JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 170 of 2010

Zahid Karim
Versus
The State

Appellant by:	Ch. M. Junaid Akthar, Advocate.
State By:	Ch. Abdul Jabbar, Assistant Attorney General along with M. Nadeem Mughal, Sub-Inspector.
Date of Hearing:	22.04.2020.

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GHULAM AZAM QAMBRANI, J.:- Through the instant appeal, the appellant (Zahid Karim) has assailed judgment, dated 13.02.2010 passed by the learned Special Judge (Central) Rawalpindi, in case F.I.R No. 34 dated 11.03.2007, offences under Sections 409/ 420/ 477-A P.P.C registered at Police Station Secretariat, Islamabad, whereby the learned Special Judge Central convicted the appellant under Section 409 P.P.C and sentenced him to 7 years R.I and a fine of Rs.2,00,000/-, in default whereof, the appellant was to further undergo one year S.I.

2. Briefly stated facts of the prosecution case are that appellant/ convict (Zahid Karim) was working as Cashier in the Admn & Accounts Branch of Pakistan National Council for the Arts (hereinafter be called as "***PNCA***") and it was his duty to fill up the official bank cheques, get the said cheques signed by two officers i.e. the Director Admn. & Accounts and Executive Director or the Director General/ Chief Executive and then to encash the said cheques from the National Bank of Pakistan, Super Market Branch, Islamabad, where PNCA was maintaining its official account. On 27.02.2007, accused prepared a bank cheque worth Rs.5,00,000/- (five lacs) in the name of Maj. Retd. Awais Ahmed, the Dy. Director Admn PNCA and after getting signatures of the authorized officers,

handed over the said cheque to Maj.Retd. Awais Ahmed. When Maj. Retd. Awais Ahmed went to National Bank of Pakistan, Super Market Branch, Islamabad, and presented the said cheque for encashment, the same was dishonored due to insufficient balance. Thereafter, Maj. Retd. Awais Ahmed reported the matter to Imtiaz Ahmed, Director Admin and Accounts, PNCA, who directed the Accounts Officer, Miss Shabana Ashraf to inquire into the matter and report. The Accounts Officer after making necessary inquiries from the bank and from the office of PNCA reported that since 30.06.2006, the present appellant/ convict namely, Zahid Karim had been committing fraud, forgery and with malafide intention had enhanced the amount upon 104 bank cheques of PNCA with his own handwriting after getting the signatures of the Senior Officers, got them encashed and in that manner, he embezzled an amount of Rs.10,82,278/-. In addition to that, the appellant/convict Zahid Karim also issued receipts of membership fees and pocketed the amount of Rs.23,985/-, hence he committed criminal breach of trust. The officers concerned, thereafter, filed a complaint to the local police; hence, the instant F.I.R was registered against the appellant/convict.

3. After registration of the F.I.R and usual investigations, report under Section 173 Cr.P.C was submitted before the learned trial Court. After fulfilling codal formalities, charge was framed against the accused, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined the following seventeen witnesses:-

i. PW.1, Imtiaz Ahmed, Director Admn. & Account, PNCA, Sector F-5/1, Islamabad,
ii. PW.2 Maj. (R) Awais Ahmed, Deputy Director Admn, PNCA, Sector F-5/1, Islamabad.
iii. PW.3 Waqar Hanif, Director Publication, PNCA, Sector F-5/1, Islamabad.
iv. PW.4 Miss Shabana Ashraf, Account Officer, PNCA, Sector F-5/1, Islamabad.
v. PW.5 Ghulam Nabi Accountant, Budget, PNCA, Sector F-5/1, Islamabad.
vi. PW.6 Muhammad Aslam Cashier/Accountant, PNCA, Sector F-5/1, Islamabad.

