

Form No: HCJD/C-121.

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Criminal Appeal No.480 of 2010

Muhammad Irfan.

Vs.

The State.

Appellant's by : Mr. Shaukat Ali Sajid, Advocate.

Respondent's by : Mr. G. Shabbir Akbar, Advocate.
Mr. Awais Haider Malik, learned
State Counsel.

Date of hearing : 23.01.2020

AAMER FAROOQ, J. - The appellant was indicted in case F.I.R. No.114, dated 19.07.1999 under Sections 419, 420, 466, 468, 471, 166, 193, 409 P.P.C. read with Section 5(2) of Prevention of Corruption Act, 1947, Police Station Aabpara, Islamabad and upon conclusion of the trial, the learned Trial Court convicted the appellant and sentenced him with imprisonment for different terms separately for each offence, which were to run concurrently.

2. The case of the prosecution against the appellant is that in the year 1999 while he was posted as Deputy Director, he alongwith his co-accused facilitated a private firm namely M/s Zeenat Brothers (Pvt.) Limited against whom a civil suit had been filed by a sub-contractor Riaz

& Sons. The said suit was for recovery of the amount in which the learned Trial Court on 23.02.1997 attached the payable bills of M/s Zeenat Brothers (Pvt.) Limited with Capital Development Authority. The referred order of attachment was confirmed by the Hon'ble Lahore High Court on 19.06.1997, but despite the stay order, the appellant alongwith the co-accused made payments to M/s Zeenat Brothers (Pvt.) Limited amounting to Rs.11,02,126/- and Rs.93,811/- through two cheques and also engaged a counsel which the appellant was not authorized to do so, who made a statement before the learned Civil Court to the effect that the money payable to M/s Zeenat Brothers is in excess of the claim of M/s Riaz & Sons and tendered a fake and forged statement of account, hence causing loss to Capital Development Authority. The prosecution in order to prove their case led evidence of Mian Ahmed Mehmood, Deputy Director Capital Development Authority (PW-1), Qazi Muhammad Khalid, Sub-Engineer Capital Development Authority (PW-2), Muhammad Zaman, Director (Coordination), Capital Development Authority (PW-3), Zafar Iqbal, S.I. (PW-4) and Zawar Hussain, Investigating Officer (PW-5). In addition to the above, a number of documents were tendered in evidence. Statement of the accused was recorded under Section 342 Cr.P.C. Upon conclusion of the trial, the learned Trial Court acquitted the co-accused but the appellant was convicted and sentenced as mentioned above, vide judgment dated 25.06.2010.

3. Learned counsel for the appellant, *inter-alia*, contended that the appellant has been convicted on the basis of documents, which were not properly exhibited and proved. It was contended that the attachment orders passed by the Civil Court were to the extent of Rs.67,00,000/- and

the effect of the same was that the payment was not to be made to M/s Zeenat Brothers to the said extent, however, the order did not cover the remaining amount. Learned counsel further submitted that the counsel was engaged by the appellant to represent him and not Capital Development Authority but the power of attorney tendered was not even taken into account. Learned counsel also contended that there is nothing on record to show that the appellant had misused his position in order to acquire personal gain or was a beneficiary in any way in making payments to M/s Zeenat Brothers. In support of his contentions learned counsel placed reliance on cases reported as **"2010 SCMR 608"**, **"2002 YLR 3996"**, **"2002 YLR 46"** and **"2003 P Cr. LJ 1198 (Lahore)"**.

4. Learned State Counsel alongwith the counsel for Capital Development Authority, *inter-alia*, contended that the evidence in the case is primarily documentary, which clearly shows that despite a restraining/attachment order, the appellant made payment to M/s Zeenat Brother (Pvt.) Limited in violation thereof. It was also contended that the appellant had no authority to engage a counsel on behalf of Capital Development Authority and tendered a fake and forged statement of account in the Court. It was also contended that the prosecution has proved beyond reasonable doubt the guilt of the appellant and the judgment impugned in the instant appeal does not call for interference.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The case of the prosecution has already been mentioned hereinabove, therefore, the same need not be reiterated.

7. The prime witness on behalf of the prosecution was Qazi Muhammad Khalid, Sub-Engineer Capital Development Authority, who appeared as PW-2 and tendered in evidence photocopies of various documents, which were exhibited as Ex-P4 to Ex-P29 and were taken in possession by S.I./Investigating Officer through Memo which was exhibited as Ex-PB. It is pertinent to observe that all the said documents are photocopies and are not duly attested. No request was made to tender in evidence the said documents as secondary evidence in accordance with the provisions of Qanun-e-Shahadat Order, 1984. The makers of the documents or witnesses thereto were not called in evidence. It is trite law that merely adducing of a document in evidence does not prove the same. In view of the referred position of law and facts, the documents tendered in evidence as Ex-P4 to Ex-P29 were not duly proved and could not have been relied upon by the learned Trial Court while convicting the appellant. Moreover, the *Wakalatnama* tendered before the Civil Court by Nadeem Mukhtar Chaudhry Advocate clearly mentions that it is on behalf of Mr. Muhammad Irfan /appellant. The referred exhibit does not show that the power of attorney was on behalf of Capital Development Authority, hence the allegation that the appellant engaged a counsel on behalf of Capital Development Authority, which he was not authorized to do so, does not have any substance.

8. Another main allegation against the appellant is that he tendered in the Civil Court a forged and fake statement of account. The

original statement of account was never tendered in evidence and even otherwise no document was exhibited in accordance with law indicating the outstanding bills of M/s Zeenat Brothers (Pvt.) Limited and the amount payable to it. The attachment order passed by the learned Civil Court and confirmed by the Hon'ble Lahore High Court was only to the extent of Rs.6.7 million and the statement made in the Court and the payment made to M/s Zeenat Brothers (Pvt.) Limited was not in respect of the said amount but the amount mentioned above on the basis that the payable bills are more than the attached amount. None of the parties to the civil litigation filed any contempt petition either before the Trial Court or the Hon'ble Lahore High Court. The learned Trial Court did not discuss any document or evidence in reaching the conclusion that the statement made before the Civil Court by the appellant or his counsel was not correct or that the statement of account was bogus. Even, no evidence was led regarding loss caused to Capital Development Authority and the learned Trial Court also did not discuss the same. The complainant (PW-3) admitted in cross-examination that he is not aware about the fact that sum of Rs.6.7 million is still with Capital Development Authority. Even, the Investigating Officer (PW-5) admitted that the amount of Rs.7.44 million is still to be paid to the contractor and only amount of Rs.6.7 million was attached. The Investigating Officer also admitted in evidence that there is nothing to the effect which shows that the appellant misappropriated any amount of Capital Development Authority or in any other way gained benefit by making payment to M/s Zeenat Brothers (Pvt.) Limited.

9. In view of the above position, the conviction awarded to the appellant is not sustainable, as the findings of the learned Trial Court are based on conjectures and without any basis; even as noted above, the documents tendered in evidence were not duly proved and also could not have been exhibited in evidence or relied upon by the learned Trial Court.

10. For what has been stated above, the instant appeal is **allowed** and the judgment dated 25.06.2010 is **set-aside**; consequently, the appellant is acquitted of the charges in the above-mentioned case. The appellant is on bail as the sentence was suspended, vide order dated 05.08.2010 in Criminal Misc. No.01-M of 2010. Since the appeal has been accepted, the sureties stand discharged.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 27th day of March , 2020.

JUDGE

M. Zaheer Janjua