(Judgment Sheet)

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.342 of 2019

Muhammad Arif

Versus

Tasneem Fatima and another

Appellant by:	*Raja Muhammad Kamran Alam Satti, Advocate.*
Respondent by:	*Mr.Asjad Pevaiz Abbasi, Advocate.*
State by:	*Mr. Nazar Hussain Shah, Assistant Attorney General alongwith Talha Bhatti, Sub-Inspector/ FIA.*
Date of hearing:	*22.01.2021*

GHULAM AZAM QAMBRANI, J.:- This criminal appeal is directed against the judgment dated 21.09.2019 passed by the learned Judicial Magistrate Section-30, Islamabad-west, whereby the accused/respondent No.1 was acquitted of the charge in case F.I.R No.79/2015, dated 24.02.2015, offence under Section 420, 468, 406, 489-F, 109 PPC read with Section 6 Passport Act, 1974 registered at police station FIA/ AHTC, Islamabad.

2. Succinctly, the facts giving rise to the filing of the instant criminal appeal are that Muhammad Arif, complainant/PW-1 reported to the FIA through complaint (Ex.P.25) complaining therein that he was running the business in the name and style of "**M/S Karwan Umm-e-Hani Private limited**" in Karachi. Since, he, himself, does not have Hajj Quota issued from the Ministry of Religious Affairs, hence, he came to Islamabad and met the accused/respondent, Tasneem Fatima, who ensured issuance of Hajj Quota to him and that she while perpetrating fraud received huge amount of Rs.62,47,244/- alongwith passports of 44 Persons from him for sending them to perform Hajj. She received Rs,44,27,244/- by online transfer in her UBL and Faisal Bank accounts, whereas, received Rs.18,20,000/- as cash amount paid by him in Islamabad. She was repeatedly demanded to handover the Hajj visas, but she did not fulfill her obligation. Later on, she

issued different cheques valuing Rs.45,00,000/- to the complainant for repayment of the amount received by her, but the same were dishonoured when presented for encashment. After that she was repeatedly approached and requested to return the money, however, she refused to do so, rather extended threats of life. On the aforesaid complaint, the instant case was registered by the FIA after observing all the codal formalities and inquiry.

3. During the course of usual investigation, the accused/respondent was found guilty and challaned to face trial. The record reveals that the accused was charge-sheeted and trial commenced against her. Upon conclusion of the trial, she was convicted vide judgment dated 25.2.2017 under Sections 420, 406, 489-F PPC.

4. Feeling dissatisfied from her conviction and sentences awarded to her, she filed Criminal appeal No.46 of 2017 which was allowed vide order dated 11.5.2017, the operative para of which are reproduced hereunder:-

> *"Resultantly, judgment dated 25.2.2017 is set aside with the consequence that the matter shall deem to be pending before the learned trial Court for de-novo trial, framing charge in accordance with the requirement of law and then to proceed.*
>
> *The learned trial Court must conclude the trial within three months with the direction that no unnecessary adjournment shall be granted to either of the sides".*

5. The record indicates that in post remand proceedings fresh charge was framed by the learned Judicial Magistrate against the accused/respondent under Sections 468, 489-F PPC as well as Section 6 Passport Act on 07.12.2017. After conclusion of the trial vide the impugned judgment, the learned trial Court acquitted the accused/respondent by holding that charges under Section 468 PPC and 6 Passport Act were not proved while FIA had no jurisdiction to register case against a private person under Section 489-F PPC. Feeling aggrieved thereof, the instant appeal has been preferred,

6. Learned counsel for the appellant argued that the learned trial Court has acquitted the accused on technical basis and not

even touched the merits of the case; that the learned trial Court has transgressed the mandate given to it vide order passed in Criminal Appeal No. 342 of 2019 by the Islamabad High Court; that since passport matter was also involved, therefore, FIA had got the jurisdiction to register the case and submit challan; that offence under Section 489-F PPC was also a scheduled offence as per FIA Act; that the cheques issued by the accused/respondent were dishonoured, therefore, the ingredients of commission of offence under Section 489-F PPC were fully made out; that on merit, the prosecution has been able to prove its case against the accused/respondent as most of the transactions conducted through bank; that the accused/respondents defrauded the complainant, fleeced a hefty amount from him under the garb of arranging Hajj Quota and Visas but misappropriated the amount; that the impugned judgment is not based on facts and evidence, hence the same is liable to be set-aside. Lastly, prayed for acceptance of instant appeal.

7. Learned Assistant Attorney General for the State did not support the impugned judgment passed by the learned trial court.