vii. *PW.7 Obaidullah, Program Organizer, PNCA, Islamabad*
viii. *PW.8 Muhammad Nazir Awan, P.S to DG, PNCA, Islamabad.*
ix. *PW.9 Arshad Javed, Designer, PNCA, Islamabad.*
x. *PW.10 Shahid Rana, Store Keeper, PNCA, Islamabad*
xi. *PW.11 Mian Khawar, OG-II, National Bank of Pakistan, Regional Compliance Wing, Central Region, Lahore.*
xii. *PW.12 Roohullah, OG-II, National Bank of Pakistan, Main Branch, Islamabad.*
xiii. *PW.13 Javed Iqbal Naz AVP, National Bank of Pakistan, Super Market Branch, Islamabad.*
xiv. *PW.14 Rasheed Ahmed, A.S.I*,
xv. *PW.15 Muhammad Bashir, 4920/C,*
xvi. *PW.16 Sultan Mahmood, A.S.I/ I.O,*
xvii. *PW.17 Shaukat Ali Asstt. Director, F.I.A/Technical Wing, F.I.A/Hq, Islamabad.*

After closure of the prosecution evidence, the statement of appellant/convict was recorded under Section 342 Cr.P.C wherein he categorically denied the allegations leveled against him, however he did not opt to record statement on oath as envisaged under Section 340 (2) Cr.P.C. In his defence evidence, he produced photo copies of some portion from the Handbook of Drawing and Disbursing Officer, some portions from General Financial Rules of Central Govt Volume-I, II and copy of the System of Financial Control and Budgeting. The learned Special Judge Central after hearing the arguments of the learned counsels for the parties announced the judgment dated 13.02.2010 (hereinafter be called as "***impugned judgment***") hence, the instant appeal.

5. Learned counsel for the appellant contended that the learned trial Court while convicting the appellant under Section 409 P.P.C has failed to apply judicial mind and passed the impugned judgment in slipshod manner, which is based on surmises and conjectures; that the case should have been filed under Section 5 of the Prevention of Corruption Act, 1947; that the appellant is a public servant within the meaning of Section 21 of P.P.C and the prosecution had not taken the mandatory sanction to prosecute the appellant, which is condition precedent for institution of the case

against the appellant; that the case against the appellant should have been investigated by F.I.A, but was investigated through Sub-Inspector of P.S Secretariat, Islamabad. Further contended that the learned trial Court failed to appreciate the defense of appellant; that nothing incriminating recovered from the exclusive possession of the appellant; that application under Section 540 Cr.P.C. for summoning Agha Khalid Zubair, Director as Court witness, who conducted departmental inquiry, dated 09.05.2007 was dismissed without any cogent reason.

6. On the other hand, learned A.A.G. opposed the contention of the learned counsel for the appellant/convict and contended that the appellant was already serving in the said department. During the said period, he issued cheques, got signatures of the signing authorities and after that used to change the amount in the cheques. That handwriting expert report has proved the handwriting of the appellant/convict on tampered cheques; that the prosecution has proved its case through cogent and reliable evidence beyond any shadow of doubt. Hence, prayed for dismissal of the instant criminal appeal.

7. I have heard the arguments of the learned counsel for the appellant and learned Assistant Attorney General (A.A.G) and have perused the record with their able assistance.

8. Perusal of the record reveals that the main allegation against the appellant is that he misappropriated an amount of Rs.10,82,278/- from 30.06.2006. The modus operandi used by the appellant/ convict was that he allegedly used to make the figures of 7000 to 17000 and likewise 9000 to 19000 for example and in the same manner he also used to add the letters " teen" after "seven" and "nine" for example, because the original cheques were also prepared by the accused Zahid Karim. The record further reveals that one Muhammad Aslam PW.6 was Cashier in the said department and PW.4 Ms.Shabana Ashraf was the Accounts Officer in the said department. It is an admitted fact that the appellant was

