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Judgment Sheet

IN THE LAHORE HIGH COURT BAHAWALPUR BENCH BAHAWALPUR

JUDICIAL DEPARTMENT

Criminal Appeal No. 454-ATA of 2023
(Khalid Mahmood Vs. The State and another)

JUDGMENT.

Date of hearing:	23.04.2024.
Appellant by:	Mr. Zeeshan Haider, Advocate.
State by:	Mr. Najeeb Ullah Jatoi, Deputy Prosecutor General.

Sadiq Mahmud Khurram, J.- Khalid Mahmood son of Abdul Razzaq (convict) was tried by the learned Judge, Anti-Terrorism Court, Bahawalpur Division, Bahawalpur, in case F.I.R No.15 of 2022, dated 19.12.2022, registered at Police Station CTD, Bahawalpur in respect of offences under sections 11-F(2),11-F(6),11-G,11-N,11-I, 11-J and 11-EE(4) of the Anti-Terrorism Act, 1997. The learned trial court vide judgment dated **18.10.2023** convicted Khalid Mahmood son of Abdul Razzaq (convict) and sentenced him as under:-

Khalid Mahmood son of Abdul Razzaq : -

(i) Rigorous Imprisonment for one year under section 11-G of The Anti-Terrorism Act, 1997

(ii) Rigorous Imprisonment for one year under section 11-F (6) of The Anti-Terrorism Act, 1997 and directed to pay fine of Rs.10,000/- (rupees ten thousand) and in case of non-payment of fine, the convict was directed to further undergo one month of simple imprisonment.

(iii) Rigorous Imprisonment for five years under section 11-N of The Anti-Terrorism Act, 1997 read with 37 P.P.C and directed to pay fine of Rs.30,000/- (rupees thirty thousand) and in case of non-payment of fine, the convict was directed to further undergo one month of simple imprisonment.

(iv) Rigorous Imprisonment for one year under section 11-EE(4) of The Anti-Terrorism Act, 1997.

The convict was extended the benefit provided under section 382-B of the Code of Criminal Procedure, 1898 by the learned trial court. All the sentences awarded to the convict were ordered to be run concurrently by the learned trial court.

2. Feeling aggrieved, Khalid Mahmood son of Abdul Razzaq (convict) lodged the instant Criminal Appeal No.454-ATA of 2023 assailing his conviction and sentences.

3. Precisely, the necessary facts of the prosecution case, as brought on record through the statement of Muhammad Ashraf 595/UO (PW-3), the complainant of the case, are as under:

> "Stated that on 19.12.2022, I was posted at CTD Bahawalpur. On the same date, at about 3:35 pm, 1 with Saeed Anwar 1164/CPL, Muhammad Ikram 40/CPL, Imdad Hussain 30/CPL and Operation team on official vehicle No.LEG/1074 with driver Bisharat Hussain 235/DC while armed with rifles, was present at Awan Chowk Mubarak Pur in connection with surveillance of active organizational persons, where I received information through source that Khalid Mehmood son of Abdul Razzaq Caste Mandhal resident of Chak Loharan, enlisted in 4th schedule, belonging to defunct organization 'Lashker-e-Jhangvi' and involved in financial support of said defunct organization by collecting funds, is present at Qainchi Pull Mubarak Pur road and is collecting funds from public for his defunct organization, who should be checked. Considering this information reliable, I along with my team reached said place at 3:40 pm and on pointation of source we saw a person collecting funds for defunct organization at Qaichi Pull. Public dispersed on seeing police party. Said person also tried to escape but we apprehended him, who disclosed his name, Khalid Mehmood accused present in court.
>
> *(At this stage sealed parcels produced before this Court in a sealed condition which are de-sealed by the permission of this Court).*