8. Learned counsel for the respondent/accused supported the impugned judgment with the submission that the same has been passed exactly in accordance with law; that the prosecution has failed to produce any evidence to the extent of commission of offence under Sections 468 PPC and Section 6 of the Passport Act; that FIA was not competent to register a case under Section 489-F PPC against a private person; that the learned trial Court has rightly appreciated this legal aspect of the case; that the impugned judgment having been passed in accordance with law, does not call for any interference.

9. Heard arguments of the learned counsel for the parties and perused the available record.

10. Perusal of record reveals that the appellant/accused was convicted by the learned trial court. She challenged her conviction and sentences in the Islamabad High Court through criminal appeal

No. 46 of 2017 which was allowed and matter was remanded to the learned trial Court for denovo trial. Record is further reflective of the fact that after remand order, Sections 406, 420 and 109 PPC were deleted and the accused/respondent was charge-sheeted under Sections 468, 489-F PPC and Section 6 of the Passport Act on 07.12.2017 only. However, the learned trial Court observed that the offences under Section 468 PPC and 6 Passport Act were not proved and gave a chit of clearance to the accused from these offences. To the extent of offence under Section 489-F PPC, it was held that same do not fall within the domain of FIA.

11. In order to appreciate the genuineness or otherwise of the findings arrived at by the learned trial court, this Court has scrutinized the record which reveals that the FIR do not contain the allegation that any passport was received by the accused/respondent from the complainant on the pretext of arranging Hajj Quota. The FIR simply states that on the persuasion of the accused/respondent No.1, the complainant paid her an amount of Rs.63,47,244/-. Some of the amount was transferred to her through bank and some remaining paid in cash. However, in his statement as PW-1, the complainant deposed that 44 passports were given to the accused/respondent. However, during the cross-examination, the complainant admitted that in his complaint submitted before the FIR, he has not requested for recovery or return of passports from the accused/respondent. He also admitted that there is no need of passport for issuance or allotment of Hajj quota. He also admitted that Hajj quota is issued only to the authorized persons and companies. He also admitted that in the permit issued by the Government pertaining to Hajj Quota only number of persons is mentioned. From the aforesaid admission of the complainant coupled with non-recovery of passports, it stands established that no passport was handed over to the accused/respondent for the purposes of issuance of Hajj Quota. The complainant's admission further proves that Passports are not needed for issuance or allotment of Hajj Quota. The record is further reflective of the fact that none of the passport holder lodged

any complaint against the accused/respondent that she was holding their passport unauthorizedly. Section 6 of the Passport Act, 1974 provides penalties for offences pertaining to Passport. As reproduced above, delivery of passports by the complainant or receipt of the same by the accused/respondent has not been proved on record, therefore, the learned trial Court was right in acquitting the accused from the offence under Section 6 of the Passport Act, 1974.

12 The next proposition which boils down for determination is as to whether commission of an offence under Section 468 PPC was made out or not. There is no denial of the fact that Section 468 PPC deals with the forgery for purposes of cheating. It provides that ***"whoever commits forgery intending that the document forged shall be used for the purposes of cheating shall be punished with imprisonment of either description for a term which may extend to seven years and shall be liable to fine***". There is nothing on record to suggest that any forgery was made by the accused/respondent or any forged document was prepared by her for the purposes of cheating. It has come in evidence of the complainant that the accused managed a letter consisting of two pages, from Dr. Farooq Sattar MNA, but even the said document could not prove effective and even on MNA quota, no Hajj visa was issued. This Court is conscious of the fact that preparation of forged document and non-effectiveness of a document are two different issues. It is not the case of the complainant that the letter issued by Dr. Farooq Sattar MNA was fake, because no evidence to this effect was collected by the investigation officer. Statement of Dr. Farooq Sattar MNA was also not recorded during the investigation. No certificate was issued by Dr.Farooq Sattar thereby disowning the letter allegedly issued by him. None of the authority declared the said letter to be fake one. The mere fact that the said letter could not serve the purpose of the complainant qua issuance of Hajj Quota or visas does not prove that the said letter was fake, the learned trial Court was thus absolutely right in holding that offence under Section 468 PPC was not proved.