handed over the charge of Cashier from 09.12.2006 and not from 30.06.2006 and this fact has also been admitted by PW.1 in his cross-examination. After assuming charge of the Cashier by the appellant on 09.12.2006, the cheque books, ledgers, TDRs and keys of safe were also handed over to him on 09.12.2006. Adverting to the testimony of witnesses, PW.1/ complainant during cross-examination admitted that Accounts Officer is bound to reconcile the account statement every month. He also stated that it was his duty to ensure that the budget was spent correctly and he was responsible being Director Accounts for any laxity if it happens in the accounts. To another question, he replied that a committee of three officers namely Lieutenant Col. Amjad, Dr. Azam Nayyar Executive Director and Mr. Azhar Ahsan conducted inquiry against the appellant. The witness has further added that the appellant confessed his guilt before the said committee. Further has added that findings of the inquiry were submitted to the competent authority and then F.I.R was registered. PW.4, Ms. Shabana Ashraf, during cross-examination has stated that an inquiry was held against her touching the matter in-question and another inquiry was conducted against the appellant. To another question, she stated that it was her duty to check the accounts. PW.5 in his statement has stated that on 11.03.2007, the investigation officer took into possession sixteen cheque books, membership receipts through recovery memo Exh.PE, Exh.P1 to 16 while the receipts Exh.P17 to 36 and further has stated that the investigation officer also taken into custody Rs.12000/- cash through recovery memo Exh.PF, the currency notes Exh.PF/1- 10, and currency notes of Rs.500/- Exh.PF/11-14 and has further stated that the investigation officer also taken into custody prize bonds worth of Rs.11100/- vide recover memo Exh.PG and prize bonds of Rs.15000/- Exh.PG/1-7 and Exh.PG/8-10. He signed over the recovery memos as witness. During cross-examination admitted that on 11.03.2007, it was Sunday. PW.6, Muhammad Aslam, has deposed that on 13.03.2007, the investigation officer took into custody Rs.45,000/- from the appellant through recovery memos and he signed as witness over the same. During cross-

examination, stated that Bashir constable came to their office and told that they have recovered the above-mentioned amount from the briefcase of appellant lying in his house. During cross-examination has stated that since 1986, he was serving as cashier in the said department upto November 2006. The reconciliation of accounts was always done by Awais Farooqi. PW.7, Ubaidullah, during cross-examination has stated that Admin Accounts Officer told him what he has deposed against the appellant. PW.8, during cross-examination has stated that he came to know about the facts when investigation officer brought the same in his notice. PW.9, has stated that on 09.09.2007, the accused paid Rs.9554/- and obtained his signature on the voucher. PW.10 in cross-examination has stated that the amount of Rs.8000/- and Rs.7000/- were illegally converted by the accused into Rs.18000/- and Rs.17000/-. This fact was brought into his notice by the investigation officer. PW.11 Bank Officer has stated that in the year 2005, he was performing duty in National Bank, Super Market Branch, Islamabad. The official bank account of PNCA was maintained in their bank. Aslam cashier was dealing officially with the account and thereafter appellant was deputed for withdrawal of amounts of the cheques. All cheques presented to their bank prepared by the cashier always in order and complete in all respect, the payments were made to the appellant by the concerned cashier. PW.12, Bank Officer, has also deposed in the same lines as deposed by PW.11. PW.13, Bank Officer has deposed that in March 2007, he handed over 104 original cheques to the investigation officer through recovery memo Exh.PJ. PW.14, A.S.I, deposed that he kept 104 cheques at 16 counterfoils, a bank statement, 92 vouchers in the malkhana. PW.15, Muhammad Bashir- constable, has deposed that on 13.03.2007, the appellant was being interrogated by the investigation officer. During the investigation, the appellant confessed the guilt and disclosed that he could get recovered the amount of Rs. 45000/- from his house and then the appellant led them to house and got recovered the above-mentioned amount which was taken into possession. PW.16, Sultan Mehmood/ A.S.I, on the complaint of PW.1 registered F.I.R

