

**2017 M L D 1691**

**[Balochistan]**

**Before Muhammad Ejaz Swati and Nazeer Ahmed Langove, JJ**

**Haji MUHAMMAD UMAR---Appellant**

**Versus**

**TAJ MUHAMMAD and another---Respondents**

Criminal Acquittal Appeal No.98 of 2015, decided on 17th April, 2017.

**(a) Penal Code (XLV of 1860)---**

---S. 489-F---Dishonestly issuing cheque---Appreciation of evidence---Appeal against acquittal--Prosecution case was that accused in consideration of sale transaction of buffaloes with connivance of his co-accused/brother, since acquitted, had issued four cheques of different amounts, which were bounced on presentation---Record showed that cheques in question were not presented within due date---Witness/Bank representative stated that cheques were produced after the lapse of two years whereas the maximum period for presentation of the cheques was six months---Iqrarnama was executed between the parties, at the time of sale transaction, but cheques in question were not mentioned therein---Admittedly, there was civil litigation between the parties, initiated by the complainant---False involvement of accused-respondent along with his family members to settle down the civil liability, if any, by filing criminal case could not be ruled out in circumstances---Prosecution failed to prove the guilt of the respondent to the hilt because presenting cheques after the date of its expiry showed mala fide intention only to drag the respondent along with his family members in criminal case---Appeal against acquittal was dismissed in circumstances.

**(b) Penal Code (XLV of 1860)---**

---S. 489-F---Dishonestly issuing cheque---Appreciation of evidence---Appeal against acquittal--Presumption---Double presumption of innocence was attached to the order of acquittal---Interference would be declined with the findings of acquittal, unless it was proved that the acquittal order was shocking, ridiculous, artificial or based on misreading and non-reading of evidence---In the present case, the appellant had failed to prove any such defect---Appeal against acquittal was dismissed in circumstances.

Haji Paio Khan v. Sher Biaz and others 2009 SCMR 803 rel.

**(c) Criminal Procedure Code (V of 1898)---**

---S. 417(2-A)---Appeal against acquittal---Assessment of evidence---Scope---Standards of assessing evidence in appeal against acquittal and that of appeal against conviction were quite

different---Assessment of evidence in appeal against conviction was done strictly and in appeal against acquittal, such rigid method of appreciation of evidence was not to be applied as there was already findings of acquittal by the trial court after proper analysis of evidence on record.

Sher Umer Khan v. Khan Pur alias Khaney and 2 others PLD 2015 Pesh. 143 rel.

Mohi-ud-Din Achakzai for Appellant.

Yahya Baloch, D.P.G. for Respondents.

Date of hearing: 3rd April, 2017.

## **JUDGMENT**

**NAZEER AHMED LANGOVE, J.**---Instant appeal is directed against the judgment dated 18th March, 2015 passed by the learned Additional Sessions Judge-VI, Quetta whereby the Judgment dated 28th August, 2014 passed by Judicial Magistrate-VI, Quetta was set aside and the respondent No. 1 was acquitted of the charge..

2. Brief facts of the case are that in pursuance of application submitted by the complainant Muhammad Umar, the instant FIR No. 80/2013 was registered at P.S. Gawalmandi, Quetta alleging therein that in consideration of sale transaction of buffaloes the respondent/ accused Taj Muhammad with the connivance of his brothers (acquitted by the trial court) had issued four cheques of different amounts. The said cheques were presented in the concerned Bank for encashment but were bounced on account of insufficient balance, hence the registration of instant case. On completion thereof 'challan' of the case was submitted before the Judicial Magistrate-VI, Quetta and trial commenced.

3. On 18th July, 2014 the charge was framed against the respondent No. 1 and the acquitted accused to which they pleaded not guilty and claimed trial. The prosecution in order to substantiate the accusation produced 6 witnesses. On examination under Section 342, Cr.P.C. the accused disputed the allegations levelled against them and pleaded their innocence by submitting that they have committed no offence whatsoever. The complainant after receiving cheques with mala fide intention presented the same after three years of its issuance knowing that after lapse of 6 months the said cheques expired and could not have been presented. They prayed for their acquittal, however, neither opted to get themselves examined on oath as envisaged under section 340(2), Cr.P.C. nor produced any witness is examined on oath as envisaged under section 340(2), Cr.P.C. nor produced any witness in their defence. The learned trial court after hearing the parties and evaluating evidence found the respondent No. 1 guilty, as such convicted and sentenced him for the period mentioned hereinabove whereas the co-accused/brothers of the respondent No. 1 were acquitted of the charge vide judgment referred to herein above. The judgment passed by the learned trial Court was assailed in appeal by the respondent Taj Muhammad before the learned Additional Sessions Judge-VI, Quetta. The appellate Court after hearing the parties through their counsel and re-evaluating the evidence, did not find the respondent guilty, as such acquitted him of the charge by accepting the appeal, hence instant acquittal appeal.

