IN THE HIGH COURT OF SINDH KARACHI

Cr. Acquittal Appeal No.205 of 2005

Syed Zulfiqar Ali Jaffery

Vs.

Abdul Qadir & another.

Appellant	:	None present for the Appellant
The State Respondent No.2	:	Ms. Rahat Ahsan, DPG
Date of Hearing	:	23.10.2017
Date of Order	:	23.10.2017

O R D E R

Mohammed Karim Khan Agha, J. This appeal against acquittal was filed in the year 2005 (over 12 years ago). A brief review of order sheets reveal that the appellant and his counsel have shown little if any interest in proceeding with this appeal. Again today neither the appellant nor his counsel are present without intimation.

2. The Accused was booked in FIR No.89 of 2002 under Section 420/483 PPC, registered at PS Gulbahar. After usual investigation matter was challaned. The charge was framed against the accused who opted for trial. The prosecution examined four PWs. The accused made his statement under S.342, gave evidence under oath but did not call any defense witnesses. After hearing the learned counsel for the Appellant at length and considering all the evidence on record the accused was acquitted of the charge by Judgment dated 30.03.2005 by XII Civil Judge & Judicial Magistrate Karachi Central (the impugned judgment) against which this appeal has been filed by the Appellant.

3. I have reviewed the impugned judgment alongwith record with able assistance of learned DPG, who has fully supported the impugned judgment. The main paragraphs of

impugned judgment which lead to the acquittal of the accused can be found on pages 45, 47 and 49 of the impugned judgment in the R&P file of the trial Court, which are reproduced hereunder:-

> P.45 "If accepted at its face value, no case punishable u/s.420 PPC is made out unless by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to or to consent that any person shall retain any property or intentionally induces the person so deceived to do or to do omit anything which act or omission is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat, **which is not found in instant case.** The mere fact that although the allegation leveled in the FIR did not constitute offence punishable u/s.420 PPC. **Yet police registered the case under this section obviously to arrest him indicates malafide on the part of police. There is another aspect is that the complainant did not approach the concerned police immediately after the incident. Even time, date, year and place are not mentioned in the FIR but police had taken the cognizance against the accused without applying his mind to the facts of the case.** Under section 222 Cr.P.C. it is necessary that the charge should contain particulars as to time and place of the alleged offence and since in this case said particulars are not mentioned so charge is said to be groundless. In the case of Makkan & others reported in 1945 AIR 81 it was held that "the whole object of framing a charge is to enable the defence to concentrate its attention on the case that has to meet".
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> As observed in the case of Almas Ali Khan v. the state reported PLD 1959 Dacca 711 the validity of a charge is to be judged on the basis of accusation made and not upon evidence ultimately led in the case. **In the present case as discussed above the charge is groundless.**
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> As mentioned above accused has neither cheated the complainant nor thereby has induced him or any other person so section 420 PPC is not applicable to the facts of the case in hand. The prosecution in such circumstances was not able to take cognizance or prosecute the accused. The prosecution must be based on evidence beyond reasonable doubt and the prosecution has to stand on its own legs without taking advantage of any flaws in the defence. Reliance is placed on 1998 PCr.LJ 347." (bold added)

4. Page-47 is also reproduced as under-

> "**Beside this there is no evidence collected to establish that the containing PSO stuff were actually stored therein for sales and use. There is also no evidence that the accused made or had in possession the die plate or other instrument in question and that such die etc. was for the purpose of counterfeiting a trade make or property mark.** Moreover it is well settled law that mere possession of counterfeiting trade mark or property mark is not an offence punishable u/s.483 PPC unless there are evidence on record to show that the accused used and had reason to believe that same were forge.
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> Accused examined himself on Oath in disproving of the charge. He was also cross examined but nothing was come on record which can give help to the prosecution to establish his case but the prosecution could not be rebutted the defence plea of the accused. He has stated the same facts which I have reproduced above and need not repeat. If there are two versions of an incident, the one favoring the accused should be accepted by the Court. If an authority is needed reference can be made to a case of Wali Muhammad (1984 SCMR 914)". (bold added).

5. Page-49 is also reproduced as under-

> "In criminal law the "mens are" is always to be proved by the prosecution much less the question where the factum of the use or hearing reason to possess such use is in corporate in the very section of law. **In the present case the prosecution brought nothing on record either oral or circumstantial to indicate that the accused had used or had reason to believe that article in question was either forged or counterfeit, regarding noncompliance of mandatory provision of section 103 Cr.P.C. is also not without substance. It is evident from record that the mandatory provision of aforesaid provision of law had not been fulfilled** in as much as two respectable persons from public though available had not been made witnesses with recovery memo". (bold added)

6. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, fooiish, artificial, speculative and ridiculous as held by the Honorable

Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. **In other words, the presumption of innocence is doubled** as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

> "16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:
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> > Bashir Ahmed v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 02 others (PLD 2009 SC 53), Farhat Azeem v. Asmat Ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr. LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and

another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

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 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, expect 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." (bold and italics added).

7. Having gone through the evidence and the impugned judgment I find that there has been no misreading or non reading of evidence, that the impugned judgment is based on sound reasons and there is no question of the findings in the impugned judgment being perverse arbitrary, foolish, artificial, speculative and ridiculous especially as it is a well established principle of law that the accused is always entitled to the benefit of the doubt in criminal cases and as was held in the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), where the Honourable Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single 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."

8. As such in my view there is no merit in the instant appeal against acquittal. The Acquittal recorded by trial Court in favour of Respondent is based upon sound reasons, which require no interference at all. As such, the instant appeal against acquittal is dismissed.