

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

Raja Saeed Akram Khan, C.J.
Raza Ali Khan, J.

CRIMINAL APPEAL NO. 46 OF 2024

(Against the judgment dated June
14, 2024, passed by the High
Court in Criminal Appeal 37 & 49/
2023)

Ehtesab Bureau, Azad Jammu & Kashmir through Chief
Prosecutor Azad Jammu & Kashmir Ehtesab Bureau.

... Appellant

VERSUS

1. Khalid Mehmood Ansari s/o Fazal Ahmed r/o Raiki
Channi Tehsil & District Bhimber.
2. Muhammad Ajaib s/o Muhammad Nazir, r/o Mian
Muhammad Town, Tehsil & District Bhimber.

... Respondents

3. Muhammad Ajaib s/o Muhammad Nazir, r/o Dheri
Sultanpur Theikrian, Chaksawari, Tehsil & District
Mirpur.

... Proforma Respondents

Appearances:

For the appellant:

Mr. Muhammad Hanif
Chaudhary, Chief
Prosecutor Ehtesab Bureau.

For respondent No. 1:	Mr. Bashir Ahmed Mughal, Advocate.
For respondent No. 2:	Concise Statement/ Written arguments in person.
For proforma respondent No. 3:	Sahibzada Mehmood Ahmed, Advocate.
Date of hearing:	30.06.2025.

JUDGMENT:

Raza Ali Khan, J:- The captioned appeal emanates from the judgment dated June 14, 2024, rendered by the High Court in Criminal Appeals No. 37 & 49 of 2023.

2. The essential facts for adjudication of the present appeal are that proforma respondent No. 3/ Muhammad Ajaib s/o Muhammad Nazir, resident of Dheri Sultanpur Theikrian, Chaksawari, District Mirpur, on February 10, 2012, filed a complaint before the Ehtesab Bureau, Azad Jammu & Kashmir, alleging forgery and fraudulent allotment in relation to Plot No. 12/K-1, Sub-sector D/3 West Part-I, Mirpur City. He claimed to have applied for the plot on July 28, 1989, by depositing Rs.10,000/- as earnest money via draft No. 19552657 and submitting Form No. 35717, registered under No. 7831. The allotment was made in his favour on September 26, 1998. However, another individual bearing identical name and parentage, purportedly in connivance with the officials of the Mirpur Development Authority (MDA), replaced his application form and obtained allotment based on forged documents and signatures. The plot was subsequently transferred to Muhammad Basharat, who later on alienated it in favour of Abdul Qayyum Ansari, the brother of Khalid

Mehmood Ansari. The complaint, registered as No. 40/12, remained unattended for over twenty-two months, leading to a reminder being issued on December 20, 2013. Upon inquiry, a reference under Sections 10 and 11 of the Ehtesab Bureau Act, 2001 read with Sections 419, 420, 467, 468, 471, 409, and 109 of the Azad Penal Code (APC) was filed on July 5, 2014, against Khalid Mehmood Ansari, Muhammad Ajaib (resident of Mian Muhammad Town), and Muhammad Basharat. Muhammad Basharat failed to appear and was accordingly declared an absconder, whereupon proceedings under Section 512 Cr.P.C. were initiated. A formal charge was framed, and the accused pleaded not guilty. The prosecution examined 14 witnesses and produced documentary evidence. The accused were examined under Section 342 Cr.P.C., and Khalid Mehmood Ansari recorded his statement under Section 340(2) Cr.P.C., followed by the production of defense evidence. Upon conclusion of the trial, the Ehtesab Court-II, Mirpur, vide judgment dated February 28, 2023, convicted the respondents and imposed: seven years' simple imprisonment under Section 11 of the Ehtesab Bureau Act, 2001; four years' imprisonment with a fine of Rs. 50,000/- under Section 468 APC (with six months further imprisonment in default of payment); and one year's imprisonment under Section 471 APC. Aggrieved by the said conviction, the respondents preferred two separate appeals before the High Court, which were allowed through a consolidated judgment dated June 14, 2024, whereby the convictions were set-aside, and respondents were acquitted of the charge.

3. Mr. Muhammad Hanif Chaudhary, Chief Prosecutor Ehtesab Bureau, appearing on behalf of the appellant, contended that the impugned judgment of the High Court is contrary to law, the statutory scheme and the factual matrix of the case. He argued that the judgment suffers from a manifest misreading and misappreciation of the evidence, which unambiguously establishes the involvement of the respondents in the commission of the charged offences. He maintained that the trial court had thoroughly and judiciously appraised the entire evidentiary record and delivered a well-reasoned verdict dated February 28, 2023. Conversely, the High Court failed to adjudicate the matter on its merits. He further submitted that the impugned judgment is devoid of cogent reasoning, arbitrary in nature, discriminatory in consequence and violative of the express provisions of the Ehtesab Bureau Act. It was further argued that the High Court overlooked vital evidence and based its findings on speculative and unfounded grounds, thereby transgressing or circumventing its jurisdiction within the statutory framework. The learned Chief Prosecutor also highlighted that the High Court adopted a flawed approach to evaluating the evidence, as it neglected to assess the prosecution's case in its entirety and failed to appreciate that the burden of proof had been discharged beyond reasonable doubt. He accordingly urged that the impugned judgment is legally unsustainable and liable to be set aside, while the conviction recorded by the trial court warrants restoration and affirmation.

