

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

P.S.L.A. No. 01/2018.

Muhammad Adeel Asghar

Versus

Muhammad Khalid, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	31.01.2020.	Syed Javed Akbar Shah, Advocate for petitioner.

Through this PSLA, the petitioner has assailed the order dated 08.11.2017, passed by learned Judicial Magistrate Section 30 (West), Islamabad, whereby respondent No.1 was acquitted U/S 249-A Cr.P.C. in private complaint filed by the petitioner.

2. Learned counsel for the petitioner contends that petitioner was tenant of respondent No.1, who after receiving the rent from petitioner issued two acknowledgment receipts with forged signature which was used by him for registration of criminal case FIR No.421, dated 17.12.2015, U/S 448/380 PPC, P.S. Shalimar, Islamabad; that receipts were verified by the I.O in criminal case and report to that effect was placed in the criminal case lodged on the complaint of respondent/accused but the contention of the petitioner was not considered in its true perspective; that learned trial Court has recorded the evidence of two witnesses as CW-01 and CW-02 namely

Muhammad Aksar Malik and Babar Ali, which clearly spells out the offence against respondent No.1; that respondent was acquitted U/S 249-A Cr.P.C. without considering the fact that forgery was committed by respondent No.1, which is apparent on record and probability of conviction could not be considered without complete trial of the charges referred in the complaint and as such trial court has decided the matter in slipshod manner.

3. Arguments heard, record perused.

4. Perusal of record reveals that respondent No.1 Muhammad Khalid got lodged a criminal case FIR No.421, dated 17.12.2015, U/S 380/68/471/420 PPC, P.S. Shalimar, Islamabad against the petitioner with the allegation that he was owner of Insaf Plaza 6-D, F-10 Markaz, Islamabad and some persons illegally took over the basement of said Plaza which includes Adeel Asghar, his brother, Usman, Muhammad Ishtiaq Bangash, his servant Rafique, hotel employee Mustafa have committed theft after taking over basement of shops. After registration of said case, the petitioner joined the investigation and produced the receipts of rent of the premises before the I.O, however, I.O after detailed investigation submitted the challan U/S 173 Cr.P.C. against the petitioner and matter is pending before the competent criminal court and petitioner is facing the trial.

5. The petitioner after considerable period of two

years lodged the private complaint U/S 420 PPC against Muhammad Khalid/respondent No.1 with the allegation that he has taken over the possession of the disputed premises being tenant through lease agreement with respondent Muhammad Khalid for period of 05 years and has paid different amounts as rent whereafter he started business in the subject premises and after few months of commencement of said business respondent landlord extended threats as referred in para-3 of the complaint, who got lodged the FIR No.421, dated 17.12.2015, U/S 420, 448, 461, 471 PPC, P.S. Shalimar, Islamabad, however, petitioner has produced two acknowledgment receipts containing the signature of respondent before the local police in connection with the said FIR in the following manner:-

ix) That due to aforesaid reason and after deletion of section 380 PPC, petitioner himself appeared before local police and further intimated them that he was/ is a lawful tenant which factum could be ascertained through acknowledgment receipts issued on two separate occasion duly signed by respondent in his favor in presence of witnesses mentioned above.

x) That categorical bonafide stance of petitioner could further be ascertained from the fact that petitioner himself requested local police that in case of refusal from respondent to own said acknowledges receipts same can be verified through hand writing expert.

xi) That said acknowledgment receipts then sent to expert and after receiving opinion thereof astonishing facts transpired upon petitioner that respondent purportedly in order to entangle

petitioner at appropriate stage as per threats mentioned above and to defeat his claim, deliberately, dishonestly and fraudulently with malafide intention and for ulterior motives issued acknowledgment receipts to petitioner by putting and disguising different signature thereon in order to obtain favorable opinion by managing with different quarter.

6. On the basis of said document the I.O after thorough probe challaned the petitioner after obtaining handwriting expert report from FSL dated 03.10.2016, whereby signature available on the said receipts were declared forged as a result whereof offence U/S 420 PPC was added and final report was submitted in the Court.

7. Besides the above referred position respondent has also filed eviction petition, which was allowed in his favour vide order dated 05.06.2017, in which the entire claim of present petitioner qua the receipts have been discussed and learned Rent Controller has passed the eviction U/S 17 of IRRO, 2001. The record further reflects that charge was framed against the petitioner in criminal case lodged on the complaint of respondent and prosecution evidence was in progress when the petitioner has filed instant petition, however, it appears that petitioner has filed the instant complaint after two years of registration of criminal case FIR No.421/2015, which shows his afterthought and state of mind to cater the trial conducted in case FIR No.421/2015.

8. I have gone through the contents of evidence

recorded as CW-1 & CW-2 through which petitioner could not justify any of his legal right, nor he is able to demonstrate the ingredients of Section 420 PPC or any other offence especially both the receipts were brought on record by petitioner himself in the investigation of other criminal case which contain forged signature of respondent. The plea raised by the petitioner is already under adjudication before the trial Court and as such the impugned order dated 08.11.2017, passed by Judicial Magistrate, Section 30 (West), Islamabad reveals no illegality.

9. I have gone through Section 417 (2) & (3) of Cr.P.C. whereby Special Leave to Appeal from the order of acquittal is required in case of complaint subject to the satisfaction of High Court, as such complainant has been given full opportunity to justify the ingredients of offence in his evidence, which is lacking in this case and trial Court has rightly observed the same rather highlighted the malafide of the petitioner in the complaint case.

10. In view of above, this Court while considering the concept of Special Leave, did not agree with the arguments of the petitioner who himself has failed to justify his grounds against the impugned order. Therefore, trial Court has rightly seen the probability of non-conviction in terms of Section 249-A Cr.P.C. in this matter.

11. In view of above, instant PSLA does not bear the merits, therefore, same stands *dismissed in limine*.

(MOHSIN AKHTAR KAYANI)
JUDGE /

Zahid