Court	Islamabad High Court
Date	22 November 2023
Document	Judgment
Case reference	Criminal Appeals 150, 151 and 157 of 2018
Outcome	Acquitted. The Islamabad High Court overturned the 2018 conviction and acquitted Shoaib Ahmed Shaikh, ruling that no one can be tried twice for the same allegations.
Pages	6
Key excerpt	*“The convictions recorded against the appellants cannot stand on the principle of double jeopardy as enshrined in Article 13 of the Constitution.”*

(1)

BEFORE THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD.

Criminal Appeal No. 151 /2018

District	Date of filing	Whether filed by Appellant or Advocate
Islamabad	-07-2018	Raja Rizwan Abbasi, Advocate, High Court, Islamabad.

In the matter of:

Shoaib Ahmad Sheikh son of Baseer Ahmad, R/o 26/3, 18th street, Khayaban-e-Tanzeem, DHA Phase-V, Karachi (Director/CEO)

Appellant

Versus

1. The State.
2. Gohar Ali Shah (Sub Inspector) FIA/Cyber Crime Circle - Islamabad.

Respondents

29 NOV 2023
Examiner
Supply Section
Islamabad High Court
Islamabad

APPEAL U/S 410, CR.P.C. AGAINST THE JUDGMENT DATED 05.07.2018 PASSED BY CH. MUMTAZ HUSSAIN, LEARNED DISTRICT & SESSIONS JUDGE (EAST) ISLAMABAD.

Offences - FIR No.56 dated 07.06.2015 U/S 419, 420, 468, 471, 473, 109, 34 PPC read with section 36/37 ETO and Section 4 AMLA Act .2010, P.S. FIA, Cyber Crime Circle, Islamabad

From the court - Ch. Mumtaz Husain, District & Sessions Judge, (East), Islamabad.

Sentence - The appellant convicted under sections 419/109/34 PPC, sentenced to three years RI and to pay fine of Rs.1,00,000/- and in default of payment of fine, to

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Crl. App. No.151-2018

Shoaib Ahmad Sheikh

Vs.

The State & Another

Crl. App. No.157-2018

Nigel Brin Robellow

Vs.

The State & Another

Crl. App. No.150-2018

Rizwan Shah

Vs.

The State & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	22.11.2023	Mr. Abid Zuberi, Sardar Latif Khan Khosa, Ms. Naila Noreen, Syed Mehmood H. Gillani, Ms. Suzain Jahan Khan, Advocates for appellants in Crl. App. Nos.150 & 151/2018 along with appellants. Nemo for the appellant in Crl. App. No.157-2018. Syed Ishfaq Hussain Naqvi, SPP for FIA Mr. Azmat Bashir Tarar, Assistant Attorney General. This order shall decide captioned appeal as well as Criminal Appeals No.157-2018 & 150-2018, as all of them assail judgment dated 05.07.2018 passed by the District & Sessions Judge, Islamabad-East. 2. All the appellants, in the above mentioned appeals, were implicated in case FIR No.56 dated 07.06.2015 under sections 419/420/468/471/473/109/34 PPC read with sections 36/37 ETO and Section 4 AMLA Act,

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Islamabad High Court
Islamabad

2010 registered with Police Station Cyber Crime Circle, Islamabad and were convicted by learned trial court vide judgment dated 05.07.2018 and were accordingly sentenced. It is pertinent to observe that this is the second round of litigation inasmuch as earlier, in the same case, learned Additional Sessions Judge, Islamabad-West, vide judgment dated 31.10.2016, had acquitted the appellants and the State preferred the appeal, which was allowed by this Court vide judgment dated 25.04.2018. Apparently, on the same set of allegations, another FIR was lodged i.e. FIR No.07 dated 27.05.2015 under sections 420/468/471/472/473/474/477-A/109/34 PPC read with sections 36/37 Electronic Transaction Ordinance and sections 3 & 4 of Anti Money Laundering Act, 2010 registered with FIA Corporate Crime Circle, Karachi. In the referred case, trial was still in progress, when applications under section 265-K Cr.P.C. were filed by the present appellants, who were accused in the said case as well. The referred applications were dismissed by learned trial court vide order dated 20.02.2023. Feeling aggrieved, the appellants preferred criminal revision applications before Sindh High Court at Karachi (Crl. Rev. Applications No.38 to 40 of 2023). The said applications were decided by Sindh High Court vide judgment dated 10.03.2023 and were accordingly allowed; consequently, the appellants were acquitted of the charges leveled against them in the said case. After the said judgment, the appellants approached this Court by way of

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Islamabad High Court
Islamabad

application (CM No.137-2023) in Crl. App. No.151-2018 seeking acquittal/setting aside of the conviction on the basis that since with respect to same charges and same transaction, appellants have been acquitted, instant appeals also need to be decided accordingly.

3. Learned counsel for the appellants *inter alia* contended that it is trite law that under Article 13 of the Constitution, where a person stands convicted or acquitted on the same set of allegations/charges, he/she cannot be further proceeded with the matter. Reference was made to case reported as PLD 1997 Lah. 307. It was submitted that continuation of the instant appeals on merits would be in violation of Article 13 of the Constitution as well as section 403 Cr.P.C. Reference was made to cases reported as State Vs. Hadi Bakhsh (1981 SCMR 1008), Sherin Bacha and others Vs. Namoos Iqbal and 3 others (PLD 1993 SC 247) and Abul Hussain Sana Vs. Suwalal Aqarwala and another (PLD 1962 SC 242). It was submitted that the matter in question is exactly the same with respect to the same transaction and since there is acquittal, no occasion is made out for decision of instant appeals on merits.

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29 NOV 2023

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Islamabad High Court
Islamabad

4. Learned counsel for the respondent/State, when confronted, confirmed that the allegation leveled in both cases/FIRs is exactly the same and with respect to same transaction.

5. Submissions made by the parties have been heard and the documents, placed on record, examined with their able assistance.

6. The background, leading to filing of instant appeals, is mentioned hereinabove hence need not be repeated.

7. Before proceeding to decide with the arguments, it is pertinent to observe that all the appellants were admitted to bail by way of suspension of their sentences, however, the appellant in Crl. App. No.157-2018, stopped appearing before the Court and as a result, his perpetual warrants of arrest, were issued. Since the matter is being decided on legal question, hence it is only appropriate that the benefit of the same should also be extended to him.

8. The sole contention raised is that instant appeals merit acceptance, as on the same set of charges, appellants have already been acquitted through judgment of Sindh High Court dated 10.03.2023 and this Court was informed that no appeal/petition for leave to appeal has been filed against the referred judgment which has attained finality.

9. The examination of the referred judgment shows that criminal revision applications, filed by the appellants, were allowed and they were acquitted of the charges in the case registered against them at Karachi. There is no doubt that allegations leveled against the appellants are the same in both the cases and the position has been confirmed by learned Special Public Prosecutor appearing for the State. In the referred backdrop, contention of learned counsel for the appellants that Article 13 of the Constitution as well as Section 403 Cr.P.C. comes into play is correct. It

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29 NOV 2023
Examiner
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Qanoon-e-Shahadat Order, 1984
Islamabad High Court
Islamabad

is trite law that on the same set of allegations, if a person is acquitted or convicted, he cannot be prosecuted again on the same charges. In this regard, case law cited at bar by learned counsel for the appellants is instructive. The convictions recorded against the appellants cannot stand on the principle of double jeopardy as enshrined in Article 13 of the Constitution as well as section 403 Cr.P.C.

10. In view of foregoing, instant appeals are allowed and the judgment dated 05.07.2018, whereby conviction was recorded qua appellants in the aforementioned case/FIR, is set aside; consequently, the appellants are acquitted of the charges.

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Qanoon-e-Shahadat Order
Islamabad High Court
Islamabad

11. Since the appellants namely Rizwan Shah and Shoaib Ahmed Sheikh are on bail and present in the Court, their sureties are accordingly discharged.

12. All pending applications are also disposed of accordingly.

- sd/-

(CHIEF JUSTICE)

Zawar