JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 137 of 2021

Muhammad Riaz

Versus

Rafaqat Hussain & another.

Date of Hearing	:	16.05.2022.
Appellant by	:	Ch. Imtiaz Ahmed Gujjar, Advocate
State by	:	Mr. Shahbaz Shah, State

ARBAB MUHAMMAD TAHIR, J. The instant criminal Appeal under Section 417 (2-A) Cr.P.C is arising out of Judgment dated 17.03.2021, passed by the learned Judicial Magistrate Section-30 Islamabad-East whereby respondent No. 1 (*Rafaqat Hussain*) was acquitted in case FIR No.28, dated 27.01.2014 under Section 406, 420. 468, 471, & 34 PPC registered at Police Station Bhara-Kahu, Islamabad.

2. Precisely, respondent No. 1 *(Rafqat Hussain*) was indicted to trial on 08.01.2018 on the allegations of cheating, commission of forgery and using the vehicle as genuine, under Section 420, 468 & 471 PPC. As per the allegations set forth in the complaint, on 15.10.2012, respondent No. 1 with whom the appellant/complainant had acquaintance, borrowed Rs. 240,000/- on the pretext for proceeding abroad and in-return, handed over Suzuki-Mehran Model 2011 registration No. AUC-281, subsequently intercepted by the Staff of Anti Car Lifting Cell, Lahore and pursuant to chemical treatment, it was found tempered. The complainant/appellant had alleged that the respondent No. 2 by committing fraud had handed over a vehicle of having dubious identity and thus committed the offence.

3. At the trial, complainant himself appeared as PW-1 and got examined Muhammad Iqbal and Arshad Munir as PW-2 and PW-3 respectively while Arshad Ali inspector appeared as PW-4. FIR is Ex. PA,

site plan Ex. PB, report of FSL Ex. PC. The respondent No. 2 in his statement under Section 342 Cr.P.C denied the prosecution evidence, however, opted not to make his statement on oath or to produce any defence evidence. The learned Trial court after hearing learned counsel for the respondent No. 1 and learned Prosecutor, acquitted the respondent No. 1 vide judgment dated 17.03.2021, being impugned through the instant appeal.

4. Learned counsel for the appellant argued that the prosecution evidence successfully proved the chain of events with regard to taking amount, handing over the vehicle and its dubious identity reveals through Ex. PC, report of FSL, there was no justification to acquit the respondent No. 1. Further argued that the impugned judgment is short of reasoning to the extent of offence of criminal breach of trust envisaged in section 406 PPC as prosecution evidence amply established ingredients of criminal breach of trust therefore, impugned judgment is liable to set aside.

5. Arguments heard, record perused.

6. Perusal of record reveals that there is ample admissions on the part of complainant/appellant on material aspects which have been highlighted in paragraph No. 17 of the impugned judgment particularly to the effect that *the appellant/complainant had no documentary proof respecting handing over of the vehicle to him by the respondent No.* 1; *regarding lending of the amount to the respondent No. 1* and that *he had no document which could be made basis to link the respondent No. 1 with the alleged offenc*e. The prosecution evidence did not establish nexus of the respondent No. 1 on the aspect of forgery and preparation of forged document of the vehicle.

7. In addition, the case property which, according to the appellant, was entrusted to him as surety against the payment made to the respondent No. 1 was not produced in the Court. This glaring flaw itself is sufficient to create serious dent to the veracity of the allegations as the subject matter that had been alleged to be having dubious identity and tempered status and made basis to initiate criminal action against the respondent No. 1 was not produced in support of the allegations.

8. Coming to the submission with regard to lack of findings under section 406 PPC, the offence of criminal breach of trust as defined under

S.405, P.P.C, punishable under S.406, P.P.C. was to be committed if the property (money) was given on trust and the same property was not returned. In the present case the advancement of money was not as a trust but as per allegations, the respondent No. 1 had borrowed Rs. 240000/- as loan in presence of witnesses and as surety for the return of the said amount handed over the vehicle. The handing over of the vehicle is not established through the statement of the appellant while the vehicle itself was not produced. These aspects were duly observed by the learned trial Court in paragraph No. 17 and 20 of the impugned judgment, therefore, the ground urged is not available to the appellant.

9. It is settled principle that an accused who earns acquittal after full length trial carries double presumption of innocence and strong and cogent reasons are required to dislodge such presumption. Guidance is taken from the law laid down in the case laws reported as ***2019 SCMR 1045, 2017 SCMR 1710, 2010 SCMR 491 and 2009 SCMR 1232.***

10 In the case of *Zulfiqar Ali v. Imtiaz and others* (**2019 SCMR 1315**) the Hon'ble Apex Court observed that:-

> *"It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view, unless, the impugned view is found on the fringes of impo0ssibility, resulting into miscarriage of justice, freedom cannot be recalled".*

11. In view of above, impugned judgment does not suffer from any illegality or material irregularity. Consequently instant appeal fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//