

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Acquittal Appeal No.S-41 of 2022

Date of hearing: 15.08.2024
Date of decision: 15.08.2024

Appellant: Dr. Hadi Bux, through Mr. Muhammad Hashim Laghari,
advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through the listed Criminal Acquittal Appeal, the appellant/complainant has assailed the order dated 18.01.2022, passed by Judicial Magistrate-II, Hyderabad, in Cr. Case No.938/2021, outcome of FIR bearing Crime No.23/2021, for offence punishable under Sections 342, 506, 504 PPC, registered at PS Site, Hyderabad, whereby the private respondents/accused have been acquitted under Section 249-A CrPC.

2. Brief facts of the case that the complainant, a doctor, purchased two shops in 2016 at Boulevard Mall, Hyderabad, in his son's name. He received rent for the shops until 2019, after which payments ceased. On November 3, 2020, the complainant and his associates met with the accused, Hamayoon Barkat, to discuss the overdue rent. During the meeting, Hamayoon agreed to buy the shops for Rs. 20 million, with payments to be made in two installments. However, when the complainant visited Hamayoon's office on April 14, 2021, to finalize the agreement and collect the remaining rent, Hamayoon became aggressive, refused payment, and, along with his associates, physically assaulted the complainant's son. The complainant and his son were confined in a room for two hours and threatened. After their release, they reported the incident to the police, leading to the registration of an FIR.

3. During trial, the accused/ private respondents filed an application under Section 249-A CrPC which has been allowed by trial court vide order dated 18.01.2022, hence, this criminal acquittal appeal.

4. Per learned counsel for the appellant/complainant that learned trial Court has passed the order in violation of law and there was sufficient material available on record to convict the private respondents/accused but learned trial Court acquitted them on flimsy grounds. Lastly, he prayed for setting aside of the impugned order and allowing of the instant criminal acquittal appeal.

5. Heard learned counsel for the appellant/complainant and perused the material made available on the record.

6. It reflects from the impugned order that the learned trial court has mainly acquitted the private respondents on the reasoning mentioned in paragraphs No.11 & 12 of impugned order which are reproduced as under:-

“11. It is very much clear from the record that sufficient opportunity and clear directions were issued to prosecution to produce witnesses and lead evidence, but they failed to comply the same and it was observed that complainant is deliberately avoiding to proceed with the case. However, it would not be out of place to discuss that in today’s era/ society it has been observed that most of the people are being dragged into Court by the opposite party due to their personal enmity arising out of civil or family disputes and admittedly the cause of alleged incident was a civil/monetary dispute and such cases have burdened the Courts which have no base and roots and causing wastage of precious time of the Court and even after conclusion of the case, the outcome of the such cases is nothing except acquittal of the accused from charge of the case and further it appears that dispute between both the parties is of civil/monetary nature and same is converted into criminal case.

12. I am of humble view that no sufficient evidence is available against present accused. The perusal of section 249-A Cr.P.C clearly shows that Magistrate is given powers of acquitting accused person at any stage of the case, after given notice to prosecution and for the reasons to be recorded, if, he considers that charge is groundless or that there is no probability of the accused being convicted of any offence. The use of words “at any stage” indicates the intention of the legislature that such an order can be passed even before recording of evidence, if the facts of the case are such that the Court is satisfied that no useful purpose would be served by prosecuting further in the matter. The main consideration to be kept in view would be whether the continuance of the proceedings would be a futile exercise, wastage of time and abuse of process of Court. The bare reading of case file shows that there is no probability of conviction of applicants/accused. The trial in the present case would not serve any purpose rather would be a futile exercise.”

7. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment/order to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Honourable Supreme Court in the case of State Versus Abdul Khaliq and others (PLD 2011 SC 554), wherein the Hon’ble Supreme Court has held as under:-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or

*non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”*

8. The sequel of above discussion is that the learned trial Court has committed no illegality or irregularity while recording acquittal of the private respondents/accused by way of impugned order, which even otherwise does not call for any interference by this Court by way of instant Criminal Acquittal Appeal, the same fails and is dismissed accordingly together with listed applications.

JUDGE

Irfan Ali