Exh.PA/1; the complainant produced sixteen (16) counterfoils of cheque books Exh.P1 to 16, twenty (20) membership receipts Exh.P17 to 36. This witness has further deposed that on 13.03.2007, the appellant made a disclosure and led to the recovery of Rs.45,000/- from his residential house; he obtained the original cheques from the banks, obtained specimen signatures of appellant and sent the same to the handwriting expert of F.I.A Rs.12000/- were recovered from the possession of appellant through recovery memo Exh.PF, which was taken into possession. Prize bonds valuing Rs.11,100/- were recovered and taken into possession through recovery memo Exh.PG. During cross-examination has stated that the said signatures are different from the signatures available on the voucher Exh.PC/1- 104. To another question, has replied that Rs.12, 000/- were presented to him by one Kashif, a partner of the appellant. He has admitted that no prize bond was misappropriated from the PNCA office. PW.17, Shoukat Ali, Assistant Director F.I.A, has deposed that on 23.04.2007, he received cheques Exh.PH/1–104 counterfoils Exh.PJ/1-104 alongwith specimen signatures Exh.PK/1-9. After examination of the said documents, he submitted his report Exh.PL.

9. I have minutely gone through the statements of witnesses which show that the case of prosecution is not free from doubt. The prosecution produced witnesses in support of the charge, but none of them have directly implicated the appellant in the commission of alleged offence, except the allegation made by the complainant in the report on the basis whereof instant case was registered. It has also come on record that during investigation, the appellant made disclosure about the commission of offence and led the police to his house and got recovered an amount of Rs.45,000/- to be the same amount embezzled by him. In this regard, it is stated that no disclosure memo was prepared nor produced in evidence. Thus, the portions of statements made by the witnesses cannot be taken into consideration. It has been admitted by PW.4 Ms.Shabana Ashraf that departmental inquiries were conducted, but admittedly, the

inquiry reports/ audit reports were not placed before the learned Trial Court, even the Inquiry officer Agha Khalid Zubair was given-up by the prosecution.

10. Perusal of record further reveals that the charge framed by the learned trail Court against the appellant to the effect that the appellant had been drawing additional amounts thereon by 30.06.2006 or before, was a defective charge and contrary to the contents of report Exh.PA. Furthermore, the specific period for commission of offence had not been put to the appellant while recording his statement under Section 342 Cr.P.C. The record further reveals that one Muhammad Aslam, PW.6, was Cashier and Ms. Shabana Ashraf, PW.4, was Account Officer in the said department. It is an admitted fact that the appellant was handed over the charge of Cashier on 09.12.2006 and this fact was admitted by PW.1 in his cross-examination. After assuming charge of the post of Cashier by the appellant, the cheque books, ledgers, TDRs and keys of safe were also handed over to him on 09.12.2006. A prudent mind cannot accept that how it is possible that the appellant can be held responsible for incidents prior to 09.12.2006. There is allegation of tampering on 104 cheques, out of which 52 cheques have been issued and enchased before 09.12.2006. Though the report of handwriting expert Exh.PL has been placed on record but the same has not been put to the appellant while recording the statement under Section 342 Cr.P.C. Without putting of this piece of evidence to the appellant and not obtaining any explanation of the same from the accused, this piece of evidence cannot be taken into consideration for awarding conviction against the appellant.

11. In the present case, the Investigating Officer has also recorded the statement of Agha Khalid Zubair, the Inquiry Officer, who conducted the inquiry against the appellant/convict and others as well as Mst. Shabana Ashraf. The said inquiry officer was the person who could have strengthened the case of prosecution being an important witness. His evidence carries more weight than the statement of any other official witness, but the evidence of this

witness was withheld by the prosecution without any plausible reason or justification, whereas the evidence of said witness was the best piece of evidence, which the prosecution could have relied upon for proving the case against the appellant/convict, but for the reasons best known, his evidence was withheld and he was not examined. Once the statement of any witness is recorded, his examination before the Court is necessary. It is evident from statement of PW.1 that the inquiry was conducted by Agha Khalid Zubair, who submitted his findings, on the basis whereof, the instant case was registered against the appellant. The non-examination of the said witness by the prosecution creates a presumption under Illustration (g) of Article 129 of Qanoon-e-Shahadat Order, 1984 that had the said witness examined in the Court, his evidence would have been unfavorable to the prosecution. Although, the prosecution was not bound to produce each and every witness, but if the prosecution failed to produce such witness who was the central figure and all the story revolved around him, then the prosecution story would become doubtful. Reliance in this regard is placed on the case of "*Hunar Shah alias Anar Shah and another vs. Khan Zad Gul and another*" (**2014 Y L R 1180)**. The relevant portion is reproduced herein below:-

