

JUDGMENT SHEET

**PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)**

Cr.A No. 289-M/2021

Bilal Ahmad son of Nisar Ahmad
(Appellant)

Versus

The State through A.A.G.
(Respondent)

Present: *M/S Ishaq Shah, Muhammad Ishaq (Khalil),
Ghulam Mohy-ud-Din Malik and Muhammad
Farooq Malik, Advocates.*

Mr. Haq Nawaz, Asst: A.G.

Date of hearing: **20.06.2022**

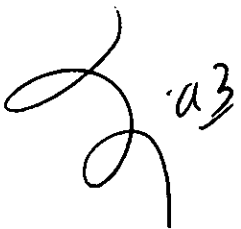
JUDGMENT

MUHAMMAD IJAZ KHAN, J.- This order is directed to decide the appeal filed by appellant namely Bilal Ahmad against the judgment of his conviction and sentence dated 12.10.2021 passed by the learned Sessions Judge Malakand at Batkhela.

2. As per contents of FIR complainant Naik Rehman, Post Commander of Levy Post *Hassan Khan Shaheed, Alladhand* along with other levy official laid a barricade at *Alladhand* road near *Sharab Dara* when in the meanwhile they stopped a motorcar bearing No. 6432/Police coming

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from *Amandara* side. Driver of the car disclosed his name as Bilal Ahmad (the appellant herein), while the person sitting in its front seat has been identified as Shakeel Ahmad. During search of the motorcar, the levy officials recovered a white colour plastic lying beneath the front seat on mate which contained five packets of Chars total weighing 6000 grams, regarding which a separate FIR No. 84 dated 12.09.2020 under section 9 (d) of The Khyber Pakhtunkhwa Control of Narcotic Substances Act 2019 has been registered at Levy Post Alladhand District Malakand. Further search of the accused/ appellant namely Bilal Ahmad led to recovery of three service cards of the Khyber Pakhtunkhwa Police Department. The appellant was arrested on the spot and the motorcar was also taken in possession. '*Murasila*' was drafted which was reduced into FIR No. 84 dated 12.09.2020 registered under sections 420, 468, 473 PPC at Levy Post Alladhand District Malakand.



3. The accused was summoned by the learned trial Court and charge was framed against him, to which he pleaded not guilty and claimed trial. The prosecution was invited to produce its evidence, who accordingly examined five (05) witnesses in support of their case. Thereafter, statement of accused was recorded under section 342 Cr.P.C and on conclusion of trial in the case, the accused/appellant was convicted vide the impugned order/judgment dated 12.10.2021 of the Court of learned Sessions Judge Malakand at Batkhela and was sentenced as follows;

“Under sections 420,468,471 PPC to three years rigorous imprisonment along with fine of Rs. 50,000/- (fifty thousand), or in default thereof he was ordered to undergo six months simple imprisonment. The appellant was also extended benefit of section 382-B Cr.P.C.

The appellant has now challenged the aforesaid judgment by filing the instant criminal appeal before this Court.

4. Arguments of learned counsel for the appellant as well as learned Astt: A.G. appearing on behalf of the State were heard in

considerable detail and the record perused with their able assistance.

5. At the very outset it may be noted that the evidence produced by the prosecution in both set of allegations i.e. recovery of Chars and recovery of forged service cards are verbatim copy of each other and as such their evidence qua the present set of allegation is to be analyzed as under;-

6. It is the case of prosecution that since the appellant namely Bilal Ahmad has fixed a police number plate on his motorcar in which he was boarded at the relevant time and as the three service cards of the Police Department were recovered from his pocket, therefore, he has committed the offences under sections 420, 468 and 473 PPC.

7. Before appreciating the evidence it would be relevant to mention here that what are the essential ingredients to constitute an offence under sections 420, 468, 473 PPC;-

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An offence under section 420

PPC could be constituted when a person has dishonestly induced another person;-

- (i) *To deliver any property to any person or;*
- (ii) *To make, alter or destroy;*
 - (a) *The whole or any part of a valuable security or;*
 - (b) *Anything which is signed or sealed and which is capable of being converted into a valuable security.*

Similarly to constitute an offence

under section 468 PPC the prosecution has to prove;-

- (i) *That the document is a forgery;*
- (ii) *That the accused forged the document;*
- (iii) *That he did as above intending that the forged document would be used for the purpose of cheating.*

and the ingredients of section 473

PPC are;

- (i) *That the accused made or counterfeited the seal, plate, etc., or that he had such seal etc., in his possession, and he knew it to be counterfeit;*
- (ii) *That such seal, etc., was made in order to produce impressions;*
- (iii) *That he intended to use such seal, etc., for the purpose of committing forgery;*
- (iv) *That such forger was punishable under section 467.*

