

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Acquittal Appeal No.785 of 2022
(Muhammad Shafique Khan Toori Vs. The State and another)

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| Date | Order with Signature of Judge |
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1. For orders on office objections and reply at Flag A.
2. For hearing of main case.

22.12.2025

Appellant present in person.
Mr. Muhammad Taqi, Advocate for respondent No.2
a/w respondent No.2.
Mr. Sharafuddin Kanhar, APG Sindh.

ORDER

Syed Fiaz ul Hassan Shah; J: The appellant has challenged the judgment dated 09.12.2022 (“**impugned judgment**”) passed in Criminal Appeal No.33 of 2022 by the learned IIIrd Additional Sessions Judge, Karachi, East (“**Trial Court**”) filed by respondent No.2 arising out of FIR No.979 of 2021 registered under Sections 420/406 PPC with P.S. Aziz Bhatti whereby the appeal of respondent No.2 was allowed.

2. The brief facts of the case are that on 29.09.2021, the appellant (complainant) lodged FIR No. 979 of 2021 against respondent No.2 stating therein that he is a journalist by profession. He booked two plots situated in Block-4/A, Superhighway, Karachi, in a Project Mahdia City, a project of M/s. Hadi Builders and Developers, and the office of said builder was situated at office No.205, Second Floor, Crown Square, Plot No.31-B, Block 13-A, Gulshan-e-Iqbal, Karachi. These two plots bearing Nos.83 and 84 were booked in year 2011 and the appellant, so far, has deposited Rs.805,000/- in furtherance of the said booking and receipts of deposits were available with him. Due to re-planning, the appellant has been allocated Plots No.138 and 139 and on inquiry from his own sources, the appellant came to know that the subject plots viz. Plot No.138 and Plot No.139 do not exist in the said project and such cheating done by a person namely Ali Murtaza (respondent No.2) is the CEO (Chief Executive Officer) of Hadi Builders to whom he had paid the earnest amount through cheques. The appellant alleged that accused Syed Ali Murtaza has cheated him and committed fraud with him and he is liable to be

convicted due to the fact that he has cheated and committed fraud in the name of Holy Twelfth Imam and that the respondent No.2 himself belongs to clergy and under sacrosanct garb he cheated and it is a case of double cheating.

3. Heard appellant in person and learned counsel for respondent No.2 as well as Assistant Prosecutor General Sindh and perused the record with their assistance.

4. It appears from the record that respondent No.2 is the owner of land measuring 109.27 acres, Taluka 7, District Jamshoro, and he developed a project through Hadi Developers which is a partnership concern and respondent No.2 and his wife are partners of this Hadi Developers. The appellant has booked and secured allocation in respect of two plots bearing Nos.83 and 84 in the year 2014 against above mentioned earnest money. Subsequently, the respondent No.2 has changed planning and substituted the said allocations of plots by giving new Plots No.138 and 139 in his same project which have been accepted by the appellant by signing a proforma binding parties to strictly adhere with the terms and conditions printed on the said Booking Form. This fact has not been disputed by the appellant as well as by the learned Assistant Prosecutor General Sindh.

5. The contention of the appellant is that respondent No.2 had allocated Plots No.83 and 84 and subsequently he has changed such allotment by allocating another set of plots bearing Nos.138 and 139 which are not existing in Layout Plan thereby he has committed a fraud and cheating with the appellant and more so respondent No.2 is a religious leader and due to his social and religious status, the appellant has got utter surprise.

6. I do not find any merits in the contention of the appellant that the substitution of plot numbers or re-allocation in the same project for the same valuation could be termed as a “fraud” or “cheating” in view of clause-7 at Exh.3 – a binding contract between the appellant and respondent No.2. The appeal does not speak about the “monetary loss” or inducement that may supplement the contention of the appellant to attribute the ingredients of Sections 419 and 420 PPC. The appellant has not accepted the offer of respondent No.2 to get two plots in Block-3/A of the said project without additional fees of re-allocation or take back earnest money at Dollar rate or double the amount of earnest money in Pak rupees and thus the contention of

the appellant that new Plots No.138 and 139 or its Block-4/A do not exist carries no weight as the case lacks mens rea or actus rea essential element for the conviction. None of the ingredients of the proviso of Sections 419 and 420 PPC are attracted.

7. The learned counsel for respondent No.2 as well as respondent No.2 himself categorically stated before me that they are still ready to settle down this dispute with the appellant by proposing the best location in his project which shows the bonafide intention of respondent No.2. The learned Assistant Prosecutor General Sindh states that even respondent No.2 is willing to pay double of the price alongwith the interest ratio for the earnest money which offer has also been recorded in the impugned judgment but the appellant is not interested to settle dispute.

8. The essential element of *mens rea*, which forms the cornerstone of criminal liability under the Cheating or fraud remains unproven. In the absence of such culpable intent, and in light of the settled jurisprudence, the appeal against acquittal does not meet the legal threshold required for interference. Reliance is placed on the following authoritative pronouncements of the Hon'ble Supreme Court of Pakistan as held in *Muhammad Zaman v. The State and others* [2014 SCMR 749], *Muhammad Rafique v. Muhabbat Khan and others* [2008 SCMR 715], *Jehangir v. Amin Ullah and others* [2010 SCMR 491], *Mst. Askar Jan and others v. Muhammad Daud and others* [2010 SCMR 1604], *Mst. Sughra Begum and another v. Qaiser Pervez and others* [2015 SCMR 1142]. These precedents collectively affirm that unless the acquittal is demonstrably flawed due to gross mis-appreciation of evidence or violation of settled legal principles, the presumption of innocence stands reinforced and must not be disturbed.

9. It is a settled principle of criminal jurisprudence that an appeal against acquittal is governed by a distinct and narrower framework than an appeal against conviction. The approach adopted by appellate courts in such cases is fundamentally different, owing to the presumption of *double innocence* that attaches to an acquitted individual. This presumption not only reinforces the initial finding of innocence but also imposes a heightened threshold for interference by the appellate forum. The scope of appellate review in cases of acquittal is therefore limited and circumscribed. Unless the findings of the trial court are shown to be perverse, manifestly illegal, or wholly unsupported

by evidence, interference is not warranted. Mere possibility of a different conclusion is insufficient to disturb an acquittal. The presumption of innocence is further strengthened upon acquittal, and the appellate court must exercise restraint and caution before reversing such a finding. Reliance is placed on the authoritative judgment of the Hon'ble Supreme Court in ***Inayatullah Butt v. Muhammad Javed and others*** (PLD 2003 SC 562).

10. Consequently, the Criminal Acquittal appeal finds no merit, therefore the same is dismissed while maintaining the Judgment passed by the trial Court.

J U D G E

Asif