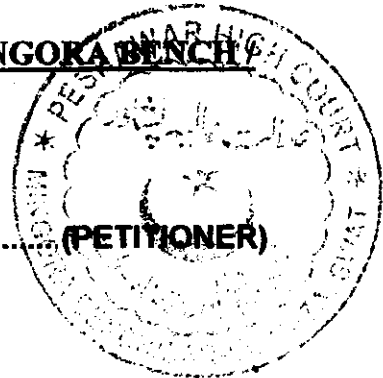


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BEFORE THE HONOURABLE PESHAWAR HIGH COURT MINGORA BENCH
DARUL QAZA SWAT

Cr.A 37 / 2017.

The State through AAG at Dar-Ui-Qaza Swat.....



Versus

Ihsanullah s/o Gul Akbar r/o Qondos Afghanistan presently residing Refugee Camp Mayar Teh Samarbagh District Dir Lower..... (Accused/Respondent)

CASE FIR NO. 188 DATED 01-06-2016 U/S 419/468/471 PPC 14 FA P.S MAYAR, DIR LOWER.

APPEAL AGAINST ACQUITTAL U/S 417(I) CR.PC AGAINST THE JUDGEMENT DATED: 22/12/2016 OF THE LEARNED ADDITIONAL SESSIONS JUDGE/ IZAFI ZILLA QAZI AT SAMARBAGH DIR LOWER IN THE ABOVE MENTIONED CASE.

RESPECTFULLY SHEWETH:

A brief fact of the prosecution case is that local police of P.S Mayar during routine gasht stopped a private passenger Pick up Datsun and de boarded accused for his identification. He was searched and during search the local police recovered from his possession CNIC No. 15303-9422983-5. As he was identified as Afghan Refugee hence the subject case was registered. He was arrested, interrogated and after completion of investigation case was challaned to the Court of Judicial Magistrate/Illaqa Qazi Samarbagh for trial. He was charge sheeted to which he did not pleaded guilty and claimed trial. The learned trial court recorded statements of five (5) PWs and thereafter recorded statement of accused U/S 342Cr.PC and was convicted and sentenced for 18 Months imprisonment and fine of Rs: 50000/- and in default of payment to further undergo six months imprisonment. Being aggrieved by the said order the accused/respondent filed appeal against the order of Judicial Magistrate/Illaqa Qazi Samarbagh who vide order dated: 22/12/2016 accepted his appeal and acquitted him of the charges.

Being aggrieved by the impugned judgment dated: 22/12/2016 of the Additional Session Judge/IZQ Samarbagh the State begs to submit this appeal inter alia on the following grounds.

GROUND FOR APPEAL.

1. That the judgment /order of the learned Additional Session Judge/IZQ Samarbagh is against law, facts and complete misreading/non-reading of the

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Additional Registrar

Judgment Sheet

**PESHAWAR HIGH COURT, MINGORA BENCH/
DAR UL QAZA, SWAT**

JUDICIAL DEPARTMENT

JUDGMENT

Cr.A. No. 37-M of 2017



Date of hearing18.01.2018

Appellant: (The State through A.A.G) by Mr. Rafiq
Ahmad, Asstt: Advocate General.

Respondent: (Ihsanullah) by Mr. Ikramullah Khan,
Advocate.

MOHAMMAD IBRAHIM KHAN, J.-. Here is

the impugned judgment of acquittal dated
22.12.2016 rendered by the learned Additional
Sessions Judge/Izaf: Zila Qazi Samarbagh Dir
Lower, whereby the accused/Respondent
Ihsanullah was acquitted under sections
419,468,471 PPC and 14 Foreign Act in case FIR
No. 168 dated 01.06,2016 being charged under the
above-referred sections of law at Police Station
Mayar District Dir Lower.

2. The prosecution version as deciphered
from the contents of 'Murasila' followed by

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lodging of First Information Report is that during mobile Ghast, the local police halted the passengers pickup coming from Maskanai side. Out of which a young lad was de-boarded on account of suspicion, who disclosed his name as Ihsanullah son of Gul Akbar resident of Afghanistan. During his personal search, out of his front pocket the police recovered Pakistani National Identity Card bearing No. 15303-9422983-5 on the name of Aminullah son of Abdul Jabbar Khan, upon which picture of the said Ihsanullah was hitched on. Thus, the *ibid* FIR was lodged against him at Police Station concerned.