8. Now keeping in view the aforesaid essential ingredients for commission

of offences levied against the appellant the prosecution has to prove that the appellant has deceived them for delivery of any property or part of it, however, it is not at all the case of prosecution, even such nature of allegations were not leveled by it what to say about the proof of it. Similarly, prosecution is bound to prove that what documents have been forged by the appellant. It is an admitted fact that the appellant is a police personal and he was having service cards of Police Department which were sent for verification and the same were found as genuine, so, except allegation prosecution has not brought on record any evidence to substantiate their charge. Similarly, prosecution has also to prove that which counterfeit number plate has been made by the appellant. It is the case of prosecution that the appellant has affixed a number plate

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of Police Department on his motorcar, which is in a broader sense is not a counterfeit number plate as the appellant is an employee of Police Department and as such the allegation would have at the most attract the provision of section 473 PPC, had the appellant not been an employee of Police Department. It may be an offence under The Motor Vehicles Ordinance, 1965 but in no way would attract the provision of section 473 PPC to the case of appellant.

9. It is and has been an admitted fact that the appellant namely Bilal Ahmad is an employee of the Police Department and posted at the office of C.P.O Peshawar and that his two out of the three service cards recovered from him were verified during the course of investigation and were found genuine, therefore, in such eventuality when

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the appellant is admittedly an employee of the Police Department and when he was having his service cards in his pocket then one fails to understand that how he has committed an offence as stated hereinabove. These allegations should have been carrying some weight had the appellant not been an employee of the Police Department and he has personated to be an employee. The service cards recovered from him reflects his designation as constable and computer operator respectively. It was admitted by the learned Astt: A.G. at the bar that the appellant was initially appointed as a constable in the Police Department, however, when he was literate in computer, therefore, he was posted at C.P.O Peshawar office as a computer operator, therefore, all the cards recovered from him bearing his correct designation i.e.

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of constable and computer operator and as such on this score too, the service cards so recovered from the appellant are genuine and correct qua the factual position of his designation and Department.

10. Similarly, fixing of a police number plate on the motorcar which was given to him on '*Superdari*' too is not a false, forged or counterfeit number plate as the appellant is an employee of the Police Department, however, fixing of such a number plate on the motorcar may be an offence under The Motor Vehicles Ordinance, 1965, which is not the case of prosecution but by no stretch of imagination the provision of section 473 PPC could be attracted, therefore, on this score too the allegation made by the prosecution appears to be misconceived and

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does not constitute an offence within the meaning of section 473 PPC.

11. As stated above that the appellant is and was an employee of the Police Department and even if the allegations made by the prosecution are considered to be correct the applicability of section 420 PPC could not be attracted against the appellant as it is not the case of prosecution that he has dishonestly induced them for the delivery of any property. Similarly, section 468 PPC too could not be attracted against the appellant as he has not committed any forgery for the purpose of cheating. As stated above that all his service cards and number plate reflect the true position that he is an employee of the Police Department, therefore, in such state of affairs, it can safely be concluded that the appellant has not at all committed an offence,



which may attract the penal provision of sections 420, 468 and 473 PPC.

12. The statements of the PWs recorded in this FIR as well as in the connected FIR No. 84 dated 12.09.2020 are the verbatim/ photo-state copies of each other and all the PWs have not uttered a single word that the appellant has either induced them for the delivery of any property or that he has committed any forgery to cheat them or he has prepared any counterfeit plate/seal etc. as during the course of investigation and the trial all their allegations are turned out to be false, therefore, in such state of affairs the impugned conviction and sentence of the appellant could not be sustained.

13. In view of the above, the case of prosecution is misconceived qua the true factual position with respect to official position of the appellant being employee of

Police Department and his service cards and police number plate affixed on his motorcar, therefore, he is entitled for the lapses in the prosecution evidence. It is not essential that there should be many doubts in the prosecution case, even a single doubt is sufficient to extend its benefit to an accused person as it is the cardinal principle of criminal administration of justice that let hundred guilty persons be acquitted but one innocent person should not be convicted. In the case of "Tariq Pervaiz v/s The State" reported as 1995 SCMR 1345 , the Hon'ble Apex Court has held that the concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. Reliance in this behalf can be

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made upon the cases of "Muhammad Zamin v/s The State & others" (2014 SCMR 749), and Muhammad Akram v. The State (2009 SCMR 230). In the case of "Ghulam Qadir & others v/s The State" reported as 2008 SCMR 1221 the Hon'ble Apex Court has also held that it needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge-makers the whole case doubtful. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt end this duty does not change or vary in the case. A finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case.

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14. For what has been discussed above, this Court is of the firm view that the prosecution has miserably failed to prove its case against the accused/appellant beyond reasonable doubt; therefore, his conviction and sentence cannot be maintained. Resultantly, while extending him the benefit of the doubt, this appeal is allowed and the impugned order/judgment of conviction and sentence dated 12.10.2021 recorded by the learned trial Court is set aside and consequently the appellant is acquitted of the all charges levelled against him. He be released forthwith from the Jail, if not required in any other case.

15. These are reasons for my short order of even date.

Announced
Dt. 20.06.2022


JUDGE

Office
24/07/2022
MR