> On checking of accused from his left hand, one fund receipt book P1 of defunct terrorists organization 'Lashker-e-Jhangvi' bearing serial No.2301 to 2350 among those receipts from Sr. No.2301 to 2306 had already been issued their counterfoils contained signatures of the accused. From funds receipt book collected amount Rs.2550/- with denomination nation two currency notes of Rs.500/- each P2/1-2, ten currency notes of Rs.100/- P3/1-10, eleven currency notes of Rs.50/- each P4/1-11 and black pointer P5 were recovered whereas from right side pocket of accused blue color OPPO mobile phone A-12 P-6 was recovered. I prepared one sealed parcel of receipt book and pointer and second sealed parcel of above said mobile phone for analysis from PFSA and third sealed parcel of terrorism financing amount and took all above said material into possession vide recovery memo Exh.PB, attested by PWs Saeed Anwar 1164/CPL and Muhammad Ikram 40/CPL. On query accused further disclosed that Government and Law Enforcement Agencies had killed their Organizational companions in police encounters, therefore, he and his organization had to support the families of their companions, so, he collected funds for this purpose. As accused had committed offence of terrorism financing by collecting funds for defunct organization, so 1 drafted complaint Exh.PC, and sent it to Police Station CTD Bahawalpur through Imdad Hussain 30/CPL whereon instant F.I.R was registered. On arrival of I.O, I handed over the custody of accused to him along with case property, verified the contents of complaint to him, who investigated the case."

4. After the formal investigation of the case, report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court, and the appellant was sent to face trial. The learned trial court framed charges against the appellant on 17.07.2023, to which he pleaded not guilty and the learned trial court proceeded to examine the prosecution witnesses.

5. The prosecution in order to prove its case got statements of **six** witnesses recorded. The prosecution witnesses namely Muhammad Ashraf 595/UO (PW-3) and Muhammad Ikram 40/UO (PW-4) gave evidence of the recovery of various articles from the possession of the appellant. Rashid Ali Javed 794/UO

(PW-1) stated that on 19.12.2022, he got recorded the formal F.I.R (Exh.PA) and on the same day the Investigating Officer of the case handed over to him three sealed parcels and on 25.12.2022, he handed over one sealed parcel said to contain a mobile phone device to Muhammad Ikram 40/UO (PW-4) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 20.05.2023,he handed over the articles received from the Punjab Forensic Science Agency, Lahore to the Investigating Officer of the case. Muhammad Shahzad 1805/C (PW-2) stated that on 21.12.2022, Mr. Nayyar Mustafa, learned Magistrate (PW-5) obtained the specimen signatures of the appellant . Muhammad Irshad, Inspector (PW-6) investigated the case from 19.12.2022 till its conclusion and narrated the facts of investigation conducted by him in his statement before the learned trial court.

6. On 23.09.2023, the learned Deputy District Public Prosecutor closed the prosecution evidence after tendering in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh.PN and Exh.PP).

7. After the closure of prosecution evidence, the learned trial court examined the appellant namely Khalid Mahmood son of Abdul Razzaq under section 342 Cr.P.C. and in answer to a question "*why this case against you and why the PWs have deposed against you"*, the appellant claimed that he had been falsely involved in this case and was innocent. The appellant further claimed that he had been kept in illegal detention. The appellant opted not to get himsel examined under Section 340(2) Cr.P.C. and did not adduce any evidence in his defence.

8. On the conclusion of the trial, learned Judge, Anti-Terrorism Court-, Bahawalpur Division, Bahawalpur, convicted and sentenced the appellant as referred to above.

9. The learned counsel for the appellant submitted that the prosecution has failed miserably to prove the case against the appellant. The learned counsel further argued that there were glaring contradictions in the statements of the witnesses hitting at the very basis of the prosecution case. The learned counsel also stated that nothing was recovered from the appellant. The learned counsel

further stated that the whole case was fabricated and false; that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence. The learned counsel further argued that the Investigating Officer did not associate any member of the public during the investigation of the case which made the case highly doubtful. The learned counsel also contended that the prosecution witnesses examined by the prosecution were stock witnesses as they were subordinates of the complainant and interested as well. The learned counsel further contended that the police officials, in order to save their own skins, had ruthlessly implicated the appellant in this false case. The learned counsel finally stated that the prosecution has totally failed to prove the case against the accused beyond the shadow of a doubt and prayed for the acceptance of the appeal.

