

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Aqeel Ahmed Abbasi

Cri.P.L.A.No.188-K of 2022

Appeal against the Judgment dated 17.10.2022
passed by the High Court of Sindh at Karachi in
Criminal Acquittal Appeal No.256 of 2007

Altaf Yousuf

...Petitioner (s)

Versus

The State through Additional Director
FIA, Passport Circle, Karachi and
another

...Respondent(s)

For the Petitioner(s) : Malik Khushhal Khan, ASC
Along with Petitioner

For Respondent(s) : Mr. Khaliq Ahmed, DAG

Date of Hearing : 24.12.2025

Judgment

Muhammad Ali Mazhar, J.- This Criminal Petition for leave to appeal is directed against the judgment dated 17.10.2022 passed by the High Court of Sindh, Karachi in Criminal Acquittal Appeal No.256/2007.

2. According to the prosecution case, encapsulated in the FIR No.50/2006, dated 01.02.2006, lodged under Sections 419, 420, 468, 471 and 109 PPC read with Section 17 (1) (b), 22 (b) & 23 of the Emigration Ordinance, 1979 at Police Station FIA, P.P Circle Karachi, the accused persons in furtherance of their common intention forged a passport and other documents to help accused Mst. Hira to go abroad, for that the present case was registered. On completion of investigation, two separate chargesheets under Section 173 of Criminal Procedure Code (**Cr.P.C**) were submitted, one before the learned Judicial

Magistrate, Malir, Karachi, for prosecution under Sections 419, 420, 468, 471 and 109 Pakistan Penal Code (**PPC**) and another before the Special Judge (Central-II), Karachi, for prosecution under Section 17 (2) (b), 22 (b) of Emigration Ordinance, 1979. The petitioner was acquitted under Section 249-A Cr.P.C., by learned Judicial Magistrate, Malir Karachi vide order dated 21.06.2006. He was also acquitted by the learned Special Judge (Central) II Karachi vide judgment dated 06.12.2017 in the case arising out of FIR No. 50/2006 lodged in the aforesaid Section of Emigration Ordinance, 1979. Against the acquittal order dated 21.06.2006, passed by the learned Judicial Magistrate, Malir Karachi, the State filed Crl. Acquittal Appeal No. 256/2007 in the High Court which was allowed after a long time vide impugned judgment dated 17.10.2022 and while setting aside the acquittal order dated 21.06.2006 to the extent of the petitioner/respondent, the matter was remanded to the learned Judicial Magistrate to proceed with the case in accordance with law.

3. The learned counsel for the petitioner argued that the impugned judgment is based on misreading and non-reading of material available on the record. It was further contended that the learned High Court failed to consider that the petitioner was already acquitted by the learned Special Judge (Central-II), Karachi, in the main case but no acquittal appeal was filed by the State. He further contended that no tangible evidence was available on record or collected by the prosecution to prove that the petitioner committed any offence of fraud or cheating beyond reasonable doubt.

4. The learned Deputy Attorney General argued that the I.O cited certain witnesses at the time of submission of the second interim supplementary charge sheet, who supported the version of prosecution but the Trial Court, while acquitting the petitioner, failed to determine his role in the crime. It was

further averred that the whole case was based on the documentary evidence and on pointation of the petitioner, incriminating material was recovered and the seizure memo was also prepared on 04.02.2006. He further contended the charge was not groundless, despite that the Trial Court, while exercising powers under section 249-A Cr.P.C, acquitted the petitioner without determining his role.

5. Heard the arguments. The minutiae and survey of the First Information Report reflects the offenses under PPC i.e. Section 419 (cheating by personation punishable with imprisonment of either description for a term which may extend to seven years, or with fine, or with both); Section 420 (provides punishment with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine on cheating and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and capable of being converted into a valuable security); Section 468 (committing forgery, intending that the document forged shall be used for the purpose of cheating which is punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine); Section 471 (fraudulently or dishonestly use as genuine any document knowingly or reason to believe to be a forged document, punishable in the same manner as if he had forged such document); Section 109 (abetting any offence. If the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence). Insofar as the offenses under Emigration Ordinance, 1979 are concerned, Section 17 (pertains to unlawful emigration, except in conformity with the provisions of this Ordinance and rules, emigrates or departs or attempts to emigrate or depart shall be punishable with imprisonment for a

term which may extend to five years or with fine or with both); Section 22 (providing or securing, or on the pretext of providing or securing, to or for any person employment in any country beyond the limits of Pakistan is punishable with imprisonment for term, which may extend to fourteen years, or with fine, or with both) and Section 23 (contravention or failure to comply with, any of the provisions of this Ordinance or the rules shall, if no other penalty is provided by this Ordinance for such contravention or failure, be punishable with imprisonment for a term which may extend to one year and with fine).