> *"The inference regarding non-production of this important independent witness would go against the prosecution that had he been produced his statement wouldn't have been favourable to prosecution. It would also reflect that prosecution wanted to suppress material evidence."*

12. It has also been observed that the prosecution produced the original cheques Exh.PB/1- 104, which were allegedly tampered by the appellant/convict. In this regard, it is stated that the original vouchers and the relevant record has not been tendered in evidence before the learned trial Court for knowing the actual facts and for proving the allegation leveled against the appellant. This aspect of the case also casts serious doubts on the veracity of the prosecution story and without production of original vouchers in evidence, same cannot be proved against the appellant. Further, Mr. Adam Nayyar,

the other signing authority of the alleged cheques was also given up by the prosecution, which makes the case of the prosecution highly doubtful. Thus in the present circumstances, I am constrained to draw adverse inference under Article 129 (g) of the Qanoon-e-Shahadat Order, 1984 by holding that the purpose behind withholding of witnesses before the learned trial Court appears to be based on sinister designs. In this regard, I am fortified by the law laid down in "*Abdul Qayyum v. Muhammad Rafique*" **(2001 SCMR 1651**) "*Zia-ul-Hassan v. The State*" **(PLD 1984 SC 192)** and "*Fazal Muhammad v. Mst. Chohara and others*" **(1992 SCMR 2182).**

13. The learned trial Court has also committed an illegality by not putting the incriminating piece of evidence i.e. cheques Exh.PB/1–104 and report of handwriting expert Exh.PK/1-9 to the appellant while recording his statement under Section 342 Cr.P.C. which is a binding provision of law. Section 342 Cr.P.C. reads as under.-

> *"342. Power to examine the accused.--(l) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the 'Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence."*

14. This Section is based on the principle involved in the maxim *audi alteram partem*, means that no one should be condemned unheard. Where a person is to be charged with any penal liability he should be made aware of all the facts and circumstances existing against him in order to enable him to give explanation in respect of those charges and evidence produced against him. Departure from such procedure could be fatal to prosecution as a very important step in the trial would, thus, be bypassed making the entire trial completely vitiated. The accused should be heard not merely on what is prima facie proved against him but also on every circumstances appearing in evidence against him.

15. The Hon'ble Supreme Court of Pakistan in a case reported as "*S.A.K. Rehmani vs. The State*" [**2005 S C M R 364**] has held as under.-

> "It may be mentioned here that the provisions as contained in Section 342, Cr.P.C. have been discussed on different occasions by various judicial forums by holding that reasonable opportunity must be afforded to the accused while recording his statement under Section 342, Cr.P.C. enabling him to explain his position. The provisions as contained in Section 342, Cr.P.C. were discussed in the case of Abdul Wahab v. Crown PLD 1955 Federal Court 88 which still holds the field is reproduced herein below for ready reference.-
>
> > *"The opening words of the section are very important. It is for the purpose of enabling the accused to explain the circumstances appearing in evidence against him' that his examination is needed. Where the circumstances appearing in evidence against him' are not put to the accused and his explanation is not taken thereupon, it cannot be said that the purpose of section 342 has been fulfilled. It is not a mere formality, but is an essential part of the trial that the accused should be given notice of the point or points which he must meet in order to exonerate himself. In Tani's case 20 Cr.LJ 12 (Nag.), it was held in order that the accused may explain all the facts appearing in the evidence against him, it is necessary that his attention should be directed to all the vital parts of the evidence against him, specially if he is an ignorant person who cannot be expected to know or understand what particular parts of the evidence are or are likely to be considered by the Court to be against him. In Alimuddin's case (52 Cal. 522), it was laid down the Court should not only point out to the accused the circumstances appearing in the evidence which require explanation but it must out of fairness of the accused exercise that power in such a way that the accused may know what points in the opinion of the Court require explanation and failure or refusal on the part of the accused to give the explanation will entitle the Court to draw an inference against him.' In the Calcutta case cited above, it was also pointed out that the word `generally' does not limit the nature of*

