

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

*Mr. Justice Mohammad Karim Khan Agha*

CRIMINAL APPEAL NO.424 OF 2020

Appellants:

- 1) Muhammad Kamran Khan s/o Muhammad Usman Khan
- 2) Faisal Islam s/o Muhammad Islam
- 3) Muhammad Ali s/o Murtaza Ali through Mr. Shoukat Ali Shehroze, advocate and
- 4) Muhammad Shariq s/o Zaheenuddin through Mr. Samiullah Soomro, Advocate.

Respondent:

The State through Mr. Ghulam Sarwar Baloch, Assistant Attorney General of Pakistan.

Date of Hearing : 12.09.2024

Date of Judgment : 26.09.2024

JUDGMENT

*Mohammad Karim Khan Agha, J.* Appellants Muhammad Kamran Khan, Faisal Islam, Muhammad Ali and Muhammad Shariq were tried in the Court of Special Judge Anti-corruption & Immigration (Central-I) Karachi in Case No.04/2017 arising out of FIR No.58 of 2017 under Section 409/ 419 /420/ 468/471/109 PPC r/w. Section 3(2), 13/14 Foreigners Act, 1946 r/w Section 5(2) PCA-II 1947 registered at PS FIA AHTC Karachi and vide Judgment dated 08.10.2020 were convicted and sentenced as under

- I found guilty to accused Muhammad Kamran Khan for committing offence u/s 468 PPC and sentenced him R.I. for one year and he shall be liable to pay fine of Rs.5000/-, however, in default thereof he shall further undergo S.I. for one month. The accused also found guilty for committing offence u/s 14 of the Foreigners Act, 1946 and sentenced R.I. for one year and shall also liable to pay fine of Rs.2000/- in default thereof he shall further undergo S.I. for one month. The accused found guilty for committing offence u/s 5(2) of PCA-II, 1947 and sentenced R.I. for one year.

- I found guilty to accused Faisal Islam committing offence u/s 468 PPC and sentenced him R.I. for one year and he shall be liable to pay fine of Rs.5000/-, however, in default thereof he shall further undergo S.I. for one month. The accused also found guilty for committing offence u/s 14 of the Foreigners Act, 1946 and sentenced R.I. for one year and shall also liable to pay fine of Rs.2000/- in default thereof he shall further undergo S.I. for one month. The accused found guilty for committing offence u/s 5(2) of PCA-II, 1947 and sentenced R.I. for one year.
- I found guilty to accused Muhammad Ali for committing offence u/s 468 PPC and sentenced him R.I. for one year and he shall be liable to pay fine of Rs.5000/-, however, in default thereof he shall further undergo S.I. for one month. The accused also found guilty for committing offence u/s 14 of the Foreigners Act, 1946 and sentenced R.I. for one year and shall also liable to pay fine of Rs.2000/- in default thereof he shall further undergo S.I. for one month. The accused found guilty for committing offence u/s 5(2) of PCA-II, 1947 and sentenced R.I. for one year.
- I found guilty to accused Muhammad Shariq for committing offence u/s 468 PPC and sentenced him R.I. for one year and he shall be liable to pay fine of Rs.5000/-, however, in default thereof he shall further undergo S.I. for one month. The accused also found guilty for committing offence u/s 14 of the Foreigners Act, 1946 and sentenced R.I. for one year and shall also liable to pay fine of Rs.2000/- in default thereof he shall further undergo S.I. for one month. The accused found guilty for committing offence u/s 5(2) of PCA-II, 1947 and sentenced R.I. for one year.
- It is ordered that all the sentences of accused persons shall run concurrently except the payment of fine.

