

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.42/2014

Manzoor Ahmad

versus

Ahmad Jamal Akhtar Jalali & another

Appellant by: Nemo for appellant.

Respondents by: Mr. Muhammad Majid Bashir, Advocate for respondent No.1.
Raja Muhammad Aftab Ahmad, AAG.
Sabir, S.I., P.S. FIA.

Date of Hearing: 16.03.2021.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through the instant criminal appeal, the appellant has called in question judgment of the learned Special Judge Central, Islamabad, dated 27.02.2014, whereby Ahmad Jamal Akhtar Jalali (*respondent No.1*) has been acquitted of the charges in case FIR No.239, dated 19.04.2005, under Sections 18/22 of Emigration Ordinance, 1979 and Section 489-F PPC, P.S. FIA/AHTC, Rawalpindi.

2. Succinctly, Manzoor Ahmad (*appellant*) submitted an application to the D.G. FIA alleging that respondent No.1 while not being the authorized Overseas Employment Promoter induced the appellant for sending him to England for employment and had received Rs.550,000/-, as such, respondent No.1 had not merely failed to fulfill his commitment but also did not return the received amount. On the basis of said application, the aforementioned FIR No.239/2005 has been registered and respondent No.1 was put to trial after completion of codal formalities, per se, the trial

culminated into acquittal of respondent No.1 vide impugned judgment dated 27.02.2014. Hence, instant criminal appeal.

3. Learned counsel for appellant, though not available on the date of hearing i.e. 16.03.2021 but, he had already argued his case on the previous date, hence, his arguments have been recorded, whereby he contended that the learned trial Court has not acted in accordance with law as the complainant has opposed the closure of prosecution evidence but, his stance was not recorded, as such, complainant along with his counsel was present before the Court but, their presence has not been marked in the Court proceedings; that the prosecution has brought on record confidence inspiring evidence against respondent No.1 but same has not been appreciated by the learned trial Court in its true perspective; that the learned trial Court has not appreciated the facts and circumstances of the case in accordance with law and passed the impugned judgment of acquittal in a slipshod manner.

4. Conversely, learned AAG as well as learned counsel for respondent No.1 contended that the prosecution has badly failed to prove their case and the learned trial Court has rightly acquitted respondent No.1 of the charges; that no material evidence with respect to charge under Section 489-F PPC has been produced by the prosecution, even the witnesses produced by the prosecution failed to qualify the test of Qanun-e-Shahadat Order, 1984, per se, no evidence regarding the status of respondent No.1 as an Overseas Employment Promoter has been produced on record, as such,

the learned trial Court has rightly appreciated the case and acquitted respondent No.1 in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that on the complaint (Exh.PB) of Manzoor Ahmad / appellant the case FIR No.239, dated 19.04.2005, under Sections 18/22 of Emigration Ordinance, 1979 and Section 489-F PPC, P.S. FIA/AHTC, Rawalpindi has been registered against respondent No.1, whereby it has been alleged that Ahmad Jamal Akhtar Jalali (respondent No.1) while claiming to be an Overseas Employment Promoter / Agent had assured appellant that he would arrange for him work visa for England against consideration of Rs.750,000/-, whereupon a sum of Rs.550,000/- was paid by the appellant and remaining amount of Rs.200,000/- was agreed to be paid after completion of work. The amount of Rs.550,000/- was said to have been paid in presence of Muhammad Bux and Mushtaq Ahmad Gondal at Islamabad. The appellant claimed that respondent No.1 had committed fraud and handed over him a PC Passport of one Muhammad Umar Sheikh son of Nasim ul Haq on 10.01.2004 with the appellant's photograph swapped with the photograph of said actual passport holder. The appellant refused to avail the said fake passport and claimed return of his amount, as a result whereof, respondent No.1 issued a post dated cheque No.6372424, amounting to Rs.300,000/- on 15.08.2004, drawn at UBL North Nazimabad, Karachi, as such, when the same was presented before the bank, it was dishonored on

18.08.2004. The cheque as well as dishonor slips were presented in the Court as Exh.PA, Exh.PA/1 and Exh.PA/2.

7. I have gone through the evidence with the able assistance of learned counsel for the parties and observed that the appellant while appearing as PW-1 has acknowledged that he has not mentioned any date and time in his complaint moved to FIA and it has also been admitted that respondent No.1 met appellant's brother at Karachi in house of one Major Raza, who told him that he immigrates people abroad for employment but, this aspect is not reflected from the complaint Exh.PB, neither he has referred sale of land, house or luggage in said application nor any sale deed was presented to the Investigating Officer during the course of investigation, per se, it has also been observed from record that nothing was recovered from respondent No.1 at the time of his arrest.

