JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Revision No. 111 of 2019

Riaz Khan
Versus
The State, etc.

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Appellant By	:	Shams Iqbal, Advocate
Respondents By	:	Mr. Nadeem Mukhtar Ch., Advocate
State By	:	Mian Zain Qureshi, State Counsel. Mr. Sajjad ASI.
Date of Hearing	:	25.10.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant criminal revision under section 435 read with section 439 of the Code of Criminal Procedure, 1898 (**"Cr.P.C"**), petitioner/convict namely *Riaz Khan* impugns judgments dated 28.06.2019 and 02.10.2019 passed by the learned Judicial Magistrate 1st Class and the learned Additional Sessions Judge-IX, West Islamabad respectively, whereby he was convicted in case FIR No. 31 dated 16.01.2015 under sections 420, 468 & 471 PPC, Police Station Kohsar, Islamabad and sentenced to undergo Two Years R.I. with fine of Rs. 20,000/- each, in default to pay the amount of fine, to further undergo one month S.I with benefit of section 382 Cr.P.C.

2. In order to set the law in motion, respondent No. 2 namely *Syed Yousaf Mubashar* (herein after to be referred as **"complainant"**) lodged a complaint (Exh. PB) to the SHO P.S. Kohsar, Islamabad with the allegations that:-

> "It is submitted that I made a Guest House, in VIP Plaza F-10 Markaz, and appointed Riaz Khan, as caretaker. Over a passage of time, it came into my notice that Riaz Khan, is doing business of prostitution and narcotics, in my Guest House.
> Keeping in view the above situation, I dismissed him and informed that his services are no more required. Thereafter, Riaz Khan, make a fake lease agreement and inscribe my signatures.
> It is therefore, requested that an immediate legal action may kindly be taken against him under my intimation.

3. On the complaint (Exh. PB) *ibid*, formal FIR Exh. PC was registered. The matter was investigated by Shafqat Ullah ASI who entered the witness box as PW-2. According to the said witness, on receipt of complaint Exh. PB on 16.01.2015, he registered formal FIR Exh. PC, on the next day i.e. 17.01.2015 inspected the site and prepared rough site plan Exh. PD, on 26.01.2015, petitioner joined the investigation, on 11.02.2013 the I.O transmitted the question document i.e. lease agreement, Exh. PA to the FIA for opinion of hand writing expert, on 06.03.2015 said report was received which the I.O had taken in possession through memo Exh. PF, he also recorded the statements of prosecution witnesses and after completion of investigation, sent the report under section 173 Cr.P.C before the court of competent jurisdiction for trail.

4. The complainant in order to substantiate the allegations appeared as PW-1, wherein he corroborated the contents of complaint Ex. PB and reiterated the allegations that the petitioner prepared forged lease agreement while his suit and appeal were dismissed.

5. After the recording of prosecution evidence, the petitioner was examined under section 342 Cr.P.C wherein he denied the prosecution evidence. On the aspect of allegation qua preparation of forged lease agreement Exh. PA, the petitioner in reply to question No. 2 asserted that "*in fact the agreement Exh. PA was prepared on the business letter head of the complainant the same was prepared by the complainant and got on the same signature of the marginal witnesses, one of the witness namely Muhammad Ruaf Khan was doing construction work in the house complainant that time, from whom complainant secured his signature as marginal witness as Exh. PA. The other witness namely Arshad Mehmood was present in the house of complainant, who on the request of the complainant put signature as marginal witness on Exh. PA.* ***Complainant after ascribing his signature on Exh. PA also affixed his stamp showing his name and business address***. *I am in possession of the Guest House prior to execution of Exh. PA as tenant, complainant just want to get vacate the Guest House from me got registered instant false case against me. I am in*

possession of Guest House prior to execution of agreement Exh. PA. I never secured possession of the Guest House on the force of the agreement Exh. PA."

6. The defence plea of the petitioner had been to the effect that he was in possession of the Guest House, owned by the complainant even prior to execution of agreement Exh. PA as tenant, it was the complainant who put his signature on Exh. PA and also affixed his stamp containing his business particulars. According to the petitioner, the complainant in order to get vacate the premises without recourse to law, planted concocted story of preparation of forged and fabricated agreement and that prior to it, he had been paying monthly rent to the complainant regularly besides payment of utility bills.

7. In order to substantiate the defence plea, petitioner got recorded his statement in terms of section 340 (2) Cr.P.C and also got examined one Faiz Ahmed, as DW-2. In documentary evidence tendered receipt Exh. DW-1 as other documents Mark-A Mark-G, Mark-DG, Mark-DF, Exh. DB, Exh. DH and Exh. DF. The learned trial Court after hearing learned counsel for the parties, convicted and sentenced the petitioner vide judgment dated 28.06.2018 in terms noted in Para 1 ibid. The petitioner assailed his conviction and sentence through appeal but the same was dismissed vide judgment dated 02.10.2019, hence instant revision petition.

