

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No.152/2019

Zarina Kausar
Vs.
Deedar Ali etc.

Sr.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
-----------------------------------	----------------------------------	--

07.02.2020 Mian Nadeem Aziz Jatala, Advocate for the appellant.

GHULAM AZAM QAMBRANI, I. Appellant

(Zarina Kausar) seeks setting aside of impugned order dated 13.11.2018, passed by the learned Judicial Magistrate, Section-30, Islamabad-West, whereby respondents No.1 was acquitted.

2. Briefly stated, prosecution case is that the complainant/ appellant got registered F.I.R No.121 dated 13.04.2017 with Police Station Industrial Area, Islamabad, under Section 380/34 PPC, Islamabad, with the averments that one Zaib Deedar S/o Deedar Ali was well acquainted with her family therefore, he used to visit her house. It has been further stated that, on 01.07.2016, she sold out her plot bearing No.87-A, Block-B, Membership No.725, situated at Judicial Town,

Cooperative Housing Society, Islamabad, in consideration of Rs.17,00,000/- (seventeen lac), in favor of the accused/ respondent, out of which an amount of Rs.7,00,000/- (seven lac) were paid while the remaining amount of Rs.10,00,000/- (ten lac) were to be paid after a period of one month and she transferred the above said plot in the name of Zaib Deedar. It has been further alleged that on 06.03.2017, the above said Zaib Deedar along with his father namely Deedar Ali came to her house and his father requested for a last chance to pay the remaining amount. In the meantime, they were sitting in the drawing room of her house, she went to the kitchen for making tea for them and in her absence, both accused persons stolen the documents of the plot as well as Rs.2,00,000/- from the Almirah of her house as the accused Zaib Deedar had the knowledge as to where the documents were kept hence, the above said F.I.R was lodged.

3. After registration of F.I.R investigation was carried out. During the course of investigation, Deedar Ali, the father of Zaib Deedar was arrested.

After usual investigation, challan was submitted before the learned Court of Judicial Magistrate, Islamabad-West. After fulfilling the codal formalities, charge was framed against the accused to which he denied and claimed Trial. The prosecution was directed to produce evidence in support of the charge for proving the charge

4. In order to prove its case, the prosecution examined PW-1 Zarina Kousar. That on 06.11.2018, accused/ respondent moved an application under Section 249-A Cr.P.C. The learned Judicial Magistrate acquitted the accused namely Deedar Ali vide order dated 13.11.2018, under Section 249-A Cr.P.C, on the ground that there is no probability of the accused being convicted and further trial in the case, will be wastage of the time of the Court. Being aggrieved from order impugned appellant filed instant appeal.

5. Learned counsel for the appellant contends that the learned Judicial Magistrate passed the impugned order in hasty manner and without recording the statements of the remaining three witnesses, namely Abdul Khalil, Muhammad Ali

Ayub and Afzal s/o Fazal Din; that the impugned order passed by learned judicial magistrate is suffering from legal infirmities, therefore, is liable to be set-aside.

6. I have minutely perused the entire record which depicts that one of the accused namely Deedar Ali was arrested on 15.04.2017. He was thoroughly investigated and after that, he was shifted to judicial custody. The record further reveals that the above said Deedar Ali had filed an application under Section 22-A/B Cr.P.C against the complainant, Zarina Kousar, before the learned Additional Sessions Judge-II/Ex-Officio Justice of the Peace, Islamabad, which was disposed of vide order dated 21.02.2017. So far as, the contention of learned counsel for the appellant that there are three other witnesses, who were not examined by the learned Judicial Magistrate, is concerned, I have minutely perused the statement of above said witness namely Abdul Khalil recorded under Section 161 Cr.P.C wherein he has stated that on 30.04.2016 the complainant namely Mst. Zarina Kousar herself came to her office and purchased a

stamp paper with regard to plot in favour of Zaib Deedar. However, he has no knowledge about the contents of the said stamp paper. The witness, Muhammad Ali Ayub has also stated that the complainant namely Mst. Zarina Kousar, widow of Hafeez ud Din, herself came to her office for purchasing a stamp paper for a sale agreement. He registered the particulars however; he has no concern, whatsoever, with the contents of the stamp paper mentioned therein. The witness namely Muhammad Afzal has stated that he is the resident of judicial colony and narrated that there is no dispute of Zaib Deedar with regard to plot No.87-A, Block-B, Judicial Colony, nobody has restrained him for construction of the house on the said plot, however, now a days, value of the said plot has been increased from Rs.17,00,000/- to Rs.18,00,000/- and the same is free from all encumbrances.

7. The allegation against the arrested accused Deedar Ali and his son Zaib Deedar was about commission of theft of Rs.2,00,000/- as well as documents of the above mentioned plot bearing

No.87-A, Block-B, Judicial Colony, Islamabad. It is pertinent to mention here that the complainant herself mentioned in the contents of the F.I.R that she had already transferred the said plot in the name of absconding accused Zaib Deedar. So far as the involvement of acquitted accused Deedar Ali is concerned, in this regard, it is stated that admittedly he was arrested, thoroughly investigated but nothing was recovered from his possession and no direct evidence has come on record to connect him with the commission of the alleged offence. As far as the contentions of the learned counsel for appellant is concerned that the remaining three witnesses have not been recorded by the learned Trial Court, the statements of the above said witnesses, as mentioned above are altogether different, and have no concern with the commission of the alleged offence, therefore, they are unnecessary. The learned Judicial Magistrate has rightly not recorded their statements, being unnecessary.

8. In view of the facts discussed above, it transpires from the record that no direct evidence

is available on record against the acquitted accused Deedar Ali. The allegation about the theft of alleged agreement is baseless as the complainant herself transferred the above said plot in favour of Zaib Deedar, therefore, the sale of above said plot and execution of agreement makes the prosecution case highly doubtful and as there was no probability of the conviction of the accused even if the evidence of the remaining PWs was recorded, therefore, the learned Trial Court has rightly acquitted the accused/respondent.

9. I have found no illegality or irregularity in the impugned order warranting interference by this Court, nor the same is suffering from any misreading or non-reading of evidence.

10. Resultantly, the instant appeal having no force, is **dismissed in limine**.

(GHULAM AZAM QAMBRANI)
JUDGE

Rana M.J.R.*