

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

Criminal Appeal No. 28 of 2017

Imran Mumtaz
Vs.
Nadeem Sultan and another

Appellant by:	Sh. Abdul Khaliq, Advocate.
Respondent No.1 by:	In person.
State By:	Mr. Zohaib Hassan Gondal, State Counsel along with Abdul Hameed, Sub-Inspector.
Date of Hearing:	09.07.2020.

GHULAM AZAM QAMBRANI. J.:- Through the instant appeal under Section 417(2), Cr.P.C., the appellant (Imran Mumtaz) has assailed the order dated 24.01.2017, passed by the learned Judicial Magistrate, Section-30, Islamabad-West, in case F.I.R No.429 dated 21.10.2015, under Sections 420, 468, 471, 408 & 411 P.P.C registered at Police Station Koral, Islamabad, whereby the respondent No.1 was acquitted from the charge.

2. Briefly stated facts of the prosecution case are that the appellant got lodged, above mentioned case F.I.R stating therein that the accused person Kamran Hussain was serving as Branch Manager of Islah Trust at Tarlai Branch, Islamabad, who sent 137 applications of different persons to the institution for further process and received their cheques accordingly; that the said Kamran Hussain in connivance with present respondent and Farhan etc, made fake applications of the so-called claimants and received the amounts

through the above said cheques; as such, the accused persons have committed criminal breach of trust, hence, this F.I.R.

3. After registration of the F.I.R and usual investigation, challan under Section 173 Cr.P.C was submitted before the learned trial Court. After fulfilling codal formalities, charge was framed against the accused to which they pleaded not guilty and claimed trial. During the proceedings before the learned Trial Court, the respondent submitted an application under Section 249-A, Cr.P.C. for his acquittal in the instant case, which was allowed vide impugned order dated 24.01.2017, hence, the instant appeal.

4. Learned counsel for the appellant has contended that learned Trial Court while acquitting the respondent/accused has failed to appreciate that the accused/ respondent has got en-cashed six cheques from the concerned bank. Further, submitted that the material available on the record fully supports the prosecution case, which connect the respondent with the commission of the offence; that the learned Trial Court failed to apply its judicious mind while passing the impugned order, which resulted into grave miscarriage of justice. Next submitted that the respondent is nominated in the F.I.R with a specific role of cheating and fraud, as such, there was no question to acquit him vide impugned order; therefore, the same is liable to be set-aside.

5. On the other hand, learned counsel for the accused/ respondent has contended that the respondent was performing the duty of Cashier at Abpara Branch, Islamabad, and no single cheque

was encashed through the respondent; that all the cheques were processed by certain other officials. Next contended that petitioner was exonerated in the inquiry proceedings conducted by the bank; that the petitioner is innocent and has falsely been implicated in the instant case; that there is no evidence on record to connect the respondent with the commission of the alleged offence. The learned State counsel also supported the impugned order passed by the learned trial Court contending that no evidence is available to the extent of the respondent.

6. Heard arguments of the learned counsel for the parties and perused the available record.

7. Perusal of the record reveals that on the application of appellant Imran Mumtaz, above said F.I.R was got lodged against the respondent and others. The learned trial Court framed charge against the respondents and others to which they pleaded not guilty. During the proceedings before the learned trial Court, the respondent filed an application under Section 249-A, Cr.P.C. which was accepted vide order dated 24.01.2017. Record further depicts that the allegation against the respondent is that he in connivance with the other co-accused got encashed certain cheques against so-called applicants but during the investigation, the prosecution failed to bring on record even a single cheque, which was got encashed by him. Further, not a single cheque bears the signature of the respondent and the prosecution has also failed to bring on record any convincing piece of evidence against the respondent to connect

him with the commission of the alleged offence. It is also evident from the record that the signatories of the cheques have not been associated during the investigation to bring on record the truth. All these facts and circumstances make the prosecution case doubtful. As such, the learned Trial Court has rightly acquitted the respondent from the charges even without recording the prosecution evidence because there was no probability of conviction of the respondent/accused in the instant case.

8. I have found no illegality or irregularity in the impugned order passed by the learned trial Court, nor the same is suffering from any misreading or non-reading or misappropriation of material available on record, warranting interference by this Court.

9. Resultantly, the instant appeal, having no force, is **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced In Open Court On this 16th day of July, 2020

JUDGE /

"M. 7/11."