

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.378/ 2019

Kashif Zubair Ahmed
Versus
Sheikh Alu-Din and others.

Appellant by:	Mr. Kashif Zubair Ahmad, Advocate.
Respondents 1 to 3 by:	Mr. Sajjad Haider Gondal, Advocate.
Respondents 4 to 6 by:	Mr. Shamshad Ullah Cheema, Advocate.
State by:	Mr. Zohaib Hassan Gondal, State Counsel along with Tanveer Iqbal, ASI.
Date of Hearing:	28.08.2020

Ghulam Azam Qambrani, J.:- This appeal has been filed against the impugned order dated 03.09.2019, passed by the learned Judicial Magistrate, Section 30, Islamabad- West, in case F.I.R 179 dated 11.06.2015, under Sections 420/ 468/ 471/ 34 PPC P.S Shalimar, Islamabad, whereby respondents No. 1 to 9 were acquitted.

2. Briefly stated facts of the case as narrated by the appellant/ complainant are that he purchased two plots in Housing Scheme namely Model Town in the year, 2003 by paying huge amount to the respondents, but they did not develop the scheme. Being aggrieved, the appellant lodged an FIR No. 179 dated 11.06.2015, under Sections 420/ 468/ 471/ 34 PPC at Police Station Shalimar, Islamabad, against respondents 1 to 9. After thorough investigation the police submitted cancellation report of the above said FIR, which was disagreed by the learned Judicial Magistrate 1st Class, Islamabad-West vide order dated 23.05.2017 and the SHO was directed to submit report under Section 173 Cr.P.C. Thereafter, the challan was submitted before the learned trial Court but the learned

Judicial Magistrate Section 30, Islamabad-West vide order dated 03.09.2019 acquitted all the accused persons on the ground that no incriminating material is available against the accused persons with the prosecution.

3. Learned counsel for the appellant submitted that the impugned order has been passed without considering the material available on record; that the accused persons received heavy amount from the appellant on fake allotment letter in the name of Model Town Housing Society, whereas the TMA had never issued No Objection Certificate and Security Exchange Commission of Pakistan had specifically prohibited launching of the scheme and selling the plot. Lastly prayed for setting aside of the impugned order dated 03.09.2019.

4. On the other hand, learned counsel for the respondents submitted that no inducement was made to the appellant to purchase the plot; that the appellant failed to join the Investigation Officer; that all the accused persons were placed in column No.02 of the report under Section 173 Cr.P.C; that the Housing Society is duly registered and land is available with the respondents, but due to the Atomic Energy Department, the development could not be made; that the appellant was only issued provisional allotment letter wherein it is written that it is temporary allotment letter and it depends upon the completion of the development work of the society. He further submitted that there was no evidence against the accused persons, as such the Investigating Officer submitted cancellation report of the above said FIR before the concerned Judicial Magistrate. Further submitted that vide impugned order, the respondents have rightly been acquitted of the charge.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that F.I.R was lodged by the complainant with the allegation that the respondents have launched a fake Housing Society and have received heavy amount from the

appellant, but never developed the said housing scheme. It transpires from the record that during the investigation, the appellant failed to produce any cogent evidence before the Investigating Officer in support of his version. After thorough investigation, all the accused persons were placed in column No.02 of the report under Section 173 Cr.P.C. Prime facie, record reveals that there was no inducement to the appellant on behalf of the respondents and the appellant was not forced to purchase the plots in the said housing society. The appellant was only issued provisional allotment letter wherein it was clearly written that it is a temporary allotment letter and it depends upon the completion of the development work of the society. No cogent and concrete evidence is available on record against the respondents, as such, the learned Judicial Magistrate vide impugned order dated 03.09.2020 has rightly acquitted the respondents from the instant case.

7. It is settled principle of law that under the Criminal Procedure Code, a Magistrate is bestowed with powers to acquit an accused at any stage of the proceedings if the charge appears to be groundless or there is no probability of his conviction. Challan in this case was submitted by the police by placing the accused/ respondents in Column No.2 of the report under Section 173 Cr.P.C. and the learned Judicial Magistrate vide order dated 03.09.2019 acquitted all the accused persons.

8. The learned Judicial Magistrate has the power to acquit an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or there is no probability of the accused being convicted of any offence. The examination of the impugned order on the touchstone of principles on the subject leads this Court to draw an inference that the accused/ respondents were acquitted mainly on the grounds that no incriminating material is available against the

accused persons and when there is no incriminating material against them with the prosecution, further proceedings in the instant case would be futile exercise. The police in this case submitted challan by placing respondents/ accused in Column No.2 of the report under Section 173 Cr.P.C.

9. Learned counsel for the appellant has failed to point out any illegality and irregularity in the impugned order dated 03.09.2019, passed by the learned Judicial Magistrate Section 30 Islamabad-West, warranting interference by this Court, therefore, the instant appeal having no force, is hereby **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

Announced in open Court on this 15th day of September, 2020.

~~JUDGE~~

R.M. 1/4