

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.61 / 2020

Muhammad Afzal
Versus
Shahid Ali Khawaja and another.

Appellant By:	Ms. Tabish Farooq, Advocate.
Respondent No.1 By:	M/S Mubashar Maqsood Jaffar Qasoori and Khawaj Javaid Iqbal, Advocates.
State by:	Mr. Hammad Saeed Dar, State Counsel with Ashfaq Warraich, ASI.
Date of Hearing:	22.09.2020

GHULAM AZAM QAMBRANI, J.:- This appeal has been filed against the impugned judgment dated 07.10.2019, passed by the learned Judicial Magistrate, Section 30, Islamabad-West, in case F.I.R No. 161 dated 15.04.2014 under Sections 489-F P.P.C registered at Police Station Ramna, Islamabad, whereby respondent No.1 (hereinafter be referred to as "***respondent***") was acquitted from the charge.

2. Briefly stated facts of the case are that the respondent being the employee of complainant K & N's Foods Company on 10.02.2014, received an amount of Rs.1,10,000/- from Amin Bakers, Islamabad, and submitted a cheque No.4195618 dated 10.02.2014 on behalf of Amin Bakers, which was apparently issued by one Abdul Ghafoor Awan Attari in the account of company K & N's, which was dishonoured due to closed account. On the written application of complainant, F.I.R was registered under Section 489-F P.P.C against the respondent. After usual investigation, challan under Section 173 Cr.P.C was submitted before the learned court of Judicial Magistrate, Islamabad-West. The learned trial court after fulfilling codal formalities framed charge against the respondent under Section 408 P.P.C for

commission of criminal breach of trust and mis-appropriation of an amount of Rs.1,10,000/-, which he pleaded not guilty and claimed trial. On denial of the charge, prosecution evidence was summoned. In order to prove its case, the prosecution produced the following witnesses:-

- i. PW-1, Muhammad Afzal (complainant),
- ii. PW-2, Bilal Ahmed, Manager, HBL, G-10 Branch, Islamabad,
- iii. PW-3, Faiz Ahmed Gondal, S.I/ Investigation Officer.

After closure of the prosecution evidence, the accused/respondent was examined under Section 342 Cr.P.C wherein he denied the allegations levelled against him. The accused did not opt to record his statement on oath as envisaged under Section 340 (2) Cr.P.C; however, in reply to question No.6, he replied that he places reliance on Ex.D-1 to Ex.D-6 and pleaded innocent. The learned trial Court, after hearing the arguments of the learned counsel for the parties, passed the judgment dated 07.10.2019, (hereinafter be called as the "**impugned judgment**") whereby, the respondent was acquitted from the charge. The appellant/ complainant being aggrieved of the impugned judgment, has challenged the same through the instant appeal.

3. Learned counsel for the appellant has contended that the learned trial court while acquitting the accused/ respondent has not properly appraised the evidence and ignored the material evidence; that the prosecution has successfully proved its case against the respondent through reliable evidence; that the impugned judgment is the result of misreading and non-reading of the evidence; that the impugned judgment is based on surmises and conjectures, and lastly, prayed for setting aside of the impugned judgment.

4. Conversely, learned counsel for the accused/ respondent submitted that no offence is made out against the respondent; that no entrustment of any amount was made to the respondent, as such, the offence under Section 406 P.P.C punishable under

Section 408 P.P.C does not attract; further, submitted that the prosecution failed to prove its case beyond any shadow of doubt. As such, the learned Trial Court has rightly acquitted the respondent. The learned State counsel opposed the impugned judgment passed by the learned trial Court.

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

6. The facts, leading to filing of the instant appeal, have been mentioned hereinabove, therefore, need not be reproduced.

7 Perusal of the record reveals that the F.I.R was registered on the written application of complainant Ex.P-1, wherein it is stated that he is performing duty as Admin Officer; their company K & N's Foods on order, supply their products and recovery is made through Companies Sale Officers. It has been alleged that the accused being, Senior Sales Representative (SSR) of the K&N's Foods, an amount of Rs.1,10,000/- was outstanding against the Amin Bakers, he received a cheque No.4195618 of the said amount from Amin Bakers, in the account name of Abdul Ghaffoor Attari, to which the respondent submitted in the company's account, which was later on dishonoured. Consequently, Amin Bakers was asked about dishonour of the cheque, in reply they stated that they never issued any cheque to the company rather always paid in cash. It was alleged that the respondent in connivance of the Amin Bakers has misappropriated the amount of Rs.1,10,000/- and committed criminal breach of trust. PW-2, Bilal Ahmed, Manager has appeared and deposed that he identifies the stamp of the bank on Ex.P-2 and also identified the signatures of bank officer namely Iftikhar and further deposed that the dishonour slip Ex.P-3 received to them through UBL. PW-3, Investigation Officer, has deposed that on 04.04.2014, application was received from PW-1 for registration of F.I.R, which was registered on 15.04.2014. He interrogated the matter, recorded the statements of the witnesses

and on completion of the investigation, submitted challan under Section 173 Cr.P.C.

8. It is transpired from the record that no evidence has come on record that whether any amount was received by the respondent from Amin Bakers, which he misappropriated. The record also depicts that vide zimini dated 30.04.2014, the issuer of the cheque namely Abdul Ghaffoor Attari was discharged. In his statement, PW-1 has stated that an affidavit was submitted by the Amin Bakers through Abid Hussain wherein, it was stated that they always paid cash to the Senior Sales Representative (SSR) but neither the said Abid Hussain appeared before the court for recording his statement nor any proof in this regard has come on record. During the cross examination, PW-1 has admitted that the Accounts Officer did not join the investigation nor the Investigation Officer checked the record. He also admitted that the Senior Sales Representative (SSR) collected the amount and submitted the same with the Account Officer. He also admitted that during the investigation, nobody from Amin Bakers produced any receipt with regard to payment of cash amount to the respondent; also admitted that the Investigation Officer did not record the statement of anybody from Amin bakers under Section 161 Cr.P.C. PW-2 in cross-examination, was not the actual witness, who processed the clearance cheque, which was later on dishonoured. During cross-examination, he has admitted that no statement under Section 161 Cr.P.C was got recorded by him to the police. He admitted that the cheque was deposited by the respondent on 12.02.2014. He admitted that he did not investigate the matter from the Amin Bakers with regard to payment or payment in cash. He admitted that the cheque on the basis whereof, F.I.R was registered, was in the name of Abdul Ghafoor Attari, who has been discharged in the case. He admitted that no affidavit was presented to him by the Amin Bakers.

9. The nutshell of the allegation is that the respondent received an amount of Rs.1,10,000/- in shape of cash from Amin

Bakers against the payment of its company products but malafidly, he deposited the said amount through a cheque No.4195618, issued by one Abdul Ghafoor Attari whereas, the prosecution could not produce any single witness from the Amin Bakers, in the shape of oral or documentary evidence, which could support the contention of the complainant in respect of payment made to the respondent in cash. The prosecution miserably failed to prove its case beyond reasonable shadow of doubt, therefore, the learned trial court has rightly acquitted the respondent.

10. 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/ respondents through a well-reasoned judgment, by giving them 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].

11. Keeping in view the above facts and circumstances, it transpires from the record that no material was available on record against the accused/ respondents. The learned trial Court, after proper appraisal of evidence available on record, has rightly concluded that the prosecution has miserably failed to prove its case against the respondent.

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, this appeal is **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 29th day of September, 2020.

JUDGE

Rana. M. Iqbal *