**ORDER SHEET**
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**
**JUDICIAL DEPARTMENT**

**Criminal Appeal No. 263 of 2019**

**Nazar Hussain**
v.
**Shahid Mehmood, etc.**

| S. No. of order/ proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | 21.06.2022 | Mr. Qaiser Imam Chaudhry & Ahsan Shoaib Advocates for appellant,<br>Mr. Zahid Asif Chaudhry, Advocate for respondents. |

**ARBAB MUHAMMAD TAHIR J.** The instant appeal in terms of Section 10 (1) of the Pakistan Criminal Law Amendment Act, 1958 ("**Act of 1958**") is arising out of judgment dated 20.06.2019 passed by the learned Special Judge Central, Islamabad, whereby respondent No. 2 namely Muhammad Riaz was acquitted by extending benefit of doubt in Private Complaint, filed by the appellant against the said respondent and one Shahid Mehmood under Section 420, 468, 471, 109 PPC read with section 5 (2) 47 PCA.

2. It is significant to note that co-accused namely Shahid Mehmood, during the trial died and, therefore, proceedings to his extent stood abated as reveals through Para 3 of the impugned judgment.

3. Precisely, the respondent No. 2 along with the late Shahid Mehmood S.I. was indicted to trial on 08.02.2012 on the allegations that on 30.06.2010, during the hearing of a petition under section 22-A Cr.P.C., they both in connivance with each

other, produced fake report and record of the CDA before the learned Ex-Officio Justice Of Peace/ASJ, Islamabad by tempering the name of father of respondent No. 2 as Khushal instead of Khan Muhammad. In-addition the Award of rooms as per application under Section 22-A Cr.P.C was awarded on 26.12.1964, the amount of that award Rs. 2109 was received by respondent No. 2 on 30.05.1976 while he was born on 30.07.1971.

4. In order to substantiate the charge, appellant himself appeared as PW-2 and got examined Halqa Patwari namely Muhammad Iqbal as PW-1. The appellant in documentary evidence tendered copy of application under section 22-A Cr.P.C, Ex. PA/1-2, copy of decision on said application Ex. PB, inquiry report submitted by late co-accused Shahid Mehmood in the Court, Ex. PC/1-2, CDA record Mark-A, record of CDA Ex. PD/1-2, Birth Certificate of respondent No. 2 Ex. PE, Copy of application under Section 476 Cr.P.C and decision thereupon Ex. PF and Ex. PG respectively and closed the evidence. The respondent No. 2 in his statement recorded under section 342 Cr.P.C denied the evidence and had taken the plea that the complainant (*appellant*) initiated series of litigation including the instant complaint, just to usurp and get the possession of Chiraghi (Mazar/Chiragha) and none except the complainant deposed against him.

5. The learned Trial Court after hearing arguments from both the sides, dismissed the complaint vide judgment dated 20.06.2019, being impugned through the instant appeal.

6. The learned counsel for the appellant argued that the impugned judgment is result of misreading and non-reading of evidence led by the appellant as observation with regard to non-

filling of applications for summoning of record of the learned Ex-Officio JOP and that of CDA is contrary to record as the appellant not only filed the said application but the same was also allowed; that the documentary evidence tendered by the appellant was not at all taken into consideration therefore, the impugned judgment being arbitrary, perverse and non-speaking is liable to be set aside.

7. On the other hand, learned counsel for respondent No. 2, at the inception objected upon the maintainability of the instant appeal being filed by the complainant as Appeal against the order of acquittal passed by the Special Judge could only be filed by the Public Prosecutor under section 10 (2) of the Act, of 1958 as the said provision had minimized the scope of Section 417 Cr.P.C by ousting the right of appeal by a private person/aggrieved person to file appeal against the order of acquittal passed by the Special Judge. According to the learned counsel, instant appeal being not maintainable is liable to be dismissed on this score alone.

8. Learned counsel further argued that the learned trial Court after appreciating the evidence on record, acquitted the respondent No. 2 as the appellant had failed to substantiate allegation of forgery by producing any document in this respect and that there exists no cogent and strong reasons to upset the order of acquittal, therefore, appeal is liable to be dismissed. Learned counsel placed reliance upon case laws reported as 2017 SCMR 1710, 2000 SCMR 1904, 2004 P Cr.L J 422, 2010 YLR 2911 and PLD 2006 Lahore 147.

