

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN AT
REGITRY BRANCH SKARDU.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Muzaffar Ali, Judge.**

**Cr. Appeal No. 01/2015 in
Cr.PLA NO.10/2015.**

1. Syed Ali Shah & others **Petitioners.**

VERSUS

2. The State through FIA Gilgit **Respondent.**

PRESENT:-

1. Mr. Wazir Walayat Ali advocate alongwith Mr. Ali Khan Advocate-on-Record for the petitioners.
2. Mr. Shabir Hussain Shigri, Special Prosecutor, FIA Gilgit-Baltistan for the respondent.

DATE OF HEARING: - 19-11-2015.

DATE OF DELIVERY OF DETAIL JUDGMENT: -24.11.2015.

JUDGMENT

Dr. Rana Muhammad Shamim, CJ..... This appeal has been arisen out of the impugned judgment in criminal appeal No.04/2013, dated 02.04.2015 passed by the learned Chief Court Gilgit-Baltistan. The appeal of the State/ respondent was accepted while setting aside the judgment in Anti- No. 02/2000 & 03/2011, dated 26.04.2013 passed the learned Sessions Judge/ Special Judge Anti Corruption Skardu, and remanded the case to the learned Trial Court to hear the parties afresh and pass orders in the light of material available on record or even to seek fresh evidence from either of the parties.

The learned counsel for the petitioners contends that the State/complainant lodged a criminal case against the petitioners/accused and challan of the case submitted in the court of learned Sessions Judge/Special Judge of Anti-Corruption Skardu for trial. The learned Trial Court after framing charge & completing codal formalities recorded the prosecution evidence and upon hearing the parties acquitted the petitioners/accused giving them benefit of doubt as the prosecution witnesses have not implicated them. He further contends that the State/complainant feeling aggrieved by and dissatisfied with the said judgment passed by the learned Trial Court Skardu filed Criminal Appeal No. 04/2013, before the learned Chief Court Gilgit-Baltistan. Whereby, the learned Chief Court without applying its judicial mind accepted the appeal of the respondent by setting aside the judgment of the learned Trial Court and remanded the case back. While saying so the learned counsel for the petitioners referred the operative part of the judgment passed by the learned Trial Court which is reproduced hereunder:-

Quote:-

“Accused/cashier Ehsan Ali had prepared pay bills while LDC/typist Ejaz Hussain had typed the same. Accused Syed Ali Shah accountant of DIS Skardu had put up the bills to DIS Muhammad Ali for signature who signed the pay bills as DDO then the bills were submitted in treasury Skardu for pass. Different T.O.S passed the bills from 12/93 to 3/95 and accused Ehsan Ali cashier draw the amount from NBP Skardu. All of the above persons including present accused played their respective role in connection drawal of the amount. But recovery was shown against accused Ehsan Ali. As per recovery memo Exh. PW-7/A Rs. 595,000/- were recovered from accused Ehsan Ali in presence of Magistrate Muhammad Ibrahim and marginal witnesses Muhammad Hassan and Muhammad

Ali but neither the recovery witnesses nor the Magistrate who attested the recovery memo were examined in the court. Without examining its marginal witnesses and Magistrate recovery memo has no evidential value. While no recovery was affected from accused Syed Ali Shah. Moreover recovery of Rs. 412,776/- the remaining embezzled amount was also shown against accused Ehsan Ali who had deposited this amount in National Bank Skardu but neither proper recovery memo was recovered in this regard nor any recovery witness and concerned official of National Bank was examined in the court showing that this amount was really deposited by the accused Ehsan Ali in the National Bank. Without preparing recovery memo and examining marginal witnesses this recovery has also no value to the eyes of law. Statement of PWs under Section 161 Cr. P.C. recorded during investigation of the case is not available on judicial record. Stock register and expenditure register recovered in the case are also not made part of judicial record. The concerned TOS who passed the pay bills on different occasion from December, 1993 to March, 1995 were neither cited as PWs in the calendar of witness nor examined in the court. Investigation of the case was not conducted properly. The lacunas pointed above are of serious nature not curable and fatal to prosecution case. It will be absolutely unsafe to record conviction against the accused on the basis of evidence available on record. Prosecution has failed to prove its case beyond doubt. Accused are hereby acquitted giving benefit of doubt. File after completion be consigned to record”.

Unquote:-

We have heard the learned counsels for the respective parties at length, gone through the materials on record and both the Judgments of learned Chief Court as well as the learned Trial Court, in our considered view, the prosecution has miserably failed to prove its case against the petitioners as none of the witnesses so examined has implicated the petitioners. Consequent thereto the learned trial Court has rightly acquitted the petitioners by giving them benefit of doubt. Whereas the learned Chief Court failed to appreciate that the prosecution could not produce any corroborative witness though available for the reason best know to them. It was not the duty of the petitioners /accused to prove their innocence

but it was the legal duty of the prosecution to prove its case beyond reasonable doubt. Since the prosecution has failed to prove its case against the petitioners/accused, the learned Chief Court was not justified for remanding the case back to the learned Trial Court for fresh trial.

In view of the above discussion we, therefore, allow this appeal, set aside the Impugned Judgment in Criminal Appeal No. 04/2013 dated 02.04.2015, passed by the learned Chief Court Gilgit-Baltistan and maintain the judgment in case No. 02/2000 & 03/2011 dated 26.04.2013, passed by the learned Trial Court. These were the reasons of our short order dated 19.11.2015.

The appeal is allowed.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?