> *the questioning to one or more questions of a general nature relating to the case, but it means that the questions should relate to the whole case generally, and should not be limited to any particular part or parts of it. The word `generally' does not mean that the accused cannot be subjected to a detailed examination by the Court. The law intends that the salient points appearing in the evidence against the accused must be pointed out to him in a succinct form and that he should be asked to explain them if he wished to do so".*
>
> *It could not however, be overlooked that the real object of Section 342 is not to subject the accused to a detailed cross-examination. It is, as a matter of fact, inviting his attention to the point or points in the evidence which are likely to influence the mind of the Judge in arriving at conclusions adverse to the accused and before such an adverse inference can be drawn, the accused should be afforded an opportunity to offer an explanation, if he has any.*
>
> *16. There is no cavil with the proposition that section 342 Cr.P.C. can be bifurcated into two parts. Subsection (1) of section 342 Cr.P.C. confers discretion to the Court while its second part is mandatory and besides that the section revolves around the maxim audi alteram partem i.e. that no one should be condemned unheard. References are "AIR 1940 Nag. 283, 41 Cri.LJ our 585, AIR 1957 Mys. 9, ILR 1956 Mys. 114, 1957 Cri.L. Jour 208, AIR 1936 Pesh. 211, AIR 1937.Pesh 20, 38 Cri. Jour 387,1 AIR 1935 Cal. 605, AIR 1936 Oudh 16, 36 Cri.L Jour 1303, AIR 1934; Oudh 457". The purpose of this section is that the Court should give an opportunity to the accused to give such explanation as he may consider necessary in regard to the salient features/points made against him. It is however, not intended merely for his benefit. It is a part of a system for enabling the Court to discover the truth and it constantly happens that the accused's explanation or his failure to explain is the most incriminating circumstance against him. The result of the examination may certainly benefit the accused, if a satisfactory explanation is offered by him. It may however, be injurious to him, if no explanation or a false or unsatisfactory explanation is given". [PLD 1967 Dacca 503].*

16. It is settled law that a statement under section 342 of Cr.P.C. is either to be believed in its entirety or not at all. Reliance is placed on the cases titled as *"Shabbir Ahmad vs. The State"* [**PLD 1995 S.C. 343**], *"Abdur Rehman alias Boota and another vs. The State*

and another" [**2011 SCMR 34**], *"Wajahat Ahmed and others vs. The State and others"* [**2016 SCMR 2073**], *"Muhammad Asghar vs. The State"* [**PLD 2008 S.C. 513**], *"Waqar Ahmed vs. Shaukat Ali and others"* [**2006 SCMR 1139**] and *"Ali Ahmad and another vs. The State and others"* [**PLD 2020 S.C. 201**].

17. It may be observed on the same wake of events that the whole object of enacting this Section is that the attention of the accused should be drawn to the specific points in the evidence on which the prosecution claims that the case is made out against the accused, so that he may be able to give such explanation as he desires to give.

18. Similar view was taken by the Hon'ble Supreme Court of Pakistan in the case reported as "*Haji Nawaz Versus the State*" [**2020 SCMR 687**] wherein it has been held as under.-

> *"The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under section 342 Cr.P.C. then the same cannot be considered against him for the purpose of recording his conviction. Apart from that we have further observed that no evidence worth its name had been produced by the prosecution before the trial court establishing safe custody of the recovered substance at the local Police Station or safe transmission of the samples of the recovered substance from the Police Station to the office of the Chemical Examiner. This Court has already held in the cases of Amjad Ali v. The State (2012 SCMR 577) and Ikramullah and others v. The State (2015 SCMR 1002) that in the absence of any proof regarding safe custody or safe transmission of the recovered substance or the samples thereof a conviction cannot be recorded in a case of this nature."*

