

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Crl. Appeal No. 29/2013.**

Gulshan Bibi

Versus

Mubashar Ahmad, etc.

Appellant by: Mr. Ahmad Nawaz Bhatti, Advocate.

Respondents by: Barrister Ayesha Siddique Khan, State Counsel.  
Mr. Gul Muhammad Khan, Advocate.

Date of Decision: 27.01.2020.

**MOHSIN AKHTAR KAYANI, J:-** Through this Crl. Appeal, the appellant has assailed the judgment 28.11.2012, passed by learned Judicial Magistrate (East), Islamabad, whereby, respondents No.1 & 2 were acquitted from the case FIR No.223, dated 29.05.2008, U/S 406, 468, 471 PPC, P.S. Shahzad Town, Islamabad.

2. Learned counsel for the appellant contends that appellant got lodged the above mentioned FIR against respondents No.1 & 2 with the allegations that appellant paid Rs.3,56,000/- to respondents No.1 & 2 in or around September, 2006 for purchase of two plots in Bankers city and one plot in Education city; that plots files comprising of allotment letters were given to the appellant by respondents No.1 & 2, which were found to be fake and not confirmed from the relevant authorities, nor even transferred in the name of appellant, even matter was referred to the Reconciliatory Committee of P.S. Shahzad Town; that appellant's hard earned money was misappropriated by respondents; that learned trial Court has not appreciated the evidence in a proper manner and

acquitted the respondents without considering the available record; that respondents have admitted their relationship and liability and as such they could not be acquitted in a manner as referred by the trial Court.

3. Conversely, learned counsel for respondents No.1 & 2 contends that learned trial Court after recording of evidence has rightly appreciated that matter in dispute was of civil nature where appellant has to justify her payment, entrustment of property and provision of forged allotment letters and files, which are missing on the part of prosecution, therefore, trial Court has no other option but to acquit the respondents under the law.

4. Arguments heard, record perused.

5. From the perusal of record, it reveals that appellant has got lodged the FIR No.223, dated 29.05.2008, U/S 406, 468, 471 PPC, P.S. Shahzad Town, Islamabad for criminal breach of trust and fraud with the allegation that respondents No.1 & 2 provided three files (two file of Bankers City and one file of Education City) against the total sale consideration of Rs.3,56,000/-, however, files were not confirmed by the authorities and fraud was committed by the respondents who had failed to provide the plots, nor even arranged transfer of the same. The trial Court after framing of charge recorded the testimony of Gulshan Bibi as PW-1, who reiterated her stance referred in Ex.PA and produced the documentary evidence in shape of Mark A/1 to A/18, as such the documentary evidence referred by the appellant in her testimony did not qualify to be called as documentary evidence in terms of Article 72 & 73 of *Qanun-e-Shahadat* Order, 1984, which requires to prove the contents of documents either by primary or secondary evidence which is lacking in the instant case. The documents which have been marked during the course of trial are photocopies of Education city and Bankers city allotment letters, affidavits, undertakings and agreements to sell, etc but these documents could not be called as primary evidence in any

manner, therefore, the basic allegation of providing fake files to the appellant by respondents No.1 & 2 has to be justified through independent evidence but in this case the appellant who appeared as PW-1 in the trial reiterated her stance in oral testimony on the basis of all marked documents.

6. The entire case revolves around the relationship of the parties which connects the respondents only with the documentary evidence, however, when the entire edifice constructed on the documentary evidence which is not admissible under the law, the same could not be taken into account in any manner.

7. The appellant has to justify the payment of Rs.3,56,000/- but surprisingly no bank receipt has been placed on record to justify that appellant has ever paid the amount to the respondents, although during the course of cross-examination certain relationship has been observed regarding sale and purchase of different files.

8. The appellant has also produced PW-2 Mehbood Ahmed, S.I/I.O of this case, who registered the FIR Ex.PC on the complaint of appellant and submitted the challan after completion of investigation. During the course of cross-examination he acknowledged that offence U/S 468, 471 PPC was deleted but later on it was incorporated in the record. PW-2/I.O was specifically questioned on the subject of provision of files sold out by respondents to the appellant, however, I.O categorically stated that he could not get the files verified from the office of Bankers city society and the office was closed. This aspect confirms that the allegation of handing over of forged files have not been established by the prosecution, even I.O has not investigated the matter as required in such type of cases.

9. I.O was further cross-examined regarding proof of payment whereby he categorically stated before the Court that no such proof was available through

which it could be justified that appellant ever paid the amount to respondents No.1 & 2, even he further stated that accused Saima Mubashar/respondent No.2 has nothing to do with the entire case.

10. This Court while considering the above mentioned evidence has also gone through the statement U/S 342 Cr.P.C. in which respondent No.1 Mubashar Ahmad categorically stated that:-

میرے توسط سے مستغیثہ نے پلاٹوں کی فائلیں خود خریدیں۔ اصل فائلیں مستغیثہ کے پاس ہیں۔ جس نے کسی بھی فورم پر اصل فائلیں پیش نہ کی ہیں۔ نہ ہی تفتیشی ایجر نے فائلیں چیک کروانے کی زحمت گوارا کی۔ اگر مستغیثہ کو فائدہ ہو جانا فائلوں میں تو وہ خاموش رہتی مگر سوسائٹی ناکام ہونے کی صورت میں فائلیں سستی ہو گئیں تو مستغیثہ نے ہم دونوں کو قصور وار ٹھہرا دیا۔ پیسے اصل مالکان نے وصول کئے۔

11. The above referred stance left nothing in favour of appellant rather the co-accused Saima Mubashar also denied the said event and took the stance that she is a house wife. In such situation the requirement of Section 406 PPC i.e. entrustment of property and criminal breach of trust is not justified rather it is a dispute among the parties qua sale and purchase of files which were later on lost their value due to failure on the part of Bankers city company whereas respondent No.1 Mubashar Ahmad accused has only acted as a real estate agent who has not received any benefit directly from the appellant, neither any entrustment is visible on record.

12. The other primary question revolves around the forgery of documents and as such when the original record was not placed, nor I.O has investigated the matter from Bankers city, even the verification was not confirmed from original record as to whether the same is forged or otherwise, the allegation referred in Ex.PA is not visible. I have gone through the impugned judgment rendered by the trial Court in which record has been appreciated in a proper manner and acquittal of respondents No.1 & 2 is legally justified.

13. In view of above, appellant has failed to establish her case in accordance with law and appeal against acquittal is not maintainable, especially when respondents No.1 & 2 have earned presumption of double innocence in their favour. Instant appeal is meritless and the same is hereby ***dismissed***.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid