

## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain,*

### CRIMINAL APPEAL NO.425 OF 2021

**Appellant:** Syed Anees Hasan son of Qamar ul Hassan through Mr. Ahmed Ali Hussain, Advocate

**Respondent:** The State through Mr. Gul Faraz Khatak, Assistant Attorney General.

**Date of Hearing:** 11.11.2021

**Date of Announcement:** 17.11.2021

### JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Syed Anees Hasan son of Qamar ul Hassan has assailed the impugned judgment dated 27.07.2021 passed by learned Judge, Special Court (Offences in Banks) Sindh at Karachi in Case No.41 of 2011 arising out of Crime No.07 of 2011 under Section 420/467/468/471/477-A/109/34 registered at PS FIA, SBC, Karachi whereby the appellant was convicted as under:-

- a) Accused Syed Anees Hassan s/o Syed Qamar ul Hassan is convicted u/s.420 PPC and sentenced to suffer 06 years R.I and fine of Rs.241 million. In case of nonpayment of fine he shall suffer further S.I. for 01 year more.
- b) He is also convicted u/s.468 PPC and sentenced to suffer 04 years R.I. and fine of Rs.50,000/-. In case of non-payment of fine, he shall suffer S.I. for 06 months more.
- c) He is also convicted u/s.471 PPC and sentenced to suffer 03 years R.I. and fine of Rs.50,000/-. In case of non-payment of fine, he shall suffer S.I. for 06 months more.
- d) All the sentences shall run concurrently. Benefit of Section 383-B Cr.PC is also extended to accused.

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2. Briefly stated that facts as narrated in the FIR lodged by the complainants Mr. Fazal Muhammad and Mr. Muhammad Zubair, who are the Vice Presidents of UBL, are that the complainant bank provided financial facilities to M/s. Pak Rock Oil Trading Corporation on mortgaging the property viz Plot No.6 E-2, Gulberg-III, Lahore and finance was disbursed by the bank to the accused Syed Anees Hassan and Yasir Zaidi who were the directors of the corporation. It is further narrated that the loan was defaulted by the company therefore a recovery suit in the Hon'ble High Court of Sindh was filed and subsequently suit NO.D-18/2010 was decreed amounting to Rs.224,251,241/-. The complainant bank had got verified the documents from LDA (Lahore Development Authority) but said documents were not authenticated. The bank had conducted enquiry and found that documents on which the loan was sanctioned were bogus, fake therefore, the complaint was filed against the accused who cheated and defrauded the bank and committed willful default.

3. After usual inquiry and completing all the legal formalities IO submitted challan against accused before the concerned trial court. Thereafter a charge was framed against the accused to which he pleaded not guilty and claimed trial of the case.

4. The prosecution in order to prove its case examined 15 prosecution witnesses and exhibited various documents. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 27.07.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellant has contended that the he is innocent of any wrong doing; that he did not collude with anyone to



defraud the bank; that his signatures are not on the property document; that the mortgaged property did not belong to him; that he had no idea that the property which was mortgaged did not belong to Ammar Yasir Zaidi; that if all those who verified the genuineness of the property document which included bankers, lawyers and valuers had been let off how could he have possibly colluded with any one in order to defraud the bank and as such based on any of the above factors the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on **Nasir Abbas v The State** (2011 SCMR 1966), **Agha Siraj Khan Durrani v The State** (2000 P Cr. L J 1329), **Hakim Ali Zardari v The State** (PLD 2002 Lahore 369), **Muzammil Niazi and Others v The State** (PLD 2003 Karachi 526), **Haji Jamil Ahmad v Mst. Shahnaz Parveen** (2016 P Cr. L J Note 40-Lahore ), **Rehmat alias Rhaman alias Waryam alias Badshah v The State** (PLD 1977 SC 515), **Syed Mushahid Shah v Federal Investment Agency** (2017 SCMR 1218), **Muhammad Shah V The State** (2010 SCMR 1009), **Zaffar v The State** (2021 YLR 1918) and one unreported case of (**Nusrat Ali Shar & Ors. v The State**) passed by Supreme Court in Cr. Appeals No.24-K, 25-K and 26-K of 2018 on 26.02.2019.

7. On the other hand learned Assistant Attorney General appearing on behalf of the State and who was also representing the complainant bank has fully supported the impugned judgment and has contended that since the prosecution had proved its case against the appellant beyond a reasonable doubt his appeal should be dismissed. In support of his contentions, he placed reliance on **Galla Nageswara Rao v State of Andhra Pradesh** (1992 Cr.L.J. 2601), **Ch. Sami Ullah v The State** (1984 P Cr. L J 1486), **Maqsood Pervez alias Billa v The State** (2000 SCMR 1859), **Quadratullah v The State** (PLD 2017 Peshawar 5), **Muhammad Hussain v The State** (1988 P Cr. L J 2029), **Babu Lal v The State** (2019 P Cr.L J 157) and **Ghufran v The State** (2012 P Cr. L J 98).

8. We have heard the arguments of the learned counsel for the appellant as well as learned Assistant Attorney General and have gone through the entire evidence which has been read out by the appellant, and

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the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

9. After our reassessment of the evidence we find that the prosecution has NOT proved its case against the appellant beyond a reasonable doubt for the following reasons;

- (a) Admittedly, the appellant was a Director in Ms Pak Rock Oil Trading Corporation who availed financial facilities from the bank by using a property document as security in the name of absconding co-accused Ammar Yasir Zaidi who was also a director of the aforesaid company but this fact alone does not make the appellant automatically guilty for the offences for which he was charged.
- (b) It is unclear whether the appellant or absconding co-accused Ammar Yasir Zaidi produced the property document before the bank as collateral for the finance facility.
- (c) The property document was not in the name of the appellant and his signature does not appear anywhere on it.
- (d) That the bankers, lawyers and valuers including members of the LDA whose duty it was to verify the property document all found it to be legally valid and of sufficient value to cover the loan which was disbursed by the company. If such professionals verified the document as genuine how can the appellant be expected to know otherwise. Since none of the aforesaid professionals were charged in this case it cannot be said that the appellant colluded with any one. In fact such persons have all been let off by the IO which has severely damaged the prosecution case for which strictures were passed against the IO in the impugned judgment for his poor investigation.
- (e) Once the concerned bankers were let off it became almost impossible for the prosecution to prove that the appellant had connived with them which is the case in hand.
- (f) That no evidence has come on record that the appellant either knew or it could reasonably be inferred from the evidence that he knew that the document was a forgery and as such he lacked the required *mens rea* to commit the offences especially as there is no evidence that he was involved in any forgery or collusion with others.
- (g) No PW had deposed that the appellant was in any way involved in forgery.

10. With regard to mens rea for the offences so charged it was held by the Supreme Court in the case of **Nasir Abbas** (supra) at P.1970 as under;



"8. Before dilating on the conduct of the appellant as to whether he committed the offences under which he was tried and convicted in the light of the evidence led during trial, it would be pertinent to refer to the penal provisions under which he stands convicted. These are as follows:-

**'420. Cheating and dishonesty inducing deliver of property--**

Whoever cheats 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 which is capable or being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**468. Forgery for purpose of cheating--** Whoever commits forgery, intending that the documents forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

**471. Using as genuine a forged document----**Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document."

9. While examining the judgment of the trial Court, we noted with dismay that the Court besides non-reading material evidence on record, did not keep in view requirement of proof of two essential elements of an offence to warrant a finding of guilt i.e. mens rea and actus reus. The age old Latin phrase epitomizes this concept, "actus non facit reum nisi mens sit rea" which means that the act does not make a person guilty unless the mind be also guilty. Actus reus in simple parlance is the actual act of committing some offence contrary to the law of the land and mens rea is the intent to commit the said offence. If either of the elements is missing, the conduct would not attract a penal provision unless it is a case of strict liability wherein the absence of mens rea may not be fatal to the prosecution. The wording of section 420, PPC indicates that the afore-referred two ingredients are prerequisites for trying and punishing an accused under this provision. For instance 'cheating dishonestly' is indicative of the mens rea whereas inducing a person "to deliver any property to any person, or to make, alter or destroy" constitutes the actus reus. In section 468 of the Pakistan Penal Code, two essential elements of the offence are 'forgery' and 'cheating'. 'Cheating' (section 415 of the Pakistan Penal Code) inter alia includes element of deceiving a person fraudulently or dishonestly with a view to induce the person so deceived to do something or to omit to do something which he would not have done or omitted, if he had not been so deceived. The actus reus under section 468, PPC is the making of a false instrument whereas the mens rea is three fold i.e. :-

- i) that the document is used to induce someone to accept it as genuine,
- ii) that the person before whom the document is produced will accept it as genuine and in so doing he will do some act or omit to do something to his own or someone else is damaged or injured or is intended to "support any claim or title" or with an intent to commit fraud, and



iii) *that the maker of the false instrument/document is aware that the document in question is false.*

10. Section 471 of the Pakistan Penal Code is attracted when a person though is not a maker of the forged document uses it as genuine 'fraudulently' or 'dishonestly' about which he knows, or has reason to believe to be a forged document. Thus under this provision the *actus reus* would be the act of using a forged document as genuine and the *mens rea* would be his dishonest intent and the knowledge that the document is forged."

11. As mentioned earlier in this judgment we find that based on the particular facts and circumstances of this case the prosecution has failed to prove either through direct evidence or inference based on the conduct of the accused that there was any *mens rea* on his part to commit any of the offences for which he was convicted.

12. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

13. For the reasons discussed above we find doubts in the prosecution case against the appellant and thus by extending the benefit of the doubt to the appellant the appellant is acquitted of the charge, the impugned judgment is set aside, his appeal is allowed and the appellant shall be released from jail unless wanted in any other custody case.

14. The appeal stands disposed of in the above terms.