8. Learned counsel for the petitioner argued that the prosecution has failed to prove the charge against the petitioner as the allegation of use of forged lease agreement has not been proved, while the petitioner in his statement in terms of section 340 (2) Cr.P.C had given the complete details as to how and when the subject property came in to his possession. According to the learned counsel, in cross examination by the prosecution, the petitioner has explained the details that also include that the premises were handed over to him under an agreement in the year 2010 and that the said agreement was ascribed on a stamp paper. Further argued that the statement of the complainant is also not worthy of credence while the handwriting expert report, retains no evidentiary value as the expert was not examined to substantiate the contents of the report for which the

petitioner had filed an application but the same was dismissed. According to the learned counsel, the prosecution has failed to substantiate the charge against the petitioner by producing evidence of unimpeachable character, the benefit of which should be extended to the petitioner. Learned counsel fortified his submission by placing reliance upon case law reported as ***2021 SCMR 873, 2019 SCMR 194, 2015 SCMR 284, 2013 PCr. LJ 1737, 1991 MLD 1937 and 2019 CLC 1693.***

9. On the other hand, learned State counsel assisted by counsel for the complainant repelled the above submissions by contending that the prosecution successfully proved its case against the petitioner beyond any reasonable doubt, that concurrent findings arrived at by the two learned Courts are in accordance with evidence on record while the petitioner has failed to point any misreading or non-reading of evidence therefore, petition is liable to be dismissed.

10. Heard the learned counsel for the petitioner, learned State Counsel, counsel for the complainant and examined the record besides the evidence with able assistance.

11. There is no second opinion that the prosecution is under obligation to discharge onus to substantiate the allegations by producing evidence of unimpeachable character while any loophole or ill-defence cannot be made basis to hold an accused person guilty for the offence charged. The responsibility to substantiate the charge, therefore, exclusively rests upon the prosecution.

12. In the present case, the allegations leveled by the complainant had been to the effect that he appointed the petitioner as caretaker of his Guest House, who started doing business of prostitution and narcotics in the Guest House, he dismissed the petitioner on that account and that thereafter petitioner make a false lease agreement and ascribed his signatures. The petitioner was indicted to

trial for the offence of *"cheating" "forgery for the purpose of cheating and using as genuine forged document, knowing to be forged one."*

13. It is significant to note that the complainant while appearing as PW-1 was subjected to lengthy cross examination by the learned defence counsel. Perusal of the same would show that the complainant *denied that he rented out his Guest House to the petitioner ----- that he had been away to USA, therefore, Special Attorney was given to the petitioner as he was caretaker, however, subsequently he got the special attorney cancelled ---- that petitioner had been his employee and that he expelled out the petitioner few days before preparation of forged lease agreement ---- that he did not receive any rent of the building from the petitioner.* The witness denied *that he prepared the forged lease agreement and that the same contained his signatures and stamp.*

14. The complainant despite lengthy cross examination stood firm that it was the petitioner who prepared forged lease agreement Exh. PA and then used it as genuine in order to cover up his illegal possession over the property of the complainant. The alleged falsity of Exh. PA is supported by the report of the expert, whereby on examination of Exh. PA, the signatures upon the same do not found correspond to the signature of the complainant. It had been argued by learned counsel for the petitioner that the report of the expert retains no evidentiary value and therefore, could not be relied upon. This argument retains no force, for the reason that in presence of confidence inspiring testimony of the complainant which is supported by the two documents i.e. Ex. PA lease agreement and the other document Exh. P2, *wherein the status of the petitioner is mentioned as employee*, the wroth of handwriting expert report cannot be brushed aside as, nonetheless, it corroborates the rest of the prosecution evidence.

15. And, when the defence plea is taken into consideration by putting the same in juxtaposition with that of the prosecution evidence, leaves no room to take view contrary to one taken by the learned trial Court and concurred by the

learned appellate Court. It was also for the reason that there is an admission on the part of the petitioner regarding his possession of the subject premises and preparation of lease agreement Exh. PA. It was the case of the petitioner that the complainant himself put his signatures on Exh. PA besides his stamp. The existence of the document and possession thereunder by the petitioner over the subject premises are the facts that the petitioner himself admit. The controversy had been to the effect that either the complainant signed Exh. PA as pleaded by the petitioner or it was a forged document prepared by the petitioner. The statement of the petitioner got recorded as PW-1, lengthy cross examination, the contents of the crucial document Exh. PA wherein it is mentioned that an amount of Rs. 25 lac had been adjusted for future rent for three years, the other stamp paper Exh. P-2 and the report of handwriting expert unambiguously established the charge against the petitioner.

16. The learned counsel for the petitioner has not been able to make out a case warranting interference in the concurrent orders of conviction and sentence which in the light of the evidence on record is just and proper and, therefore, do not call for any interfere. Consequently instant criminal revision fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on ____11.2022.

JUDGE

//Kamran//