

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Appeal No.214/2018

Shams ul Haq Loan

Versus

Muhammad Aksar Malik Awan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.03.2019	Mr. Ahmad Waqas Aslam, Advocate for the appellant

Through the instant criminal appeal, the appellant, Shams ul Haq Loan, impugns the order dated 17.07.2018, passed by the Court of the learned Judicial Magistrate Section-30 Islamabad-West, whereby respondents No.1 and 2's application under Section 249-A Cr.P.C., was accepted and they were acquitted of the charges against them in case F.I.R. No.76, dated 06.03.2017, registered at Police Station Industrial Area, Islamabad, under Sections 419, 420, 468, 471, 406 and 34 P.P.C.

2. Learned counsel for the appellant submitted that the appellant paid Rs.6,900,000/- and Rs.13,100,000/- in the form of pay order to respondents 1 and 2 as sale consideration for land measuring 679 *kanals* in *Mouza* Tarlai Kalan, Tehsil and District Islamabad; that the agreement between the parties was reduced into writing on 11.05.2016; that on 22.06.2016, respondents No.1 and 2 returned to the appellant the pay order for Rs.13,100,000/- and received Rs.15,000,000/- in cash; that on 15.07.2016, the appellant paid Rs.10,000,000/- in the form of a cheque to respondent No.2; that respondents No.1 and 2 persuaded to the appellant to cancel the said cheque and received the said amount in cash; that even after receiving Rs.31,900,000/- from the appellant, respondents No.1 and 2 did not

transfer the said land to the former; that respondents No.1 and 2 defrauded the appellant of the said amount; and that the learned Court below did not appreciate these vital aspects of the case.

3. Learned counsel for the appellant further submitted that the appellant had already instituted a civil suit for recovery of the said amount before the Court of the learned Civil Judge, Islamabad; and that the said suit has been pending since the last two years. Learned counsel for the appellant prayed for the criminal appeal to be allowed in terms of the relief sought therein.

4. I have heard the contentions of the learned counsel for the appellant and have perused the record with his able assistance.

5. Apparently, a consent order was passed by this Court on 24.06.2016 in C.S. No.05/2015, titled "Muhammad Aksar Malik Awan Vs. Allah Ditta, etc" perusal whereof shows that the suit filed by the plaintiff in the said case was decreed after the defendants in the said case recorded their statement to the effect that they have received the remaining sale consideration of 13,100,000/-.

6. The appellant's case is prior to the passing of the said decree. The appellant had entered into a verbal agreement for the purchase of the said land from respondents No.1 and 2. The appellant was under an obligation to ensure that the title in the property which he was purchasing vested in the person with whom he had entered into an agreement.

7. The learned Court below accepted respondents No.1 & 2's application under Section 249-A Cr.P.C. primarily on the ground that the dispute raised by the appellant was of a civil nature. Since the appellant has already filed a suit

for recovery against respondent No.2, I do not deem it appropriate to interfere in the impugned order dated 17.07.2018, passed by the learned Court below.

8. In view of the above, the instant appeal is dismissed in *limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan