JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

(JUDICIAL DEPARTMENT)

Criminal Appeal No. 200/2018

Aftab Anwar Baloch
Versus
Sheikh Khurram Shabbir etc

Appellant by:	Ch.Muhammad Khan Gondal Advocate
Respondent No.1 by:	Mr. Muhammad Ilyas Sheikh Advocate
State by:	Mr. Hammad Saeed Dar, State Counsel alongwith Shah Nawaz ASI.
Date of Hearing:	17.08.2020

Ghulam Azam Qambrani, J.: This appeal has been filed against the impugned judgment dated 16.10.2018, passed by the learned Judicial Magistrate, Section 30, Islamabad- West, in case F.I.R 192 dated 30.05.2017, under Section 406 Pakistan Penal Code, 1860 (hereinafter referred to as 'PPC') registered at Police Station Kohsar, Islamabad, whereby respondent No.1 was acquitted.

2. Briefly stated facts of the case as narrated by the complainant, Aftab Anwar Baloch are that on the inducement of accused/respondent No.1 and his co-accused, the appellant gave Rs.80,00,000/- to them and in the very beginning, both the accused paid the installment in the appellant's account, but later on, they delayed the profit, on which the appellant demanded his original amount i.e. Rs.80,00,000/-, which was given due to trust and afterwards the accused persons disappeared and misappropriated the said amount. Hence, the above said F.I.R was lodged.

3. After registration of F.I.R, the investigation was completed and report under Section 173 Cr.P.C was submitted on 13.01.2018. Formal charge was framed against the accused/respondent No.1 on 31.03.2018 to which he pleaded not guilty and claimed trial. Therefore, the prosecution evidence was summoned. During this

the respondent moved an application under Section 249-A, Cr.P.C. for his acquittal on the ground that he has been involved in a false and frivolous case. The learned Trial Court vide order dated 16.10.2018, acquitted the accused/respondent from the instant case under Section 249-A Cr.P.C. Hence, the instant appeal.

4. The learned counsel for the appellant has contended that the impugned order passed by the learned Trial Court is not in accordance with law; that the learned Trial Court has violated the principal of law while accepting the application under Section 249-A Cr.P.C and acquitting respondent No. 1; that the order passed by the learned Trial Court is illegal, perverse and arbitrary. Further contended that sufficient evidence is available against the respondent No.1 to connect him with the alleged offence and then leading to his conviction but the learned Trial Court did not consider this legal aspect. Hence, prayed for setting aside the impugned order.

5. Conversely, learned counsel for respondent No.1 opposed the contentions raised by the learned counsel for the appellant and contended that the respondent No.1 has been falsely implicated in this case; that the respondent No.1/accused is innocent; that nothing is on the record from which it can be established that the respondent No.1/accused committed any offence and the learned trial Court has rightly acquitted the respondent No.1/accused.

6. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

7. The case of the appellant is that he gave an amount of Rs.80,00,000/- to the respondent No.1/accused as investment in the business of trading for the purpose of profit, but the respondent No.1/accused misappropriated the amount and also refused to pay back the original amount and thus committed offence under Section 406 PPC.

8. For facilitation, Section 406 is reproduced below for ready reference and assistance;-

> *"**Section.406**. Punishment for criminal breach of trust. Whosoever commits criminal breach of trust shall be punished with imprisonment of either description of a*

term which may extend to (seven) years, or with fine, or with both.

The essential ingredients of the offence of criminal breach of trust are as follows:-

a) Entrustment.
b) Dishonest misappropriation or conversion to his own use by the person in whom the confidence reposed.
c) Dishonest use or disposal of property in violation of any direction of law.
d) Dishonest use or disposal of property in violation of any legal contract.
(e) Offence of dishonest misappropriation of conversion to one's own use is not contingent upon time spent rather it is the co-incidence of actus rea and mens rea.

In the instant case, it is the stance of the appellant that he gave an amount of Rs.80,00,000/- to the respondent for investment purpose in the business of trading for the purpose of profit and according to the appellant, he has been receiving the profit of the said amount, as such, the said amount was not given to the respondent as entrustment, as such, the ingredients of Section 406 PPC are not made out against the respondent. Further the appellant has also failed to produce on record any evidence to prove that the respondent was entrusted with any kind of property. Even the appellant has not specifically mentioned the name of any person to whom he gave the said heavy amount. Therefore, the essential ingredient i.e. entrustment of the property as defined under Section 405 PPC is also missing. Moreover, there is also no evidence on record to show that the amount of the appellant has been misappropriated by the respondent or that he has converted the said amount of the appellant to his use, rather the appellant has invested the amount in the Fair Deal Security Limited for profit purposes and according to him, he has been receiving profit through installments. In this way, the second ingredients "*Dishonest misappropriation or conversion to his own use by the person in whom the confidence reposed*" is also not made out against the