10. On the other hand, learned Deputy Prosecutor General appearing on behalf of the State contended that the prosecution has proved its case beyond shadow of doubt by producing truthful witnesses and submitted that it was a promptly lodged FIR and the appellant was named therein which excluded the element of deliberation and consultation about his involvement in the instant case; that the appellant was caught red-handed, which clearly connected him with the commission of the crimes; that the police officers, who furnished ocular account before the learned trial court, had no enmity, grudge or malice against the appellant to implicate him in this case of heinous nature and even otherwise, the defence has not brought on record any ulterior motive of the police to depose falsely against the appellant, as such they are as good witnesses as the private persons would be; the prosecution case against the appellant stands proved from all angles, hence, prayed for dismissal of the appeal filed by the appellant and maintaining the conviction and sentences awarded to him by the learned trial court.

11. We have considered the arguments advanced by the learned counsel for the appellant, the learned Deputy Prosecutor General and have gone through the entire record with their able assistance.

12. The mainstay of the prosecution case is the evidence of Muhammad

Ashraf 595/UO (PW-3) and Muhammad Ikram 40/UO (PW-4) who gave evidence of the recovery of various articles from the possession of the appellant. We find that both the prosecution witnesses namely Muhammad Ashraf 595/UO (PW-3) and Muhammad Ikram 40/UO (PW-4) remained unable to prove their presence at the place of the incident as narrated by them and also could not prove that the appellant was arrested from the same place, at the same time as was claimed by the said prosecution witnesses namely Muhammad Ashraf 595/UO (PW-3) and Muhammad Ikram 40/UO (PW-4). Though it was admitted by the prosecution witnesses that the appellant was arrested from the busiest places within the city of Mubarikpur still none from the said place joined the investigation of the case and supported the prosecution case. The prosecution witness namely Muhammad Ashraf 595/UO (PW-3) stated during cross-examination as under:-

> " The alleged place of occurrence is a busiest place of Mubarakpur. No person joined in investigation who claimed that accused had distributed stickers to him or demanded fund from him. 1.0 did not join any neighbor shopkeepers or passers-by in any proceedings of this case. None from Al-Majeed clinic and Al-Akbar Petroleum was cited as witness in this case. No private person joined investigation of this case in my presence. 1.0 did not record statement of any private person in my presence"

The prosecution witness namely Muhammad Ikram 40/UO (PW-4) admitted during cross-examination as under:-

> " The alleged place of occurrence is a busiest place of Mubarakpur. The distance between Awan Chowk and place of occurrence is about 1/2 kilometer. No person joined in investigation who claimed that accused had distributed stickers or share any material related to proscribed organization to him or demanded fund from him. I.O did not join any neighbor shopkeepers or passers-by in any proceedings of this case. None from Al-Majeed clinic and Al-Akbar Petroleum was cited as witness in this case. No private person joined investigation of this case in my presence. I.O did not record statement of any private person in my presence"

13. We have also noted that the prosecution story that the appellant was collecting funds for a banned organization from the members of the public

could not materialize and be proved through any cogent or supportive evidence because the said members of the public, probably imaginary, ran away from the scene of the crime and remained imaginary in the sense that no person was arrested later during investigation nor got recorded his statement regarding the charge that he was one of those who had funded the appellant. The prosecution witness namely Muhammad Ashraf 595/UO (PW-3) stated during cross-examination as under:-

> "No private person appeared before I.O in my presence claiming that he had witnessed accused ever demanding funds for defunct organization. I did not mention any SIM number in recovery memo. 1.O did not join any person in investigation to whom the alleged receipt had already been issued. No one was joined as accused in this case whose names are mentioned in counterfoils of receipts. I did not write in complaint that I had seen accused demanding or collecting funds from any person for any proscribed organization."

The prosecution witness namely Muhammad Ikram 40/UO (PW-4) admitted during cross-examination as under:-

> "No private person appeared before 1.0 in my presence claiming that he had witnessed accused ever demanding funds for defunct organization. I.O did not join any person in investigation to whom the alleged receipt had already been issued. No one was joined as accused in this case whose names are mentioned the counterfoils of receipts.".

14. We have also noted that Muhammad Ashraf 595/UO (PW-3), the complainant of the case did not proceed to the police station after the arrest of the accused for getting the F.I.R recorded rather deputed Imdad Hussain 30/CPL(not produced) to get the FIR registered. It is unexplainable as to why Muhammad Ashraf 595/UO (PW-3)himself did not proceed to the Police Station when he himself had arrested the accused and prepared the recovery memos as well as the sealed parcels. Furthermore, the police station was at a distance of as much as **fifty kilometres** from the place of recovery and there was nothing further to be done at the spot by Muhammad Ashraf 595/UO (PW-3) or indeed the other witnesses for them to have kept standing at the place of occurrence. Additionally, the said Imdad Hussain 30/CPL, who took the

complaint (Exh.PC) to the police station for the registration of FIR, was neither cited as a witness nor his statement under section 161 Cr.PC was recorded nor he was examined as a witness during the trial of the case though he was also an eye witness of the arrest of the appellant and the recovery from the appellant. This aspect of the case has convinced our minds that the whole prosecution case is a figment of the imagination of Muhammad Ashraf 595/UO (PW-3), the complainant of the case. Reliance in this regard is placed on the case of *Minhaj Khan Vs. the State* (**2019 SCMR 326**).

15. We have also noted that during the personal search of the appellant after his arrest, no material was collected which could label him as a member of a banned organization and no membership card or other document in this regard was recovered from his possession. The prosecution witness namely Muhammad Ashraf 595/UO (PW-3) stated during cross-examination as under:-

> "Not sticker, badge or membership card of any defunct organization was recovered from the possession of accused. "

The prosecution witness namely Muhammad Ikram 40/UO (PW-4) admitted during cross-examination as under:-

> "Not sticker, badge or membership card of any defunct organization was recovered from the possession of accused".

Muhammad Irshad Inspector (PW-6),the Investigating Officer of the case, stated that he obtained a **copy of the notification** No.SO(IS-1)4-10/2021 (Bahawalpur)-19 dated 23.08.2021 (P-7) regarding the declaration of the appellant as a proscribed person and his enlistment in the list of proscribed persons as maintained under the Fourth Schedule of the Anti-Terrorism Act,1997. The provisions of Article 76 of the Qanun-e-Shahadat Order, 1984, declare the conditions in which the production of secondary evidence is allowed to prove a document and it is provided that the same can be done if it is proved that the original document is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person legally bound to produce it, and when, after the notice

mentioned in Article 77 of the Qanun-e-Shahadat Order, 1984, such person does not produce it or **when the original has been destroyed or lost** or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time. The prosecution did not lead any evidence to prove that the original notification No.SO(IS-1)4-10/2021 (Bahawalpur)-19 dated 23.08.2021 could not be produced before the Court due to it being lost or destroyed and in absence of such evidence a copy of the said notification No.SO(IS-1)4-10/2021 (Bahawalpur)-19 dated 23.08.2021 could not have been admitted in evidence.

16. We have also noted that Muhammad Irshad Inspector (PW-6),the Investigating Officer of the case, himself stated that the amount of Rs 4000/- sent to Muhammad Qasim son of Malik Ishaq,the leader of the defunct organization *'Lashker-e-Jhangvi* on the mobile phone No.0308-7184531 for terrorism financing was sent from SIM No.0306-5020838, which SIM No.0306-5020838 was registered in the name of Shafiq Ahmad, the brother of the appellant and not the appellant himself. Muhammad Irshad Inspector (PW-6),the Investigating Officer of the case, in his statement before the learned trial court stated as under :-

> "In their presence reader DSP Investigation handed over 32 prints P12/1-32 of Mobilink Micro Finance Bank to me and I examined the same and found that according to page No.21 & 27 of said report, accused had sent Rs 4000/- to Muhammad Qasim son of Malik Ishaq leader of defunct organization 'Lashker-e-Jhangvi on mobile phone No.0308-7184531 for terrorism financing, said amount was sent from SIM No.0306-5020838 registered in the name of Shafiq Ahmad brother of accused Khalid Mehmood and in the use of accused Khalid Mehmood, present in court. I submitted application to RO CTD Bahawalpur for requisitioning ownership and NADRA verisys report. After sometime I received two copies of ownership of Shafiq Ahmad and Muhammad Qasim comprising four pages P13/1-4. I took above mentioned documents into possession vide recovery memo Exh.PF, attested by PWs. I recorded statements of PWs u/s 161 Cr.P.C in this regard."

No evidence was collected during the investigation of the case nor produced before the learned trial court that the SIM No.0306-5020838 was in the use of the appellant. When the prosecution itself did not collect any evidence to prove that the SIM No.0306-5020838 was in the use of the appellant, then it cannot be presumed that the said SIM No.0306-5020838 was under the use

of the appellant and the amount of Rs 4000/- was sent to Muhammad Qasim son of Malik Ishaq ,the leader of the defunct organization *'Lashker-e-Jhangvi* by the appellant.

17. It was the case of the prosecution that the appellant was apprehended at the moment when he was collecting funds for a banned organization from the members of the public, who ran away on seeing the CTD raiding team. From his search, the fund receipt book (P-1) having the counterfoils of the receipts No..2301 to 2350 was recovered and taken into possession however the said counterfoils of the receipts No..2301 to 2350 were never exhibited by any of the prosecution witnesses during the course of the trial. The learned Deputy Prosecutor General has argued that even if the counterfoils of receipts No.2301 to 2350 were not exhibited in the evidence during the trial, the criminal liability of the appellant could still be proved through material extracted or retrieved from the mobile phone (P-6) recovered from his possession on the day of his arrest. We have examined the material placed on record as well as the report of the Punjab Forensic Science Agency, Lahore (Exh.PN) with respect to the extraction of such material from the mobile phone device (P-6) as recovered from the appellant. This evidence cannot be used against the appellant due to the reason that images (P-10/1-8) retrieved from the mobile phone and stored in the USB storage device (P-11) as the video footage and pictures as stored in the USB storage device (P-11) were not displayed in the learned trial court during the statement of any witness so as to prove the same. We are also seriously concerned about the extraction of data from a personal mobile phone, may be of an accused, without his consent; which is not a good practice as it opposes to constitutional guarantee of the right to privacy and we feel that if the accused was not ready to accord consent, then at least permission from magistrate should have been taken. Though in this case, the Anti-Terrorism Court supervised the processes of investigation whenever needed but we have not found any such permission in the record nor the learned Deputy Prosecutor General has shown the same to us, therefore, retrieval of data from the mobile phone device (P-6) of the appellant without the consent of

accused amounts to self-incrimination prohibited under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, such evidence is ruled out from consideration. The Islamic Republic of Pakistan is a signatory to several international and regional instruments with privacy implications, including:

- The International Covenant on Civil and Political Rights (signed April 2008, ratified June 2010). Article 17 of the ICCPR states that "no one shall be subject to arbitrary or unlawful interference with his privacy, family or correspondence." The ICCPR also commits Pakistan to ensuring the protection of other rights that rely on the protection of privacy, such as freedom of expression and freedom of association.

- The Cairo Declaration on Human Rights in Islam (signed August 1990). Article 18 of the CDHRI affirms that: "a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property. (b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference. (c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted."

- The Convention on the Rights of the Child (ratified November 1990). Article 16 of the CRC states that "1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. 2) The child has the right to the protection of the law against such interference or attacks."

A number of laws regulate communications surveillance, acquisition of data and protection thereof in Islamic Republic of Pakistan, some of which are cited herein below with required expression relevant to the case in hand;

The Investigation for Fair Trial Act, 2013

This Act allows for access to data, emails, telephone calls, and any form of computer or mobile phone-based communication, subject to a judicial warrant. However, a warrant can be requested wherever an official has 'reasons to believe'

that a citizen is, or is 'likely to be associated' with, or even 'in the process of beginning to plan' an offence under Pakistani law.

The Pakistan Telecommunication (Re-organization) Act, 1996.

32. Warrants for search.---(1) Where on information furnished by the Authority or Board, the Court has reason to believe that any unlicensed telecommunication system, wireless telegraphy apparatus or unapproved terminal equipment or unapproved crypto apparatus is being kept or concealed or any unlicensed telecommunication service is provided, or any licensed service is being used against the interest of national security and public safety it may issue a search warrant; and the person to whom such warrant is directed, may enter the premises, vessel, aircraft, or hovercraft or place where such telecommunication system, wireless telegraphy apparatus or terminal equipment or crypto apparatus is allegedly kept or concealed or unlicensed telecommunication service is provided or any licensed service being used against the interest of national security and public safety therefrom carry out search and inspection thereof and seize such telecommunication system, wireless telegraph apparatus or terminal equipment or crypto apparatus

The Prevention of Electronic Crimes Act, 2016

The Act contains a number of sections related to data privacy. However, these are intended to grant law enforcement and other government entities access to the private data of citizens, or to restrict citizens from gaining access to government data. Sections 3, 4, 5, 6, 7 and 8 make it a crime for anyone to gain unauthorized access to any information system or data, or copying or transmission of critical infrastructure data, punishable with a prison sentence up to 3 months to seven years or a fine of up to fifty thousand to 10 million rupees.

Section 31 allows a law enforcement officer to require a person to hand over data without producing any court warrant if it is believed that it is "reasonably required" for a criminal investigation. This can be done at the discretion of the officer and needs only be brought to the notice of a court within 24 hours after the acquisition of the data. Section 32 requires telephone and Internet service providers to retain traffic data for at least one year. Law enforcement bodies can demand access to that data subject to a warrant issued by a court. Section 33 allows courts to issue a warrant to a law enforcement officer to search and seize any data that "may reasonable be required" for a criminal investigation. In cases involving the vaguely defined "cyberterrorism", the officer can search and seize

the data without a warrant and notify the court within 24 hours of its seizure.

Section 35(2)(b) requires that law enforcement officers carrying out a search and seizure "take all precautions" to maintain the secrecy of the seized data and not interfere with any data not related to the crime being investigated.

Section 39 permits for real-time collection and recording of information for a criminal investigation if a Court is satisfied on the basis of information furnished by an authorized officer.

Section 42 allows the government to share any data obtained from its investigation with any foreign government or international agency.

The Freedom of Information Ordinance, 2002

According to section 17 of the Freedom of Information Ordinance, "Privacy and personal information", certain forms of "information is exempt if its disclosure under this ordinance would involve the invasion of the privacy of an identifiable, individual (including individuals) other than the requester."

Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973 prohibits self-incrimination which is reproduced as under;

Protection against double punishment and self-incrimination

13. No person-

(a) shall be prosecuted or punished for the same offence more than once; or

(b) shall, when accused of an offence, be compelled to be a witness against himself.

Above expression in Article 13(b) of the Constitution of the Islamic Republic of Pakistan, 1973 clearly indicates that no one can be compelled to be a witness against himself. All above references of law clearly speak that the acquisition of data stored in an information system or seizure of any articles containing such data requires the intervention of the Court either by obtaining a warrant in this respect or otherwise an intimation to the Court after such seizure within 24 hours. Therefore, when any mobile phone is recovered from a suspect, and any data retrieval whereof from the said phone is essential for criminal investigation, it could only be obtained with the permission of the concerned Court with strict regard to privacy rights

guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973.

