

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Acquittal Appeal Nos.177 & 178 of 2020

Appellant in Appeal 177/2020 : Hamid Ali son of Ahmed Ali.

Appellant in Appeal 178/2020 : M/S. SSFR (Pvt.) Ltd.  
Both represent through M/s. Sohail  
Hameed and Shakeel Ahmed,  
Advocates.

Respondent Nos.1&3 : The State  
through Mr. Fayyaz Hussain Saabki  
APG.

Respondent No.2 : Aamir Khan  
through Mr. Rehman Ghous, Advocate.

Date of hearing : 07.04.2025

Date of order : 07.04.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.** – Through filing the separate titled Criminal Acquittal Appeals, both appellants impugned the single order dated 11.01.2020 passed by the learned XXVth Judicial Magistrate Karachi-East in Criminal Case No.608/2019, whereby the trial Court has acquitted the Respondent No.2/Accused under Section 249-A Cr.P.C.

2. Heard learned counsel for the parties and perused the material available on record.

3. At the very outset, the learned counsel for the appellant/complainant drew the attention of this Court to the deposition of PW Hamid Ali, recorded at Exhibit 06, wherein he categorically referred to the registration of the FIR and produced a CD of CCTV footage at Exhibit 6/B. The learned counsel submitted that this piece of electronic evidence forms the very foundation of the prosecution's case, as it allegedly captures the accused in the act of committing theft of unstitched garments from the complainant's factory premises. It was further contended that the said testimony remained entirely unchallenged, as no opportunity of cross-examination was availed or afforded to the defense counsel at any stage. In this context, reliance was placed on Article 113 of the Qanun-e-Shahadat Order, 1984, which provides that "*facts admitted need not be*

*proved.*” The learned counsel submitted that since the evidence of PW Hamid Ali, along with the accompanying CD, remained unrebutted, it carries full evidentiary value and ought to have been duly appreciated by the learned trial Court.

4. The learned counsel for the respondent/accused, while generally supporting the impugned order, initially challenged the maintainability of Criminal Appeal No. 178/2020 on the ground that it was filed by a private Limited Company, M/s SSFR (Pvt.) Ltd. However, he ultimately conceded, though with some reluctance, that the statutory definition of “person” under Section 11 of the Pakistan Penal Code, 1860, includes a company or body of persons, whether incorporated or not, thereby establishing the maintainability of the appeal. More importantly, he emphasized that no cross-examination of PW Hamid Ali was carried out and his evidence including the production of the CCTV/CD, stood uncontroverted and unassailed; an aspect which was overlooked by the learned trial Court in its acquittal order.

5. The learned APG for the State also supported the appellant's stance and submitted that the complainant and two other prosecution witnesses were never examined during trial. Furthermore, the CD containing CCTV footage produced through PW Hamid Ali was not considered at all by the learned trial Court. He pointed out that the trial Court had erroneously stated that all prosecution witnesses had been cross-examined, which is manifestly incorrect from the record. Such a misstatement led to the premature acquittal of the accused under Section 249-A Cr.P.C., depriving the prosecution of its legitimate right to lead evidence and prove its case.

6. The impugned order, dated 11.01.2020, appears to have been passed in undue haste and on patently erroneous assumptions. The assertion in the order that all prosecution witnesses were cross-examined is factually inaccurate, as no such opportunity was provided to the defense and key witnesses including the complainant were never examined. The failure to allow cross-examination, particularly of PW Hamid Ali whose testimony stands unrebutted and carries significant evidentiary value, has materially prejudiced the case and rendered the proceedings incomplete.

7. The right to a fair trial, enshrined under Article 10-A of the Constitution of the Islamic Republic of Pakistan, is a sacrosanct

constitutional guarantee that mandates a meaningful opportunity to present and contest evidence before an impartial tribunal. The denial of such procedural safeguards, especially the right of cross-examination, strikes at the very root of due process and cannot be condoned. Additionally, in view of Article 113 of the Qanun-e-Shahadat Order, 1984, the unrebutted testimony of PW Hamid Ali, supported by documentary evidence in the form of the CCTV CD (Exh. 6/B), constitutes material that the trial Court was obligated to consider and evaluate. The failure to do so reflects a non-application of judicial mind and warrants interference by this Court.

8. In view of the foregoing legal and factual infirmities, the impugned order dated 11.01.2020, whereby the accused were acquitted under Section 249-A Cr.P.C., is hereby recalled. The matter is remanded to the learned trial Court with explicit directions to allow the defense counsel an opportunity to cross-examine PW Hamid Ali (Exh.06), and to record the evidence of the complainant and other prosecution witnesses, if produced. The learned trial Court is further directed to decide the matter afresh on merits, in accordance with law and in light of the principles laid down herein.

9. Consequently, both Criminal Appeals, along with all pending applications, stand disposed of in the above terms. Office is directed to place copy of this order in connected appeal.

**J U D G E**