

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**Crl. Revision No.09/2020.**

**Muhammad Ejaz Aziz**

**Vs.**

**The State etc.**

Petitioner by:

Mr. Wasim Ahmed Abbasi, Advocate.

Respondent No.1 by:

Mr. Muhammad Sohail Khurshid,  
State Counsel.

Respondent No.2 by:

Nemo.

Tipu Sultan Ranjha, S.I, P.S Tarnol,  
Islamabad.

**Date of Decision:**

**18.05.2020.**

**MOHSIN AKHTAR KAYANI, J:-** This criminal revision petition has been filed against the judgment dated 31.03.2017, passed by learned Judicial Magistrate Section-30 (West) Islamabad, whereby the appellant has been convicted and sentenced U/S 420 PPC to undergo 03 years R.I and fine of Rs.50,000/- in case FIR No.104, dated 04.05.2015, U/S 406, 467, 468, 471 PPC, Police Station Tarnol, Islamabad. In default in payment of fine, the appellant shall further undergo 06 months S.I. The petitioner has also assailed the judgment dated 28.11.2019, passed by learned Sessions Judge (West) Islamabad, whereby his appeal against the conviction of learned Trial Court was dismissed.

2. Learned counsel for the petitioner contends that Col (R) Javed Iqbal Gondal/respondent No.2/P.W.1 got lodged the FIR on the basis of complaint Exh.PE, whereas question of fraud has not been proved; that the petitioner/accused and wife of respondent No.2 namely Shareen Perveen entered into an agreement dated 17.04.2013 regarding shop No.G-14, ground floor situated at commercial plot No.7, Janjua Arcade, Sector G-15 Markaz, Jammu & Kashmir Cooperative Housing Society, Islamabad against total sale consideration Rs.36,00,000/-, whereas Rs.16,00,000/- were received by the petitioner as earnest money and he also delivered the possession to respondent No.2, however, later on balance amount was not paid and dispute arose, whereupon respondent No.2 got lodged the FIR without

any legal authority; that during pendency of the criminal case, respondent No.2 received two post dated cheques amounting to Rs.27,00,000/- (Twenty Seven Lac) on account of compromise, which were later on dishonored and second FIR No.99/2016, dated 10.03.2016, U/S 489-F PPC, P.S Kohsar, Islamabad was registered despite the fact that the matter was reconciled between the parties; that the petitioner has been convicted U/S 420 PPC although ingredients of the offence have not been substantiated on the record as such both the Courts below have committed error while passing the impugned judgments; that the petitioner has served the sentence even more than 3 years and this fact has been reflected from the report submitted by the Superintendent Central Jail, Rawalpindi.

3. Despite clear direction of this Court on the last date of hearing i.e. 27.04.2020 to learned counsel for complainant/respondent No.2 to argue this case being last opportunity no one has put appearance today on behalf of the complainant, which shows that the complainant intends to delay the proceedings, even name of learned counsel for the complainant is reflected in the cause list, therefore, this Court has no other option but to decide the matter after hearing learned State Counsel.