3. Upon completion of investigation, complete *challan* against the accused/Respondent was submitted before the learned Trial Court. Charge was framed against the accused/Respondent on 10.9.2016, who pleaded not guilty and claimed trial. In order to bring home charges, the prosecution examined Abdul Ghaffar

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Khan as PW-1, Muhammad Naveedullah Constable as PW-2, Muhammad Afzal Khan SI as PW-3, the complainant Muambar Khan SHO as PW-4, Muhammad Zahid ASI as PW-5 and statement of one Ihsanullah son Buzarg Ahmad Superintendent NADRA office Samarbagh was recorded as CW-1.

4. Upon conclusion of evidence of prosecution, statement of the accused/Respondent was recorded under section 342 of the Code of Criminal Procedure, wherein he denied the charges posed innocence and stated to have falsely been implicated in the case.

5. After hearing learned counsel for the accused/Respondent and learned State counsel, the learned Judicial Magistrate/Illaqa Qazi Samarbagh was impressed with the evidence put-forward by the prosecution and vide his judgment dated 24.11.2016 convicted and sentenced the accused/Respondent in the following manner:-

"مندرجہ بالا بحث اور Observation کو مد نظر رکھتے ہوئے عدالت نے اس نتیجے پر پہنچی ہے کہ ملزم نے Cheating کر کے، اپنا نام تبدیل کر کے اپنے آپ کو

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Newab (S.B.) Hon'ble Mr. Justice Mohammad Ibrahim Khan

آمین ولد عبد الجبار خان ظاہر کیا ہے اور پولیس استغاثہ نے ملزم کے خلاف شک سے بالاتر مقدمہ ثابت کیا ہے۔ لہذا عدالت ملزم کو دفعات 419/468/471 PPC میں مجموعی طور پر 18 ماہ قید محض اور 50000 روپیہ جرمانہ کی سزا دیتا ہے۔ عدم ادائیگی جرمانہ کی صورت میں ملزم مزید 6 ماہ قید محض، ملزم کے ملک بدری کا حکم صادر کرتی ہے۔ ملزم کو B-382 ضابطہ فوجداری کا فائدہ دیا گیا ہے۔ مال مقدمہ شناختی کارڈ بحق سرکار ضبط کی جاتی ہے اور مقامی پولیس کو ہدایت کی جاتی ہے کہ وہ اس نسبت نادرا حکام سے بھی رابطہ کرے۔ مسل پولیس واپس جبکہ مسل عدالت ملزم ابعد از ترتیب و تکمیل داخل دفتر ہو۔"

6. Next off feeling aggrieved, the accused/Respondent taken up the matter before the Court of learned Additional Sessions Judge/Izafi Zila Qazi Samarbagh Dir Lower through Criminal Appeal No. 17/10 of 2016, wherein on acceptance of appeal vide impugned judgment of acquittal dated 22.12.2016 accused/Respondent was acquitted of the charges. The concluding Para of the said judgment is reproduced as under for ready reference:-

"ان حالات میں قاضی عدالت ماتحت کا حکم زیر اپیل منسوخ کیا جاتا ہے اور اپیل ہذا منظور کرتے ہوئے ملزم کو مقدمہ ہذا سے بری کیا جاتا ہے۔ ملزم اگر کسی دوسرے مقدمہ میں ملوث نہ ہو تو اسے مقدمہ ہذا سے رہا کیا جائے۔ مال مقدمہ بحق سرکار ضبط کیا جاتا ہے جو بعد از معیار اپیل حسب قانون نمٹایا جائے۔ ریکارڈ فی الفور واپس ہو۔ جبکہ مثل عدالت ہذا بعد از ترتیب داخل دفتر ہو۔"

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7. The State is dissatisfied with the findings contained in the judgment of acquittal dated 22.12.2016 passed by the learned appellate Court. Thenceforward this appeal within the meaning of Section 417 (1) of the Code of Criminal Procedure against acquittal of the accused/Respondent with the following prayer:-

" Keeping in view the above cogent reasons, it is humbly prayed that the order dated 22.12.2016 of the learned Court of Additional Sessions Judge/Izafi Zila Qazi Samarbagh may kindly be restored and the accused/Respondent may be committed to Judicial lock up and his expel to Afghanistan from Pakistan in order to meet the ends of justice."

8. Arguments of learned Astt: Advocate General appearing on behalf of the State and learned counsel for acquitted accused/Respondent were heard with vehemence and available record gone through with their valuable assistance.

