

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A. No.339-P/2009.

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This appeal is directed against the judgment dated 23.06.2009, rendered by learned Senior Civil Judge/Judicial Magistrate Charsadda whereby respondent-accused Muhammad Iqbal, has been acquitted in case FIR No.563 dated 12.04.2004, registered under section 489-F PPC, in Police Station Charsadda.

2. Allegation against the respondent-accused are that he handed over a cheque amounting to Rs.2,50,000/- pertaining to Account No.8821871 of National Bank Charsadda, to complainant Himayat Ullah in respect of adjustment of some loan, but the same was dishonoured from the concerned bank on its presentation by complainant due to insufficient amount in the account of the accused.

3. After completion of investigation challan was submitted against the accused before the learned Trial Court, where he was tried and ultimately acquitted vide impugned judgment, hence, this appeal.

4. Learned counsel for the appellant argued that appellant has proved the guilt of the accused/respondent through cogent and confidence inspiring evidence but by overlooking the same, the learned Trial Court reached to erroneous conclusion by acquitting the respondent accused; that about the disputed amount the appellant has also filed a civil suit against the respondent-accused which has been decreed in his favour; that the findings of the learned Trial Court qua non-maintainability of criminal and civil proceedings concurrently about the same transaction, are against the law as as there is no legal bar to the maintainability of both such proceedings simultaneously because criminal offence is altogether a different matter from the civil liability. He sought reversal of the impugned judgment.

5. Learned AAG supported the arguments of learned counsel for the appellant to the extent of criminal and civil proceedings concurrently about the same transaction, he, however, fairly and frankly conceded that the material evidence to prove that the accused/respondent

was legally authorized to issue the cheque on behalf SHAMAL CONSTECH in his personal affairs has not been put to the accused in his statement under section 342 Cr.P.C., benefit of which would definitely goes in favour of the accused-respondent.

5. Learned counsel for the accused/respondent contended that prosecution has miserably to prove the account in respect of which the alleged cheque had been issued to be the account of the accused; the decree passed against the respondent by the learned Civil Court in respect of the disputed amount has been set aside by the learned Appeal Court/ District Judge-I Charsadda vide judgment dated 07.04.2010. He produced attested copy of the judgment of the appeal Court. He while supporting the impugned judgment sought dismissal of the appeal.

6. Arguments heard and record perused.

7. It appears from the record that accused/respondent was the director of a company known as SHAMAL CONSTECH. As per partnership deed, the said company was being run in the partnership of two partners, namely, Mr. Iqbal Khan and Mr. Imtiaz Ahmad. Account No.8821871 was opened in the name of aforesaid compnay in National Bank of Pakistan Charsadda. According to the partnership deed, the Bank

account of the company will be operated with joint signatures of the two partners, named above. The cheque in question has been allegedly handed over to the appellant by respondent which pertains to account of the aforesaid Company, but it does not bear the signatures of the two partners. Nothing is on the record to prove that SHAMAL CONSTECH had authorized the accused/respondent to issue a cheque in his personal capacity. The controversy about the loan of Rs.304000/- was allegedly between the accused and the appellant and not between the appellant and the Company. Though the memorandum governing the rights of SHAMAL CONSTECH was produced during the course of arguments, according to which any cheque issued by the accused/ Director would be acceptable to the Company, but neither the said document has been exhibited during trial nor has the same been put to the accused in his statement under section 342 Cr.P.C. It is settled law that any piece of evidence on which the prosecution relies, if not put to an accused in his statement under section 342 Cr.P.C., would be of no help for the prosecution. Besides, the said document having been not exhibited would have no evidentiary value. The grievance of the petitioner is not against SHAMAL CONSTECH, but against an individual/ accused, but he failed to prove the

account in respect of which the cheque in question has been issued to be the personal account of the accused. Rather sufficient material is available on record which prove the account in question to be that of SHAMAL CONSTECH Company. Apart from above, according to the condition No.4 of the partnership deed, the Bank account of the company will be operated with joint signatures of the two partners, but the cheque in question does not bear any signature of the two partners named above. None of these two partners has been examined to support the version of the appellant or to justify the fact that accused respondent was legally authorized to issue a cheque from the account of the company in respect of his personal affairs.

8. In view of the above discussed facts and circumstances of the case in light of the available evidence, prosecution has miserably failed to prove the guilt of the accused/respondent. As regard civil suit filed by the appellant against the respondent in respect of the same transaction i.e. recovery of the disputed loan, no doubt, the same had been decreed in his favour by the learned Trial Court, but during the course of arguments, learned counsel for the accused-responder produced attested copy of judgment of the learned Appellate Court/ Additional

District Judge-I, Charsadda, in C.A. No.62/13 decided on 07.04.2010, wherein the impugned judgment and decree of the learned Trial Court/ Civil Court has been set aside.

9. The findings of the learned Trial Court qua not maintainability of the criminal proceedings in presence of civil proceedings about the same transaction, are against the law because civil and criminal proceedings are two different remedies provided by law having different consequences therefore, both the remedies being not overlapping can be simultaneously availed by a person having right under the law. If different rights to commence proceedings of civil or criminal nature has sprung up with different results, those can be availed of, differently, and maxim that a “a man should not be vexed twice”, would not be applicable in such a situation.

10. In view of the above, the findings of the learned Trial Court that “a man should not be vexed twice”, being not applicable to the facts and circumstances of the instant case are hereby set aside, while rest of the findings qua acquittal of the accused/respondent are hereby maintained. Resultantly, this appeal being without any substance stands dismissed.

Announced
15.01.2016

J U D G E

