

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Cr.Appeal. No. 08/2015 in

Cr.PLA. No. 20/2015.

Abdul Rahim s/o Haji Musa r/o Mehdi Abad (Ex ACSI Bulk Depot Skardu) presently residing at Olding Tehsil and District Skardu.

Petitioner/accused.

Versus

The State through FIA Gilgit

Respondent.

CRIMINAL APPEAL FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER 2009 READ WITH ORDER XXIII OF GILGIT-BALTISTAN SUPREME APPELLATE COURT RULES 2008 AGAINST THE JUDGMENT/ORDER DATED 02/04/2015 PASSED BY THE LEARNED CHIEF COURT CAMP SKARDU WHEREBY THE LEARNED CHIEF COURT BY PARTIAL ACCEPTING THE APPEAL OF STATE/RESPONDENT AND REMANDED THE CASE TO THE TRIAL COURT WITH DIRECTION TO HEAR PARTIES AND PASS FRESH ORDERS IN THE LIGHT OF MATERIAL AVAILABLE ON RECORD OR EVEN TO SEEK FRESH EVIDENCE, IF SO REQUIRED FROM EITHER OF THE PARTIES.

FOR SETTING ASIDE THE SAME AND TO ACQUIT THE PETITIONER/ACCUSED IN THE FIR NO. 02/1997 OF POLICE STATION NO. 14 FIA GILGIT TO MEET THE ENDS OF JUSTICE.

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. The Deputy Attorney General for Pakistan at Gilgit-Baltistan on behalf of respondent.

DATE OF HEARING: - 24-03-2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ.....The learned counsel for the petitioner submits that in the year 1997 Police Station No. 14 FIA Gilgit registered a criminal case bearing No. 02/1997 under section 409,420,468,471 PPC read with section 5(2) of Prevention of Corruption Act, (PCA) of 1947. However, the prosecution presented the challan before Special Judge Anti Corruption/Sessions Judge Skardu and started trial of petitioner/accused. He further submits that after complete trial of the case the learned Special Judge Anti Corruption/Sessions Judge Skardu acquitted the petitioner/accused alongwith other accused/respondent No. 02 & 03 vide judgment dated 25.11.2013.

He further contends that feeling aggrieved by and dissatisfied with the judgment/order of Special Judge Anti Corruption/Sessions Judge Skardu State/respondent No. 01 filed an appeal before the learned Chief Court, Gilgit-Baltistan. After having heard the parties, the single Judge of learned Chief Court by partial accepting the appeal set aside the judgment dated 25.11.2013 passed by Special Judge Anti Corruption/Sessions Judge Skardu and remanded the case to the Trial Court with direction to hear parties and pass fresh orders in the light of material available on record or even to seek fresh evidence if so required from either of the parties.

He further contended that the provision of Section 5(2) of the Prevention of Corruption Act, 1947 are mandatory in nature which cannot be condoned. He also contended that the learned

Chief Court Gilgit-Baltistan fell in error while interpreting the provisions of section 5(2) of the Prevention of Corruption Act, 1947, which are mandatory in nature and as such the Federal Investigation Agency committed illegality which cannot be cured under Section 537 Cr.PC. He also contends that the impugned judgment dated 02.04.2015, in Criminal Appeal No. 01/2014 passed by the learned Chief Court Gilgit-Baltistan by setting aside the order of the learned Trial Court, remanded the case back to the learned Trial Court is not sustainable in law. He also contended that the learned Trial Court has rightly held that the case was registered against the petitioner under Section 409,420,468 and 471 read with Section 5(2) of the a Prevention of Corruption Act, 1947 and the investigation of the same can only be conducted by an officer not below the rank of Sub Inspector being a schedule offence under Section 3(1) of the Federal Investigation Agency 1974. He further submitted that the judgment dated 25.11.2013 in Anti. 01/2000, 04/2006, 02/2011 (SKD) passed by the learned Sessions Judge/Special Judge Anti Corruption District Skardu was purely decided on the question of law, resultantly, the petitioner was acquitted.

He also contended that appeal against the petitioner in the learned Chief Court was time barred and the case of the petitioner was at par with the respondent No.03, who was acquitted by the learned Trial Court and no appeal against the said acquittal

order was filed by the State. The judgment passed by the learned Chief Court, Gilgit-Baltistan for remanding the case back to the learned Trial Court was against the parameters laid down by the Hon'ble apex court of Pakistan, which is not tenable in law. In support of the above submissions, the learned counsel for the petitioner relied upon the case laws reported in 1992 SCMR 96, SBLR 2008 Sindh 1546, PLD 1983 SC 117, 2001 SC 24, 1986 SCMR 806, 1988 SC 940, 1983 SCMR 550.

He finally contended that the impugned judgment dated 02.04.2015 passed by the learned Chief Court Gilgit-Baltistan is required to be set aside being not sustainable as the same is the result of misconception of law and facts and the judgment dated 25.11.2013 passed by the Special Judge/Sessions Judge Skardu may kindly be maintained being based on facts and law.

On the other hand, the learned Deputy Attorney General for Pakistan at Gilgit-Baltistan supports the impugned judgment. He submits that the learned Chief Court has rightly remanded the case back to the Trial Court as there are defects in manner of collection of prosecution evidence and benefit of doubts cannot be given to the accused. The proof of delivery of different goods of the department to the petitioner/accused is a strong circumstantial evidence which has not been discussed by the Trial Court. He finally submits that the impugned judgment may please be maintained.

We have heard the learned counsel for both the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 02.04.2015 in Criminal Appeal No. 01/2014 passed by the learned Chief Court Gilgit-Baltistan as well as the judgment dated 25.11.2013, passed by the Special Judge/Sessions Judge Skardu. We also gone through the case laws referred by the learned counsel for the petitioner, which support his contentions. We hold that there must be a legal evidences on record and the crime has to be proved through cogent evidence beyond reasonable doubts. The prosecution had to stand on its own legs to prove its case beyond reasonable doubts. The respondent No.03 was acquitted on the same facts, same evidences and same question of law. Consequently, the petitioner cannot be deprived from the benefit of doubts on the principle of equity. The concept of evidence of doubts is deep rooted. It is not necessary that there should be series of circumstances creating doubts in the prosecution case. A slightest doubt, if any, the benefit of such doubts must go to the accused.

We after considering the materials on record and hearing the learned counsel for the petitioner are of the considered view that the prosecution has miserably failed to prove its case against the petitioner beyond reasonable doubts. The petitioner cannot be convicted or sent for re-trial on the same set of allegation and same set of evidence. The petitioner was accordingly entitled for benefit of

doubts given to respondent No.03. Furthermore, the appeal against the acquittal was time barred filed in the learned Chief Court. No appeal against the acquittal of respondent No.03 was filed in the Chief Court. The direction for remanding the case of the petitioner to the learned Trial Court is uncalled for & unwarranted as the petitioner was equally entitled for acquittal as of respondent No.03.

We are fortified from judgments of Hon'ble Supreme Court of Pakistan and persuaded to allow the appeal. Consequently, the petition is converted into an appeal and the same is allowed. In view of the above discussions, the impugned judgment dated 02.04.2015 in Criminal Appeal No. 01/2014 passed by the learned Chief Court, Gilgit-Baltistan is set aside whereas, the judgment dated 25.11.2013, passed by the learned Special Judge/Sessions Judge Skardu is maintained.

The appeal is allowed.

Chief Judge.

Judge.

Judge.

Weather the case is fit to be reported or not?

