

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

Criminal Revision No.39/2014

Muhammad Abid Farooq
Versus
The State and another.

Petitioner by:	Ch. Muhammad Junaid Akhtar, Advocate alongwith petitioner.
State by:	Malik Mazhar Javed, State counsel and Mr. Zohaib Hassan Gondal, State Counsel with Faiz S.I.
Complainant by:	In person.
Date of Hearing:	30.01.2020.

Ghulam Azam Qambrani, J:- Through this Criminal Revision Petition, the petitioner/convict has assailed the order dated 12.02.2014 passed by the learned Sessions Judge-West, Islamabad and the impugned judgment dated 29.11.2013 passed by learned Judicial Magistrate, Section-30, Islamabad-West, whereby he was convicted in case FIR No. 40, dated 23.1.2013 under section 489-F PPC and was sentenced to Rigorous imprisonment for three years and fine amounting to Rs. 50,000/- and in default of payment of fine the accused have to further undergo simple imprisonment for a period of six months. Benefit under section 382-B Cr.P.C was also extended to the convict/petitioner.

2. Brief facts of the case are that Syed Amjad Hussain Shah/ complainant lodged a complaint with P.S Kohsar alleging therein that he is resident of Mohra Syedan Tehsil Murree, District Rawalpindi. The convict/petitioner Muhammad Abid Farooq had received Rs.1,20,00,000/- in the month of August and September, 2010 with the commitment that he deals in the business of cement

and if the complainant makes the investment, there are chances of profit. In return of said amount, the convict/petitioner gave three cheques total valuing Rs 1,37,00,000/- to the complainant which were deposited for encashment but the same were dishonored. On this complaint, the instant case was registered.

3. After registration of FIR, investigation was carried out and thereafter report under section 173 Cr.P.C. was submitted before the learned trial Court. After fulfilling codal formalities, charge was framed against the convict/ petitioner, to which he pleaded not guilty and claimed trial. The prosecution examined as many as six PWs and also produced documentary evidence in support of its case. Thereafter, statement of accused person was recorded Under Section 342 Cr.P.C. The learned Judicial Magistrate Section-30, West, Islamabad convicted the accused/ petitioner vide Judgment dated 29.11.2013. The accused/ petitioner being aggrieved filed an appeal before the learned Sessions Judge-West, Islamabad which was also dismissed vide Judgment dated 12.2.2014, hence the instant Criminal Revision.

4. Learned counsel for petitioner contends that the impugned judgments are not maintainable under the norms of natural justice; that the learned Trial Court convicted the petitioner without adopting due process of law; that the learned Trial Court as well as the learned Appellate Court passed the impugned judgments without providing an opportunity to the accused to engage services of a counsel for cross-examination and compelled the petitioner to cross-examine the witnesses himself. He further contended that prosecution has miserably failed to prove its case against the petitioner and the impugned judgments are based on surmises and conjectures, hence liable to be set aside.

5. On the other hand, learned State Counsel supported the impugned judgments and contended that the issuance of cheque by the accused person is admitted; that statements of the PWs fully supported the prosecution case. Complainant of the case present before the Court submits that he relies on arguments advanced by the learned State counsel.

6. I have heard the arguments of the learned counsel for the petitioner and learned State counsel, duly assisted by the complainant, and perused the available record with their able assistance.

7. Perusal of record depicts that on 20.05.2013, charge was framed against the petitioner to which he denied and claimed trial. In order dated 25.11.2013, the learned Trial Court mentioned that directions for expeditious disposal of case has been received from the Islamabad High court, Islamabad, vide letter dated MIT/IHC/1419 dated 25.11.2013, and further mentioned that the case will be proceeded on daily basis. The statements of the witnesses were recorded by the learned Trial Court. The petitioner requested for adjournments for the purpose of cross-examination on the statements of the witnesses by his counsel but the petitioner was directed to cross-examine upon the statements of witnesses himself, and in absence of his counsel, the statements of the witnesses were recorded.

8. On conclusion of the Trial, the learned Trial Court passed the impugned judgment and convicted the petitioner under section 489-F, PPC and sentenced him to Rigorous imprisonment for three years and fine amounting to Rs.50,000/- and in default of payment of fine the accused/petitioner was to further undergo simple imprisonment

for a period of six months. Benefit under section 382-B Cr.P.C was also extended to him.