4. Mr. Bashir Ahmed Mughal, learned counsel for respondent No. 1, defended the impugned judgment with vehemence, asserting that it is well-reasoned,

comprehensive, and firmly grounded in the facts, evidence, and applicable legal principles. He maintained that the High Court rightly accepted the appeals of respondents No. 1 and 2, culminating in their lawful acquittal. He pointed out that although the initial complaint was lodged on February 10, 2012, however no inquiry was conducted within the prescribed statutory timeframe, and proceedings were initiated only upon a subsequent application dated December 20, 2013, following an undue delay of nearly twenty-two months. This he argued, contravenes the first proviso to sub-section (6) of Section 21 of the Ehtesab Bureau Act, 2001, which mandates automatic abatement of any inquiry not concluded within one year. Consequently, the trial court's assumption of jurisdiction was ultra vires and contrary to the legislative intent. He further submitted that the complainant remained dormant for over twelve years, during which Plot No. 12/K-1 was duly maintained and lawfully re-registered in the name of respondent No. 2 by the MDA, following a comprehensive departmental inquiry, and was thereafter transferred to a bona fide purchaser, Muhammad Basharat. He emphasized that the complainant, having already been allotted multiple plots by the MDA, sought to exploit the mere similarity in name and parentage to falsely implicate the respondents, without adducing any conclusive documentary evidence to substantiate his claim to the disputed plot. He contended that the investigation conducted by Syed Asad Naqvi, Inspector Ehtesab Bureau, was biased, incomplete, and violative of the procedural due process as the statements of respondents No. 1 and 2 were never recorded, nor were they afforded a proper hearing, in direct contravention of the first proviso to sub-section (2) of Section 21 of the

Ehtesab Bureau Act, 2001. He concluded that the appellant failed to identify any legal error, procedural impropriety, or misreading of evidence in the impugned judgment, which was rendered strictly in accordance with law. Hence, the present appeal, being without merit and instituted with mala fide intent, is liable to be dismissed.

5. Respondent No. 2 filed the concise statement adopting and affirming the submissions made by the learned counsel for respondent No. 1.

6. Sahibzada Mehmood Ahmed, learned counsel for the complainant/proforma respondent No. 3, supported the contentions advanced by the appellant and submitted that proforma respondent No. 3 had duly applied for the allotment of a plot before the MDA on July 28, 1989, by depositing earnest money in the sum of Rs. 10,000/- through Draft No. 19552657 drawn on the National Bank. He asserted that, Plot No. 12-K/1 was subsequently allotted to him by the Allotment Committee in its meeting held on September 26, 1998. He argued that thereafter, the record was tampered with; the applicant's address was illicitly altered, and a forged application form was inserted into the file in collusion with MDA officials. The counterfeit form falsely reflected a deposit of Rs. 5,000/-, bore only forged signatures, lacked registration, and was neither attested by a Magistrate nor supported by any valid endorsement. He maintained that these irregularities clearly establish manipulation of the record and fraudulent intent on the part of the real respondents.

7. We have heard the learned counsel for the parties at a considerable length and have meticulously

examined the record, the evidence adduced, and the impugned judgment rendered by the High Court. The central issue requiring adjudication in this appeal is whether the prosecution succeeded in establishing the guilt of the respondents beyond reasonable doubt, thereby justifying the conviction recorded by the trial court, or whether the High Court was justified in acquitting the respondents following a proper evaluation of the facts, evidence, and applicable legal principles.

8. A careful perusal of the record reveals that the allegations pertain to Plot No. 12/K-1, situated at Sector D-3 West Part-I, Mirpur. The complainant, Muhammad Ajaib s/o Muhammad Nazir, resident of Dheri Sultanpur Theikrian Chaksawari, asserted that this plot was allotted to him in 1998. The prosecution's narrative is that the accused persons, including Khalid Mehmood Ansari and one Muhammad Ajaib (resident of Mian Muhammad Town), took advantage of the similarity in name and parentage to fraudulently substitute the complainant's original application form with a forged document. It was alleged that this unlawful substitution facilitated the illegal allotment and subsequent transfer of the plot. However, a scrutiny of the case reveals both procedural and substantive deficiencies in the prosecution's case. Most notably, the complainant failed to invoke the appropriate statutory remedy before the MDA, which is the competent authority for addressing allotment-related disputes. Instead, he directly approached the Ehtesab Bureau, thereby bypassing the administrative hierarchy and pre-empting the statutory mechanism.