9. Heard, record perused.

10. The question as to whether a private person aggrieved of an order of acquittal passed by a Special Court could file an appeal

has been settled by the Hon'ble Supreme Court of Pakistan in *Mian Khalid Rauf v. Chaudhry Muhammad Saleem and another* (**PLD 2015 SC 348**). It was held that:-

> "Consequently it would be quite appropriate to observe that any aggrieved person whether it be the Federal or the Provincial Government or an accused **or a Complainant** could approach the High Court in appeal against either an order of conviction or acquittal or for that matter for the purpose of enhancement of a sentence passed by any Special Judge appointed under the Act 1958 and as much should be read into Section 10(1) of the Act. In this regard, it may also be observed that perhaps this was the legislative intent, as Section 10(2) of the Act was added to cater for the right of Crl. Appeal No.70/2009 5 the Federal Government to file an appeal against acquittal as such right was not given to it under Section 417, Cr.P.C."

11. As held by the Hon'ble Apex Court ibid, any aggrieved person whether it be the Federal Government, Provincial Government, an accused **or complainant**, can file an appeal against conviction, **acquittal** or for enhancement of sentence, **against the order passed by any Special Judge** appointed under the Act of 1958, therefore, objection to this effect put-forth by the learned counsel for respondent is accordingly repelled.

12. Adverting to the merits, it is the stance of the appellant that the documentary evidence was not taken into consideration at all; therefore, impugned judgment being sketchy, result of misreading and non-reading of the evidence is liable to be set aside. Evidence led by the appellant has carefully been gone through and it is noticed that mere statement of the appellant itself vitiates the entire charge.

13. It was the appellant who himself in cross-examination admitted that respondent Riaz is not a public servant and he did

not give any gratification to any public servant nor he received the same on behalf of public servant. The appellant further admitted that no forged document was prepared by the respondent in his presence; that he has no verdict or order of any court of law wherein it has been stated that any forged document was ever produced by the respondent Riaz in the Court. The appellant further explained that CDA authorities did not initiate any criminal proceeding against any person regarding preparing of alleged CDA documents. The appellant admitted that earlier he filed a complaint under the Illegal Dispossession Act against the respondent Riaz wherein the latter was acquitted.

14. As noted above, if the contention of the learned counsel regarding non reading and taking into consideration to the documentary evidence is presumed as correct, even then, the sole testimony of the appellant, highlighted above, would be sufficient to discard the allegation of commission of forgery and using of any forged documents for the benefit by the respondent Riaz. The appellant, in his statement, himself vanished the allegations. In absence of any forged document, the declaration of the same as such by the competent forum, its production and use by the respondent Riaz and that the same were held so by the issuing authority/CDA, there was no justification to hold the respondent guilty for the offence charged particularly when the element of malice or false implication was there when the appellant in cross examination himself asserted that his complaint under the Illegal Dispossession Act remained unsuccessful against the respondent Riaz.

15. It is a settled law that an accused who is acquitted by any court of competent jurisdiction carries double presumption of innocence, strong and cogent reasons are required to dislodge such presumption. Reliance is placed upon case laws reported as Jehangir V. Aminullah (**2010 SCMR 491**), Mst. Anwar Begum

V. Akhtar Hussain alias Kaka (**2017 SCMR 1710**), Zaheer Sadiq V. Muhammad Ijaz (**2017 SCMR 2007**), Muhammad Azam V. State (**2009 SCMR 1232**), Muhammad Shafi alias Kuddoo V. State (**2019 SCMR 1045**).

16. Moreover, in the cases of **Sajawal Khan and 4 others V. Amir Sultan and 11 others (2016 P.Cr.LJ 929)** and **Muhammad Shaft V. The State and others *(1992 P.Cr.LJ 1391)***, petition for special leave to appeal assailing order of acquittal was dismissed by observing that "*when an accused is acquitted of the charge, he would enjoy double presumption of innocence in acquittal appeal under Section 417 Cr.P.C which could not be dislodged.*"

17. In view of above, there exists no justification to call for record and re-appreciate the evidence which would be a futile exercise as no apparent or even remote infirmity has been pointed out in the impugned judgment. Consequently the instant application is accordingly **dismissed** and leave refused.

**(ARBAB MUHAMMAD TAHIR)**
**JUDGE**

Announced in open Court on ____07.2022.

**JUDGE**

**//Kamran//**