respondent. As such, the learned trial Court after proper appraisal of the evidence available on record has rightly culminated the acquittal of the respondent in the instant case. Jurisdiction under Section 249-A Cr.P.C can be exercised suo motu and no formal application is required when it is found that the charge against the accused is groundless and there is no possibility of his conviction even after recording of evidence; provision of Section 249-A Cr.P.C is meant to decide criminal case without completion of trial and in order to invoke powers under section 249-A Cr.P.C or 265-K Cr.P.C as the case may be, the Court has to fulfill the following three conditions:-

(i) The Court shall hear the prosecutor;

(ii) The Court shall hear the accused; and

(iii) The Court shall take into consideration overall facts and circumstances and the evidence.

No other embargo exist upon the Court to exercise powers under Section 249-A Cr.P.C. The said provision is meant to prevent rigours of prolonged trial. Moreover, the use of expression at *"any stage of the case"* is indicative enough of the intention of the Legislature that to exercise powers under Section 249-A, Cr.P.C or 265-K Cr.P.C, an application in each and every case is not mandatory and any such stage could be the very initial stage, after taking cognizance or it would be a middle stage after recording some proceedings, or even, it could be latter stage as well. Reliance in this regard is placed upon the case reported as Chairman Agricultural Development Bank of Pakistan & another Vs Mumtaz Khan" [PLD 2010 SC 665] wherein the Hon'ble Supreme Court of Pakistan has held as under:-

> " We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the, defence, the Court decided to

> extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence."

9. The interference of this Court would be warranted, if the reasoning of the trial Court in acquitting an accused is perverse, artificial or ridiculous. It is only in an exceptional case that this Court will interfere by setting aside the acquittal of an accused. In the instant case, the learned trial Court has properly appreciated the evidence available on record and acquitted the accused/ respondent No.1 through a well-reasoned judgment, by giving him benefit of doubt. The learned counsel for the appellant has also not been able to show that there has been any misreading or non-reading of evidence. Reliance is placed on the cases titled as *"Muhammad Zaman versus The State and others"* [2014 SCMR 749], *"Muhammad Rafique versus Muhabbat Khan and others"* [2008 SCMR 715], *"Jehangir versus Amin Ullah and others"* [2010 SCMR 491], *"Mst. Askar Jan and others versus Muhammad Daud and others"* [2010 SCMR 1604] and *"Mst. Sughra Begum and another versus Qaiser Pervez and others"* [2015 SCMR 1142].

10. In the case reported as "*Sanaullah Vs. The State through Prosecutor General*" (**2015 P.Cr.L.J. 382 (Balochistan)**, it has been held that as under:-

> "It is well settled principle of administration of justice and rule of prudence stipulates that the prosecution has to prove its case beyond the shadow of any doubt. It is a well-settled rule of prudence that the accused has not to prove his innocence until and unless proven guilty. The golden principle of administration of criminal law under the Islamic Jurisprudence is that benefit of slightest doubt shall necessary be extended in favour of the accused and not otherwise."

11. Keeping in view the above facts and circumstances, it transpires from the record that no material was available on record

against respondent No.1/accused. The learned trial Court, after proper appraisal of evidence available on record, has rightly held as under:-

> " Therefore, on mere nomination of the accused person in the FIR, without any corroboratory material, the accused person cannot be convicted, therefore, after perusing the record of the case, this Court has come to the conclusion that to proceed with the trial of present accused/petitioner is mere wastage of the time, therefore, insufficiency or non-availability of the material shall bring no other result except the acquittal and therefore, there is no possibility of the accused person being convicted of the charge for the want of evidence, therefore, the accused person Khurram Shabbir be acquitted from the instant case under Section 249-A Cr.P.C. His bail bonds stands discharged."

12. It is important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached, in the latter case. Reliance in this regard is placed upon the case of "*Inayatullah Butt v. Muhammad Javed and 2 others*" [PLD 2003 SC 562]. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence, no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417, Cr.P.C.

13. The learned counsel for the appellant has failed to advance any ground to justify the setting aside of the acquittal judgment. There is no misreading or non-reading of evidence nor the findings of the learned trial Court are patently illegal. The findings of acquittal, by no stretch of the imagination, can be declared as

perverse, shocking, alarming or suffering from errors of jurisdiction and misreading or non-reading of evidence.

14. For what has been discussed above, there is no merit in the instant appeal; therefore, the same is hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 20th day of August, 2020.

JUDGE

S.Akhtar