

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

Criminal Appeal No.377/2019

Dr. Salman Ahmed Saleem

versus

Shahzaib & another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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03.	08.03.2021	Malik Qamar Abbas, Advocate for appellant. Mr. Sadaqat Ali Jahangir, State Counsel.
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Through the instant criminal appeal, the appellant has called in question judgment of the learned Judicial Magistrate Section 30 (West), Islamabad, dated 12.09.2019, whereby Respondent No.1 has been acquitted of the charges in case FIR No.35, dated 29.06.2015, under Sections 419, 420, 468, 471 PPC read with Sections 5(2), 47 PCA, P.S. FIA Crime Circle, Islamabad.

2. Succinctly, Dr. Salman Ahmed Saleem (appellant) had exchanged his car bearing registration No.SH-496 of make and model Toyota Fielder (2007), Black, Engine No.1MZ-543471, Chassis No.NZE141-9021892 with a car bearing registration No.ARN-633 of make and model Mark-X (2005), Silver, Engine No.4GR-0363780, Chassis No.GRX120-0022033 with one Faraz Ashraf, whereafter the latter sold out the vehicle (SH-496) to Shahzaib (respondent No.1), who subsequently sold out the same to one Salim Bilal. As such, the documents pertaining to vehicle (ARN-633) having been received by the appellant in exchange of his vehicle (SH-496) were found bogus. Resultantly, the aforesaid FIR No.35/2015 has been lodged

against respondent No.1. After completion of investigation, challan was submitted in the Court and formal charge against respondent No.1 was framed on 03.09.2019, to which he pleaded not guilty, per se, the trial culminated into acquittal of respondent No.1 vide impugned judgment dated 12.09.2019. Hence, instant criminal appeal.

3. Learned counsel for appellant contends that the appellant intended to move an application under Section 94 Cr.P.C. to highlight the misconduct on the part of Investigating Officer in suppressing and not making documents of crucial importance part of the challan, per se, such documents had to be advanced through Section 94 Cr.P.C., but the learned trial Court hurried in passing the impugned judgment, which has caused miscarriage of justice; that the offence with which respondent No.1 was charged has fully been proved, as such, the appellant has no ill will or enmity to involve respondent No.1 in the instant case; that the learned trial Court has not appreciated the facts and circumstances of the case, rather resorted to passing the impugned judgment in arbitrary manner.

4. Conversely, learned State Counsel contends that though no notice had been issued to him but, it is his duty to assist this Court in the instant appeal against acquittal, whereby he contends that the judgment of the learned Trial Court is in accordance with law and, as such, no illegality has been observed, even the entire matter

revolves around a civil dispute, which has been converted into a criminal case.

5. Arguments heard, record perused.

6. Perusal of record reveals that Dr. Salman Ahmed Saleem (appellant / complainant) has submitted application (Exh.PA) to the FIA for registration of a criminal case, which has been converted in FIR No.35, dated 29.06.2015, under Sections 419, 420, 468, 471 PPC read with Sections 5(2), 47 PCA, P.S. FIA Crime Circle, Islamabad (Exh.PE), whereby the appellant alleged that he has exchanged his vehicle bearing registration (SH-496), Toyota Fielder (2007) with vehicle bearing registration (ARN 633) Toyota Mark-X (2005) owned by one Faraz Ashraf, however the record of exchanged vehicle was found bogus as per record of Excise Office, Karachi. He further alleged that said Faraz Ashraf transferred appellant's vehicle (SH-496) to one Shahzaib (Respondent No.1) of Islamabad without fulfilling the procedural requirements in connivance with officials of Excise & Taxation Office, Islamabad, even fake documents have been presented by respondent No.1 as also confirmed by the Excise Officer, Islamabad. Later on, respondent No.1 further sold out the vehicle to Saleem Bilal and same was taken into possession by the FIA.