9. As per assertions levelled by the prosecution through 'Murasila' followed by

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lodging of the First Information Report, the local police have recovered forged Pakistani National Identity Card from personal possession of the accused/Respondent Ihsanullah being an Afghan National residing in Pakistan and more so at the relevant time he could not produce any identity card of the status of an Afghan Refugee living in Pakistan, therefore, the *ibid* FIR was lodged against him at Police Station Mayar District Dir Lower under sections of law as referred to above. A bare look of the charge framed against the accused/Respondent would divulge that the learned Trial Court in a very slipshod manner charge-sheeted the accused/Respondent without defining the offence being committed under each and every section of law. Out of the levied sections against the accused/Respondent, section

419 along with section 416 PPC reads:

Cheating by personation. *A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any*

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other person is a person other than he or such other person really is. The punishment of this offence has been defined under section 419 PPC.

Keeping in sight the theme as envisaged in above quoted section of law, the evidence of prosecution is silent to the effect that the accused/Respondent has ever used this forged Identity Card for the purpose of personation pretending to be someone else, rather he disclosed his real identify to be an Afghan National living in Pakistan and during his personal search the Pakistani National Identity Card was recovered from his front pocket. Thus, the element of "cheating by personation" is missing in this case.

Likewise, section 468 of the Pakistan Penal Code opines:-

Forgery for purpose of cheating "
Whoever commits forgery, intending that the documents forged shall be used for the purpose of cheating."

In the same analogy "forgery" has been defined under section 463 PPC in the following manner:-

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Nawab (S.B.) Hon'ble Mr. Justice Mohammad Ibrahim Khan

"Forgery. " Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

Again the evidence of prosecution is dormant about this element that whether this Identity Card was ever used to cause damage or injury to the general public or due to this act of the accused/Respondent any harm has been caused to anyone. Thus, the basic theme of referred section i.e. **"Forgery for the purpose of cheating"** is not coming to surface from the evidence so adduced by the prosecution. Similarly, applicability of section 471 PPC to the extent of accused/Respondent is also under cloud as he never used this Identity Card as genuine document. In this regard, reliance has been placed on **PL D 2004 (Lahore) 767**

"ISHTIAQ AHMAD RAJA V/S GHAZANFAR

ALI, S.I./F.I.A., ISLAMABAD and another,

wherein the relevant citation speaks of:-

—Ss. 468/471—Forgery—Possession of forged documents not an offence—Mere possession of forged documents by itself is not an offence unless the same are used for the purpose of cheating or fraudulently used as genuine.

10. Apart from above, the alleged Pakistani National Identity Card on the basis of which the accused/Respondent has been convicted by the learned Trial Court and subsequently acquitted by the learned Appellate Court has not been exhibited during the trial proceedings coupled with the fact that it was expired. So, there is no evidentiary value of this piece of evidence in respect of guilt of the accused/Respondent, which has rightly been disbelieved by the learned Additional Sessions Judge concerned.

11. The prosecution also levied section 14 Foreign Act against accused/Respondent because he could not produce any valid document at the time of his arrest. But the prosecution badly failed

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to bring on record any documentary evidence to the effect that the accused/Respondent is living as an Afghan Refugee illegally in Pakistan, rather during the course of arguments learned counsel for the accused/Respondent produced a card wherein accused/Respondent Ihsanullah has been shown as an Afghan Citizen, placed on record.

12. Even otherwise, it is the duty of the prosecution to prove its case beyond any shadow of doubt and now it has been settled by the Hon'ble apex Court that a single circumstance creating reasonable doubt is sufficient for acquittal of the accused and if any single and slightest doubt is created, its benefit must go to the accused, so, the trial court has rightly extended the benefit of doubt to the accused on valid and cogent reasons based on proper appreciation of evidence and the acquittal of respondent does not call for any interference by this Court. Moreover, criterion of appraisal of evidence in an appeal against acquittal is quite different than an appeal against conviction,

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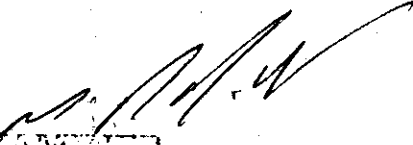
because in case of acquittal double presumption of innocence lies in favour of the accused. Even if another view is possible, the view favourable to the accused is to be preferred. Reliance in this regard can be placed on the case of Muhammad Iqbal vs. Abid Hussain alias Mithu and 6 others, 1994 SCMR 1928. Learned Astt: Advocate General failed to point-out any misreading or non-reading of the evidence on record and on the contrary the evidence was appreciated and assessed on the settled principles of law by the learned appellate Court.

13. For what has been discussed above, this criminal appeal being shorn of merits stands dismissed.

Announced.
18.01.2018

Certified to be true copy.


JUDGE


EXAMINER

Peshawar High Court, Peshawar
Authorized Under Article 178 of the Constitution of Pakistan

13/2/18

Office
26/01/18
W/R