4. Conversely, learned State Counsel contends that the petitioner has admitted receiving of the amount, execution of the agreement and issuance of post dated cheques in compromise, whereas he failed to transfer the property despite receiving of the amount and as such ingredients of section 420 PPC are made out from the record; that the petitioner has rightly been convicted and sentenced by learned Trial Court; that entire matter revolves around the agreement and acknowledgment of the petitioner, who has not denied receiving of amount in his statement U/S 342, Cr.P.C rather admitted his liability, therefore, propriety and correction of impugned judgments cannot be questioned at this stage; that objection raised by learned counsel for the petitioner regarding registration of the FIR by the complainant/respondent No.2 has no force as he was not authorized to lodge the FIR on behalf of his wife.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that complainant/respondent No.2/Javed Iqbal Gondal/P.W.1 lodged the FIR Exh.PG against the petitioner for misappropriation of the amount as well as fraud regarding shop No.G-14, ground floor situated at commercial plot No.7, Janjua Arcade, Sector G-15 Markaz, Jammu & Kashmir Cooperative Housing Society, Islamabad, which was sold out by the petitioner/accused against total sale consideration of Rs.36,00,000/- and received Rs.16,00,000/- as earnest money through cheque vide agreement dated 17.04.2013, which was executed between wife of the complainant and the petitioner. The petitioner delivered the possession of the suit shop but later on he failed to transfer the property in the name of the complainant's wife under the terms of the agreement. The investigation was conducted by Munir Hussain Jaffery, Inspector/P.W.2, who submitted final report U/S 173, Cr.P.C before the Trial Court. Charge was framed on 27.04.2016 U/S 468, 467, 406, 471 PPC, however, after recording of evidence, learned Trial Court convicted and sentenced the petitioner U/S 420 PPC to 03 years R.I and fine of Rs.50,000/- and acquitted the petitioner U/S 468, 467 and 406 PPC. The petitioner assailed his conviction before Sessions Judge (West) Islamabad in appeal, whereby his appeal was dismissed and sentenced awarded by the Trial Court to the petitioner was maintained.

7. I have gone through the evidence of the complainant/respondent No.2/P.W.1, in which he has leveled primary allegations in the following manner:-

"مجھے معلوم ہوا کہ محمد اعجاز (ملزم) نے جو ایگریمنٹ کیا اس میں ملزم نے اپنے آپ کو دکان و پلازہ سنڈ کرہ کا مالک ظاہر کیا جو کہ میرے ساتھ دھوکہ دہی اور جھوٹ بول کر میرے سے رقم وصول کی۔ ملزم میرے اصرار کے باوجود دکان ٹرانسفر نہ کروا سکا۔ بعد ازاں مجھے معلوم ہوا کہ محمد اعجاز عزیز کا معاہدہ نور محمد نامی شخص کے ساتھ ہوا تھا جو کہ اصل میں اس پلازے کا مالک تھا۔ ملزم حاضر عدالت نے دھوکہ دہی و فراڈ سے مجھ سے رقم ہتھیالی اور خرد برد کر لی۔"

8. Whereas during course of cross-examination, P.W.1 acknowledged the following facts:-

"۱۔ معاہدہ Ex.PA میں فریق اول ملزم محمد اعجاز جبکہ فریق دوم مسماۃ شیرین پروین ہے۔ یہ درست ہے کہ میں معاہدہ Ex.PA میں نہ تو گواہ ہوں اور نہ ہی کوئی فریق ہوں۔ یہ درست ہے کہ مسماۃ شیرین پروین مقدمہ ہذا میں بطور گواہ پیش نہ ہوئی ہے۔ یہ درست ہے کہ مسماۃ شیرین پروین نے پولیس کے پاس کوئی بیان ریکارڈ نہیں کروایا۔ یہ درست ہے کہ مسماۃ شیرین پروین مقدمہ ہذا کے سلسلہ میں نہ تو کبھی تھانے گئی اور نہ ہی کبھی تفتیشی افسر نے اسے شامل تفتیش کیا۔ یہ بھی درست ہے کہ مسماۃ شیرین پروین نے ملزم کے خلاف تھانے میں کوئی درخواست نہیں دی۔"

میرے پاس مسماۃ شیرین پروین کی طرف سے مقدمہ ہذا کی بابت مختار خاص موجود نہ ہے۔ از خود کہا کہ رقم کی ادائیگی میں نے کی ہے اور مقدمہ ہذا بھی میں نے درج کروایا ہے۔

۲۔ یہ درست ہے کہ معاہدہ Ex.PA کے مطابق فریق دوئم نے بقیہ رقم مبلغ بیس لاکھ روپے مورخہ 17.09.2013 سے قبل ملزم کو ادا کرنی تھی۔

۳۔ یہ درست ہے کہ آج تک ملزم کو مبلغ چھتیس لاکھ روپے کی ادائیگی نہیں کی گئی۔ از خود کہا کہ چونکہ ملزم دکان ٹرانسفر کروانے سے قاصر ہے کیونکہ یہ اس کا مالک نہیں ہے۔

