

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Crl. Appeal. No. S- 78 of 2014.

Appellant: Zulfiqar Ali through Mr. Muhammad Hashim Laghari, advocate.

Complainant: Syed Saood Ahmed through Mr. Zafar Iqbal Arain, advocate.

The State: Through Mr. Siraj Ahmed Bijarani, APG.

Date of hearing: 20.09.2024.

Date of judgment: 11.10.2024.

J U D G M E N T

Zulfiqar Ali Sangi, J.- The appellant is aggrieved and dissatisfied with the judgment dated 30.06.2014 passed by learned Additional Sessions Judge, Kotri, in Sessions Case No.177 of 2012 arising out of FIR No.428/2011 for the offences punishable U/S 467, 468, 420 PPC at P.S. Kotri whereby the appellant was convicted and sentenced as under;-

“u/s. 467 PPC

Accused is convicted and sentenced to undergo R.I for 07-years and shall be liable to pay fine of Rs. 50,000/-. In default in payment of fine, accused shall suffer S.I for three months more.

u/s. 468 PPC

Accused is convicted and sentenced to undergo R.I for 03-years and shall be liable to pay fine of Rs.30,000/-. In default in payment of fine, accused shall suffer S.I for three months more.

u/s 420 PPC

Accused is convicted and sentenced to undergo R.I for 03-years and shall be liable to pay fine of Rs.30,000/. In default in payment of fine, accused shall suffer S.I for three months more.

All the sentences awarded to the accused shall run concurrently.”

2. The facts of the prosecution case are that Syed Saood Ahmed lodged an FIR with Police Station Kotri on 29.09.2011, alleging that he is the manager of Philip Morris Pakistan, a factory involved in the sale of cigarettes. Abdullah Traders, run by Zulfiqar Ali in Digri City, had business dealings with the company. On 05.08.2011, at approximately



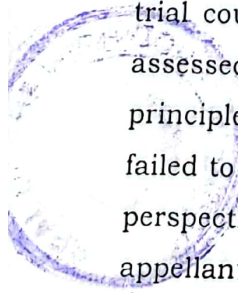
12:00 hours, Zulfiquar Ali, son of Sher Muhammad, provided an online slip for the amount of Rs. 2,780,000/- from Muslim Commercial Bank Limited, Digri Branch, for the purchase of cigarettes from the company. On 06.08.2011, the company delivered cigarettes worth Rs. 2,769,988/- in various brands to Zulfiquar Ali at Digri. However, upon checking the slip in the company's system, it was discovered that the said amount had not been remitted. The company then verified the slip through Muslim Commercial Bank Limited, Kotri Branch, where bank officials confirmed that the slip was fake. Subsequently, the company contacted Zulfiquar Ali, who promised to return the amount within two or three days, but he failed to do so. Following this, the company granted power of attorney to the complainant, who then filed an application before learned District & Sessions Judge, Jamshoro at Kotri. Upon the orders of the Court, the FIR was lodged.

3. After completing the usual investigation, the charge against the appellant was framed on 25.02.2013, to which he pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 04 Prosecution Witnesses and exhibited various documents and other items. The statement of the accused/appellant was recorded under Section 342 Cr.P.C in which he denied all allegations leveled against him. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted the appellant as mentioned above; hence, the appellant has preferred this appeal against his conviction.

5. Learned counsel for the appellant has mainly contended that the impugned Judgment dated 30.06.2014 passed by the Learned Additional Sessions Judge, Kotri is contrary to law, facts of the case, principles of criminal justice and material available on record and is, therefore, not sustainable and is liable to be set aside; that learned trial court has made a subjective approach to the case and has not assessed prosecution evidence in accordance with well established principles set up by the superior courts on the subject and has also failed to appreciate statement of accused/appellant on oath in its true perspective, as such, arrived at a wrong conclusion while convicting appellant; that on verification of cheque and online slip, it become evident that there is no account of appellant in the Muslim Commercial Bank Digri, and such certificate has also been issued by

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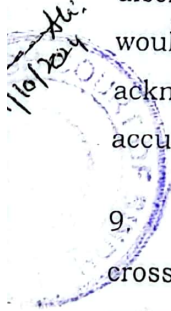
the Manager of MCB Digri Branch; that, learned lower court has failed to consider material aspect of the case that there are material contradictions in the evidence of all the witnesses. Lastly, he prayed that the appellant may be acquitted by extending him benefit of the doubt.