19. In this regard, this Court is also fortified by the law laid down by the Apex Courts in the cases of "*Qaddan and others vs. The State*" [**2017 SCMR 148**] and "*Imtiaz alias Taj vs. The State and others*" [**2018 SCMR 344**] wherein it has been held as under:-

> *"Piece of evidence or a circumstance not put to an accused person at the time of recording his statement*

> *under Section 342, Cr.P.C, could not be considered against him."*

Thus, the law is settled by now that if a piece of evidence or a circumstance is not put to an accused at the time of recording of his statement under Section 342 Cr.P.C., the same cannot be considered against him for the purpose of recording his conviction.

20. One of the contentions of learned counsel for the appellant/convict is that the F.I.R was registered by the local police and investigated by an Assistant Sub-Inspector of the police, which was illegal and contrary to Section 3(i) of F.I.A Act, 1947, whereby offence in the schedule shall be inquired into, investigated and challaned by the F.I.A. and not only this, but the said investigation is also contrary to the rules laid down under Section 5-A of the Prevention of Corruption Act, 1947 where under, no officer below the rank of Inspector is competent to investigate any offence described in Pakistan Penal Code as mentioned in Sections 3 & 5 without orders of Magistrate 1st Class and further that the alleged offence under Section 409 P.P.C. is admittedly a scheduled offence and is to be investigated according to Section 3 (i) of F.I.A Act, 1947, which has not been done in the case in hand. In my humble view, this contention of learned counsel for the appellant is misconceived. In this regard, reliance is placed upon the judgment reported as "*Raja Amir Muhammad Vs. The State*" (**2004 SCMR 506**), wherein it has been held as under:-

> *"We have considered the contentions raised by the learned counsel for the petitioner and minutely perused the material available on record. We have also perused the judgments passed by the trial Court as well as the learned High Court. We found that while rejecting the application of the petitioner the trial Court- had taken a view that under subsection (i) of section 4 of Pakistan Criminal Law (Amendment) Act. 1958 a Special Judge has jurisdiction to take cognizance of any offence committed within his territorial limits and triable under the said Act: upon receiving a complaint of facts which constitute such offence, or upon a report of such facts made by any police officer, and since the trial Court has already taken cognizance of the alleged offence on the challan submitted against the petitioner by the D.S.P.,*

> *which is virtually a report of facts constituting the offence committed by the petitioner, therefore contravention of rule 11 of Sindh Enquiries and Anti-Corruption Rules 1993 in view of provisions of subsection (1) of section 4 of the Pakistan Criminal Law Amendment Act, 1958, shall not affect or vitiate the trial. In this view of the matter, the learned High Court has rightly maintained the order of the learned trial Court by dismissing the application of the petitioner. After carefully scanning the reasons given by the learned High Court, which are based on the law laid down by this Court in the case of Abdul Latif v. G. M. Paracha and others 1981 SCMR 1101, we are of the considered opinion that the impugned judgment is well reasoned and within the parameters of the law and does not call for interference by this Court."*

Therefore, the above contention of the learned counsel for the appellant has no force.

21. In view of above discussion, I am of the considered opinion that charge against the appellant/convict has not been proved beyond reasonable doubt. Findings of conviction, recorded by the learned trial Court are not sustainable. Perusal of impugned judgment reveals that the same is suffering from mis-reading and misappreciation of material available on record. The prosecution has miserably failed to prove the charge against the appellant beyond any reasonable shadow of doubt.

22. For the above reasons, instant Criminal Appeal is **allowed** and conviction and sentence recorded by the learned trial Court against the appellant through impugned judgment, dated 13.02.2010 are hereby set-aside.

Resultantly, the appellant Zahid Karim is acquitted of the charge. He is on bail, his surety is discharged from his liabilities.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 06th day of July, 2020.

JUDGE

"Rana.M.Ift."

Approved for reporting.