

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Revision Application No. S- 98 of 2023

(Asadullah Khoso Vs. The State and another)

For hearing of main case.

ORDER.**13-02-2024.**

Mr. Abdul Qadeer Khoso, advocate for the applicant.

Abdul Aziz private respondent in person.

Mr. Aftab Ahmed Shar, Additional P.G for the State.

IRSHAD ALI SHAH,J;- It is the case of prosecution that the complainant being sales officer in Reema Ghee Mills Sukkur booked 910 cartoons of Ghee to be delivered at Gautam Traders Jacobabad through the goods company of the applicant, those were not delivered; consequently an FIR for the said incident was lodged by the complainant at PS Site Area Sukkur. The applicant joined the trial; denied the charge and prosecution to prove the same, examined in all four witnesses and then closed its side. The applicant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence, he did not examine anyone in his defence; however he examined himself on oath. On conclusion of trial, he was convicted u/s 420 PPC and sentenced to undergo simple imprisonment for three years with fine of Rs. 100,000/-, he was further convicted u/s 406 PPC and sentenced to undergo simple imprisonment for three years with fine of Rs. 100,000/-; he was further convicted u/s 379 r/w section 34 PPC and sentenced to undergo simple imprisonment for three years with fine of Rs. 50,000/-. In default in payment of fine, the applicant was directed to undergo imprisonment for one month. All the sentences were directed to run concurrently with benefit of section 382 (b) Cr.P.C by learned IIIrd Judicial Magistrate

(MTMC) Sukkur vide judgment dated 12-10-2023, which the applicant impugned by preferring an appeal, it was dismissed by learned IVth Additional Sessions Judge (Hudood) Sukkur, vide judgment dated 08-11-2023, which the applicant has impugned before this Court by preferring the instant Crl. Revision Application.

2. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the police and has been convicted and sentenced on the basis of evidence, which was doubtful in its character; therefore, he is entitled to be acquitted of the charge by extending him benefit of doubt; which is not opposed by the complainant by filing his affidavit; however, learned Additional P.G for the State by supporting the impugned judgment has sought for dismissal of instant Crl. Revision Application by contending that the prosecution has been able to prove its case against the applicant beyond shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. The FIR of the incident has been lodged by the complainant claiming himself to be sales man of Reema Ghee Mill, without producing any authority letter that too with delay of more than one month; such delay having not been explained plausibly could not be over looked obviously it is reflecting consultation and deliberation. Apparently the applicant being owner of Goods Company provided a Mazda pickup to the complainant party for delivery of cartoons containing Ghee to Gautam Traders at Jacobabad. On asking, the complainant was fair enough to say that he has not been able produce any documents with regard to such delivery to the driver of the Mazda pickup; such omission on his part could not be over looked. Be that as it may, Waheed Ali who is alleged to

be driver of the said Mazda pickup is still absconding. None has been examined by the prosecution from Gautam Traders at Jacobabad to prove whether the delivery of the subject goods was actually made to them or not. PW/mashir Muhammad Akram has contradicted the complainant with regard to availability and/or functioning of the CCTV camera at the place of incident; such contradiction in their evidence could not be ignored. Evidence of PW/PC Imran Ali is only to the extent that he recorded FIR of the present case; his evidence is immaterial to be discussed. Evidence of I.O/ASI Khair Muhammad is to the extent that he has conducted investigation of the case and submitted challan of the present case before the Court having jurisdiction; his evidence is not enough to improve the case of the prosecution. The applicant was charged for having committed an offence punishable u/s 406 r/w 34 PPC; on conclusion of trial, besides the said penal section; he has also been convicted u/s 420 and 379 PPC simultaneously against the spirit of law. By such action, the applicant has been misled in his defence seriously, which is in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, which prescribe that the right of individual to be dealt with in accordance with law. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the applicant beyond shadow of reasonable doubt and to such benefit, he is found entitled.

5. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates

reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

6. In view of above, the conviction and sentence awarded to the applicant by learned trial and appellate Courts by judgments below are set aside, he is acquitted of the offence for which he was charged, tried, convicted and sentenced; he is present in Court on bail, his bail bond is cancelled and surety is discharged.

7. The instant CrI. Revision Application is disposed of accordingly.

J U D G E

Nasin/P.A