6. On the other hand, learned counsel for the complainant and learned Assistant Prosecutor General Sindh contended that all the witnesses have fully supported the case of prosecution; that no major contradictions in their evidence has been pointed out by learned defence counsel; that there is absolutely no circumstance on record to show if complainant or its company had previous animosity of any nature or dispute on account of any transaction, but it was first time that the appellant had cheated the company and by deception method while producing bogus online slip had successful to got shipment of cigarettes for huge amount of Rs.2,769,988/-; that these all circumstances, evidence on record clearly prove charges against the appellant therefore the appeal may be dismissed.

7. I have heard the learned counsel for the parties and perused the material available on record with their able assistance.

8. The meticulous re-appraisal of material brought on the record is entailing that though the prosecution witnesses have tried to support the case of prosecution but their evidence when scrutinized deeply was found coupled with material infirmities/improbabilities. In his testimony, the complainant admitted that he did not know whether it is mentioned in the FIR that "while leaving for Kunri, the accused handed over to me the original customer copy of the online slip." During cross-examination, the complainant further admitted that the FIR does not mention that he met with the accused/appellant at his shop, where the accused allegedly disclosed that his salesman has committed fraud and that the amount would be transferred within two days. The complainant also acknowledged that Exhibit 06/A does not bear the signature of the accused/appellant.

9. It is important to highlight that the complainant admitted during cross-examination that the goods were received by Shahzad Ali, who was acting on behalf of the accused/appellant, yet this fact is not mentioned in the FIR. Additionally, the online slip was not sent for handwriting



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verification, and the investigating officer did not investigated about the stamp of the bank embossed on the slip. Prosecution witness (PW-3), Abdul Rasool, the Manager of MCB Bank, Digri, testified clearly that he verified Exhibit O6/A and stated that cheque No. 6027294, mentioned in the slip, belonged to one Bharoo Mal and not to the appellant Zulfiqar Ali. The investigating officer neither examined Bharoo Mal nor made him an accused in the case, despite his account allegedly being used to commit the offence. The complainant testified that the accused/appellant handed him the online slip for purchasing cigarettes while he was on his way from Digri to Kunri. However, neither the location nor the presence of any witnesses at the time the slip was handed over is mentioned in the prosecution's case, which raises serious doubts. Additionally, the slip was allegedly handed over one day before the delivery of goods, leading to the question of why it was not verified before delivering goods worth Rs. 27,80,000/-. This fact also casts doubt on the prosecution's case.

10. It is a settled principle of law that no one should be convicted of a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible. Similarly, the mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. It is also an established principle of law that an accused person is presumed to be innocent until and unless he is proved guilty beyond a reasonable doubt and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond a reasonable doubt on the basis of legally admissible, confidence-inspiring, trustworthy and reliable evidence. It has also been held by the Superior Courts that conviction must be based upon unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused. The rule of giving the benefit of doubt to an accused person is essentially a rule of caution and prudence and is deep-rooted in our jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (Peace Be Upon Him): "Avert punishments (Hudood) when there are doubts" and "Drive off the

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ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in 'pardon is better than his mistake in punishment.' The Honourable Supreme Court has quoted probably the latter part of the last-mentioned saying of the Holy Prophet (PBUH) in case of *Ayub Masih v. State (PLD 2002 SC-1048)* "**Mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent.**" The same principle has also been followed by the Honourable Supreme Court of Pakistan in recent Judgment in case of *Naveed Asghar and 2 others v. The State (PLD 2021 SC-600)*. It is also settled principle of law that if a single circumstance creates reasonable doubt in a prudent mind about guilt of the accused, then the accused will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in case of *Tariq Pervez v. The State reported as (1995 SCMR-1345)*, wherein the Honourable Supreme Court of Pakistan has held as under:-

"The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is any circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right".

11. The sequel of above discussion is that the prosecution has miserably failed to establish the guilt against the present appellant beyond shadow of reasonable doubt. Consequently, the conviction and sentence awarded to the appellant by learned trial Court vide impugned judgment is set aside and the instant criminal appeal is **allowed** resulting to acquittal of the appellant. The appellant is on bail. His bail bond and the surty are discharged.

Sd/-ZULFIQAR ALI SANGI.
JUDGE. 11. 10. 2024.

Compared by NADEEM.

Prepared by ASIP

CERTIFIED TO BE TRUE COPY

(KHAIR UDDIN KHAN)
Jc Assistant Registrar
High Court of Sindh,
Circuit Court, Hyderabad.