

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL

CRIMINAL PETITION NO. 91-K OF 2020

*(On appeal against the judgment dated 12.05.2020
passed by the High Court of Sindh, Karachi in Criminal
Appeal No. 183/2019)*

Muhammad Samiullah

... Petitioner

Versus

The State

...Respondent(s)

For the Petitioner: Mr. Anis Muhammad Shahzad, AOR

For the State: Mr. Hussain Bux Baloch, Addl. P.G. Sindh

Date of Hearing: 09.02.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner was proceeded against in terms of the case registered vide FIR No. 25/2015 dated 14.07.2015 under Section 409 PPC read with Section 5(2) of Prevention of Corruption Act-II, 1947 at Police Station ACE East Zone, Karachi on the allegation that he being incharge of Laboratory of Regional Education Center, Shah Faisal Colony, Karachi had misappropriated some of the machinery/equipment. The learned Trial Court vide its judgment dated 19.03.2019 convicted the petitioner while exercising powers under Section 245(2) Cr.P.C. and sentenced him to suffer rigorous imprisonment for 4 years for the offence under Section 409 PPC. He was also directed to pay fine of Rs.25000/- or in default whereof to further suffer SI for 3 months. The petitioner was also convicted under Section 5(2) of Prevention of Corruption Act, 1947 and was sentenced to 4 years RI with a fine of Rs.25000/- or in default whereof to further undergo SI for 3 months. The sentences were ordered to run concurrently with benefit of Section 382(b) Cr.P.C. In appeal, the learned High Court of Sindh, maintained the conviction and sentences recorded by the learned Trial Court.

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced 6 witnesses. In his statement recorded under Section 342 Cr.P.C the appellant pleaded his innocence and refuted all the allegations leveled against him. However, he neither examined himself on oath under Section 340(2) Cr.P.C nor did he lead any evidence in his defence.

4. At the very outset, learned counsel for the petitioner contended that it was an unseen occurrence as nobody has seen the petitioner while stealing the equipment of the laboratory. Contends that the prosecution's case revolves around the alleged admission of the petitioner by filing an application but the fact is that the petitioner had never filed any such application. Contends that the case against the petitioner is highly doubtful and the courts below have failed to take into consideration that the prosecution has miserably failed to prove its case against the petitioner beyond any shadow of doubt and the benefit of the same must be given to the petitioner. Lastly contends that the judgments passed by the courts below are result of misreading and non-reading of prosecution evidence whereby a huge miscarriage of justice has been done.

5. On the other hand, learned Law Officer has defended the impugned judgment. He contended that the appellant has been specifically nominated in the crime report with an allegation of misappropriation of office equipment and during departmental inquiry proceedings, he had admitted his guilt and had filed an application in this regard and sought time to return the equipment, therefore, he does not deserve any leniency by this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

The perusal of record clearly reflects that there is no direct evidence available on the record, which could connect the petitioner with the commission of the crime. The prosecution's case mainly hinges upon the testimonies of four PWs, who belong to the

petitioner's department. The crux of the testimonies of the four PWs who belonged to the petitioner's department is that during the inquiry proceedings the petitioner had confessed his guilt and had submitted an application seeking time to return the articles. However, we have noted that a specific question in this regard was put to the petitioner while recording his statement under Section 342 Cr.P.C. but he categorically denied the filing of any such application or his signatures on the said application. Perusal of the record reveals that neither the disputed signatures of the petitioner were sent to the handwriting expert nor the forensic test of the same was got done to get them verified in a scientific manner and the Trial Court of its own compared the admitted signatures of the petitioner with the disputed signatures on the alleged application filed by him. There is no cavil that Article 84 of the Qanun-e-Shahadat Order, 1984 empowers the Courts to compare the disputed signatures in order to ascertain whether the same is that of the person by whom it purports to have been written or made but in the matters where no direct evidence is available and the prosecution case exclusively rests on indirect evidence especially like the present case where the prosecution's case is solely based upon the alleged admission of the petitioner then as an abundant caution the Courts while convicting an accused must adopt a safest way, which glorifies the true spirit behind the safe administration of criminal justice, which admittedly has not been done by the courts below. Even otherwise, it is settled law that in absence of sufficient evidence available on the record in the shape of oral or documentary, the evidence of handwriting expert is always considered to be most unsatisfactory, so weak and decrepit as scarcely to deserve a place in the system of jurisprudence and the courts are not to base their findings merely on expert opinion. Reliance is placed on Rubina Jamshed Vs. UBL (2005 CLD 50), Abdul Hamid Vs. Deputy Commissioner (1985 SCMR 359), Shabbir Hussain Vs. The State (1968 SCMR 1126) and Anwar Ahmad Vs. Nafis Bano (2005 SCMR 152). It is also an admitted position that at the time of registration of the crime report neither the inventory of the alleged stolen articles nor their description was given. If the foundation of the prosecution case is false and would not conform to the doctrine of fairness then the very case of the

prosecution falls to the ground. In these circumstances, a dent in the prosecution's case has been created, benefit of which must be given to the petitioner. It is a settled law that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution's case is to be resolved in favour of the accused as burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt. Before parting with the judgment, we may observe that the learned Special Judge, Anti Corruption/Trial Court while un-necessarily pressing into Section 245(2) Cr.P.C. has convicted the petitioner for the offence under Section 409 PPC. Chapter XX of the Code of Criminal Procedure deals with the trial of cases by Magistrate and Section 244 & 245 lie in this Chapter, which prescribe the procedure for trial of a warrant case instituted on a complaint. However, as the prosecution has failed to prove its case, we do not deem it appropriate to go further into this aspect of the matter.

7. *For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment. The petitioner is acquitted of the charge. He shall be released from jail forthwith unless detained in any other case.*

JUDGE

JUDGE

JUDGE

Islamabad, the
9th of February, 2022
Approved For Reporting
Khurram