6. The acquittal order dated 21.6.2006, (Case No.51/2006 arising from FIR No.50/2006) passed by the Vth Civil Judge & Judicial Magistrate, Malir, Karachi, demonstrates that the accused lady allegedly acted as the carrier of accused Malika Hemani and the petitioner/accused (Altaf Yousuf) issued air tickets to that lady. However, according to the learned Trial Court, no concrete and tangible evidence was on record to expound that the petitioner/accused was in knowledge that the lady Malika was holding fake documents or despite that he assisted in the commission of offence of cheating. On the contrary, it was held that the accused, Hira, had genuine traveling documents and admittedly her passport was returned on the order of the Trial Court. The learned Trial Court disregarded the statement of the arrested accused Malika, who disclosed that the accused Hira was her carrier. Even no statement of that lady was recorded under Section 164 Cr.P.C. After vetting the investigation record, the learned Trial Court held that the petitioner/accused issued only air tickets and mere issuing air tickets as a traveling agency does not amount to committing any offence of cheating or fraud. Neither any tangible evidence of fraud or cheating or any inducement to deceive or dishonesty was found, nor any element of cheating by impersonation surfaced on record. Since the charge was found groundless and there was no probability of the

accused/petitioner being convicted of offences conscripted in the FIR, hence the petitioner was acquitted. On the contrary, the learned High Court upset the acquittal order while acknowledging that the Special Judge (Central-II), Karachi, has already acquitted the petitioner/accused in the connected case for which the charge sheet was bifurcated to try the accused persons for the offence under Section 17 (2) (b), 22 (b) of Emigration Ordinance 1979. However, without any independent application of mind, rather, without any plausible or judicious reason, the order of acquittal was set aside on the notion that though the petitioner was acquitted in the main case, such acquittal by itself may not be enough to dismiss the acquittal appeal and finally, directions were issued to the Trial Court to proceed with the case in accordance with law.

7. The learned Trial Court proficiently considered every nook and cranny of the prosecution case. According to Article 38 of the Qanun-e-Shahadat Order 1984, no confession made to a police officer shall be proved as against a person accused of any offence. Whereas the nitty-gritties of Article 39 explicates that subject to Article 40, no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. In the case in hand, it is gleaned from record that no statement under Section 164 of Cr.P.C of co-accused was recorded. The presumption of innocence is constituent of a fair trial and also foundation of our criminal administration justice system wherein it is obligatory for the prosecution to prove the guilt beyond a reasonable doubt and the incriminating material/evidence should be so convincing and logical in which no other inference could be drawn except the guilt of accused. The judges act out as the concierge of law and mere indictment cannot be treated as evidence of guilt unless the burden of proving every element of the crime beyond a reasonable doubt is discharged by the prosecution.

8. The philosophy "innocent until proven guilty" is the fundamental vade mecum and golden thread to the doctrine of presumption of innocence as a shield but not as a sword. The presumption of innocence is not mere legal theory but it is in fact evidence in favour of the accused and starting point with the assumption that the accused has not committed any crime, but this powerful shield is not impenetrable come what may. Rather, it can be subjugated if the prosecution produces irresistible and credible evidence to meet high standards of proof beyond a reasonable doubt. This principle is every now and then recapitulated on the strength of a Latin maxim "*ei incumbit probatio qui dicit, non qui negat*" (burden of proof lies with the one who declares, not the one who denies). The presumption of innocence is considered as the foundation stone of administration of criminal justice. The globally settled jurisprudence in the criminal justice system including our own country fervently and overwhelmingly espouses the principle "innocent until proven guilty" considering it the basic limb or component of fair trial opportunity and due process of law rather than preferring or declaring an accused "guilty before proven innocent", which seriously undermines the fundamental principle of fair trial/due process and obviously the presumption of innocence.

9. An acquittal is called a "double presumption of innocence" and it is not mandatory that there must be numerous aftermaths that give rise to doubts to justify the benefit to the accused, rather a single circumstance if creating reasonable doubt is enough to enable him a benefit. The interference in a judgment of acquittal is found to be rare unless some glaring errors of law and fact are shown by the prosecution to demonstrate that the acquittal judgment is perfunctory with shocking conclusion. In the criminal justice system, if two sensible and judicious conclusions can be drawn, then the view

which espouses and provides backing towards acquittal must be subscribed to. The Court in an appeal against acquittal would not ordinarily interfere but gives due weightage to the findings of acquittal which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence. The learned High Court while reversing the acquittal did not advert to any cogent or solid ground for its reversal and remanding the matter to the Trial Court after a long period of time. No independent application of mind seems to have been applied to evaluate the Trial Court order but the acquittal order was set aside in a slipshod manner without scrutiny of record or incriminating material, which if at all or at the best, available for indictment of the petitioner who was acquitted in both the cases.

10. This Criminal Petition was converted into an appeal and allowed vide our Short Order dated 24.12.2025, whereby the impugned judgment passed by High Court of Sindh, Karachi, on 17.10.2022 in Crl. Acquittal Appeal No.256/2007 was set aside and the order dated 21.06.2006 passed by the Court of Vth Judicial Magistrate Malir Karachi in Case No.51/2006 (FIR No.50/2006 registered under Sections 419, 420, 468, 471 and 109 PPC) was restored. Above are the reasons assigned in support of our Short Order.

Judge

Judge

Karachi

24.12.2025

Khalid

Approved for reporting

