

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.188/2018

Mirza Jaffar Hussain
versus
Arslan Afzal & another

Appellant by: Mr. Ghulam Abdul Qadir, Advocate.
Respondents by: Mr. Taimoor Aslam Khan, Advocate for
Respondent No.1.
Mr. Sadaqat Ali Jahangir, State Counsel.
Date of Hearing: 08.03.2021.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through the instant criminal appeal, the appellant has called in question order of the learned Judicial Magistrate Section 30 (East), Islamabad, dated 14.09.2018, whereby Arslan Afzal (Respondent No.1) has been acquitted of the charges in case FIR No.155, dated 12.06.2017, under Section 420, 468, 471 PPC, P.S. Lohi Bher, Islamabad.

2. Succinctly, Mirza Jaffar Hussain (appellant) bartered his property i.e. House No.15, Street No.12, Sector B, DHA Phase-I, Rawalpindi for a number of 12 commercial plots having been offered by Muhammad Nadeem, situated in Federal Employees Cooperative Housing Society in Jinnah Garden, Phase-II, Zone-V, Islamabad, as a result whereof, the appellant transferred his aforesaid house in the name of Mst. Ghazala Shaheen having been introduced by Muhammad Nadeem as investor, whereafter 14 No Demand Certificates (NDC) have been issued in favour of appellant. In the while, the appellant realized that he was cheated upon as he has been issued forged transfer letters and NDCs. Resultantly, the

appellant filed a complaint for registration of a criminal case against the said accused persons, whereupon the aforementioned FIR No.155/2017 has been lodged. The main accused persons namely Muhammad Nadeem and Mst. Ghazala Shaheen remained absconders, whereas Arslan Afzal (Respondent No.1) being co-accused person submitted application under Section 249-A Cr.P.C., which was allowed by the learned trial Court vide impugned order dated 14.09.2018, whereby respondent No.1 has been acquitted of the charges.

3. Learned counsel for appellant contends that it is apparent from record that respondent No.1 has committed cheating and fraud as defined in Sections 415 and 420 PPC, as such, respondent No.1 remained associated with the principal accused persons in preparing forged documents, per se, the learned trial Court has acquitted respondent No.1 of the charge in a slipshod manner and without recording of evidence; that the impugned order has resulted in miscarriage of justice as the same is against the facts and settled law, rather same is based on conjectures and surmises.

4. Conversely, learned State Counsel as well as learned counsel for respondent No.1 contended that respondent No.1 has falsely been roped in the instant case, even the appellant as well as the prosecution has failed to bring on record any incriminating evidence against respondent No.1, per se, no forged document or material concerning forgery has been recovered from the possession of respondent No.1, as such, the learned trial Court has rightly appreciated the facts and circumstances of the case and acquitted respondent No.1 of the charges in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that Arslan Afzal (respondent No.1) has been acquitted of the charges in case FIR No.155, dated 12.06.2017, under Sections 420, 468, 471 PPC, P.S. Lohi Bher, Islamabad, lodged on the complaint of Mirza Jaffar Hussain (appellant). As per complaint (Exh.P1), the appellant has been deprived of his hard earned money by one Muhammad Nadeem and Mst. Ghazala Shaheen, who lured the appellant for making investment with respect to purchase of plots situated in FECHS, Jinnah Garden, Phase-II, Islamabad, whereby a number of 12 commercial plots comprising of Plots No.7961 to 7972, were transferred in the name of appellant on 04.02.2016 by Muhammad Nadeem / accused with the promise that these plots would be sold after one year with double of the principal amount and, as such, the appellant has paid an amount of Rs.2,500,000/- per plot, total amounting to Rs.3 Crore, per se, Muhammad Nadeem / accused convinced the appellant to transfer his house situated in DHA in name of Mst. Ghazala Shaheen against the said investment of Rs.3 Crore, whereupon the appellant transferred his house in the name of said lady and as a result whereof 12 plots were transferred in the name appellant., per se, the appellant had also paid additional amount of Rs.140,000/- to the father of Muhammad Nadeem / accused for issuance of NDCs.

7. The appellant while appearing as PW-2 has introduced Arslan Afzal (respondent No.1) in this case and involved him with the principal accused qua his connivance. During the course of cross-examination, PW-2 appellant was neither aware of the date when he contacted respondent No.1 for NDC of the plot nor had he referred the date in his statement when the NDCs were handed over to him, even the alleged amount of

Rs.140,000/- having been paid on account of charges of NDCs was handed over to Muhammad Kaleem i.e. father of Muhammad Nadeem. However, the appellant acknowledged that nothing adverse to respondent No.1 is available in this case, as such, due to such admission the learned trial Court has acquitted respondent No.1 of the charges as apparently there was no probability of conviction of respondent No.1.

8. Perusal of the impugned order reveals that the learned Trial Court has rightly observed that mere presence of respondent No.1 could not be made basis for his conviction and pendency of trial in hope of prosecution evidence would not be considered a ground to tether an innocent person in a superfluous case, per se, the role attributed to respondent No.1 is insignificant in the entire case.

9. In view of above factual aspect, the principle governing the exercise of powers under Section 249-A Cr.P.C. has rightly been followed by the learned trial Court as such powers could be exercised at any stage of trial subject to condition that prosecutor and the accused had been heard and the charge appears to be groundless or there is no probability of the accused being convicted. Reliance is placed upon PLD 2009 SC 102 (Ajmeel Khan vs. Abdur Rahim).

10. I have confronted learned counsel for appellant to demonstrate any incriminating evidence from the available record but, nothing favourable to the prosecution is available to the extent of respondent No.1, even otherwise, the instant appeal has been filed with delay of three (03) days, though the appellant has appended C.M. No.2 of 2018 for condonation of delay on the ground that he was under treatment at Shaukat Khanum Memorial Cancer Hospital, Lahore during the period of August-

September, 2018, as such, the impugned order was passed on 14.09.2018, per se, the last discharge summary appended with the instant appeal reveals that appellant was discharged from hospital on 04.09.2018 . Taking such stance of appellant as true, even then the conduct of appellant to apply for the certified copy of the impugned order on 16.10.2018 could not be ignored, which is apparently after the expiry of limitation period. Hence, there is no place of condonation of delay made out from the record.

11. In view of above, the instant criminal appeal is meritless and the same is hereby **DISMISSED**. The learned Trial Court is directed to conclude the trial of the remaining accused persons within the period of 04 months. The office shall immediately transfer original record of this case to the learned Trial Court for compliance of direction.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 11th March, 2021.

JUDGE

Khalid Z.