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

P.S.L.A. No.19 of 2019

Syed Zahid Hussain

Versus

Br. (R) Jameel Anwar and 2 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.05.2022	Mr. Muhammad Shoaib Ch., Advocate for applicant. Mr. Zeshan Babar, learned State Counsel with Sajid Cheema DSP (Legal) and Nasrullah ASI. Through the instant application, applicant (*Syed Zahid Hussain*) seeks leave to appeal in terms of Section 417 (2) Cr.P.C. against the judgment dated 28.05.2019, passed by learned Judicial Magistrate Section-30, Islamabad (West), whereby in his Private Complaint under Section 382, 427, 454, and 455 PPC, respondents were acquitted of the charge. 2. Facts, relevant for the disposal of instant application, are that the applicant filed a private complaint with the allegations that on 02.07.2014 at about 02:00-03:00 p.m. the respondents alongwith 20-25 persons armed with weapons, hamours and spade committed house breaking after having made preparation to cause hurt, started breaking his shop that he had obtained on rent, committed theft of valuable that includes TVs, LCDs, DVDs, Cameras, Mobile Phones, Lap-top etc.

3. In order to substantiate the complaint, applicant appeared as PW-1 and tendered documentary evidence Mark-A to Mark-J comprising photocopies of utilities bills, civil suit and application to I.G. for the registration of FIR.

4. The respondents in their respective statements under Section 342 Cr.P.C denied the allegations and pleaded that no such incident took place. They have no concern with the commission of offence. The learned Trial Court after hearing the parties, acquitted the respondents vide judgment dated 28.05.2019 hence, the instant P.S.L.A.

5. Learned counsel contends that ample evidence in the shape of statement of the applicant and the documents Mark-A to Mark-J is available on record whereby the allegation stood established against the respondents, therefore, there was no justification to acquit them contrary to the evidence on record.

6. On the contrary, learned State Counsel stood behind the impugned judgment and prays for dismissal of the instant application.

7. Heard, record examined.

8. In order to upset an order of acquittal, it is mandatory to explore non-reading, misreading of the evidence besides departure from the law on the subject or that the findings arrived at are perverse, fanciful and erroneous.

9. In the present case, the respondents were accused of commission of theft, entering the premises duly armed with intention to cause hurt and causing damage to the articles lying in the shop.

10. The perusal of impugned judgment reveals that the statement of the complainant was short of material particular as he did not state anything about the commission of theft of his articles by the respondents or that the latter were duly equipped with weapons. The evidence was also short of details regarding damage to the articles lying in the shop.

11. The record further reveals that the applicant got registered FIR No. 461 dated 17.10.2014 at Police Station Kohsar, Islamabad on the same allegations regarding the same occurrence wherein the police recommended cancellation of the said FIR which was agreed by the learned Judicial Magistrate, Islamabad (West) vide order dated 25.10.2015.

12. It appears that the case of the applicant rests on the report of Local Commission Mark-G, whereby it was reported that the respondents in collusion with Police and CDA Officials in violation of injunctive order got demolished the shop but as per the defence version, the suit of the applicant was dismissed, his complaint under the Illegal Dispossession Act also met the same fate while resort to this Court by the applicant also did not find favour and it was observed that the shop was a temporary structure built with the iron bars and according to the CDA as well as owner of building the construction was neither approved at the time of construction of the building nor subsequently authorized as the Authority refused to renew the lease of building till the shop in question was removed. The alleged offence, as a matter of fact was an action against the illegal encroachment in

terms of Regulation 18 of the Islamabad Building Regulations 1963.

13. As mentioned above, the evidence of the applicant on the charge of commission of theft of valuable electronic articles, use of fire-arms and breaking of the shop with intention to cause hurt was highly discrepant, therefore, in absence of any illegality or misreading or non-reading of evidence, impugned judgment needs no interference.

14. 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. AkhtarHussain 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)***.

15. 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.*"

16. 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

//Kamran//