

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH
(Judicial Department)**

Cr.A No. 170-M/2016

***Sherin Zada s/o Anwar Khan r/o Dherai, Tehsil
Adenzai, District Dir Lower.***

(Appellant)

Versus

1) Bakht Biland and 03 others.

(Respondents)

Present:

***Syed Sultanat Khan , Advocate for
appellant.***

Mr. Rafiq Ahmad, Assistant A.G. for State.

***Mr. Razi Khan, Advocate for accused/
respondents.***

Date of hearing: 25.01.2017

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through criminal appeal, the appellant has challenged the order dated 16.07.2016 of the learned Judicial Magistrate Chakdara whereby the accused/ respondents have been acquitted of the charge under Sections 419/420/468/471/34 P.P.C. vide private complaint filed against them by appellant.

2. Brief facts of the case are that appellant/complainant Sherin Zada filed a private complaint against the accused/

respondents under sections 419/420/468/471/34 P.P.C. in the Court of learned Judicial Magistrate, Chakdara, Dir Lower. Assertions of the appellant in the complaint are that a civil case between the owners/possessors over the landed property of villages Dherai and Khair Abad is subjudice before the Member, Board of Revenue and the residents of Dherai have appointed respondent Bakht Biland to pursue that case on their behalf. The appellant further alleged that respondent Bakht Biland has fraudulently produced a fake power of attorney on his behalf before the said forum which has been attested by respondents Khaista Muhammad and Waris Khan who are equally responsible for committing the offence of fraud/forgery.

3. The learned trial Court after recording statement of the appellant under Section 200, Cr.P.C. directed the S.H.O concerned for detailed report. After receipt of the report, the accused/respondents were summoned and after fulfilling the formalities of Section 241-A, Cr.P.C formal charge was


framed against them. On 02.06.2016, counsel for accused submitted an application for acquittal of the accused under Section 249-A, Cr.P.C which was allowed vide order dated 16.07.2016 resultantly the respondents were acquitted of the charge. Being aggrieved, appellant filed application for special leave to appeal before this Court against the order of the learned trial Court which was allowed vide order dated 31.03.2017 and special leave to appeal was granted to him whereafter the appeal was registered at Serial No. 170-M/2016, the fate of which is being decided through this judgment.

4. Arguments heard and record perused.

5. The main stance taken by the learned counsel for the appellant during the course of arguments that the S.M.B.R or other Revenue hierarchy is not a Court and the learned trial Court has wrongly acquitted the respondents/accused by considering the fact that the complaint has not been forwarded by

the concerned Court. According to Sub-section 2 of section 195 Cr.P.C, the term 'Court' includes a Civil, Revenue or Criminal Court. For the sake of convenience, 195 (2) Cr.P.C is reproduced below.

"(2) In clause (b) and (c) of the sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Registration Act, 1908."




Besides above, section 476 of the Code of Criminal Procedure provides mechanism for dealing with the complaints made u/s 195 of the Cr.P.C, which is reproduced herein below.

"476. Procedure in cases mentioned in Section 195. – (1) When any offences referred to in Section 195, sub-section (1), clause (b) or clause (c), has been committed in, or in relation to, a proceeding in any Civil Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII. "

Undoubtedly, the case in hand originated as a result of the alleged fraudulent submission of forged power of attorney in the

matter which was subjudice between the parties before the Member Board of Revenue, Peshawar. Section 5 of the West Pakistan, Board of Revenue Act, 1957 reads as follows.

“5. Powers of the Board. (1) The Board shall be controlling authority in all matters connected with the administration of the land, collection of Land Revenue, preparation of land records and other matters relating thereto. (2) The Board shall be the highest Court of appeal and revision in the revenue cases in the Province.”



In view of such legal position, in the opinion of this Court, the appellant have misconceived the legal preposition at the time of directly making complaint before the Judicial Magistrate instead of the Court where the matter was subjudice. In this respect, reliance is placed on the case of 'Ch. Atta Muhammad and 2 others Vs. The State and another' reported in **1981 PCr.LJ 55.**

6. Moreover, the impugned order was also perused which reveals that the learned trial Court has acquitted the accused by pressing into service the provisions of

Section 195(1)(c), Cr.P.C. The next contention of learned counsel for the appellant is that the learned trial Court has misinterpreted the above provision as the respondents have also been charged under Sections 419, 420 & 468, P.P.C. No doubt, apart from Section 471, the appellant has also charged the accused under Section 419, 420 and 468 of the Pakistan Penal code but his main allegation is that of a fake power of attorney which was submitted on his behalf in the Court of Member, Board of Revenue. Using of a forged document as genuine is an offence punishable under Section 471, P.P.C for which the accused are mainly charged whereas the remaining offences are ancillary in nature and appears to have been levelled *malafide*, in order to extend the scope of the complaint and to meet the question of jurisdiction of the learned trial Court in the matter, admittedly, the Court in which the civil case is subjudice has not made any complaint, therefore, the learned trial Court was not Competent within the meaning of *ibid* referred

Section 195(1)(c), Cr.P.C to take cognizance of the offence.

Z. In light of the above discussion, the learned trial Court has committed no illegality by acquitting the respondents from the charge in this case. Therefore, this appeal, being devoid of merits, is dismissed.

Announced
25.01.2018

JUDGE

07/12
1/2
W/A