JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Appeal No.389 of 2023

Syed Tahir Zahoor
Vs.
Muhammad Iqbal another

Appellant by:	Mr. Munir Bashir Ansari, Advocate.
Respondent No.1 by:	Raja Asim Iftikhar, Advocate.
Respondent No.2/State	Rana Ali Raza, State Counsel. Shoukat Gujjar, ASI, P.S Shalimar, Islamabad.
Date of Hearing:	**24.02.2025.**

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INAAM AMEEN MINHAS, J.- This appeal has been directed against the judgment dated 30.09.2023 **("Impugned Judgment")**, passed by learned Judicial Magistrate Section 30, Islamabad-East **("Trial Court")**, whereby respondent No.1 was tried in case FIR No.115/2017, dated 05.05.2017, under sections 419, 420, 467, 468, 471 PPC, registered at Police Station Shalimar, Islamabad and was acquitted.

2. The facts in brief leading to the lodging of FIR are that the appellant/complainant Syed Muhammad Tahir Zahoor reported the matter to the police that his unmarried sister namely Mst. Shahnaz Iqbal was a Professor (BS-19) in Education department, who had died on 17.10.2007. The appellant/complainant along with his deceased sister and other family members was residing on the ground portion of House No.367, Street No.71, Sector F-11, Islamabad. Upper portion of the said house was rented to respondent No.1/accused Muhammad Iqbal by his

sister being owner since 2006. Sister of the appellant was a cancer patient and in the year 2007 she also became a kidney patient, due to which she was bedridden and the appellant/complainant and his family members were looking after her. Accused Sardar Muhammad Fafique Gujjar and respondent No.1/accused belong to Qabza Mafia Group, who in connivance with each other prepared a fake sale agreement dated 21.06.2007 in respect of the said house with the contents that Mst. Shahnaz Iqbal has sold out her house to accused Sardar Rafique Gujjar. The stamp paper of the fake sale agreement was got issued from District Sargodha, on which a fake stamp of Notary Public was affixed, whereas sister of the appellant/complainant in the year 2007 was not in position to travel rather she was bedridden. That thereafter the accused Sardar Rafique by pretending himself as owner of the house prepared another sale agreement in favour of respondent No.1/accused. That both the accused have committed fraud and cheating by preparing forged documents, hence this case.

3. On conclusion of the investigation report under section 173, Cr.P.C was submitted before Trial Court, where charge was framed, evidence was recorded and after hearing the arguments of learned counsel for the parties, respondent No.1/accused was acquitted from the case.

4. Learned counsel for the appellant contended that none of the PWs had any enmity with respondent No.1; that sufficient incriminating material is available on record to prove that the accused used to prepare forged documents. He also submitted that the prosecution has proved its

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case beyond any shadow of doubt, hence, respondent No.1/accused may be convicted in this case.

5. On the other hand, learned counsel for respondent No.1 argued that Mst. Shahnaz Iqbal herself executed sale agreement with respondent No.1 in presence of marginal witnesses, received the sale consideration and handed over possession of upper portion of the said house; that Mst Shahnaz Iqbal never challenged the sale agreement in her lifetime, however, the appellant challenged the same just to blackmail respondent No.1. He further submitted that nothing is available on record to establish that the alleged sale agreement is fake and forged; that lawful possession of respondent No.1 over the upper portion of house is proved from the report of Bailiff. He further argued that respondent No.1 was neither involved in preparing of the sale agreement nor he was vendor/vendee; that the appellant got registered this fake, false and frivolous case just to harass and blackmail, whereas there is no evidence at all that respondent No.1 had committed the offence; that no eye witness has been produced during trial; that the prosecution has also failed to bring any material evidence regarding preparation and using of the fake sale agreement; that the case against respondent No.1 is highly doubtful, therefore, he has rightly been acquitted by Trial Court.

6. I have heard learned counsel for the parties and perused the record.

7. Perusal of the FIR reveals that the accused namely Sardar Muhammad Rafiq Gujjar and respondent No.1 were jointly charged

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with the commission of the offence of cheating and the preparation of a forged sale agreement dated 21.06.2007 (Exh.PC-1) allegedly executed in connivance with each other. However, during the course of the investigation, the prosecution failed to collect any incriminating material to substantiate the allegations against respondent No.1. Consequently, he was declared innocent and was placed in column No. 2 of the report under section 173, Cr.P.C. Furthermore, during trial no material evidence was brought on record to establish any criminal liability against respondent No.1 and created serious doubt, which goes in favour of respondent No.1.

8. Record further reveals that with respect to the alleged forged signature of the landlady, no expert handwriting analysis or corroborative evidence was presented to substantiate the claim of forgery. The prosecution heavily relied upon the report of the Record Keeper, ADCR Office, Sargodha Exh.PJ. However, the record keeper was neither presented as a witness nor authenticity of the report was verified from any independent or official source. This failure to substantiate the evidentiary value of the document further weakens the prosecution's case regarding its credibility and admissibility in legal proceedings.

9. While recording the statement of the accused under Section 342, Cr.P.C. the prosecution failed to put the incriminating evidence, including Exh.PC/1-10 and Exh.PJ to respondent No.1. As per the established legal principles declared by the Honourable Supreme Court of Pakistan, any evidence not brought to the direct attention of the

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accused during his statement under Section 342, Cr.P.C. cannot be considered against him, thereby making the said evidence inadmissible. Reliance is placed upon ***Imtiaz alias TAJ vs. State*****, (2018 SCMR 344),** ***Dr. Hameed Waqar vs. State*****, (2020 SCMR 321)** and ***Haji Nawaz vs. State*****, (2020 SCMR 687).**

10. In addition to above, the prosecution failed to bring any direct witness to establish the alleged offence and the appellant set the law into motion while relying upon statements of unidentified individuals, who did not appear before Trial Court. As such there is no concrete evidence to prove the allegations against respondent No.1 beyond any reasonable doubt. It is a well-established legal principle that if any single piece of evidence creates doubt, it is sufficient for the acquittal.

11. It is also a settled principle of law that the approach for the reappraisal of evidence in an appeal against acquittal differs from that in an appeal against conviction. The accused is always presumed to be innocent unless proven guilty beyond a reasonable doubt. Reliance is placed upon ***Ghulam Sikandar and another vs. Mamaraz Khan and others*** **(PLD 1985 SC 11).**

12. The Appellate Court does not interfere with an appeal against acquittal unless Trial Court's findings are perverse, arbitrary, or based on a misreading of evidence, which results in a miscarriage of justice. In the present appeal. Trial Court has properly appreciated the evidence and no glaring illegality or misreading of material facts has been found. Respondent No.1 is, therefore, entitled to the double presumption of innocence and no compelling reason exists to interfere with the

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acquittal. Furthermore, the State has not challenged the acquittal, reinforcing the view that no miscarriage of justice has occurred. Reliance is placed upon ***State vs. Abdul Khaliq*****, (PLD 2011 SC 554),** ***Jehangir vs. Aminullah*****, (2010 SCMR 491)** and **Muhammad Sharif vs. The State, (PLD 1999 SC 1063)**.

13. In view of the above discussion, the instant appeal bears no merit, therefore, **dismissed.** Impugned Judgment of Trial Court is **upheld**.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 28.02.2025.

JUDGE

R.Anjam

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