

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.241 of 2017

Appellant : Muhammad Junaid Khan
through Mr. Ghulam Sarwar
Chandio, Advocate

Respondent : The State through Mr.
Muhammad Iqbal Awan, Addl.
Prosecutor General, Sindh

Date of Hearing
& Judgment : 21.11.2024

JUDGMENT

Mohammad Karim Khan Agha, J. Appellant Muhammad Junaid Khan faced trial in the Court of Special Judge Anti-Corruption (Provincial) Karachi, in Special Case No.54 of 2010, in respect of FIR No.30/2010 of ACE Karachi, under Section 409,420,467,468,471,34 PPC readwith Section 5(2) Act-II, 1947, registered at PS ACE Karachi and vide judgment dated 17.05.2017, the appellant was convicted and sentenced to undergo R.I for 05 years with fine of Rs.200,000/- and in case of non-payment of fine, he was directed to undergo SI for six months more. However, the benefit of Section 382-B was also awarded to the appellant.

2. Brief facts of the case are that the case was registered as result of inquiry conducted by enquiry officer Mr. Anand Ram Hotwani Judge, Anti-Terrorism, Court-III, Karachi vide No ATC-III/K-DIV/408/2010 Karachi, dated 08.10.2010 addressed to the Registrar Special Courts STA/ATA Home Department, Govt. of Sindh, Karachi, who forwarded the same to the Director ACE Sindh Karachi vide No. REG(HD)3-209/2008(P1) Karachi dated 21.10.2010 along with enquiry report furnished by Enquiry Officer Mr. Anand Ram Hotwani, Judge Anti-Terrorism Court III, Karachi. The Registrar of Special Courts STA/ATA, Home Department Karachi requested to lodge FIR against involved person namely

Muhammad Junaid Khan former Reader/Assistant of Anti-Terrorism Court-II, Karachi. Subsequently, the same was approved by the competent authority (ACC-III), Karachi on 04.11.2010 and conveyed to Ali Khan Bhayo, Assistant Director, ACE Karachi vide No.DD/ACE/K/PE:No.512/2010/8720-21, dated 08.11.2010 and assigned to Inspector Hyder Bux Shahwani on 08.11.2010 for immediate compliance. From the enquiry report of Mr. Anand Ram Hotwani, Judge Anti-Terrorism Court III, Karachi, it has been found that accused Muhammad Junaid Khan former Reader/Assistant of Anti-Terrorism Court-II, Karachi is found involved for committing fraudulent withdrawal of cash amounting to Rs 2,96,000/- from the account of DDO. So, he is responsible for the fraud, embezzlement of Rs.2,96,000/- (Amount of 8 cheques) and manipulated signatures of Presiding Officer (Mr. Abdul Ghafoor Memon previous Judge Anti-Terrorism Court) ATC Court No.II Karachi. Hence, the case was registered against accused above named in connivance with others, committed offences punishable u/s 409, 420, 467 468, 471, 34 PPC r/w section 5(2) Act 11, 1947.

3. After completion of usual investigation, the matter was sent for trial and the appellant pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined 14 P.Ws and exhibited various items and other documents. The appellant in his 342 Cr.P.C statement denied prosecution's allegations and claimed trial. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After appreciating evidence on record, the trial court convicted and sentenced the appellant. Hence the appellant has filed this appeal against his conviction.

6. At the very out set learned counsel for the appellant and learned Additional Prosecutor General Sindh pointed out that PW-8 Inspector Hyder Bux Shahwani had not been cross-examined. The appellant had been denied the right to cross-examine PW-8 Inspector Hyder Bux Shahwani and as such the appellant had

been prejudiced in his trial and in consonance with Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, this case should be remanded to the concerned trial Court. It was also pointed out that in the impugned judgment, the trial Court has not set out the conviction and sentences for offence under Section 409, 467, 468, 471 PPC r/w section 5(2) of Prevention of Corruption Act-II, 1947 and as such awarded R.I for 05 years with fine of Rs.2,00,000/-, which is contrary to the law as the separate conviction and sentences needed to be recorded in respect of each offence.

7. I have considered the arguments of learned counsel for the appellant and learned Additional Prosecutor General Sindh and I am in agreement with the same. This is a case where the right to cross-examination was denied to the appellant and as such he has been prejudiced in his trial. Furthermore, a separate conviction and sentences should have been handed down in respect of each separate offence for which the accused was convicted. In this respect, reliance is placed on the case of **Irfan and another v. Muhammad Yousaf and another** (2016 SCMR 1190).

8. For the reasons discussed above, I set aside the impugned judgment and remand this case to the Special Judge Anti-Corruption (Provincial) Karachi, for the limited purpose of recording evidence of PW-8 Inspector Hyder Bux Shahwani including examination-in-chief, cross-examination and re-examination in the presence of a counsel for the appellant and that the appellant be given a chance to cross-examine PW-8 Inspector Hyder Bux Shahwani. Thereafter, the learned trial Court shall record a fresh statement under Section 342 Cr.PC of the appellant and after hearing arguments from the parties hand down a fresh judgment. In such judgment, the learned trial Court shall ensure that a separate offence enters either the conviction or acquittal alongwith the sentences, if any, for that offence. For this limited purpose, the concerned trial Court shall complete the exercise within 03 months of the date of this judgment.

9. The appellant who is on bail during trial shall remain on bail. However, he shall ensure his attendance before the learned trial Court on each and every date of hearing. A copy of this order alongwith R&Ps shall be sent to learned the Court of Special Judge Anti-Corruption (Provincial) Karachi, for compliance.

10. The appeal stand disposed of in the above terms.

JUDGE

Nadir*