

IN THE HIGH COURT OF SINDH AT KARACHI**Present:****Mr. Justice Mohammad Karim Khan Agha****Mr. Justice Amjad Ali Sahito,****CR. REVISION APPLICATION NO.83 OF 2015**

Applicant Mushtaq Ahmed Kamali son of Noor Muhammad through Mr. Naveed Ali Khokar, Advocate.

Respondents/State: Through Mr. Zahid Khan, Assistant Attorney General.

Dates of hearing: 06.11.2020

J U D G M E N T

Mohammad Karim Khan Agha, J.- Applicant Mushtaq Ahmed Kamali son of Noor Muhammad has filed this criminal revision application impugning the judgment dated 12.06.2015 passed by the Special Court (Offences in Banks) Sindh at Karachi in Case No.03 of 2013 arising out of a direct complaint under Section 409/420-/468/471/477-A/34 PPC. The learned trial court vide its judgment dated 12.06.2015 acquitted the respondent Mst Imrana.

2. The brief facts of the case as per direct complaint are that the complainant Co-operative Housing Society is maintaining PLS account No.01-151-008-4 in University Road Branch of ABL which is being operated by Mushtaq Ahmed Kamali its Honorary Secretary which is also operated with joint signatures of Mushtaq Ahmed Kamali and absconding accused Zahid Hameed who was working as assistant in the society and used to maintain the account, ledgers and cash book etc. It is further averted in the complaint that internal audit of the societies account was conducted wherein it transpired that some fake payments have been shown in ledger cash book of the society, therefore, the complainant moved to the bank to supply them the statement of account as well as tampered/forged cheques but the bank for about two years avoided to supply the statement of account and when the statement of account was supplied it revealed that about 137 cheques were encashed which either

were tampered with or forged under the forged signature of Honorary Secretary and as such as such they moved to the bank for supply of those cheques which after great efforts supplied photocopies of 102 cheques whilst the remaining cheques have so far not been supplied. It is further averred in the complaint that after surface of fraudulent act absconding accused Zahid Hameed fled away alongwith, ledgers, cash book and other relevant record. The amount which the complainant calculated was drawn by absconding accused Zahid Hameed was in the sum of Rs.1,03,76657/-. The complainant tried his level best to receive the said amount from the bank which the bank had fraudulently encashed, through fake cheques, therefore they moved to the Banking Ombudsman against the bank where their complaint was entertained and decided in their favour and against the decision of Banking Ombudsman the bank also filed review petition before Banking Ombudsman which also was dismissed.

3. The Accused Zahid Hameed could not be served through the process of the court, therefore statement of process server Mansoor Ali, ASI FIA was recorded wherein he stated that the address of the accused is incomplete. In the light of the statement of process server accused was declared as proclaimed offender.

4. After compliance of the provision of Section 241 Cr.P.C. the charge was framed against the lady accused Mst Imrana to which she pleaded not guilty and claimed for trial. Accused Zahid Hameed absconded therefore he was, declared absconder and an order was passed to proceed with the case in his absence. After framing the charge the complainant has examined himself as PW-1 wherein he produced the alleged fake cheques and other documents and closed its side.

5. Statement under Section 342 Cr.PC was recorded in which lady accused denied all the allegations made against her. She did not give evidence under oath and did not examine any witness in her defence.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 12.06.2015 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

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7. The appellant in this appeal against acquittal has mainly contended that the trial court has acquitted the Respondent without appreciating the evidence in accordance with the settled principles of law and that there has been a misreading and non reading of evidence and as such the impugned judgment should be set aside by this court. On the other hand learned counsel for the State has submitted that the impugned judgment is in accordance with law and that there are no legal infirmities which justify it being interfered with.

8. Heard arguments, examined the entire evidence available on record and the impugned judgment with the able assistance of the appellant and learned State counsel and considered the relevant law.

9. It appears that the trial court through the impugned judgment has mainly acquitted the Respondent for the following reasons as set out in the impugned judgment below;

"A perusal of testimony of Mushtaq Ahmed Kamali shows that nowhere in his statement before this court he has leveled any allegation against the present accused nor even stated about fraudulent involvement of the lady accused with absconding accused Zahid Hameed. From his evidence it transpired that he has grievance against the bank to the extent of non supply of statement of account of the society to him and no where he has stated that lady accused Mst. Imrana being branch manager passed any cheque in her signature. In banking system branch manager used not to clear or passed all the cheques which are to be passed and cleared by the cashier of the bank. It has also not alleged by the complainant that she supervised those cheques which were bogus or altered or tampered. In fact Mushtaq Ahmed Kamali in any way has not implicated the present accused in his statement before this court.

He has produced photocopy of order dt. 29.11.2013 passed by Banking Ombudsman vide Exh.4/A which simply shows that he had dismissed the review petition of the bank whereas he has not produced his complaint or original order passed by the Banking Ombudsman on his complaint to peruse the same by this court which could not be used against the accused in absence of production of the same before this court. Both the points are therefore

Point No.3.

From the evidence led by the complainant it has been established that the complainant in any way has not implicated the present lady accused nor has led any independent evidence to involve her in present complaint, as such the case of the complainant is not free from doubt, therefore, while extending benefit of doubt, the lady accused is hereby acquitted u/s.245(1) Cr.P.C from the charge. (bold added)

10. It is settled law that judgment of acquittal should not be interjected unless findings are perverse, arbitrary, foolish, 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:

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, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The

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)

11. Having gone through the evidence and the impugned judgment **we find** that there has been no misreading or non reading of the evidence and that such evidence has been appreciated by the learned trial court in its proper perspective, 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 and we find that there is neither any direct or circumstantial evidence against the respondent either through oral evidence or documentary evidence. In particular PW 1 Mustaq Kamali has admitted in his evidence that, "In those days of bogus entries accused Zahid Hammed was working as accountant and Ashraf Miskeen was working as honorary secretary and joint signatory with me," which tends to implicate the aforesaid persons as opposed to the respondent who was the bank manager and not the cashier who would have had no responsibility for encashing the fraudulent cheques. Learned counsel for the appellant despite his best efforts has not been able to point out a single legal infirmity in the impugned judgment based on the evidence recorded before the trial court which accords fully with the reasoning given in the impugned judgment.

12. As such for the above reasons we find there is no merit in the instant appeal against acquittal. The Acquittal recorded by trial court in favour of the Respondent is based upon sound reasons, which require no

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interference at all. As such, the instant revision application/appeal against acquittal is dismissed.

13. These are the reasons for our short order dated 06.11.2011 which are set out below for ease of reference.

"This is a criminal revision application filed by the applicant impugning the judgment dated 12.06.2015. Learned counsel for the applicant has made his submissions. Learned DPG has also made his submission.

For the reasons to be recorded later, the instant revision application is dismissed".