2. The brief facts of the case are on 20.02.2017 at about 1915 hours, the instant FIR was registered at PS FIA AHT Circle, Karachi on the basis of Enquiry No.462/2016, under the complaint of Inspector/SHO Muhammad Shoaib, PS FIA AHTC, Karachi, which depict the facts that accused NADRA officials namely Muhammad Kamran Khan (ERP No.6583), Deputy Assistant Director being Incharge of NADRA Registration Centers in collusion with Data Entry Operators namely Faisal Islam (ERP No.6581)-Junior Executive, Muhammad Ali (ERP No.7343) - Senior Executive and Muhammad Shariq (ERP No.7409) - Senior Executive by abusing their official positions used particulars of Gul Nawab holder of CNIC No.15602-0465164-9 and processed/issued CNIC to aliens namely Sardar Wali s/o Gul Nawab holder of CNIC No.42401-6475480-5, Sarwar Khan s/o Gul Nawab holder of CNIC No.42401-9908543-3 and Zabil Khan s/o Gul Nawab holder of CNIC No.42401-4042065-9 illegally as said aliens/accused persons are not



son/relatives of Gul Nawab in any manner. It is established that following illegal acts were committed by above said accused persons/NADRA officials, hence the aforesaid FIR was lodged against the appellants.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial where they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined six (06) PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. wherein they claimed that they are innocent. They did not give evidence on oath or call any witness in support of their defence.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellants as set out earlier in this judgment and hence, the appellants have filed this appeal against their convictions and sentences.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants has contended that the appellants are innocent as they followed the required SOP on this issue as produced by NADRA; that the correct process of filing the complainant under the NADRA Ordinance 2000 had not been followed which vitiated the enquiry; that they had diligently processed all the necessary documents which were produced before them and sent them to Islamabad HQ and thus for any or all of the above reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt. In support of their contentions they placed reliance on the cases of unreported judgments passed by this Court in the case of Syed Hamid Hasan and others v. The State and Faisal Islam and another v The State as well as order passed by High Court of Balochistan in Cr. Misc. Quashment Nos.193/2019 and 198/2019.

8. On the other hand Learned DAG fully supported the impugned judgment and contended that the appellants had deliberately and intentionally manipulated the documents which had been placed before them to enable aliens to obtain CNIC's and as such their appeal be dismissed.

9. I have heard the learned counsel for the appellants as well as learned DAG and have also perused the material available on record.

10. After my reassessment of the evidence on record, I find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons;

- (a) That under S.31 of the NADRA Ordinance 2000 no court could take any cognizance under this Ordinance except upon a complainant in writing by the Authority or any gazetted officer authorized by it in this behalf. S.31 was not complied with which the whole trial doubtful.
- (b) The investigation officer (IO) failed to seize the NADRA SOP under which the appellants were obliged to operate when processing new applications for CNIC's as such it is not possible to tell whether or not the appellants followed or violated such SOP's.
- (c) The source report from the ISI was general in nature and did not name the appellants as the culprits and the IO's enquiry report was not exhibited in evidence which may or may not have implicated the accused
- (d) The star witness in this case was Gul Nawab who the names of the three aliens were allegedly added as his son's to his family tree however he was not called to give evidence to refute or confirm this fact.
- (e) It has come in evidence that Gul Nawab may have had three wives namely; Shaheen, Ayesha and Fatima but no effort was made to track down these wives and confirm whether or not they were the mother of the three aliens who if not being the case could have been called to give evidence to that effect however this was not done.
- (f) That all the documents which were produced at trial were photo copies which casts doubt on their admissibility.
- (g) That the job of the appellants was to enter the documents/date in the NADRA system which they had received from applicants. In the attestation part of the application the attester would be held liable for any wrong information. PW's 3 and 4 Ahmed and Tasneen respectively who were school headmaster/head mistress signed the application forms which contained their correct CNIC's however they denied their signatures. Their signatures however were neither sent to a hand writing expert or for forensic examination to determine their correctness and as such it cannot be categorically found that the attestation signatures on the application forms were in fact not theirs especially as on the attestation form they would be liable for any wrong information.

- (h) No financial gain has been recovered from any of the appellants as a result of this incident.
- (i) The evidence on record tends to suggest that this might have been a case of mistake or gross negligence by the appellants in which case disciplinary action should be initiated against the appellants by NADRA if it has not already been done

11. Thus, based on the above discussion, I find that the prosecution has NOT proved its case against the appellants beyond a reasonable doubt for the offences for which they have been convicted and sentenced in the impugned judgment and as such by extending the benefit of doubt to the appellants the impugned judgment is set aside and all the appellants are acquitted of the charge and their appeal is allowed and their bail bonds stand discharged and they are free to go.