8. The two star witnesses of this case are witnesses of alleged payment of Rs.550,000/- namely PW-2 Mushtaq Ahmad Gondal and PW-3 Muhammad Bux, whereby the former stated that the appellant / complainant and PW-3 Muhammad Bux visited his residence on 17.10.2003 where they jointly visited the house of respondent No.1's brother and paid the amount of Rs.550,000/- to him for sending the appellant abroad.

9. PW-3 Muhammad Bux has also reiterated the stance of PW-2 Mushtaq Ahmad Gondal and referred the address of said PW-2 as House No.436, Street No.8, Sector G-10/2, Islamabad, where the amount of

Rs.550,000/- was paid to respondent No.1. However, nothing fruitful has been achieved during the course of cross examination.

10. Muhammad Afzaal Khan, Inspector, FIA appeared as PW-4, who received the application of appellant submitted to the Director, FIA. He acknowledged that he recorded the statements of complainant and two witnesses during the inquiry proceedings but, same are not available in the police file.

11. PW-5 Shams Pervaiz, Inspector FIA investigated the crime and recorded the statement of witnesses and also submitted verification letter to the bank qua the cheque received by the appellant. He has also arrested respondent No.1 from Karachi. He also acknowledged that during the course of investigation he has not recorded statement of Major Raza and complainant's brother namely Noor Muhammad, even no document qua the mortgage or sale made by the complainant was taken into possession. It has also been admitted that no agreement was executed between the complainant and respondent No.1 except the statement recorded by respondent No.1 in this regard.

12. Cheque No.6372424 allegedly given by respondent No.1 to the appellant had also been sent to Handwriting Expert of FIA, whereby Expert Report (Exh.PC), dated 19.12.2006, was received, which reveals that no opinion can be formed about the questioned signatures / writing on the cheque as no other admitted signatures were referred . The said report has been brought on record by PW-6 Syed Munir Hussain Shah, Assistant Technical, FIA.

13. Besides the above referred prosecution evidence, respondent No.1 has also recorded his statement under Section 342 Cr.P.C., whereby he was confronted with respect to receiving a sum of Rs.550,000/- for sending the appellant to England for employment but, same has been denied by respondent No.1, however no justified reason has been brought on record in defence by respondent No.1.

14. This Court while putting in juxtaposition the pro and contra evidence has observed that the learned trial Court has rightly observed that case under Sections 18/22 of the Emigration Ordinance, 1979 has not been demonstrated in any manner, even the requirements of Sections 18/22 of Emigration Ordinance, 1979 are not visible from the case, especially when the alleged passport with photograph changed has not been verified in any manner nor even produced in the Court. In such scenario, the entire case in terms of Sections 18/22 of the Emigration Ordinance, 1979 could only be made against an accused person who forges any document required for or relating to emigration of any person and in this pretext such accused person had received some amount but, the primary charges are not visible from record, hence the findings of the learned trial Court to that extent are in accordance with law.

15. The second charge under Section 489-F PPC is also not made out as the signature of respondent No.1 has not been verified by handwriting expert in any manner as no other admitted document was available to the expert in this regard, per se, such lapse has to be considered against the prosecution, who have not compared or verified the signature from the

expert, hence, benefit is to be extended to the accused person. Reliance is placed upon 2020 MLD 502 Lahore (Ghulam Mohy-ud-Din vs. The State).

Even otherwise, the cheque amounting to Rs.300,000/- has not been confronted to respondent No.1 in the statement recorded under Section 342 Cr.P.C., therefore, same could not be considered as valid evidence for prosecution of respondent No.1. Reliance is placed upon 2016 SCMR 267 (Muhammad Nawaz vs. The State).

16. In this backdrop, no case for interference is made out and the learned Trial Court has rightly acquitted respondent No.1 of the charges by extending benefit of doubt, therefore, the instant criminal appeal filed against acquittal of respondent No.1 is devoid of merits and same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 29th March, 2021.

JUDGE

Khalid Z.