9. That it is primary duty of the Court ceased of a matter to ensure that truth is discovered. In this case, prosecution witnesses were not cross-examined on account of non-representation by defense counsel before the learned Trial Court. The evidence so recorded could be of no significance and conviction cannot safely be based on the basis of such evidence, unless the credibility of witnesses is tested on the touchstone of cross-examination. Injustice is likely to occur in a case where cross-examination on prosecution witnesses was not conducted by an advocate of the accused of his own choice. Even the cross-examination conducted by accused himself cannot be considered to be substitute of cross-examination conducted by a counsel. Learned Trial Court did not adopt right course and asked the accused to cross-examine the witnesses for which obviously accused had not requisite expertise. Procedure adopted by learned Trial Court is the result of miscarriage of justice. The right of cross-examination has from times been held, particularly in criminal cases, to be a valuable right of an accused. It is the duty and privilege of the Court to put questions to witnesses in order to discover the truth. Judicial officer should use his greater experience to ask questions in the shape of cross-examination to the witnesses where he finds that the accused is unrepresented. Article 10-A inserted in the Constitution (18th amendment) Act –X of 2010 provides as under:-

“10-A. Right to fair Trial. ----- For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to fair trial and due process.”

10. In this regard reliance is placed on the judgment of the Hon'ble Supreme Court of Pakistan titled as "Abdul Ghafoor vs. The State" 2011 SCMR 23, wherein it has been held as under:-

"With immense respect to the learned Judges of the High Court, we are persuaded to hold that it is the primary responsibility of the court seized of a matter to ensure that the truth is discovered and the accused are brought to justice. If the learned trial Court found that the counsel engaged by the appellant had sought too many adjournments, even then he was not appearing, the court could either have directed that a defence counsel be provided to the appellant at State expense or could have given last opportunity to the appellant to make alternate arrangements failing which the court would proceed to decide the matter. This course was not adopted by the learned trial Court and instead on 2-12-1999 gave a total surprise to the appellant by asking him to cross-examine those witnesses for which obviously neither the appellant had the requisite expertise nor he was prepared to do so. In these circumstances and in view of the fair concession given by the State, we find that the procedure adopted by the learned trial Court is reflective of miscarriage of justice and the appellant be provided one opportunity to have the afore-referred witnesses cross-examined. Consequently, this appeal succeeds on this short ground. The impugned judgment of the learned High Court dated 19-3-2000 and that of the learned trial Court dated 30-5-2000 are set aside. The case is remitted to District and Sessions Judge, Rawalpindi who shall either proceed with the matter himself or entrust the same to Additional District and Sessions Judge. The appellant shall be treated as under trial prisoner. He shall be given one opportunity to cross-examine the two witnesses referred to

in paragraph 6 above and thereafter the court shall decide the matter within 15 days of the said opportunity given. The parties are directed to appear or arrange representation before the District Judge for 20-5-2010 who shall proceed with the matter in terms of this order.”

11. The rationale in the judgments of the Superior Courts is that a fair opportunity should always be granted to accused to engage an advocate for cross-examination of the prosecution witnesses. In the case in hand, the appellant has been convicted without proper cross-examination on factual as well as legal aspects of the case which could be done only by a counsel. The learned Trial Court while, referring the letter dated 25.11.2013, passed by this Court for disposal of the case within seven (07) days, conducted day to day hearings, recorded the statements of witnesses and compelled the petitioner for cross-examining the prosecution witnesses and passed the impugned judgment.

12. Perusal of record shows that appellant was entirely unaware with the art of cross-examination, hence, the testimony of witnesses could not be tested properly. Testing the veracity and credibility of the witnesses is undoubtedly a legal right of the accused which could be achieved through proper cross-examination. No doubt there was a direction of this Court for conclusion of the trial but spirit of this order was meant only a speedy conclusion of the Trial, and not to deprive the accused of his right of fair trial. However, in exceptional circumstances, time can also be requested and extended in the interest of justice. Since, the rights of petitioner/accused are guaranteed under the Constitution, the very right of cross-examination by a counsel for proper defending, has been infringed.

13. In view of what has been discussed above, I **allow** this criminal revision petition. Conviction and sentence awarded to the accused/ convict, vide impugned judgment dated 29.11.2013, is set-aside and matter is remanded to the learned Trial Court with a direction to re-summon the prosecution witnesses for the purpose of cross-examination by the counsel of the petitioner/accused, on the day fixed by the trial Court. The petitioner is also directed to ensure presence of his learned counsel on each and every date of hearing and he will not be given any more opportunity. The learned Trial Court is directed to conclude the case within a span of two months after the receipt of this judgment. Parties are directed to appear before the learned Trial Court on 19.02.2020.

**(GHULAM AZAM QAMBRANI)
JUDGE**

ANNOUNCED IN OPEN COURT ON _____/2020

JUDGE

"Rana.M.Ift"

APPROVED FOR REPORTING.

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