

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

Criminal Appeal No.31/2014

Khalid Khan

versus

Ahmed Khan & 3 others

Appellant:

In-person:

Respondents by:

Mr. Jan Muhammad Khan, Advocate for
Respondents No.1 & 2.

Mr. Hasnain Haider Thaheem, State Counsel.
Khalid Awan, S.I.

Date of Decision:

09.07.2020.

MOHSIN AKHTAR KAYANI, J: Through this criminal appeal, the appellant has called in question order of the learned Judicial Magistrate, dated 03.10.2013, whereby Respondents No.1 & 2 have been acquitted of the charge in case FIR No.72, dated 19.03.2013, under Section 406/34 PPC, P.S. Shalimar, Islamabad.

2. Brief facts referred in the instant case are that on the complaint filed by the appellant the aforesaid FIR has been registered having allegations that Ahmed Khan (Respondent No.1) and Awais Khan (Respondent No.2) were his business partners in business of exports. On 09.03.2012, the said partnership dissolved in presence of Noor Alam and Muhammad Shaiq leaving outstanding dues of Rs.90,180,000/- on the part of said respondents to be paid to the appellant, regarding which an agreement was also executed. However, the said respondents failed to abide by the agreement and failed to pay their dues. Resultantly, the case FIR No.72/2013 has been registered on the complaint filed by the appellant. Accordingly, the respondents filed their pre-arrest bail applications and in the meanwhile a compromise was effected between the parties that respondents will make the payment at the earliest, but they had not paid their dues and the learned trial Court, vide impugned order dated

03.10.2013, acquitted the respondents No.1 and 2 of the charge. Hence, the instant criminal appeal against the acquittal.

3. Appellant in-person contends that the learned trial Court without issuing any notice to him has passed the impugned order and no right of hearing has been given to him, which is violation of law; that learned trial Court has not mentioned any reason that complainant has failed to produce himself before the learned trial Court, rather passed the impugned order in haste, which is liable to be set-aside and respondents No.1 & 2 may be awarded sentence in accordance with law.

4. Conversely, learned State Counsel as well as learned counsel for respondents No.1 & 2 have opposed the filing of instant criminal appeal and contend that at the time of post arrest bail of respondents No.1 & 2 the appellant himself stated before the Court that compromise between the parties has been effected and he is not interested to pursue the matter; that the learned trial Court has rightly appreciated the record and passed the impugned order in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that the appellant is mainly aggrieved with the order dated 03.10.2013, passed by learned Judicial Magistrate 1st Class, (West), Islamabad, whereby the respondents have been acquitted in case FIR No.72, dated 19.03.2013, under Section 406/34 PPC, P.S. Shalimar, Islamabad.

7. The background of the case reflects that the appellant and respondents No.1 & 2 had allegedly entered into an agreement and relationship of the parties is based upon an instrument which is presently subjudice before the Civil Court in shape of suit for recovery. However, it has not been denied by the appellant that he has executed an affidavit on 21.06.2013 in favour of respondents No.1 & 2. As a result of same, pre arrest bail applications of respondents No.1 & 2 have been confirmed vide order dated 21.06.2013 by the learned Additional Sessions

Judge-VIII (West), Islamabad. However, the contents of the affidavit appended with this appeal reflect that the appellant had no objection on the acquittal of respondents No.1 & 2, but he has taken a somersault at this stage with the contention that the affidavit could only be considered to the extent of bail, though such stance of the appellant is belied from bare perusal of the contents of affidavit.

8. On the other hand, it is settled by now that any investment in a business could not be considered for the purpose of entrustment as an offence under Section 406 PPC as the terms of the contract could only be enforced through competent court of law, like in this case, a civil suit for recovery has already been filed.

9. Besides the above referred grounds, it has been observed that impugned order was passed on 03.10.2013 and the appellant filed application on 17.02.2014 for obtaining certified copy of the said order, which was delivered on same day, but the instant appeal has been filed on 07.04.2014, as such, the appeal is apparently time barred and no plausible justification has been placed on record as to why the instant appeal has been filed with delay beyond the period of limitation, even no application for condonation of delay has been filed at the time of filing of instant appeal. As such, the respondents No.1 & 2 have earned double innocence due to their acquittal, whereas on the legal parlance the appellant has to justify the delay of each and every day, which is missing in this case, therefore, while relying upon the case law reported as 2019 P.Cr.LJ 194 Islamabad (Lt. Col. (R) Irfan Pirzada vs. The State) and 2014 SCMR 671 (The State v. Syed Ali Baqar Naqvi, etc.) the instant criminal appeal is time barred and even not sustainable on merits, hence, same is hereby DISMISSED.

(MOHSIN AKHTAR KAYAN)
JUDGE

Khalid Z.