ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Appeal No.442 of 2024

Makhdoom Ali Raza Gillani

Versus

The State and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.02.2025	Mr. Shaukat Mehmood Malik, Advocate for the appellant.

Through the instant appeal, the appellant has assailed the order dated 07.11.2024**("Impugned Order")** passed by learned Sessions Judge, Islamabad-West **("Revisional Court")**, whereby revision petition filed by respondent No.2 was allowed and he was acquitted u/s 249-A, Cr.P.C from case FIR No.373/20, dated 01.12.2020, under sections 419/420/468/471 PPC, registered at Police Station Shalimar, Islamabad.

2. Brief facts of the case are that the appellant/complainant Makhdoom Ali Raza Gillani reported to the police that he gave an advertisement for the sale of Toyota Grande Model 2016 bearing registration No. AAK-660, which was owned by his brother-in-law. A person namely Asad Raza contacted him for the purchase of the said car and after examining the vehicle, the deal was done for the sale of said vehicle against the sale consideration of Rs.3,100,000/- (Rupees Three Million One Hundred Thousand only). On 20.11 2020, he handed over the pay

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order to the appellant/complainant and after receiving the same the appellant/complainant handed over the vehicle along with original documents to said Asad Raza. When the said pay order was deposited in the bank on 20.11.2020, it revealed after three days on 23.11.2020 that the same was fake. At the time of handing over the vehicle, a sale agreement was also executed between the appellant/complainant and one Mubashir Saleem, wherein it was mentioned that sale consideration was received in cash full & final on 20.11.2020.

3. After registration of FIR, investigation of the case was conducted, in which respondent No.2 was found involved in the commission of the offence, therefore, report u/s 173, Cr.P.C was submitted before Trial Court for trial. Charge was framed on 30.05.2023 to which respondent No.2 did not plead guilty and the prosecution evidence was summoned. On 29.07.2023 respondent No.2 filed an application u/s 249-A Cr.P.C before learned Magistrate Section 30, Islamabad-West on the ground that the prosecution has failed to produce the evidence against respondent No.2, which was dismissed vide order dated 03.09.2024. Respondent No.2 filed a revision petition against the order of learned Magistrate, which was allowed and he was acquitted from the case, hence the present appeal.

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4. Learned counsel for the appellant has contended that impugned order is illegal, against the law and facts of the case; that respondent No.2 is directly involved in the alleged offence; that respondent No.2 has been attributed specific role and this fact has been over looked by the Revisional Court; that the Revisional Court has ignored the fact that to decide the matter on merit, pro and contra evidence is necessary to be recorded; that convincing and credible evidence was available on record and in presence of the same it cannot be held that there was no probability of conviction of respondent No.2.

5. I have heard learned counsel for the appellant and perused the record.

6. Perusal of the record reveals that respondent No.2 is neither directly nominated in the FIR nor specific role has been attributed to him. The report submitted under Section 173, Cr.P.C. concludes that the appellant identified respondent No.2 and nominated him along with other accused namely Faisal Mehmood, Adil Shoukat, Mubashir Saleem and Shahid Saleem.

7. During the course of the investigation, respondent No.2 was interrogated by the Investigating Officer. In his defense, respondent No.2 produced a video clip, which revealed that accused Faisal Mehmood and Najeeb Ullah had received a cash amount from him against a vehicle. It was further established that respondent No.2 is a *bona fide*

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purchaser and had no prior knowledge of the fraudulent act committed against the appellant. The I.O also recorded statement of Najeeb Ullah, who stated that he has been a professional driver for the last 20 years and is engaged in a side business involving the sale and purchase of vehicles. He further stated that respondent No.2 is his cousin, who had shown interest in purchasing the vehicle and that payment of the said vehicle was made to accused Faisal Mehmood at PC Hotel, Rawalpindi.

8. Upon thorough investigation, it was established that respondent No.2 is also a victim of accused Asad Raza alias Faisal Mehmood, who had previously committed fraud with the appellant.

9. There is no direct or indirect evidence against respondent No.2 to establish his involvement in fraud, cheating, or the preparation of forged documents. Furthermore, there is no indication of any direct or indirect contact between respondent No.2 and the appellant concerning the purchase of the vehicle. Instead, the record clearly reflects that respondent No.2 is a *bona fide* purchaser of the vehicle.

10. Trial Court is vested with the powers to invoke provisions of Section 249-A, Cr.P.C to acquit an accused at any stage of the trial, if it is established from the record that there is no evidence against the accused.

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11. In view of the above discussion, I am of the view that Revisional Court has passed the Impugned Order in accordance with law and rightly accepted the revision petition, set aside the order of learned Judicial Magistrate and acquitted respondent No.2 from the case. Consequently the instant appeal is **dismissed in *limine***.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 28.02.2025.

JUDGE

R.Anjam.

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