

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

**Criminal Appeal No.93/2018**  
Muhammad Kamran Khursheed  
*versus*  
The State & another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.09.2020	Mr. Majid Ahmed Abbasi, Advocate for appellant. Mr. Waqar Ahmad Warraich, Advocate for Respondent No.2 Mr. Hasnain Haider Thaheem, State Counsel.

Vide my detailed judgment of even date passed in Criminal Appeal No.92/2018 (Muhammad Kamran Khursheed v. The State & another), the instant criminal appeal is hereby **DISMISSED.**

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.

**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
(JUDICIAL DEPARTMENT)

**Criminal Appeal No.92/2018**  
Muhammad Kamran Khursheed  
*versus*  
The State & another

*and*

**Criminal Appeal No.93/2018**  
Muhammad Kamran Khursheed  
*versus*  
The State & another

Appellant by: Mr. Majid Ahmed Abbasi, Advocate.

Respondents by: Mr. Waqar Ahmad Warraich, Advocate for Respondent  
No.2 in both appeals.  
Mr. Hasnain Haider Thaheem, State Counsel.

Date of Decision: 24.09.2020.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:** Through this common judgment, I intend to decide the captioned criminal appeals arising out of same case FIR No.377, dated 22.12.2014, under Section 406/34 PPC, P.S. Shalimar, Islamabad.

2. Brief and consolidated facts referred in the instant cases are that Muhammad Kamran Khursheed (appellant) submitted complaint for registration of FIR against Abdul Ahmad (Respondent No.2 in CrI. Appeal No.93/2018) and Momina Gul (Respondent No.2 in CrI. Appeal No.92/2018) on the allegations that appellant had handed over his vehicle Toyota Corolla GLI (2008), bearing registration No.MZ-232-ISB, to said accused persons against monthly rent of Rs.40,000/- for period of one month, in presence of one Altaf Ahmad, however after the elapse of said period, the accused persons had failed to return the said vehicle to the appellant, which led to registration of the aforesaid FIR No.377/2014. The Investigating Officer after conclusion of investigation filed the challan under Section 173 Cr.P.C. before the Court. Accordingly, the accused

persons filed their separate applications under Section 249-A Cr.P.C. seeking their acquittal in the case, however same were dismissed vide order dated 06.03.2018. Consequently, Abdul Ahmad and Momina Gul, accused persons, filed criminal revision against the said order, which were accepted vide impugned orders dated 24.04.2018 and 08.05.2018, respectively, by the court of Sessions Judge (West), Islamabad and said accused persons were acquitted of the charge in case FIR No.377/2014. Hence, the captioned criminal appeals.

3. Learned counsel for appellant contends that the orders of acquittal of accused persons are against the facts of the case and law on the subject; that the recovery of vehicle in question has been effected from the accused persons; that the learned Revisional Court has not appraised the material available on record in its true perspective and without providing ample opportunity to the appellant acquitted the accused persons of the charge, which is against settled principle of law and has caused miscarriage of justice, therefore, captioned appeals may kindly be accepted and impugned orders may be set-aside and direction be passed to the learned trial Court to decide matter on merits after recording of evidence.

4. Conversely, learned counsel for respondent No.2 in captioned criminal appeals opposed the filing of instant appeals on the grounds that the learned Revisional Court has rightly appreciated the facts of the case together with the law on subject while passing the impugned orders, as such, the prosecution has miserably failed to disclose a valid and realistic case against the accused persons, even otherwise, the case as established by the prosecution hopelessly suffers from a dearth of evidence, which renders no possibility of conviction of the accused persons, therefore, instant criminal appeals may kindly be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the respondents namely Abdul Ahmad and his wife Momina Gul have been nominated as accused persons in case FIR No.377, dated 22.12.2014 under Section 406/34 PPC, P.S. Shalimar, Islamabad mainly on the ground that they have been entrusted with Toyota Corolla GLI (2008), bearing registration No.MZ-232-Islamabad, against monthly rent of Rs.40,000/- through an agreement executed in presence of a witness, but said vehicle was not returned to the appellant/complainant, rather the respondents disappeared from their given addresses and even blocked their mobile numbers. The challan was submitted in the Court, whereafter learned Trial Court dismissed the applications of respondents filed under Section 249-A Cr.P.C., however same were allowed by the learned Sessions Judge (West), Islamabad through impugned orders and respondents have been acquitted of the charge due to non-availability of conviction.

