

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 78 of 2015

Muhammad Azaad
Vs.
Mr. Ziauddin and another

Appellant by:	Mr. Muhammad Izzat Khan, Advocate.
Respondent No.1 by:	Sardar M.Hafeez Khan, Advocate, along with respondent No.1 in person.
State By:	Mr. Zohaib Hassan Gondal, State Counsel along with Shah Nazar, Sub-Inspector.
Date of Hearing:	17.02.2020.

GHULAM AZAM QAMBRANI I:- Through the instant appeal, the appellant (Muhammad Azaad) has assailed the judgment dated 17.03.2015, passed by the learned Judicial Magistrate, Section-30, Islamabad-West, in case F.I.R No. 154 dated 26.03.2010, under Sections 420, 468 & 471 P.P.C registered at Police Station Marglla, Islamabad, whereby the respondent No.1 was acquitted from the charge.

2. Briefly stated facts of the prosecution case are that respondent No.1, namely Ziauddin, allegedly took on rent the vehicle of the complainant, Suzuki Cultus bearing Registration No.LZ-622, Colour White, engine No.F-415148, Chassis No. 3855530, against monthly rent of Rs.20,000/- and paid rent for a month. At some later stage, he requested registration book of the vehicle and photocopy of the CNIC of the complainant as he told to be teased by the local police. Hence, the complainant accorded the request and handed over the said documents

to the accused but later accused disappeared. Upon query from the E.T.O office, Islamabad, it was learnt that the accused through fraud and forged means got the said vehicle transferred in his name and also sold the subject vehicle to some other person. Moreover, to confirm the transfer of vehicle he also affixed the fake thumb impression of the complainant over the documents. So, the complainant filed an application in the office of E.T.O, Islamabad and the subject finger prints were checked through laboratory and thereafter, the office of E.T.O, Islamabad, cancelled the alleged transfer hence, this F.I.R was got registered.

3. After registration of the F.I.R and usual investigation, challan under Section 173 Cr.P.C was submitted before the learned trial Court. After fulfilling codal formalities, charge was framed against the accused to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined the following four witnesses:-

- i. *PW-1, Muhammad Azaad, Complainant,*
- ii. *PW-2 Muneer Ahmed Shah, Assistant Director, F.I.A,*
- iii. *PW-3 Muhammad Yousaf, HC/4335,*
- iv. *PW-4 Muhammad Ishaq, SI/Investigation Officer.*

After closure of the prosecution evidence, the statement of respondent No.1 under Section 342 Cr.P.C was recorded wherein he has denied veracity of prosecution version and did not produce any defence evidence. The learned Trial Court after hearing the arguments of the learned counsel for the parties announced the judgment dated 17.03.2015, hereinafter be called as the impugned judgment hence, the instant appeal.

5. Learned counsel for the appellant contended that learned Trial Court while acquitting the respondent/accused has failed to appreciate that the prosecution has proved the guilt beyond the shadow of doubt and the prosecution story on the face of it clearly establishes that he has committed the offence of forgery and fabricated the transfer documents for registration of vehicle. Further, submitted that there is misreading and non-reading of evidence available on record, which has resulted into miscarriage of justice.

6. On the other hand, learned counsel for the accused/respondent contended that no date, time and year is mentioned in the F.I.R and there is no rent agreement with regard to the vehicle allegedly executed between the appellant and the accused/respondent. That there is no evidence on record to connect respondent No.1 with the commission of the alleged offence. The prosecution miserably failed to prove the allegation beyond reasonable shadow of doubt. Further contended that the appellant submitted an affidavit before the Court that he has received the entire sale consideration of the said vehicle. Infact, the father of respondent had paid an amount to the appellant for purchase of a piece of land from the appellant which was not given and resultantly, the vehicle in-question was handed over to the respondent. The learned State counsel supported the judgment of the learned trial Court.

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

8. Perusal of the record reveals that on the application of appellant Muhammad Azaad, F.I.R No.154 dated 26.03.2010 was registered under Sections 420, 468 & 471 P.P.C with Police Station Margalla, Islamabad. After usual investigation, the respondent appeared before the learned trial Court for grant of pre-arrest bail, wherein the appellant himself, submitted an affidavit before the learned Additional Sessions Judge, Islamabad-West on 02.06.2010, mentioning therein, that he has got registered the above mentioned F.I.R against the respondent Ziauddin; he has received the amount of vehicle bearing No.LZ-622 Suzuki Cultus; that there is nothing outstanding against the respondent, and if the respondent/ accused is granted bail or he is acquitted from the charge, he has no objection. On his affidavit, ad-interim bail of the respondent was confirmed. However, the police submitted challan before the learned Court of Judicial Magistrate, Islamabad- West.

