ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No. 290 of 2019

Abdul Raheem Farooq
v.
Javed Mehmood.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	31.10.2022	Syed Ishtiaq Haider, Advocate for the appellant,

ARBAB MUHAMMAD TAHIR J. Through the instant appeal in terms of Section 417(2-A) of the Code of Criminal Procedure 1898, '**appellant**' namely *Abdul Reheem Farooq* *(complainant in main case)* impugns Judgment dated 15.05.2019, passed by the learned Judicial Magistrate Section-30 Islamabad (West) whereby *Javed Mehmood Malik* ('**respondent**') was acquitted in case FIR No.107, dated 25.03.2016, under Section 420 PPC, registered at Police Station Aabpara, Islamabad.

2. Tersely, the subject FIR *(Ex. PE)* stood registered on the complaint *(Ex .PA)*of the appellant. It was alleged therein that his grandfather namely *Abdul Samad* had good relations with the respondent due to which the former had given an amount of Rs.30,00,000/- to the latter under a settlement that the respondent would purchase land in the name of his grandfather and thereafter alienate it and then the sale amount would be disbursed equally; that the respondent purchased land measuring 87 Kanal in MauzaWani, Tehsil Taxila District Rawalpindi but got prepared the documents i.e. Iqrar-nama and General Power of Attorney in his own name; that subsequently whenever the respondent was asked to transfer the land, he used to linger on the matter on one pretext or the other; that during that period, the respondent had paid only an amount of

Rs.14,50,000/-; that on 12.03.2015 when the respondent was informed about initiation of civil and criminal action, he promised to pay the outstanding amount after selling the property or else would transfer the land and that neither the respondent transferred the land nor paid the amount and thus committed fraud.

3. After due investigation, report in terms of Section 173 Cr PC was submitted against the respondent before the court of competent jurisdiction where he was formally charge-sheeted on 23.11.2016. In order to substantiate the charge, appellant appeared as PW-1 wherein he testified complaint Ex. PA. The witnesses also tendered in evidence pay-orders, Mark-A to Mark-G, copy of agreement which was taken in possession through recovery memo Ex. PB. The other witness of the appellant was Bilal Raza, stamp vendor, testified issuance of stamp paper and also copy of relevant register, taken in possession through recovery memo Ex. PC and Mark-H. PW-3 Muhammad Naseem Khan testified agreement Ex. PB. PW-4 Zafar Iqbal is witness of recovery memo Ex. PC/1 pertaining to relevant papers of agreement Ex. PB. PW-5 Fakhar Abbas ASI deposed to prove the details of investigation conducted by him.

4. After the recording of above prosecution evidence, the respondent was examined under section 342 Cr PC wherein he denied the prosecution evidence and has taken the plea that *the PWs are interested and have launched proceedings against him dishonestly and maliciously without any basis*. However, he opted not to make his statement on oath under section 340(2) Cr PC or to produce any witness in his defence. The learned Trial Court, after hearing the parties, acquitted the respondent vide impugned judgment, hence instant appeal.

5. The learned counsel while reiterating the stance contained in Complaint Ex.PA further asserted that the emphasis of the learned Trial Court had been on the events, happened prior to execution of the agreement while as per said agreement, the respondent not only admitted his fault but promised to pay the amount and to transfer the land but failed to honour his commitment, thus element of cheating and fraud stood proved; that reliance on part of cross examination of the appellant regarding his ineligibility to deal with the issue as per family settlement, is erroneous and that the witnesses and the documentary evidence amply established the charge against the respondent, therefore, impugned judgment is liable to be set aside.

6. Arguments heard, record perused.

7. The respondent was indicted to trial for offence under section 420 PPC which for ease of reference is reproduced:-

> **420. Cheating and dishonestly inducing delivery of property**.-- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

8. In order to establish a charge under the provision ibid, it is mandatory to establish that the accused has cheated the complainant and dishonestly induced him to deliver any property or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed and which is capable of being converted into a valuable security. The other necessary ingredient is that the method of dishonesty or deception

should be stated. The evidence should indicate the element of *mens rea* to constitute the offence under section 420 PPC.

9. In the present case, the evidence comprised of statement of appellant (complainant) PW-1, stamp vendor Bilal Raza PW-2, Muhammad Naseem PW-3, PW-4 Zafar iqbal HC and PW-5 Fakhar Abbas, ASI. The complainant is Exh. PA while agreement/Iqrar Nama is Exh. PC.