18. With regard to the report of the Punjab Forensic Science Agency, Lahore (Exh. PP) according to which the signatures on the counterfoils of the receipts No..2301 to 2350 were that of the appellant, it has been noted that the said counterfoils of the receipts No..2301 to 2350 were never exhibited by any of the prosecution witnesses during the course of trial. Furthermore, the prosecution could not prove that who had taken the receipt book (P-1) to the Punjab Forensic Science Agency, Lahore for analysis. According to the statement of Rashid Ali Javed 794/UO (PW-1), on 19.12.2022 the Investigating Officer of the case, handed over to him a sealed parcel said to contain the fund receipt book (P-1), however, Rashid Ali Javed 794/UO (PW-1) **never made any statement** that the said fund receipt book (P-1) was handed over to any prosecution witness for its deposit in the Punjab Forensic Science Agency, Lahore or for it to be produced before Nayar Mustafa, the learned Magistrate (PW-5) , whereas Muhammad Irshad, Inspector (PW-6) , the Investigating Officer of the case , stated that it was on 21.12.2022 that he received the fund receipt book (P-1) from Rashid Ali Javed 794/UO (PW-1) and then produced the same before Nayar Mustafa, the learned Magistrate (PW-5). In this manner, the prosecution failed even to prove that the fund receipt book (P-1) was sent to the Punjab Forensic Science Agency, Lahore and therefore, no reliance can be placed on the report of the Punjab Forensic Science Agency, Lahore (Exh.PP) for the said fact.

19. The most important aspect of the case is that since the very beginning the appellant had taken the defence plea that the appellant had been falsely involved in this case and the police had involved him in the case just to show their efficiency though he did not belong to any proscribed organization, was innocent and was not involved in the occurrence in any manner. The appellant claimed that he had been kept in illegal custody by the Law Enforcement Agencies and his relatives had been running from pillar to post in search of them. The appellant claimed that after keeping him in illegal custody, his arrest was shown in this false case but the learned trial Court failed to consider this aspect of the case while passing the impugned judgment, which also created

serious doubt in the case of the prosecution. While keeping the prosecution version in juxta position with the plea taken by the appellant, the defence version appears to be more plausible. In criminal cases the burden of proving its case lies on the prosecution and the prosecution is duty bound to prove the case against the accused through reliable evidence, direct or circumstantial and that too beyond reasonable doubt. Besides this, it is a settled principle of law, that if there is an element of doubt as to the guilt of an accused, the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of the doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with the law.

20. Considering all the above circumstances, we entertain serious doubt regarding the involvement of the appellant in the present case. It is a settled principle of law that for giving the benefit of doubt, it is not necessary that there should be so many circumstances rather, if only a single circumstance, creating reasonable doubt in the mind of a prudent person, is available, then such benefit is to be extended to an accused not as a matter of concession but as of right. The zeal to punish an offender even in derogation or violation of the law would blur the distinction between arbitrary decisions and lawful judgments. No doubt, duty of the courts is to administer justice; but this duty is to be performed in accordance with the law and not otherwise. The mandatory requirements of the law cannot be ignored by labelling them as technicalities in pursuit of the subjective administration of justice. One guilty person should not be taken to task at the sacrifice of the very basis of a democratic and civilized society, i.e., the rule of law. Tolerating acquittal of some guilty, whose guilt is not proved under the law is the price which the society is to pay for the protection of their invaluable constitutional right to be treated in accordance with the law. Otherwise, every person will have to bear the peril of being dealt with under the personal whims of the persons sitting in executive or judicial offices, which they in their own wisdom and subjective assessment consider good for the society. The august Supreme Court of Pakistan in the case of

"*Muhammad Mansha Vs. The State"* (**2018 SCMR 772**) has enunciated the following principle:

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

Reliance is also placed on the judgment of the august Supreme Court of Pakistan *Najaf Ali Shah Vs. the State* (**2021 S C M R 736**) in which it has been observed as infra:

> *"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of We have categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."*

21. For what has been discussed above, Criminal Appeal No.454-ATA of 2023, lodged by the appellant namely Khalid Mahmood son of Abdul Razzaq is **allowed** and the conviction and sentences of the appellant namely Khalid Mahmood son of Abdul Razzaq awarded by the learned trial court through the impugned judgment dated 18.10.2023 are hereby set-aside. The appellant namely Khalid Mahmood son of Abdul Razzaq is ordered to be acquitted by extending him the benefit of the doubt. The appellant namely Khalid Mahmood son of Abdul Razzaq is in custody and is ordered to be released forthwith if his custody is not required in any other case.

22. The case property shall be dealt with as directed by the learned trial court. The record of the learned trial court be sent down immediately.

(MUHAMMAD WAHEED KHAN)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel/*