۴۔ یہ درست ہے کہ معاہدہ Ex.PA میں مجھے کسی بھی قسم کی فوجداری کارروائی کا اختیار نہیں دیا گیا ہے۔

۵۔ یہ درست ہے کہ ملزم کی ضمانت میرے دیئے گئے بیان بابت راضی نامہ کی بنیاد پر منظور ہوئی تھی۔ مجھے صحیح تاریخ بابت حوالگی قبضہ دکان یاد نہیں ہے۔ مجھے یاد نہیں ہے کہ دکان متذکرہ ہلاکتیں عرصہ تک کرایہ پر دی گئی۔

۶۔ میں نے دکان متذکرہ ہالا مبلغ بیس ہزار روپے ماہوار کرایہ پر دی تھی۔

۷۔ یہ درست ہے کہ ملزم کو دکان کا قبضہ واپس نہیں کیا گیا۔

۸۔ یہ درست ہے کہ دکان کا قبضہ خریدار کو نور محمد نے نہیں بلکہ ملزم نے دیا تھا۔ یہ درست ہے کہ دکان متذکرہ ہالا کا قبضہ خریدار اس وقت بھی ملزم کے حوالے نہیں کر سکتا۔

۹۔ دکان متذکرہ ہالا خریدنے سے پہلے میری اہلیہ مسماۃ شیرین پروین نے اس کی ملکیت کے بارے میں کوئی جانچ پڑتال نہیں کی تھی اور نہ ہی میں نے کی تھی۔

۱۰۔ یہ درست ہے کہ مسماۃ شیرین پروین نے ایک دعویٰ برائے دلاپانے مبلغ ستائیس لاکھ بیس ہزار روپے زیر آرڈر 37 رول 2 ضابطہ دیوانی ملزم اور اس کی اہلیہ کے خلاف دائر کیا تھا۔

۱۱۔ یہ درست ہے کہ دوکان رقم کی مکمل ادائیگی کے بعد شیرین پروین کے نام منتقل ہونا تھی۔ یہ درست ہے کہ دوکان مذکورہ کی قیمت 36 لاکھ تھی۔

۱۲۔ یہ درست ہے کہ بیان حلفی بابت راضی نامہ بحق تحریر کیا گیا تھا۔ اس موقع پر کونسل ملزم نے بطور Ex-DA پیش کیا۔ مجھے علم نہ ہے کہ جس دن میں نے بیان حلفی Ex.DA کورٹ میں جمع کروایا اس دن ملزم جیل میں تھا یا نہیں۔ یہ درست ہے میں نے بیان حلفی Ex.DA ملزم کی ضمانت کے لئے دیا تھا۔ یہ درست ہے کہ بیان حلفی Ex-DA پر ملزم کے دستخط نہ ہیں۔ یہ غلط ہے کہ ملزم اس وقت بند حوالات تھا۔ Ex-PA میں درج دونوں چیک ڈس آئر ہو گئے تھے۔ ان دونوں چیکس پر FIR کروائی۔ ان چیکس پر میں نے ایک ایف آئی آر تھانہ شالیمار میں اور ایک تھانہ کوسار میں درج کروائی۔ اور جس کیس میں بیان دے رہا ہوں وہ تھانہ ترنول کا ہے۔ ایف آئی آر سے متعلق کیسز بھی چل رہے ہیں۔ یہ درست ہے کہ وہ دونوں کیسز بھی اس کیس کی رقم مبلغ 27 لاکھ روپے کی مد میں ہیں۔ میں ہی ان کیسز میں مدعی ہوں۔ دوکان تنازعہ کی بابت میں نے ایک دیوانی مقدمہ بھی دائر کیا ہوا ہے ملزم کے خلاف۔ یہ درست ہے کہ بنیادی تنازعہ ہمارا اس دوکان کے بابت ہے۔ میں نے ملزم کو کبھی کوئی رقم نہ ادھار نہ امانت دی ہے۔"

