

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

Criminal Acquittal Appeal No.S-50 of 2023

Date of hearing: 10.09.2024
Date of decision: 10.09.2024

Appellant: Bashir Ahmed through Mr. Mohammad Jamil Ahmed,
advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 20.02.2023, passed by Judicial Magistrate & Judge Consumer Protection Court, Hyderabad, in Criminal Case No.06/2022, outcome of FIR bearing Crime No.111/2021, u/s 452, 427, 506(ii), 504, 34 PPC, registered at PS Bhattai Nagar, Hyderabad, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. The brief facts of the case are that on 27-09-2021, complainant Basheer Ahmed, an advocate, registered FIR No. 111 of 2021 at Bhattai Nagar Police Station, Hyderabad. He stated that on 26-09-2021, while he was in Karachi, his house in Qasimabad, Hyderabad, was undergoing renovation, overseen by his nephew, Mohsin Khan. The accused, Ayoub Memon, Sameer Memon, Aziz Memon, and others, had been regularly harassing them. On the same day, the accused, along with unknown individuals, entered the house, threatened Mohsin with a pistol, damaged property, and left while abusing. The nephew informed the complainant, who then filed the FIR.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 20.02.2023, hence, this criminal acquittal appeal.

4. Per learned counsel for the appellant/complainant that learned trial Court has passed the judgment 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 judgment 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 judgment that the learned trial court has mainly acquitted the private respondents on the reasoning mentioned in paragraphs No.12 & 13 of impugned judgment which are reproduced as under:-

“12- Moreover, the Investigation Officer submitted final report under N/C Class and stated during his deposition before court that complainant registered false FIR against accused persons in order to pressurize them.

13- It is pertinent to mention here that the complainant himself is not eye witness of the alleged incident and alleged witness namely Mohsin Khan has not given out the actual words in his statement recorded under section 161 Cr.P.C nor in his deposition before court, which were said to have been allegedly used by the accused persons nor he has stated that he was provoked by the insulting abuse. It was held in 1991 Cr.L.J 3226 that “for the commission of offence under section 504 P.P.C, the complainant must mention the actual words used by the accused while insulting him otherwise the court will not have enough material before it to come to conclusion whether the words used by the accused amounted to intentional insult”.”

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 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 judgment, 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 application.

JUDGE

Irfan Ali