

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Criminal Appeal No. 267/2019**

Azmat Khan  
***Versus***  
The State and another.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(01)	27.01.2020	Agha Syed Murtaza Moosvi, Advocate for the appellant.

Through instant Criminal Appeal No. 267/2019, appellant (Azmat Khan) seeks setting aside of the impugned judgment dated 13.06.2019, passed by learned Judicial Magistrate (East), Islamabad, whereby respondent No.2/accused (Anwar Mehmood Raja) was acquitted.

2. Briefly stated facts of the prosecution case are that the complainant entered into sale agreement with the respondent in respect of plot measuring 10 marla situated in Khasra No. 2979, Mouza Tarlai Kalan, Islamabad, in lieu of sale consideration of Rs.2,00,000/- (two lac) per marla. As per F.I.R. Ex-PB, the complainant has paid entire sale consideration, however, the respondent/accused delayed the matter to transfer the plot in his name. It has also been alleged that a "jirga" was also convened wherein the respondent/accused admitted to execute registry on the name of the complainant, later on refused to do so.

3. After registration of the F.I.R., investigation was carried out. After usual investigation challan was submitted before the learned Trial Court. The learned

Trial Court after fulfilling the codal formalities framed the charge against the respondent/accused to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced following three witnesses:-

- (i) PW-1, Azmat Khan (the complainant);
- (ii) PW-2, Asgher Hussain; and
- (iii) PW-3, Muhammad Abbas, S.I.

After conclusion of the prosecution evidence, the respondent/accused was examined under Section 342 Cr.P.C. wherein he pleaded his innocence with the claim that the complainant could not pay remaining amount within time. Further added that the complainant filed a Civil Suit and thereafter, malafidely registered instant case against him. The respondent/accused did not opt to record statement on oath as envisaged under Section 340(2) Cr.P.C and also did not produce any evidence in his defence; that learned Trial Court after hearing the parties passed the impugned judgment.

4. Learned counsel for the appellant contended that impugned judgment is against is the law and facts of the case; that learned Trial Court has not appreciated the documents available on record; that the learned Trial Court has acted in haste while acquitting the accused; that the learned Trial Court has failed to understand that there is sufficient material, which connects accused/respondent No.2 with the commission of alleged offence and lastly contended for setting aside of the impugned judgment.

5. Heard learned counsel for the appellant and gone through the available record.

6. Perusal of the record reveals that the appellant purchased 10 marlas plot from the respondent/accused and paid all the agreed amount, but the respondent/accused refused to transfer the plot in his name; that instead of offence under Section 406 P.P.C., the respondent/accused was charge sheeted under Section 420 P.P.C. as the offence under Section 406 P.P.C. was not attracted in the matter. Section 415 reads as under:-

*"Section 415 P.P.C, whoever, by deceiving any person fraudulently or dishonestly induced to person so deceived to deliver any property, to any person, or to consent that any person shall retain any property, or intentionally induced the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which, act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat." (PLD 1958 Lahore 738)*

Ingredient of the offence of cheating are:-

- (i) *There should be fraudulent or dishonest inducement of a person by deceiving;*
- (ii) (a). *the person was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property; or*  
 (b). *the person was induced should be intentionally induced to do or to omit to do anything which he would not do omit if he were not so deceived.*
- (iii) *the act or omission could be one which caused or likely to cause damage or harm to the person induced in body, mind, reputation or property. (AIR 1957 Supreme Court 857)*

Section 420 P.P.C is as under:-

*"Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to*

*any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment, of either description for a term which may extend to seven years, and shall also be liable to fine”.*

7. Bare perusal of the contents of the F.I.R. shows that no allegation of cheating or dishonest inducement has been leveled against the respondent/accused. The sale consideration allegedly paid to the respondent makes it a transaction of civil nature. PW-1 (the complainant) has narrated the same story as mentioned in the contents of the F.I.R. During the cross examination, complainant admitted that he has filed a Civil Suit against the respondent/accused, after registration of the instant F.I.R. He has also admitted that it was decided by the "*panchait*" that the respondent will give back an amount of Rs.20,00,000/- (twenty lac) to the appellant. The ingredients for constituting an offence under Sections 415 & 420 P.P.C., are lacking in the instant case as there is no allegation of cheating against the respondent/accused. There is no evidence with regard to fraudulent or dishonest inducement by the respondent/accused to the appellant/complainant. On the other hand, the complainant has already filed a Civil Suit against the respondent.

8. It is pertinent to mention here that considerations for interference in an appeal against acquittal and an appeal against conviction are altogether different because presumption of double innocence is attached with the latter case. The well settled principles for the

appreciation of appeals against acquittal as has been held by the Hon'ble Supreme Court of Pakistan in the judgment reported as **Muhammad Iqbal Vs. Abid Hussain alias Mithu and 6 others** (1994 SCMR 1928), are as under:-

- i. That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his Trial a Court below has confirmed the assumption of innocence;*
- ii. That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;*
- iii. That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;*
- iv. That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and*
- v. That the Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose.*

9. Keeping in view the above principles, I have appreciated the arguments of the learned counsel for the appellant with care. Appraisal of the material available on record reveals that the complainant purchased 10 marlas plot from the accused/respondent No.2, but the F.I.R is silent that the accused induced the appellant for purchase of the plot, as such the sale transaction was

with free will and consent of the appellant and there is no element of inducement by respondent No.2 for purchase of the said plot. Therefore, the learned Trial Court has rightly acquitted the accused/respondent No.2 from the charge.

10. I have found no illegality, perversity or irregularity in the judgment impugned, nor the same is suffering from any misreading or miss-appreciation of evidence and see no reason to interfere in the well reasoned judgment of acquittal passed by the learned Trial Court. Resultantly, this Criminal Appeal having no force is **dismissed in limine.**

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

A. Rahman Abbasi