

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No.S- 15 of 2020

The appellant: Zubair Ahmed son of Ghulam Nabi
bycaste Mahesar **through** Mr. Mehfooz
Ahmed Awan, advocate.

Private Respondent: **Through** Syed Israr Ahmed Shah,
advocate.

The State. **Through** Syed Sardar Ali Shah Rizvi,
Additional Prosecutor General.

Date of hearing : 12-03-2024.
Date of decision : 12-03-2024.

J U D G M E N T

IRSHAD ALI SHAH, J.-. The facts in brief necessary for disposal of instant CrI. Acquittal Appeal are that the private respondent allegedly issued a cheque in favour of the appellant, it was bounced when was presented before the concerned Bank for encashment, for that the present case was registered. On conclusion of trial, the private respondent was convicted u/s 489-F PPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 30,000/- and in default in payment whereof was directed to undergo simple imprisonment for one month with benefit of section 382 (b) Cr.P.C by learned IInd Judicial Magistrate/(MTMC), Pano Aqil vide judgment dated 06-11-2019, which the private respondent impugned while preferring an appeal, it was allowed and consequently he was acquitted by learned Additional Sessions Judge, Pano Aqil, vide judgment dated 13-01-2020, which the appellant has impugned before this Court by preferring the instant CrI. Acquittal Appeal.

2. It is contended by learned counsel for the appellant that learned appellate Court has recorded acquittal of the private respondent without lawful justification and on the basis of misappraisal of evidence; therefore,

his acquittal is to be examined by this Court by way of instant Crl. Acquittal Appeal, which is opposed by learned Additional P.G for the State and learned counsel for the private respondent by supporting the impugned judgment.

4. Heard arguments and perused the record.

5. The FIR of the incident has been lodged with delay of about 11 months that too after having a recourse u/s 22 A/B Cr.P.C, such delay could not be ignored. The parties are alleged to be disputed on sale and purchase of the house, the description whereof are unknown. There is discrepancy with number of the cheque allegedly issued by the private respondent, such discrepancy could not be over looked. The *Iqrarnama* contains the number of cheque, though it was issued lateron which appears to be surprising. In these circumstances, learned appellant Court was right to record acquittal of the private respondent by accepting his plea of innocence by extending him benefit of doubt; therefore, his acquittal is not found arbitrarily or cursory to be interfered with by this Court by way of instant Crl. Acquittal Appeal.

6. In case of *State & others vs. Abdul Khaliq & others (PLD 2011 SC-554)*, it has been held by the Apex Court 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.

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. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal 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 actual infirmities”.

7. In view of above, instant criminal acquittal appeal fails and is dismissed accordingly.

JUDGE

Nasim/P.A