SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raja Saeed Akram Khan, J.

Civil P.L.A. No. 16 of 2017.
(Filed on 12.1.2017)

Regional Manager Utility Store Corporation of Pakistan, Regional Office Jehlum Valley Road, Muzaffarabad.

…. PETITIONER

VERSUS

1. Munir Sulehria s/o Yousaf Sulehria, r/o Seri Bheri, Tehsil Patika Naseerabad, District Muzaffarabad.

…. RESPONDENT

2. The State through Advocate-General of Azad Jammu and Kashmir, Muzaffarabad.

….PROFORA RESPONDENT

(On appeal from the judgment of the High Court dated 13.12.2016 in civil appeal No. 3 of 2015)

FOR THE PETITIONER: Syed Asim Masood Gillani, Advocate.

FOR RESPONDENT NO.1: Mr. Muzaffar Hussain Mughal, Advocate.

Date of hearing: 17.2.2017.

ORDER:

Raja Saeed Akram Khan, J.– This petition for leave to appeal has been directed against the judgment passed by the High Court on 13.12.2016, whereby, the appeal filed by the petitioner, herein, has been dismissed.

2. The facts in brief are that the petitioner, herein, filed an application for registration of a case against *Munir Sulehria*, respondent No.1, herein, on 21.2.2010, whereupon, the Police Station Kahori registered FIR No. 9 of 2010, against the accused-respondent in the offence under section 409, APC. After investigation, the case was presented before the Judicial Magistrate 1st Class, Pattika on 8.7.2010. The statements of all the prosecution witnesses were recorded and after the trial, the Court below acquitted the accused of the charge under section 409, APC vide judgment dated 15.12.2014. Feeling

aggrieved, the petitioner, herein, filed an appeal in the High Court. The learned High Court while dismissing the appeal upheld the acquittal order passed by the trial Court vide judgment dated 15.12.2014. Hence, this petition for leave to appeal.

3. Syed Asim Masood Gillani, Advocate, the learned counsel for the petitioner, argued that the accused-respondent was involved in the embezzlement of a huge amount of Rs. 378077/- He further argued that both the Courts below while acquitting the accused of the charge failed to appreciate the evidence in a legal manner. He argued that the prosecution proved the case against the accused-respondent through cogent and un-rebutted evidence, which has been overlooked by both the Courts below. He submitted that the trial Court passed the judgment in violation of sections 366 & 367, Cr.P.C.

therefore, the same is not the judgment in the eye of law.

4. On the other hand, Mr. Muzaffar Hussain Mughal, who entered his appearance on behalf of the accused-respondent, has strongly controverted the arguments advanced by the learned counsel for the petitioner, while arguing that no question of law of public important is involved in this case and petition for leave to appeal cannot be granted in routine. The trial Court after evaluating the evidence passed the well reasoned judgment and the learned High Court has rightly upheld the same. Both the Courts below appreciated the evidence in a legal manner which is not open for interference by this Court. He argued that it is a settled principle of law that once an acquittal order has been passed there must be strong reasons to interfere with the same,

whereas, no such eventuality is available in the case in hand. The learned counsel drew the attention of this Court towards paragraph 6 of the impugned judgment while arguing that the whole case was made on the basis of the audit report which was never produced before the trial Court. He also referred to the contents of FIR while submitting that no plausible evidence came on record in support of allegation levelled against the accused-respondent, therefore, no interference in warranted by this Court.

5. I have heard the argument of the learned counsel for the parties and gone through the impugned judgment along with the record made available. An FIR in the offence under section 409, APC was registered against the accused-respondent at Police Station, Kahori on 21.2.2010. The allegation levelled against the accused-respondent is

that during surprise audit/handing taking, an amount of Rs. 3,74,795.25/- was found embezzled by the accused-respondent. After going through the allegation levelled against the accused-respondent, it appears that the whole case of the prosecution is based upon the audit report but the same was never placed by the petitioner on record. Even the investigation officer while recording his statement has categorically admitted this fact and the same has been taking into account by the trial Court in its judgment in the following manner:—

"_____مستغیث مقدمہ نے اپنی درخواست ابتدائی میں موقف اختیار کر رکھا ہے کہ دوران آڈٹ رقم مبلغ 374795.25/- روپے خرد برد ہونے کا انکشاف ہوا۔ ملاحظہ مسل سے بخوبی واضح ہو رہا ہے کہ کوئی آڈٹ رپورٹ شامل مسل نہ ہے اور نہ ہی مستغیث اور نہ ہی کونسل مستغیث نے دوران ٹرائل یا دوران بحث کوئی آڈٹ رپورٹ پیش کی۔_____"

The learned High Court has also discussed this important aspect of the case in paragraph 6 of the impugned judgment in the following manner:—

> "6. …….It is proved from the record that complainant did not file any audit report along with the FIR and even failed to submit any record of audit report during the process of investigation……..."

After going through the above reproduced paragraphs, it appears that the document i.e. audit report, on the basis of which the allegation of embezzlement levelled against the accused-respondent was not brought on record by the petitioner. Therefore, the trial Court has not committed any illegality while extending the benefit of doubt to the accused-respondent. It is settled principle of law that even a slightest doubt must extended to the accused. Once acquittal order is passed, the accused enjoys double presumption of innocence and the acquittal order can only be interfered with if it is shocking, perverse and there is grave miscarriage of justice. Reliance can be placed on a case reported as *Masood*

Hussain & 2 others v. Ghazanfar Ali & 3 others [2005 SCR 272], it has been observed that:

> "8. According to celebrated principle of law, for setting aside an acquittal order, there must be some perversity, departure from law, arbitrariness, misreading or non-reading of evidence apparent on the face of record. There is a plethora of judgments of superior Courts on the point that once an accused is acquitted by the Court of competent jurisdiction, for setting-aside the acquittal order, there must be some extraordinary compelling reasons. ……"

6. There are concurrent findings of the Courts below who examined all the evidence available on the record minutely and decided the case after assigning the strong reasons. The learned counsel for the petitioner failed to point out any misreading or non-reading of evidence which is the only ground to interfere with the concurrent findings recorded by the

Courts below. After going through the evidence available on the record, I am of the view that the Courts below have not committed any illegality while passing the impugned judgments as the same are perfect and in accordance with law.

In the light of what has been discussed above, I do not find any illegality or infirmity in the judgments passed by the Courts below, Resultantly, this petition for leave to appeal having no force is hereby dismissed with no order as to costs.

Muzaffarabad.
21.2.2017. **JUDGE**

Date of announcement: 22/02/2017