7. During the course of cross-examination, the complainant / appellant, while appearing as PW-1, acknowledged that he entered into agreement (Exh.PC) with Faraz Ashraf and also acknowledged his thumb

impressions as well as his signatures vide Exh.PC/1 and Exh.PC/2. He also acknowledged that he got verified the credentials of vehicle from Karachi through his younger brother but, he has not been produce as a witness in this case, however he acknowledged the execution of agreement Exh.PC with accused Faraz Ashraf, which has nothing to do with respondent No.1 nor has the complainant referred anything against respondent No.1 in Exh.PA, per se, as per record the vehicle was transferred in the name of respondent No.1. PW-1 appellant admitted the fact that all the original documents, registration plates and open transfer letter were handed over to Faraz Ashraf at the time of execution of agreement Exh.PC. The most important factor surfaced on record is the admission of the appellant that he has not referred in his application Exh.PA that open transfer letter of vehicle shall remain with him till the transfer of his vehicle.

8. The prosecution has also produced PW-2 Asghar Ali / Inspector FIA, who is only a witness of inquiry in this case and acknowledged that he has not taken over record of Excise department during his inquiry nor had he got verified the open transfer letter through any forensic report, rather admitted that as per contents of agreement open transfer letters had been exchanged. He further acknowledged that he has not recommended any action against any of civil servant in this case.

9. The last witness appeared in this case is PW-3 Rana Muhammad Akram / Inspector, who acknowledged that

he investigated the matter to the extent of respondent No.1, who has been proceeded in terms of Section 512 Cr.P.C., as such, he has taken over the register of stamp papers in which Exh.PF agreement has been referred, which was executed between respondent No.1 and Faraz Ashraf for the purpose of verification of thumb impression and signatures. As per his investigation, respondent No.1 has paid the amount before the purchase of vehicle and same was transferred in Excise and Taxation Office in the name of respondent No.1 However, he has not taken over open transfer letter, which made basis for transfer of the vehicle. He also verified that original transfer letter of complainant / appellant was handed over to the accused Faraz Ashraf by complainant and the record of the stamp paper confirms the fact that the agreement Exh.PF was executed between respondent No.1 and Faraz Ashraf.

10. While considering the entire evidence, it appears that the appellant/complainant handed over his vehicle registration No. SH-496 of make and Model Toyota Fielder (2007), Black, Engine No. 1MZ-543471, Chassis No.NZE141-9021892, Black color to the accused Faraz Ashraf alongwith open transfer letter at the time of execution of agreement Exh.PC. The vehicle was further transferred from the office of Excise and Taxation, as such the same was finally transferred in the name of respondent Shahzaib, per se the appellant has no claim whatsoever of any nature against the said acquitted accused. The Investigation Officer has failed to investigate the matter as required in such type of cases, where it has not been

proved through any independent mean, though the signatures of the appellant was forged in the transfer letter.

11. Ashar Ali Baloch, Inspector, FIA, appeared as PW-2, who has neither taken over the record of the vehicle from the office of Excise and Taxation nor any such handwriting expert report was obtained.

12. In this backdrop, no case of Sections 419, 420, 468, 471 PPC or Section 5(2) 47 PCA is made out, as such double presumption of innocence is applicable to the respondents, who earned the same on the basis of doubt created in the evidence, therefore, such benefit of doubt was rightly extended to the respondents not as a matter of grace and concession, but as a matter of right in the present scenario. The appellant has failed to discharge his onus in terms of Article 117 of Qanun-e-Shahadat Order, 1984 through an unimpeachable evidence to prove the charge against respondent No.1, hence concept of doubt emerges on record, therefore, while taking the analogy from 2015 PCr.LJ 1540 (Fateh Sher and others Vs. The State and others), 1995 SCMR 1345 (Tariq Pervez Vs. The State) and 2016 YLR 905 (Mustaqeem Vs. Nawab Khan and another), no case of interference is made out.

13. For what has been discussed above, instant criminal appeal is misconceived and same is hereby DISMISSED in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE