

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 131 of 2019.

Appellant : Syed Mahmood Shah Moosvi  
son of Syed Fazil Ali Shah Moosvi  
Through Mr. Muhammad Yasir, Advocate

Respondent : The State  
Through Mr. Sharafuddin Jamali, DAG duly  
assisted by Mr. Mateeullah Gondal, Advocate  
for the Complainant.

Date of hearing : 17.04.2025

Date of judgment : 05.05.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.** - The appellant, Syed Mahmood Shah Moosvi, was convicted for the offence punishable under Section 22(b) of the Emigration Ordinance, 1979, by the learned Special Judge, Anti-Corruption/Emigration (Central-I), Karachi, vide judgment dated 26.02.2019. He was sentenced to undergo imprisonment till the rising of the Court and was directed to pay a fine of Rs. 450,000/-, with a further stipulation that in the event of default in payment of fine, he shall undergo simple imprisonment for a term of six months. The trial Court also directed that the amount of fine, if recovered, be disbursed to the complainant, Muhammad Hamza Akram, as compensation under the relevant provisions of law.

2. Briefly stated, the prosecution case is that the appellant, Syed Mahmood Shah Moosvi, along with his co-accused, Nida Fatima (currently absconding), was charged in Crime No. 341/2013 registered by the Federal Investigation Agency (FIA), Anti-Human Trafficking Circle, Karachi, for offences falling under Sections 17(2)(b) and 22(b) of the Emigration Ordinance, 1979. As per prosecution narration, in the year 2010, the appellant, who was not a licensed Overseas Employment Promoter as required under the Emigration Rules, in collusion with his daughter, fraudulently obtained an amount of Rs. 852,000/- from the complainant, Muhammad Hamza Akram. The complainant had also handed over supporting documents including photocopies of his passport, CNIC, recent photographs, bank statement, and bank certificate, on the representation that the appellant would facilitate overseas employment in Malaysia via Singapore. While the complainant was indeed sent to

Singapore, the promised onward employment in Malaysia was never arranged, nor was any refund made. The failure to fulfil the commitment or return the amount received under false pretenses led to the registration of the FIR.

3. After the completion of the investigation, the requisite documents were furnished to the appellant in compliance with Section 265-C of the Code of Criminal Procedure, 1898. A formal charge was framed, to which the appellant pleaded not guilty and claimed to be tried. In order to establish its case, the prosecution examined four witnesses, including the complainant, who supported the allegations and produced corroborative documentary evidence such as his passport, a notarized affidavit executed by the appellant acknowledging part payment, and the written complaint filed with the FIA. The investigation officer also produced the FIR and other related case materials during his deposition. In his statement recorded under Section 342 Cr.P.C., the appellant denied the allegations in toto and professed his innocence. However, he neither opted to appear as a witness on oath under Section 340(2) Cr.P.C. nor adduced any oral or documentary evidence in his defense.

4. Learned counsel for the appellant has assailed the impugned judgment as being perverse, erroneous both on facts and law, and the product of misreading and non-reading of material evidence. It is contended that the findings of the learned trial Court suffer from fundamental legal infirmities, particularly in its failure to properly appreciate the material contradictions, omissions, and inconsistencies that surfaced during the examination-in-chief and cross-examination of the prosecution witnesses. The learned counsel submits that all the material witnesses were closely related to the complainant, thereby rendering them interested witnesses. It is a settled proposition of criminal jurisprudence that in such cases, corroboration through independent, impartial evidence is essential to inspire judicial confidence, yet no such corroborative evidence was produced. Furthermore, the prosecution failed to associate or examine key witnesses such as the complainant's father, who was allegedly present at the time of the payment; the notary public who attested the purported affidavit/undertaking; and the money exchanger allegedly involved in the transaction. These omissions, it is argued, fatally weaken the evidentiary substratum of the prosecution's case. Learned counsel also pointed out that the complainant, who was admittedly unemployed at the relevant time, failed to produce any financial record, such as his own or his father's bank statement, to substantiate his

capacity to pay the substantial sum of Rs. 852,000/-. No documentary proof of actual remittance of funds to the appellant was brought on record. It is further contended that the affidavit/undertaking allegedly executed by the appellant acknowledging receipt of money was never duly proved in accordance with the Qanun-e-Shahadat Order, 1984. The investigating officer (PW-4) candidly admitted during cross-examination that no effort was made to examine the attesting witnesses of the affidavit, to verify the identity of the stamp vendor, or to summon the notary public, rendering the document legally inadmissible. The learned counsel highlighted critical discrepancies in the timeline of the alleged payment, while PW-1 claimed that payment was made in June 2010, PW-2 and PW-3 deposed that it was made in August 2010. Similarly, the location of the alleged transaction remained inconsistent, with no specific place mentioned in the initial complaint, and contradictory statements emerging during trial. The complainant later stated that the payment took place at an unspecified location, whereas PW-4 testified in cross-examination that it occurred at a shop in Kharadar. Discrepancies also surfaced as to who was present at the time of the payment, and these contradictions were left unaddressed by the trial Court. Moreover, the prosecution failed to establish that the appellant was engaged in the business of overseas employment promotion. No letterheads, visiting cards, advertisements, or passports with allegedly forged visas were produced to establish such claim. Similarly, no bank receipts, remittance documents, or mobile phone records were adduced to corroborate the complainant's assertion that he remained in contact with the appellant's daughter while abroad. The complainant made several material improvements during his examination-in-chief which materially affect his credibility. In addition, it is an admitted fact that the complaint before the FIA was filed nearly twenty months after the alleged incident, followed by another unexplained delay of twenty-two months in the registration of the FIR, an inordinate lapse that raises grave doubts about the authenticity and spontaneity of the prosecution's version. It was also submitted that the appellant had lodged an FIR against the complainant prior to the registration of the instant case, reflecting pre-existing animosity and a plausible motive for false implication. In such a background of strained relations and weak evidentiary support, the possibility of malicious prosecution cannot be excluded. The learned counsel also submitted that no specific incriminating material was put to the appellant during the recording of his statement under Section 342 Cr.P.C., thereby depriving him of a fair opportunity to explain the circumstances appearing against him, which constitutes a material illegality vitiating the trial. The evidence adduced by the prosecution is,

therefore, contradictory, unreliable, and insufficient to sustain a conviction. It is a cardinal principle of criminal law that the benefit of every reasonable doubt must accrue to the accused. Accordingly, it was urged that the impugned judgment be set aside and the appellant be acquitted of the charge, particularly as the imposition of fine is without lawful basis.

5. Conversely, the learned DAG for the State has supported the impugned judgment in unequivocal terms, submitting that the findings of the learned trial Court are well-reasoned, legally sound, and based upon a proper and judicious appraisal of the evidence brought on record. It was contended that the prosecution successfully discharged its burden of proof by adducing consistent, credible, and corroborative oral and documentary evidence, which cumulatively established the guilt of the appellant beyond reasonable doubt. The trial Court, it was argued, rightly placed reliance on the testimonies of the complainant and other prosecution witnesses, who deposed in a coherent and consistent manner and remained firm during cross-examination. The learned DAG further submitted that the mere fact that the witnesses were related to the complainant does not, by itself, render their testimony unreliable. It is well settled in law that evidence of related or interested witnesses is admissible and may form the basis for conviction if found credible and trustworthy after judicial scrutiny. The learned trial Court exercised its discretion judiciously in accepting their depositions after proper evaluation of demeanor, consistency, and the surrounding circumstances. As regards the alleged contradictions, it was argued that these were minor in nature and did not strike at the root of the prosecution case. The trial Court, being the court of first instance, had the distinct advantage of observing the demeanor of witnesses and correctly held that the discrepancies pointed out were either trivial or adequately explained during trial. The learned Deputy Attorney General further argued that the execution of the affidavit acknowledging receipt of funds stood corroborated by the complainant's testimony and the surrounding circumstantial evidence. The prosecution also satisfactorily addressed the issue of delay, explaining it as a consequence of the complainant's attempts at informal resolution and fear of reprisal, which delayed the formal lodging of the complaint and FIR. The learned DAG also submitted that while some documents, such as evidence of visa processing or money transfer records, may not have been produced, such omissions do not fatally vitiate the prosecution's case in light of the strength of the oral and supporting documentary evidence. The absence of the notary public or money exchanger was not critical, as the case was otherwise sufficiently established. It was emphasized that the burden of proof was

adequately met and the conclusion reached by the trial Court is supported by the weight of evidence and applicable legal standards. In the circumstances, no illegality, misdirection, or miscarriage of justice is apparent on the face of the record to warrant appellate interference. Accordingly, it was prayed that the appeal be dismissed and the judgment of conviction and sentence be upheld in its entirety.

6. Upon a comprehensive review of the evidence adduced at trial, it is evident that the learned trial Court meticulously examined and assessed the testimonies of all four prosecution witnesses, including the complainant, Muhammad Hamza Akram. The complainant's version, as articulated in the FIR, remained substantially consistent throughout his oral deposition and withstood the rigors of cross-examination by the defense. While defense counsel endeavored to highlight omissions and contradictions, no material deviation or substantive infirmity was elicited that could impeach the core of the complainant's narrative. Although certain factual omissions were revealed during cross-examination, particularly regarding dates and locations, these were peripheral in nature and did not materially affect the prosecution's case or impinge on the substratum of the complaint.

7. Of particular relevance is the execution of the affidavit and undertaking by the appellant, which was not expressly denied or disputed by the complainant at any stage. On the contrary, the existence and tenor of the said documents stood uncontroverted. Although defense counsel contended that these documents lacked evidentiary value due to procedural lapses, the contents thereof were substantiated by the testimony of accompanying witnesses. Additionally, the complainant did not refute the assertion that no refund of the paid amount was received, nor was there any denial of the accused's failure to facilitate the promised employment abroad. The fact that the complainant was never able to proceed to Malaysia, despite being initially routed to Singapore, was corroborated by both parties and formed a central component of the grievance.

8. The testimony of P.W-2, Syed Wahaj Ali, who was present at the time of payment and confirmed the transactional details, remained consistent and cogent throughout the proceedings. His evidence was not materially shaken during cross-examination and was free from contradictions or embellishments. Given the absence of contradictory evidence and the credibility exhibited in demeanor and content, his

testimony assumed probative value and provided significant corroboration to the complainant's version.

9. Similarly, the deposition of P.W-3, Ikhtlaq Hussain, served to further reinforce the prosecution's case. His account aligned with the material particulars narrated by P.W-1 and P.W-2 and lent credence to the existence and execution of the affidavit/undertaking. His presence as an attesting witness to the transactional sequence added an additional layer of evidentiary support, thereby enhancing the cumulative credibility of the prosecution's witnesses and narrowing the scope for any reasonable doubt.

10. The Investigating Officer (P.W-4), who was examined last, also corroborated the factual matrix through production of documentary evidence including the FIR, the complaint, and the affidavit. Despite being subjected to cross-examination, his testimony remained consistent and unimpeached. No aspect of his evidence reflected procedural impropriety or mala fide intent. While certain ancillary investigative steps, such as verification of the notary public or production of remittance records, were not taken, these deficiencies were neither raised contemporaneously nor shown to have caused prejudice to the accused's right to fair trial.

11. The learned trial Court, in its judgment, undertook a reasoned and holistic appraisal of the oral and documentary evidence. It properly evaluated the credibility of each witness, appreciating the consistency and interdependence of the testimonies. The Court rightly held that although minor discrepancies and omissions were present, these were immaterial in nature and did not strike at the root of the prosecution's case. It is well-settled that minor contradictions or lapses in memory do not erode the overall evidentiary value of a consistent and coherent prosecution narrative. The learned trial Court correctly concluded that the prosecution had established its case against the appellant beyond a reasonable doubt through reliable and corroborated evidence.

12. Notwithstanding the general correctness of the findings recorded by the learned trial Court on merits, one significant legal infirmity is discernible in the impugned judgment, which pertains to the imposition and subsequent disposition of the fine amounting to Rs. 450,000/-. The trial Court directed that the said amount, imposed as fine upon the appellant under Section 22(b) of the Emigration Ordinance, 1979, be paid to the complainant by way of compensation. This directive, however, is legally untenable and procedurally flawed, as it conflates two distinct penal and

remedial mechanisms under criminal jurisprudence, fine and compensation, each governed by separate statutory schemes with differing purposes, procedures, and beneficiaries. A fine is a punitive monetary sanction imposed upon a convict as part of the sentence under the penal provision in question. Its primary object is to punish and deter, and it is recovered as a penal debt due to the State. In contrast, compensation under criminal law serves a restorative or compensatory purpose. It is intended to redress the harm caused to the victim and to partially restore them to their original position. This distinction is not merely semantic but is statutorily codified. In Pakistan, the authority of a criminal court to award compensation to a victim of crime is derived from Section 544-A of the Code of Criminal Procedure, 1898, which empowers the Court to direct the payment of compensation to a person who has suffered loss or injury due to the offence, in addition to any other punishment. However, this provision must be read and applied in the light of the enabling statute under which the conviction is recorded. Upon a close examination of the Emigration Ordinance, 1979, particularly Section 22(b), it becomes evident that the Ordinance prescribes punitive fines but does not contain any provision expressly authorizing the award of compensation to victims akin to Section 544-A Cr.P.C. Nor does it incorporate Section 545 Cr.P.C., which also deals with restitution in limited contexts.

13. It is a cardinal principle of criminal procedure that a criminal court is a creature of statute and cannot travel beyond the jurisdiction conferred upon it by law. In the absence of any express or implied provision under the Emigration Ordinance authorizing the disbursement of fine as compensation to the complainant, the direction of the trial Court effectively amounts to unauthorized appropriation of public funds, in violation of Section 388 Cr.P.C., which mandates that all fines imposed by criminal courts shall be credited to the Government Treasury unless specific statutory exceptions apply. Moreover, the fine under Section 22(b) was imposed as a penal measure following conviction, and hence it must retain its character as a punitive financial penalty payable to the State, and not be recharacterized or redirected as victim compensation without legislative sanction. Even where the intention of the Court is equitable, judicial discretion must be exercised within the bounds of statutory authority. Accordingly, the impugned judgment, insofar as it directs the payment of the fine amount to the complainant as compensation, exceeds the jurisdictional competence of the trial Court under the governing statute. The appropriate course, in such cases, would be either to invoke Section 544-A Cr.P.C. separately and award compensation in addition to fine

(subject to legal requirements and justification), or to direct the fine to be deposited into the public exchequer in accordance with established fiscal rules. In the present case, as no such procedure was adopted and no statutory basis for compensation was cited, the directive must be construed as ultra vires and liable to be modified accordingly.

14. In light of the foregoing discussion, it is held that the instant appeal, to the extent it assails the conviction of the appellant, is not maintainable, as the impugned judgment discloses no legal infirmity, misreading of evidence, or miscarriage of justice warranting appellate interference. The conviction of the appellant under Section 22(b) of the Emigration Ordinance, 1979, is found to be well-founded, based on cogent and corroborated evidence, and is accordingly upheld. However, the impugned judgment is modified to the limited extent that the direction for disbursement of the fine amount to the complainant as compensation is without lawful authority. The Emigration Ordinance, 1979, does not contain any provision authorizing such compensatory redirection of fine, nor is the same permissible under Section 544-A Cr.P.C. in the absence of a separate, substantiated order. Accordingly, the fine shall be treated purely as a punitive sanction and deposited into the Government Treasury in accordance with Section 388 Cr.P.C. and the relevant financial rules. Except for the aforementioned modification with respect to the fine, the remaining findings of the learned trial Court, including the conviction and sentence of the appellant and the evaluation of evidence, are affirmed in their entirety. The appeal, therefore, stands dismissed. Let a copy of this judgment be transmitted to the learned trial Court for information and compliance in accordance with law.

**J U D G E**