7. The final report submitted by the Investigating Officer reveals that the relationship of parties is based upon an agreement, dated 27.03.2011, for the lease of vehicle against rental value of Rs.40,000/-. It is the case of the prosecution that the petitioner/complainant had handed over his vehicle along with its registration to the respondents only for a month period, but the FIR has been lodged on 22.12.2014 i.e. after the elapse of three years and as such, no plausible explanation was brought on record as to why the FIR has been lodged with delay of approximately three (03) years, even the respondents have been *challaned* without their arrest and the learned Trial Court has proceeded in terms of Sections 87/88 Cr.P.C., finally principal accused was arrested on 25.02.2017 and it is the case of prosecution that vehicle was recovered from him on 27.02.2017.

8. The minute scanning of case reveals that:

- a) no agreement for rent-a-car has been produced before the Investigating Officer in this case nor appended with the challan,

through it could be ascertained that vehicle in question was handed over to Abdul Ahmad/Respondent No.2;

- b) complainant/appellant relied upon oral agreement and acknowledged his stance in the FIR as well as before the Court that the relationship of parties is based on a verbal agreement;
- c) instant matter is a civil dispute, whereby violation/breach of terms of contract is visible on record;
- d) Section 406 PPC is attracted when property entrusted to the accused person is misappropriated, whereas in this case the vehicle in question was allegedly handed over on lease and as such, the claim of appellant could only be settled by way of suit for recovery i.e. being the specific remedy under the law; and,
- e) delay of three years in registration of FIR is unexplained.

9. It is the responsibility of prosecution to explain as to why the FIR has been lodged with delay, which only favours the accused persons and adversely affects the prosecution case as in absence of logical explanation regarding the delay it could be presumed a concoction, deliberation and false assertion in order to trap the respondents in this case with malafide and ulterior motives. Likewise, the entire record is silent as to why appellant has nominated Momina Gul i.e. wife of Abdul Ahmad as accused in this case, especially when there is not an iota of evidence against the said lady to be nominated as accused person in this case nor the Investigating Officer has justified the same in the final report under Section 173 Cr.P.C.

10. On the other hand, Section 249-A Cr.P.C. empowers the Court to acquit an accused person at any stage of proceedings, even before framing of charge, if there is no possibility of conviction of accused person for alleged offence and as such, the material available on record is silent qua the ingredients required in such type of cases, in such eventuality the best mode available to the Court is to

acquit the accused person in terms of Section 249-A Cr.P.C. Reliance is placed upon 2017 P.Cr.LJ 219 Karachi (Muhammad Hayat vs. Rafiq) and 2017 P.Cr.LJ Note 162 Lahore (Muhammad Asif Khan vs. Aftab Ahmad, Regional Manager (R), NBP).

11. The other requirements for application of Section 249-A Cr.P.C. are that the Court shall hear the prosecutor as well as the accused person and take into consideration overall facts and circumstances, which are reflected from the judgment passed by learned Sessions Judge (West), Islamabad and as such, all the parties have been given fair chance to explain their case, therefore, all requirements of Section 249-A Cr.P.C. have been complied with. The expression used in Section 249-A Cr.P.C. extends the power to the Court to apply the process of acquittal either at any stage of trial i.e. before or after recording of evidence, as the case may be, and there is no requirement to conclude the trial in the normal manner when such circumstances appear on record, as such, this power has specifically been provided in the Cr.P.C. to prevent the abuse of process of any court or to save the precious time of the Court from unnecessary trial proceedings. Reliance is placed upon 2017 P.Cr.LJ 1104 Lahore (Khalid Mehmood vs. Safdar Iqbal).

12. Even otherwise, the question of entrustment of property based on the agreement in terms of Section 406 PPC has been considered in terms of Contract Act, 1872 and remedy has been provided in terms of the Specific Relief Act, 1877 as highlighted in case reported as 2017 P.Cr.LJ 133 Islamabad (Muhammad Nawaz vs. S.H.O. P.S. Sabzi Mandi, Islamabad). As such, the dishonest disposal/misappropriation by the respondents or conversion to their own use is not apparent.

13. The entire case of the prosecution revolves around civil liability as neither any witness of agreement has ever been referred nor the terms have been settled in writing, though admitted by the appellant himself that same was based on a

verbal contract, hence the impugned orders, dated 24.04.2018 and 08.05.2018, are in accordance with law, as such, the case, if even tried on merits, would not result into the conviction of accused persons/respondents, therefore, the captioned criminal appeals are hereby **DISMISSED** for being meritless.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Khalid Z.