10. Much stress had been on the point that the learned trial Court had given undue weightage to the events happened prior to execution of agreement Ex. PC while as per Exh. PC, the respondent had admitted his guilt and that the respondent with dishonest intention not only failed to transfer the land in the name of the appellant but also failed to pay the outstanding amount. In this respect, the statement of the appellant and the contents of Ex. PC are crucial. The cross-examination of the appellant reveals the following facts:-

> *"---my grandfather Abdul Samad died in December, 2008 ---- -- it is correct that prior to year 2008, my grandfather had not filed any suit against the accused in any Court ---- it is correct that even after the year 2008, the legal heirs of Abdul Samad had not filed any suit against the accused -----himself stated that the accused had paid Rs. 14,50,000/------ it is correct that I filed a suit titled Abdul Raheem Farooq v. Javed Mehmood Malik, which is still pending ----- it is correct that the accused had not obtained any amount or land from him personally or made any transaction with him----- it is correct that the accused had not directly committed any fraud with him."*

11. As per agreement Ex. PC, the original deal was struck way-back in January, 1997 i.e. about eleven (11) years ago before the death of the principal (grandfather of the appellant) who died in the year 2008. It is specifically envisaged in Exh. PC, that the amount, received by the late Abdul Samad in different times was Rs. 14,50,000/-.

12. By putting the statement of the appellant in juxtaposition with contents of Ex. PC, it is surfaced that the original deal was struck in the year 1997 by the late grandfather of the appellant ("**principal**") with the respondent for the sale purchase of landed property; that pursuant to said agreement, amount of Rs. 14,50,000/- was paid by the respondent which the appellant himself admitted in cross examination and in Ex. PC as well; the principal remained alive till 2008 i.e. for eleven years after entering into original agreement with the respondent but never opted to lodge any complaint regarding alleged fraud or to file any suit against the respondent. The agreement Ex. PC was entered into between the appellant and respondent in march, 2015 while FIR was lodged after about a year in March, 2016. It is also an admitted fact that in respect of the alleged breach of agreement, Ex. PC, the appellant had filed a suit against the respondent.

13. In presence of above evidence/admitted facts, the respondent cannot be held guilty for the offence charged on the ground that by entering into agreement Ex. PC, the respondent had admitted his guilt i.e. *commission of fraud* and that failure to abide by the terms and conditions of Ex. PC, constitute offence under section 420-PPC. The writing Ex. PC on the face of it is an agreement for the breach of which the appellant already initiated civil action against the respondent. The refusal to honor an agreement or to pay back the amount did not prove mens rea as the dispute between the parties was/is of civil in nature and therefore, a party could not be allowed to use criminal proceedings as a coercive measures. Reliance is placed upon case of **Shaukat Ali v. The state (PLD 1987 Lahore 116)** wherein it was held that:-

> *"The above facts would clearly indicate that the dispute between the parties was of civil nature and stood settled in proceedings before Senior Civil Judge, Islamabad. The present proceedings against Shaukat Ali are based on the*

> *allegation that he after executing agreement-to-sell did not actually sell the land nor return the advance money, received by him at the time of the execution of the said agreement. These facts do not constitute any criminal liability on the part of Shaukat Ali accused. Muhammad Ashiq Admittedly received back Rs. 1.00.000/- from Shaukat Ali and undertook to withdraw the present criminal proceedings. It seems that after institution of the civil suit, the criminal proceedings were initiated by Muhammad Ashiq complainant to put pressure on Shaukat Ali to settle the dispute. As a matter of fact the complainant did not succeed in that effort.* ***The only allegation against the Shaukat Ali (petitioner) was that he did not honor the agreement to sell dated 14.06.1981 the refusal to honor an agreement-to-sell or to pay back the advance money did not prove mens rea. The dispute between the parties was purely of civil nature and as such a party cannot be permitted to use criminal proceedings as a coercive measure.****"*
>
> **(Emphasis Added)**

14. Another important aspect of the matter is that in order to constitute offence of section 420-PPC, it is mandatory to explore the manner of the deception (the act of hiding the truth, especially to get an advantage) allegedly practiced by the accused. In the present case, neither the complaint Ex. PA nor did the agreement Ex. PC explore any element of deception, allegedly employed by the respondent in order to get advantage. In this respect, reliance is placed upon case of ***M.E.N. Rewail v. The State (PLD 1987 SC 257)*****.**

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. The State* **(2009 SCMR 1232)** and *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 PCr.L.J 929)** and *Muhammad Shaft v. The State and others* **(1992 PCr. L.J 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, the impugned judgment dated 15.05.2019 in the backdrop of evidence besides the law on the subject is well reasoned and does not call for any interference. Consequently, instant appeal fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//*Kamran*//