4. The learned Counsel for the appellant/complainant argued that the judgment impugned herein passed by the learned appellate Court is not sustainable under the law for the reasons that the prosecution has been able to prove its case through ocular and documentary evidence by bringing on record the cheques issued by the respondent No. 1, presented by the appellant and dishonoured by the bank. The concerned Bank Manager appeared as witness and supported the prosecution version but this important and un-rebutted piece of evidence escaped notice of the learned appellate Court while reversing the findings of the learned trial court. He maintained that plea raised by the defence in respect of issuing no fake cheques by the respondent, did not appeal to reason but the appellate court acquitted the respondent No. 1 on grounds not recognised by law which caused miscarriage of justice to the appellant.

On the other hand the learned Counsel for the respondent No. 1. and D.P.G strongly opposed the appeal by submitting that the judgement impugned passed by the learned appellate Court is based on proper appreciation of evidence. The same does not suffer from any illegality, irregularity, misreading or non-reading of evidence. The learned counsel added that the prosecution failed to prove guilt of the respondent to the hilt because presenting cheques after the date of its expiry smacked mala fide intention only to drag the respondent and his family members in criminal case. They maintained that the learned counsel for the appellant failed to point out any specific illegality, irregularity, misreading, non-reading or inherent defect in the judgment impugned therefore appeal filed by the complainant is liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the record with their assistance which reflects that bone of contention between the parties was a verbal transaction of buffaloes sold out by the complainant to the respondent and in lieu thereof later had issued four cheques which were presented in the bank concerned for encashment but stood dishonoured due to non-availability of balance. The perusal of record indicates that the cheques in question were not presented within due date. PW.2 Zahid Hussain representative of the Bank in answer to a question admitted that the cheques were produced after the lapse of two years whereas the maximum period for presentation of a cheque is 6 months. As per the contention of the learned counsel for the defence the appellant presented the cheques after due date with mala fide intention to drag the respondent and his brothers in criminal case (the brothers of the respondent have already been acquitted of the charge by the trial court). We have further observed that in the year 2012 an alleged 'Iqrarnama', was also executed between the parties but surprisingly not a single word in respect of cheques in question were mentioned/incorporated therein. Apart from that civil litigation (Initiated by the complainant) also existed between the parties. In such circumstances false involvement of respondent No. 1 along with his family members to settle down the civil liability, if any, by filing criminal case cannot be ruled out. After acquittal the respondent gained double presumption of innocence. Reliance can be placed on the judgment titled as Haji Paio Khan v. Sher Biaz and others reported in 2009 SCMR page 803. Relevant observations there from are reproduced herein below:--

"It needs no reiteration that when an accused person is acquitted from the charge by a Court of competent Jurisdiction then, double presumption of innocence is attached to its order, with which the superior Courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record".

6. It may further be added that the standards of assessing evidence in appeal against

Acquittal and that of appeal against conviction are quite different. Appraisal of evidence, in appeal against conviction is done strictly and in appeal against acquittal such rigid method of appraisal is not to be applied as there is already finding of acquittal given by the trial court after proper analysis of evidence on record. Reliance can be placed on the judgment titled as *Sher Umer Khan v. Khan Pur alias Khaney and 2 others* reported in PLD 2015 Peshawar 143 relevant observation there from reads as under:--

"Moreso, this is appeal against acquittal and standards of assessing evidence in appeal against acquittal are quite different from those laid down for appeal against conviction. Marked difference exists between appraisal of evidence in appeal against conviction and in appeal against acquittal. Appraisal of evidence, in appeal against conviction is done strictly and in appeal against acquittal such rigid method of appraisal is not to be applied as there is already findings of acquittal given by the trial court after proper analysis of evidence on record. Scope of appeal against acquittal of accused is considerably narrow and limited. Unless the judgment of acquittal is perverse, completely illegal and on perusal of evidence, no other decision could be given except that accused is guilty or there has been complete mis-reading of evidence leading to miscarriage of justice. High Court is always slow in exercise of jurisdiction under section 417, Cr.P.C. unless it finds that gross injustice had been done in administration of criminal justice."

7. It is well settled principle that the courts while dealing with acquittal appeals always remain reluctant to interfere with the finding of acquittal unless it is proved that the same are shocking ridiculous, artificial and based on misreading and non-reading of evidence. In the instant case the appellant failed to prove any such defect. On the contrary the perusal of impugned judgment reveals that the learned appellate Court after attending all legal as well as factual aspects of the case passed a well reasoned and speaking judgment, which, to our perception does not suffer from any illegality or irregularity hence is not open to any exception.

In view of aforementioned facts and circumstances of the case appeal filed by the appellant/complainant is hereby dismissed.

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Appeal dismissed.