

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Crl. Appeal No. 26/2014**

Kashif Zubair Ahmed  
Vs.  
Muhammad Khalid etc.

Appellant by:	Mr. Muhammad Qaiser Nazir Sipra, Advocate
State by:	Barrister Ayesha Siddique Khan, State Counsel.
Respondent No.1	In person.
Date of Decision:	26.11.2019.

**MOHSIN AKHTAR KAYANI J.** Through this Criminal Appeal, appellant has assailed the order dated 29.01.2014, passed by learned Judicial Magistrate, 1<sup>st</sup> Class, (West), Islamabad, whereby respondent No.1 was acquitted in criminal case FIR No. 508/2011, dated 16.10.2011, U/s 406 PPC, P.S Kohsar, Islamabad while exercising the powers U/s 249-A Cr.P.C.

2. Brief facts referred in the instant FIR lodged on the complaint of Kashif Zubair/appellant are that on 03.01.2003, he had transferred the amount of 35,000/-British Pounds through banking channel in his bank account situated at UBL Jinnah Avenue Branch, Islamabad for the purchase of shares of company known as "M/s B & B Oil Mills Pvt. Ltd." to his real brother Muhammad Khalid/respondent No1., who had withdrawn the said amount with his signatures and got transferred the shares of Rs. 12,00,000/- and has not returned the balance amount, despite his promises.

3. Learned counsel for the appellant contends that the challan has been submitted in the Court. He further contends that the charge has been framed and evidence was recorded and probability of conviction is visible which has been ignored by the learned Trial Court without any justifiable reason. He

further contends that learned Trial Court passed the impugned order in haste without any basis.

4. On the other hand, Muhammad Khalid/respondent No.1 in person submits that instant FIR has been lodged with malafide to settle the score with him as both the brothers are locked in different litigation in different Courts. He further submits that instant FIR has been lodged with delay of eight years in order to exert pressure upon him, therefore, no offence U/s 406 PPC is made out, even the instant appeal is barred by limitation.

5. Arguments heard, record perused.

6. From the perusal of record, it reveals that the appellant, who is the complainant of criminal case FIR No. 508/2011, dated 16.10.2011, U/s 406 PPC, P.S Kohsar, Islamabad has alleged in the said FIR that he had transmitted 35,000/- British Pounds to his own account situated at UBL Jinnah Avenue Branch, Islamabad on 03.01.2003 through banking channel and said amount was withdrawn by Muhammad Khalid/respondent No.1 to purchase share of "M/s B & B Oil Mills Pvt. Ltd.", but respondent No. 1 has only transferred the shares of Rs. 12,00,000/- and remaining amount was misappropriated.

7. Perusal of record further reveals that the Investigation Officer of this case has submitted the final report U/s 173 Cr.P.C, wherein it has been mentioned that 21% shares have been transferred in the name of complainant/appellant, however, not a single document or instructions have been referred, through which it could be assumed that respondent No.1 is responsible to purchase the shares against 35,000/- British Pounds and even the bare reading of the entire case reveals that it is a civil dispute qua the sale and purchase of shares of "M/s B & B Oil Mills Pvt. Ltd.", which has been converted into a criminal case, despite the fact that the alleged incident referred in the FIR had taken place on 03.01.2003 and FIR has been lodged on 16.10.2011 after the unexplained delay of eight (08) years 09 months and 13 days and no plausible justification has been brought on record as to why the FIR has been lodged with such a delay.

8. Learned counsel for the appellant has been confronted regarding date of knowledge qua the less transfer of shares in his favour as well as the date on which, he came to know after coming back to Pakistan that he has been deprived from his valuable hard earned money, whereby counsel for appellant was speechless to answer the query raised by the Court. Even otherwise, learned counsel has not placed any proof of entrustment of the amount in any manner, through which the minimum requirement of Section 405 PPC could be meted out. The onus is upon the appellant to prove that he has handed over the property in a manner to the respondent No.1, which was dishonestly used by him for his personal use and as such when the ingredients are not clear, the offence U/s 406 PPC is not made out.

9. The bare perusal of FIR as well as the final report U/s 173 Cr.P.C clearly demonstrates that it is a civil dispute qua the rendition of account, if such amount has been withdrawn by respondent No.1. The Investigation Officer of this case was also confronted regarding collection of any evidence, through which it could justify for entrustment of the amount or where direction was given by the appellant for the purchase of shares of "M/s B & B Oil Mills Pvt. Ltd.", however, he has failed to answer the query raised by this Court. Record further reveals that nothing is mentioned in the report U/s 173 Cr.P.C, through which it could be justified that the appellant has given any direction to the respondent No.1 to purchase the shares.

10. It is settled law that police could not take cognizance upon issue relating to rendition of accounts and the civil issue has been converted into criminal case. It is also pertinent to mention here that the impugned order was passed on 29.01.2014, whereby application U/s 249-A Cr.P.C was allowed and the time provided for filing of the appeal to aggrieved person against the order of acquittal is thirty (30) days in terms of Section 417 (ii)(A) Cr.P.C, whereas instant appeal has been filed before this Court on 01.03.2014 and the certified copy of the said order was applied on 20.02.2014 and same was received by the appellant on 21.02.2014 and as such the appeal has been filed within prescribed time.

11. I have also gone through the case laws reported as **1998 SCMR 873 (State through Advocate General, N.W.F.P Peshawar & others Vs. Gulzar Muhammad and others)**, **2000 SCMR 1480 (Mst. Shabbana Naz Butt Vs. Mst. Hukam Jan and others)**, **PLD 2009 SC 102 (Ajmeel Khan Vs. Abdur Rahim and others)**, whereby it was held that Court has power to acquit the accused where charge is groundless and no probability of conviction is visible or where delay in registration of FIR or delay in trial could not be explained by the complainant/prosecution which itself is abuse of process of Court.
12. While considering the entire background, the offence U/s 406 PPC is not made out and the learned Trial Court has rightly acquitted the respondent No.1 as the probability of conviction is not visible, especially when the appellant has not explained the circumstances, in which he has lodged the instant FIR with delay of eight (08) years 09 months and 13 days without any logical explanation. Even otherwise, the matter is based upon civil dispute, which could only be resolved in the Court of competent jurisdiction.
13. In view of above discussion, instant criminal appeal is misconceived and same is hereby **dismissed** as the learned Trial Court has rightly acquitted respondent No.1 as the probability of conviction is not apparent on record.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

RAMZAN