9. The second witness is Investigation Officer of the case/P.W.2, who prepared the challan U/S 173, Cr.P.C against the petitioner and acknowledged that:-

۱۔ یہ درست ہے کہ میں نے مشغیت سے کبھی اصل دستاویزات طلب نہ کئے ہیں۔

۲۔ یہ درست ہے کہ Ex.PA معاہدہ ملزم اور مسماۃ شیرین پروین کے درمیان ہے۔ میں نے مذکورہ شیرین پروین کو شامل تفتیش کیا اور نہ اس کا کوئی بیان قلم بند کیا۔ مشغیت نے مجھے یہ بات بتائی تھی کہ معاہدہ ملزم اور اس کی

بیوی شیرین پروین کے درمیان ہے۔ دوران تفتیش مجھے متغیث نے بتایا تھا کہ اس نے ملزم سے چیک لے لئے ہیں۔  
یہ درست ہے کہ میں نے رپورٹ 173 میں مذکورہ چیکوں کا ذکر نہ کیا ہے۔

۳۔ یہ درست ہے کہ دوران تفتیش یہ بات سامنے نہ آئی ہے کہ متغیث یا اس کی بیوی نے کوئی رقم ملزم کو بطور امانت دی ہو۔"

10. While considering the above evidence, I have gone through the statement of the petitioner U/S 342, Cr.P.C, wherein he has acknowledged execution of the agreement/Exh.PA with wife of the complainant/P.W1 on 17.04.2013 regarding shop in question, even receipts Exh.PB to Exh.PD were admitted and receiving of payment of Rs.16,00,000/- was admitted while answers to questions No.2 & 3. The entire background of this case as well as evidence brought on record by the prosecution reflects that charge U/S 420 PPC was not framed by Trial Court and the offences with which the petitioner was charged are sections 468, 467 and 406 PPC, were not made out and he was acquitted from the said charges, however, Trial Court convicted the petitioner U/S 420 PPC, which discloses minimum requirement of cheating and dishonestly inducing delivery of property, however, in this case complainant/P.W.1 acknowledged that an agreement was executed between his wife and the petitioner, who received Rs.16,00,000/- but failed to transfer the property, whereas the possession was delivered to the complainant, who further leased out the property in question for quite a long time and received benefits of rent. Even during hearing of this petition, learned counsel for the petitioner took categorical stance that if complainant returns possession of the shop, his amount will also be returned but the complainant refused to acknowledge this stance and contended that possession has already been taken over by the actual owner of the shop in question. This entire background establishes that there is no dishonest inducement on part of the petitioner, who admittedly entered into an agreement Exh.PA with wife of the complainant. There is no cavil to the proposition that inducement and deception are key factors U/S 420 PPC, which are lacking in this case. Trial Court did not make any effort to justify this aspect through evidence, even Appellate Court has not appreciated all these discrepancies.

11. Second important point raised by the petitioner is settlement of the dispute during the trial on the basis of affidavit given by the complainant through which two post dated cheques amounting to Rs.14,00,000/- and Rs.13,20,000/- were

given to the complainant for settlement of case FIR No.104/2014 and the words used in the said affidavit confirm the stance of the petitioner, which are reproduced as under:-

"یہ کہ من مہلف حلفا بیان کرتا ہے کہ مائین مہلف اور ملزم میجر ریٹائرڈ اعجاز عزیز مقدمہ نمبر 04/14 بجرم 406، 471، 468 ت پ تھانہ ترولول راضی نامہ ہو گیا ہے۔ ملزم محمد اعجاز عزیز نے من مہلف کو دو عدد post dated چیک نمبر 21276869 تعدادی 14 لاکھ (-/1400000) مورخہ 06-10-15 اور چیک نمبر 21276870 تعدادی تیرہ لاکھ بیس ہزار (-/1320000) مورخہ 06-01-16 از اس Allied Bank سیٹری جی پندرہ مرکز برانچ اسلام آباد دے دیئے ہیں۔ ملزم کی ضمانت ہونے پر اعتراض نہ ہے۔ لیکن چیک ہائے مذکورہ بالا کیش نہ ہونے کی صورت میں ملزم کی ضمانت منسوخ کردانے کا حق محفوظ رکھتا ہوں۔ علاوہ ازیں چیک ہائے مذکورہ بالا کی بابت فوجداری و دیوانی کاروائی کا حق محفوظ ہوں۔ اقرار نامہ مورخہ 13-4-17 کی بنیاد پر بھی دیوانی کاروائی کا حق محفوظ رکھتا ہوں۔"