9. Although the record affirms that the complainant had applied for the plot and deposited earnest money, there is no conclusive evidence that the disputed plot was ever allotted to him. In contrast, the relevant allotment record demonstrates that the plot in question was lawfully allocated to another Muhammad Ajaib s/o Muhammad Nazir (resident of Mian Muhammad Town), and subsequently revised and regularized by the competent authority following payment of the requisite dues. Moreover, it is undisputed that the complainant had already received multiple plots from the MDA. Despite this, he failed to produce any credible documentary evidence to substantiate his entitlement to the disputed plot.

10. More critically, the complaint filed by the complainant remained unattended for an inordinate and unexplained period exceeding twenty-two months, during which no inquiry or investigation was initiated. This prolonged inaction is of particular legal significance, as the subsequent proceedings including the initiation of inquiry and eventual reference to the trial court occurred well beyond the limitation period explicitly prescribed under the first proviso to sub-section (6) of Section 21 of the Ehtesab Bureau Act, 2001. The said statutory provision clearly mandates that if an inquiry or investigation is not concluded within a period of one year from the date of receipt of the complaint, it shall be deemed to have abated by operation of law, and the matter shall be consigned to the record without any further proceedings. This legislative bar is couched in mandatory terms and is aimed at ensuring prompt action and finality in accountability proceedings. However, the trial court, in complete disregard of this

binding legal requirement, assumed jurisdiction and proceeded to adjudicate the matter on merits. By doing so, it not only bypassed an express statutory prohibition but also undermined the very object and purpose of the provision, which is to prevent stale, delayed, and potentially mala fide prosecutions.

11. The failure of the complainant to avail himself of the proper forum, the absence of any conclusive documentary evidence substantiating his claim to the disputed plot, and the inordinate and unexplained delay in the initiation and conduct of prosecution, vitiated the conviction recorded by the trial court. The primary objective of a criminal trial is to ensure that the accused are afforded a fair trial conducted strictly within the bounds of law. The process is not intended to impose punishment by disregarding procedural safeguards or by circumventing statutory provisions enacted to protect the rights of the accused. In light of these considerations, the High Court rightly held that the reference filed by the Ehtesab Bureau was not maintainable due to the statutory abatement of the complaint arising from undue delay. Furthermore, on the merits of the case, the prosecution failed to establish the guilt of the respondents beyond reasonable doubt. The acquittal recorded by the High Court is, therefore, legally unassailable, being based on the correct application of law and a judicious appraisal of the evidence on record.

12. It is a well-settled principle of criminal jurisprudence that an acquittal further strengthens the presumption of innocence in favour of the accused. Mere conjectures, assumptions, or reliance on the same evidence already disbelieved by the Court below are insufficient to

warrant reversal. Interference is justified only where the conclusions are shown to be manifestly perverse, arbitrary, or contrary to settled principles of law, and where the prosecution succeeds in producing strong, cogent, and compelling evidence that clearly undermines the reasoning of the Court below. In the absence of such circumstances, the acquittal must be upheld. In this regard reliance can be placed on the judgment of this Court in the case reported as "*Mushtaq Ahmed vs. Sikandar Khan & 4 others*"¹ wherein it was observed as under:-

"9. After acquittal, the accused-respondents are enjoying double presumption of innocence. Once acquittal order is passed by the Court of competent jurisdiction, it cannot be set aside on the flimsy grounds. An acquittal order can only be interfered with or set aside if the Court comes to the conclusion that the same is capricious, fanciful, perverse and arbitrary or has been passed against the settled norms of administration of criminal justice, whereas, no such element is found in the judgments passed by both the Courts below."

The same view was reiterated in a case reported as "*Mst. Mehmoona Kousar vs. Muhammad Khalil & another*"² wherein it was observed as under:-

"It is settled principle of law that when an accused is acquitted of the charge in a criminal case then his presumption of innocence becomes double and the acquittal order cannot be interfered with lightly merely on the basis of surmises and conjectures or on the basis of evidence which has been rejected by the Courts below rather very strong and cogent evidence is required to interfere in the acquittal order."

¹ 2015 SCR 1520

² 2023 SCR 921

In conclusion, having examined the record in detail and given due weight to the impugned judgment of the High Court, we find no legal or factual infirmity in its decision. The appeal is devoid of merit and is hereby dismissed. The judgment and order of acquittal passed by the High Court dated June 14, 2024, is upheld in its entirety.

JUDGE
(JII)

CHIEF JUSTICE

Muzaffarabad
03.07.2025.