13. The last proposition falling for determination is that whether the findings of the learned trial Court that FIA was not competent to register and investigate a case under Section 489-F PPC against a private person is in accordance with law or not.? It is an admitted fact that offence under Section 489-F PPC was not part of the schedule attached to FIA Act. This was included and added in the schedule vide S.R.O 977(1)/2003. To understand the issue, it may be advantageous to reproduce the same hereunder in verbatim:-

> *"S.R.O 977 (1)/2003:- In exercise of the powers conferred by section 6 of the Federal Investigation Act 1974,(VIII of 1975) the Federal Government is pleased to direct that the following further amendment shall be made in the schedule to the aforesaid Act namely:-*
> *In the aforesaid Schedule in entry (1) , after the figure and letter "489E" the comma, figures and letter "489F" shall be inserted (F.No.1/18/97-FIA.1)."*

14. From reproduction of the above S.R.O, it is clear that Section 489-F PPC was incorporated as per above quoted Notification in the FIA Act. Section 3 of the FIA Act 1974 provides that all those cases where offences are alleged to have been committed by a public servant as defined in section 21 of the PPC or those offences or allegedly committed in connection with the matter pertaining to the Federal Government or the same are committed by the employees of the Corporation set up controlled and administered by the Federal Government.

15. In the instant case, the situation is totally different, because the accused/appellant is a private person. Neither, she is employee of the Federal Government Organization nor has any concern directly or indirectly with any of the Federal Government Departments, therefore, she cannot be held liable to be tried or investigated by the FIA. Although it has been claimed by the complainant that the accused/respondent met them in the office of Ministry of Religious Affairs but no proof in this behalf was placed on record. The investigation officer also admitted in cross-examination that he has not inquired from the concerned Ministry as to the employment of the accused/respondent over there. The jurisdiction of FIA is restricted only to the Federal Government

employees as provided in Section 21 of the PPC. There is nothing on record to suggest that the accused/respondent has made any transaction in the capacity of Government servant or the complaint's issue was in any way concerned with the affairs of the Federal Government, instead this was a private arrangement between the parties. Thus jurisdiction of FIA was not made out. I am fortified by the law laid down in case reported as "*Kamran Iqbal Vs. D.G FIA*" **(PLD 2009 Lahore 137)**. The operative para of which is reproduced hereunder:-

> *"Section 489-F PPC is no doubt scheduled offence as narrated in the above Gazette Notification but it pertains to only Federal Government Employees. Since it has been established that the petitioner is a private concern and his private concern has no concern with any of the Federal Government Departments, hence FIR registered against him by the FIA is illegal and without jurisdiction. Logic behind incorporating section 489-F PPC in the schedule offence pertaining to FIA Act, 1974 is that any of the employee of the Federal Government or any Organization attached or affiliated with the Federal Government shall be tried under the said provisions of law., Moreover, investigation and submission of challan in the trial Court emanating out of the said FIR is also illegal and without jurisdiction. In this context, I am fortified by the judgment passed by the learned Division Bench of this Court reported as "Mian Hamza Shahbaz Sharif Vs. Federation of Pakistan and others" (1999 P.Cr.L.J 1584) and while accepting this petition declare the entire proceedings Coram-Non-Judice and also being strengthened by the judgment reported as "Haji Muhammad Yousaf Vs Muhammad Abbas Khan and others" (PLD 1968 Lahore 482) and 1994 SCMR 798 quash the aforesaid FIR as well as all subsequent proceedings emanating from the said FIR.*

16. In this regard, reliance is also placed upon the case reported as "*Pakistan Engineering Company Limited vs. Director General FIA Islamabad and 3 others*" **(2011 YLR 337)**, the relevant portion of the judgment is reproduced hereunder:-

> *"The perusal of the aforesaid provisions in juxta position shows that the object of the Act was to set up an Investigation Agency for the offences committed in connection with matters concerning the Federal Government and matters connected therewith. Admittedly, the complaint lodged in the instant case has no nexus with the object cited above. Moreover, neither any employee of the Federal Government is involved nor the petitioner company is under the administrative control of the Federal Government nor any loss has occurred to the*

Federal Government. Hence, FIA has no authority and jurisdiction to take cognizance in this case"

17. In view of above legal position, the learned trial Court was right in acquitting the accused from the offence under Section 489-F PPC, as FIA had no authority to register the case against a private person. Any concern or connection of the accused/respondent with the Federal Government or any Corporation controlled by the Federal Government was not proved on record, and in absence of which, the proceedings to the extent of offence under Section 489-F PPC were nothing but a nullity in the eye of law against the accused/respondents. Similarly, although a stance was taken by the complainant as well as by PW-2 that the accused/respondent posed herself to be an employee/Private Secretary to the Secretary Ministry of Religious Affairs, but this was not put to her in her statement recorded under Section 342 Cr.P.C. It is settled proposition of law that until and unless an incriminating material is confronted and put to the accused, same cannot be used against him/her.

18. The interference of this Court would be warranted, if the reasoning of the learned 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. 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.

19. 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 is placed on the case of '*Inayatullah Butt v. Muhammad Javed and 2 others*' (**PLD 2003 SC 562**).

20. For the foregoing reasons, this appeal having no force is hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 29th day of March, 2021.

JUDGE

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