12. This aspect has been acknowledged by the complainant during the hearing before this Court. The complainant received two cheques of Rs.27,20,000/- for settlement of his accounts with the petitioner and even lodged another FIR No.99/2016, dated 10.03.2016, U/S 489-F PPC, P.S Kohsar, Islamabad, in which the petitioner was sentenced to 03 years R.I with fine of Rs.1,00,000/-, however, the said judgment was assailed by the petitioner before the Court of learned Additional Sessions Judge-V (West) Islamabad and the petitioner was acquitted from the said case vide judgment dated 27.02.2017.

13. This Court has taken judicial notice of the said judgment, in which each and every aspect of compromise executed between the parties, has been discussed in detail, therefore, at this stage, the complainant cannot take summersault as he was precluded to prosecute the petitioner in terms of Article 114 of Qanun-e-Shahadat Order, 1984, whereby principle of estoppel comes into play as he adopted alternate mode of compromise while receiving two cheques from the petitioner and later on continued to prosecute the petitioner in violation of his own commitment.

14. Another important fact, which has surfaced from the record is that the petitioner has spent almost two years nine months and twelve days in jail in this case although his arrest was not included under the Pakistan Prison Rules despite the fact that he was summoned from jail by learned Trial Court and as such he spent more than three and half years behind the bars, which is reflected from the report of Superintendent Jail, Rawalpindi.

15. The entire record as well as judgments of Courts below clearly establishes that ingredients of section 420 PC are missing in this case and no case of fraud is made out against the petitioner as the agreement was executed with free will of the parties and even certain terms were complied with in shape of part performance. The entire matter is purely of civil dispute, which is apparent on record, even the complainant/P.W.1 was not authorized to lodge the case on behalf of his wife, who was not produced before the Trial Court nor her statement was recorded by the I.O. The dishonest investigation of the I.O is apparent on record, who has not collected the record of entire case nor even verified the ownership record of the property in question to prove the case that the petitioner was not the owner or he was not authorized to transfer the property, such missing link creates doubt in the entire prosecution case, which escaped notice of both the Courts below. The complainant tried to convert civil dispute into criminal one for his own benefits with connivance of the I.O, which cannot be denied at this stage. The wife of the complainant can resort to civil remedy in terms of Order XXXVII CPC was filed by wife of the complainant on the basis of two post dated cheques issued by the petitioner in result of the compromise in the instant criminal case. Therefore, the prosecution has failed to prove the charges as there was no inducement or deception on record. The possession was already delivered to the complainant, who used the property in question for the purpose of rent for quite a long time. While considering these aspects, the conviction awarded by learned Trial Court and maintained by learned Appellate Court has to be considered in terms of section 439 Cr.P.C, whereby propriety of order of sentence has been questioned and illegality committed by the Courts below were scrutinized by this Court under revisional powers, whereby this Court comes to an irresistible conclusion that both the Courts below have not appreciated the legal proposition in its true perspective and decide the matter in slipshod manner against the law.

16. In view of above discussion, the instant criminal revision petition is allowed. Impugned judgments of Courts below are hereby set aside. The petitioner is acquitted from the case.

17. Sentence of the petitioner was suspended U/S 426, Cr.P.C by this Court vide order dated 27.04.2020 subject to furnishing of bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of learned Deputy Registrar (Judl) of this Court. The petitioner was also directed to deposit cash surety of Rs.27,20,000/- with Deputy Registrar (Judl) of this Court but he could not comply with the said order and he is still in jail. Therefore, he be released forthwith, if not required in any other case.

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

R.Anjam