

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

Criminal Appeal No. 289/2019

Muhammad Saeed
Versus
Nouman Abbasi and others

Appellant by: Mr. Mazhar Iqbal, Advocate.

Respondent No.1 to 3 by: Mr. Abrar Hussain Raza, Advocate
alongwith Imran Abbasi and M. Waqar
accused.

State by Malik Mazhar Javed, State counsel
alongwith Shah Nazar, Sub-Inspector,

Date of Hearing: 04.02.2020.

Ghulam Azam Qambrani, J.:- Appellant (Muhammad Saeed) seeks setting aside of impugned judgment dated 18.07.2019, passed by the learned Judicial Magistrate, Section-30, Islamabad-West, whereby respondent No.1 to 3 (hereinafter be called as respondents) were acquitted.

2. Briefly, the prosecution case is that the complainant/appellant got registered F.I.R No.49 dated 25.02.2017 with Police Station Margallah, under Section 408 P.P.C, Islamabad, with the averments that he was running a business with the name of "*Wasiq Travels*" at F-8 Markaz, Islamabad for the last twenty-two years. Further stated that six years ago, he appointed one Imran Abbasi as manager with responsibility to collect rent etc and to account for the same at the start of every month. The complainant maintained that

unfortunately, he was falsely implicated in case F.I.R No.105 dated 16.01.2016 under Section 489-F P.P.C, Police Station Bannu K.P.K and on 04.10.2016, his pre-arrest bail was cancelled. Resultantly, he remained confined in Bannu Jail for quite some time. However, on 31.01.2017, he was released from jail and visited his office. It has been alleged that when asked for accounts, the Manager Imran Abbasi confirmed the complainant, in writing, that he had collected an amount of Rs.48,42,400/- as rent etc and an amount of Rs.7,91,000/- as "Amanat" from one Sadiq. According to the complainant, he again visited office on 06.02.2017 at about 08:15am , and when he enquired about Imran Abbasi, he was found missing. Later on, the said Imran Abbasi completely disappeared to usurp money of the complainant. The complainant alleged that accused Imran Abbasi, while in connivance with his brother Noman Abbasi and father Zameer Abbasi, dishonestly misappropriated his amount of Rs.56,33,400/-. Upon complaint Ex.PA, Muhammad Javed Awan- A.S.I chalked out F.I.R Ex.PC under Section 408 P.P.C.

3. After registration of F.I.R, the investigation was carried out and on conclusion of investigation; report under Section 173 Cr.P.C was submitted, placing the accused in Column No.3 & 4 of the same. Formal charge was framed against the accused persons to which they pleaded not guilty and claimed trial, therefore, the prosecution evidence was summoned.

4. In order to prove its case, the prosecution examined the following witnesses:-

- i. PW-1 Muhammad Saeed (complainant),
- ii. PW-2, Mudassar Mehmood,
- iii. PW-3, Muhammad Sagheer,
- iv. PW-4, Umer Zaman 3473/C,
- v. PW-5, GulZameer A.S.I,
- vi. PW-6, Muhammad Javed Awan S.I. (R)

After closure of the prosecution evidence, the accused/respondents were examined under Section 342 Cr.P.C. The accused persons led defence evidence and produced Azhar Mehmood, Naseer Ahmed Abbasi and Muhammad Siddique as DW-1 to DW-3. The learned Trial Court, after hearing the arguments of the learned counsel for the parties, acquitted the accused/respondents vide judgment dated 18.07.2019, hereinafter be called as the impugned judgment.

5. The appellant/complainant being aggrieved of the impugned judgment has challenged the same through the instant appeal.

6. Learned counsel for the appellant contended that the learned Trial Court failed to appreciate that the case against the respondents was registered, detailed inquiry was conducted by the Senior Officer of Police but the learned Trial Court passed the impugned judgment on technical aspects of the case and acquitted the respondents from charges; that the impugned judgment is against the law and facts of the case; that acquittal of accused/respondents is not in accordance with law and facts of

the case. Further contended that the impugned judgment is result of misreading and non-reading of the evidence on record and the same is unreasonable, perverse and manifestly wrong, as such, is liable to be set-aside.

7. Conversely, learned counsel for the accused/ respondent submitted that the accused/ respondents are totally innocent and have falsely been implicated in this case and there are material contradictions in the statements of the PWs. Further, contended that the offence of criminal breach of trust is not attracted against the accused persons and that no documentary evidence was led by the complainant in support of his claim. He contended that whatever was collected by the accused Imran Abbasi, was lying in the safe box/locker available at the office of the complainant and that the prosecution has miserably failed to prove its case against the accused persons/ respondents. The learned State counsel supported the impugned judgment passed by the learned Trial Court.

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

9. For ready reference, Section 405 of Pakistan Penal Code is reproduced hereunder:-

“Criminal breach of trust: Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or

dishonestly use or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

A bare reading of the provision of law reproduced above shows that a person can only be guilty of committing an offence under section 406 P.P.C if some property is given on trust and the same property is not returned to its original owner.

10. In the instant case, the appellant/complainant has stated not even a single word that how much amount was under the custody and entrusted to the respondents/accused by the appellant and even there is no evidence that the respondents/accused dishonestly misappropriated or converted the same to them own use and purpose.

11. Perusal of the record reveals that the claim of appellant is that the respondent Imran Abbasi being manager of his office had told him that an amount of Rs. 56,33,400/- was earned as rent of the vehicles. During the course of investigation, the complainant himself handed over certain documents to the investigation officer, which were taken into possession through recovery memo Ex.PB. For the alleged amount, the appellant/ prosecution has failed to produce any cogent and reliable evidence for proving that infact the amount was lying under the control of respondent Imran Abbasi and then the same was embezzled by him. For

proving such fact, the prosecution had to produce oral as well as documentary evidence but no proof has been placed on record to prove the factum of embezzlement by the respondent Imran Abbasi. It is an admitted fact that the accounts register was kept in safe custody at the office. The safe box was unlocked by the complainant himself; even then the same account register was not taken into possession by the investigation officer. It was the duty of complainant to justify the miss-appropriation of the alleged huge amount by the respondent Imran Abbasi. For proving such allegations against the respondents, two things are essentials to constitute the alleged offence under Section 406 P.P.C; in the first place, there must be a trust of dominion and in the second place dishonesty. Therefore in the case in hand, the prosecution must have proved that the accused was entrusted with the property or with dominion over it; that he misappropriated it or converted it in his own use; unless entrustment is proved, question of miss-appropriation does not arise. In the case in hand, the prosecution miserably failed to prove the entrustment and also failed to bring on record any evidence with regard to misappropriation of the said alleged amount. The co-accused persons namely Noman Abbasi and Zameer Abbasi have been implicated in the case by the complainant just on the saying of one Akhtar that the above said both accused are also involved in the commission of offence but contrary to that neither the above said Akhtar was produced as a witness nor a single evidence came on record against them

regarding their involvement in the commission of offence. It is an admitted fact that neither the complainant himself alleged that any entrustment was ever given to the above said co-accused persons nor any proof has been produced against them.

12. The reappraisal of the evidence reveals that the learned Trial Court after appreciation of evidence has rightly come to a conclusion of acquitting the accused/ respondents. The prosecution has miserably failed to prove the allegations against the respondents beyond reasonable shadow of doubt.

13. I have found no illegality or irregularity in the impugned judgment warranting interference by this Court, nor the same is suffering from any misreading or non-reading or miss-appreciation of evidence.

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

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

ANNOUNCED IN OPEN COURT ON 18TH FEBRUARY, 2020.

~~JUDGE~~

"Rana.M.Ift"