9. The learned trial Court framed charge against the respondent under Sections 420, 406, 468 and 471 P.P.C. For proving of charge, the complainant himself appeared as PW-1 wherein, he has narrated the same statement as stated in the contents of the F.I.R. In his statement, he admitted that he had submitted an affidavit to the extent of grant of bail to the respondent but still neither the amount was received by him nor the vehicle had been returned. During cross-examination, he stated that he handed over his vehicle to the respondent in the year 2009. He admitted that the handing over the vehicle to the respondent was not reduced into writing and there was no evidence with regard to handing

over of the vehicle to the respondent. He further stated that at the time of handing over the vehicle to the respondent, there were some people but he was not willing to produce them before the Court as witness. There is no evidence on record that the appellant entrusted the vehicle Suzuki Cultus No.LZ-622 to the respondent. From the contents of F.I.R and the statement of complainant it does not attract the provisions of Section 405 P.P.C. due to the fact that allegation against the respondent, as stated by the appellant is that he, on the basis of monthly rent of Rs.20,000/-, has given the vehicle to the respondent for which the prosecution failed to produce a single evidence.

10. It is appropriate to consider Section 420 P.P.C which read as under:-

"420. Cheating and dishonestly inducing deliver of property:-

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 to 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."

Ingredients of Section 420 P.P.C are as under:-

- i. Accused cheated complainant;*
- ii. Accused did so dishonestly ;*
- iii. Thereby induce the complainant;*
- iv. To deliver some property to the accused or to some other person;*
- v. To make, alter or destroy the whole or any part of the valuable security or any ting which was signed sealed and which were capable of being converted into valuable security.*

11. In other words, fraudulent and dishonest intention/*mens rea* and inducement at the time of performing the act are essential ingredients for constituting the offence of cheating and criminal breach

of trust. Therefore, proceedings under the criminal law could be initiated if dishonest intention to cause wrongful loss to the owner and wrongful gain to the accused through forgery or cheating was proved. The provisions of Section 420 P.P.C, would not be attracted when accused has not cheated the complainant or dishonestly induced to deliver any property or to make, alter or destroy whole or any part of the valuable security or sign or receipt or anything capable of being converted into a valuable security. In the instant case, the prosecution badly failed to prove by producing cogent and confidence inspiring evidence, the allegation of cheating allegedly committed by the respondent with the appellant.

12. There is allegation against the respondent that he also forged the documents of the vehicle. In this regard, the complainant himself appeared as PW- 1 and stated that accused obtained registration book of the vehicle and copy of CNIC from him and thereafter, when he came to know that the vehicle has been transferred on the name of respondent, then he submitted an application to ETO- Islamabad, and after interrogation the vehicle was again transferred on the name of complainant. There is no evidence on record with regard to allegation of forgery committed by the respondent and also there is no evidence for usage of the forged documents as genuine. In this regard, it would be convenient to reproduce sections 463 and 471 P.P.C, which are extracted as under:-

Section 463 P.P.C. - Forgery reads as under:

"Whoever makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or

to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery”

There are two essential ingredients of the forgery

- i. Firstly, the making of a false document*
- ii. Secondly, doing so with a fraudulent intention to cause damage or injury to any person. To support a false claim or to cause a person to part with property.*

Section 471. P.P.C using as genuine a forged document:

“Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.”

13. For proving the allegation of forgery, none of the witnesses made any allegation against the respondent that they have seen the respondent/accused himself committing forgery over the documents. Since, no specific allegation of forgery against the accused has been made, therefore, the prosecution miserably failed to prove the said allegation. So far as the forensic reports Ex.HE and Ex.HF are concerned, it reveals that questioned thumb impressions of the complainant did not match with the specimen thumb impressions.

14. Here the question arises as to who has managed or prepared the documents. In this regard, there is no evidence on record and mere on the allegation, the commission of alleged offence cannot be attributed to the respondent.

15. After scrutiny of the evidence, I am of the view that prosecution has failed to prove through evidence, placed on record that the respondent himself prepared forged documents with a view

to use the same as genuine, knowingly to be forged in order to attract the provisions of sections 468 and 471 P.P.C. The prosecution has to prove that a forged document was prepared and used with the knowledge or reasons to be believed to be a forged document and fraudulently used as genuine. There is no such evidence available on record.

16. It is pertinent to mention here that considerations for interference in an appeal against acquittal and an appeal against conviction are altogether different. The appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from the appeal against acquittal 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 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.*

17. Keeping in view the above principles, I have appreciated the arguments of the learned counsel for the parties and perused the record with care. Appraisal of the material available on record reveals that the appellant allegedly handed over his car to the respondent on monthly rent of Rs.20,000/- per month and the respondent later on disappeared. The prosecution miserably failed to prove the delivery of vehicle through independent witnesses. The further allegation against the respondent was that he cheated, dishonestly induced the appellant and committed forgery of the documents. But there is no element of inducement by the respondent to the appellant and there is also no evidence against the respondent about the commission of the fact of forgery allegedly committed by him.

18. I have found no illegality or irregularity in the judgment impugned passed by the learned trial Court, nor the same is suffering from any misreading or non-reading or misappropriation of evidence, warranting interference by this Court.

19. Resultantly, the instant appeal, having no force, is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

ANNOUNCED IN OPEN COURT ON 21-2/2020

JUDGE

"Rana.M.Ift."