

Offences in respect of Banks
Ingredients S.409 not proven

611

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan

CRIMINAL APPEAL NO.817 OF 2019

Appellant: Abu Bakar Shaikh s/o Karim Dino
through Mr. Mehmood A. Qureshi,
Advocate.

Respondent: The State through Mr. Ghulam
Sarwar Baloch, Assistant Attorney
General.

Date of Hearing: 29.11.2022

Date of Announcement: 05:12:2022

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Abu Bakar Shaikh son of Karim Dino was tried in the Special Court (Offences in Banks) Sindh at Karachi in Case No.13 of 2014 under Crime No.13/2014 u/s.409/420/468/471/34 PPC r/w Section 5(2) PCA II 1947 registered at PS FIA/CC/Sukkur and vide judgment dated 30.11.2019 he was convicted as under:-

- a) Accused Abu Bakar Shaikh s/o Karim Dino was convicted u/s.409 PPC and sentenced to suffer 07 years R.I. and fine of Rs.43,80,062/-. In case of non-payment of fine he was ordered to suffer further S.I. for 01 year more.
- b) He was 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 was ordered to suffer further S.I. for 03 months more.

Both sentences were ordered to run concurrently.

2. The brief facts of the prosecution case as narrated in the FIR regarding fraud/misappropriation of millions of rupees in GP Fund, Group Insurance and Worker Welfare Fund of the employees of Sukkur Electric Power Company (SEPCO) deliberately and intentionally not sent the amount of employees to budget & Account Officers (Funds) WAPDA House Lahore deducted by SEPCO from the monthly salaries of employees by the officers/officials of SEPCO as well as of UBL Minara Road Branch Sukkur. It is further alleged that fraud came into knowledge of employees of SEPCO when letter dated 04.04.2013 was received from budget & Account Officer (Funds) WAPDA House Lahore, hence the

present FIR was registered against accused persons for taking strict action against the culprits and to direct SEPCO and WAPDA to give all benefits with legal interest to the employees of SEPCO.

3. After usual investigation charge was framed against the accused on 09.03.2015 to which the appellant pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 11 witnesses and exhibited various documents and other items. The appellant in his section 342 Cr.PC statement denied all the allegations leveled against him and proclaimed his innocence. He, however, did not give evidence on oath or call any DW in support of his defence case.

5. After hearing the parties and 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. It is worth mentioning that all the other co-accused being 11 in number were acquitted of the charge. The appellant is currently on bail granted by this court.

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

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case; that admittedly he was an LDC and had nothing to do with the cheques and that no case of entrustment had been made out against him from either the oral or documentary evidence to bring the case within the purview of S.409 PPC; that he had not signed any of the nine cheques which were the subject matter of this case and had not forged any ones signature which appeared on the cheque; that the CCTV footage of him encashing cheques was inadmissible in evidence and that it did not even show him encashing the cheques in question; that he was in the bank as he held his own account there and that for any or all of the above reasons the appellant be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Shakir Hussain v The State** (PLD 1956 SC 417), **Abdul Rashid Nasir v The State** (2009 SCMR 517), **Zulfiqar Ali Shar v The State** (PLD 2007 Karachi 536), **Lal Khan v The State** (2006 SCMR 1846), **Muhammad Naeem Khan v Muqadas Khan (decd) through L.Rs.** (PLD

2022 SC 99), **The State v Ahmed Omar Sheikh** (2021 SCMR 873), **Hyderabad Development Authority v Abdul Majeed** (PLD 2002 SC 84), **Muhammad Yousuf Khan Khattak v S.M. Ayub** (PLD 1973 SC 160), **Mst. Riffat Jehan v Habib Bank Limited** (2005 CLD 941), **Dr. Major Abdul Ahad Khan v Muhammad Iqbal** (PLD 1989 Karachi 102), **Muhammad Nural Haq Mia v The State** (PLD 1958 Dacca 341), **Muhammad Panah Jokhio v The State** (2019 YLR 2911), **Notice to Police Constable Khizar Hayat Son of Hadait Ullah** (PLD 2019 SC 527), **Altaf Hussain v The State** (2019 SCMR 274), **Abdul Hakeem v The State** (2021 P Cr.L J 1538), **Ishtiaq Ahmed Mirza v Federation of Pakistan** (PLD 2019 SC 675), **Safdar Baloch alias Ali v The State** (2019 SCMR 1412), **Tariq Pervez v The State** (1995 SCMR 1345), **Ayub Masih v The State** (PLD 2002 SC 1048) and **Muhammad Akram v The State** (2009 SCMR 230).

8. On the other hand learned DAG appearing on behalf of the State has fully supported the impugned judgment. In particular, he has contended that the evidence of the prosecution witness's shows that he forged the signatures on the cheques in question which was supported by the CCTV footage of him in the bank and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and the appeal be dismissed.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the learned counsel for the appellant, the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

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

(a) From the evidence it is apparent that the appellant is an LDC at SEPCO and had nothing to do with the preparation of the cheques which was carried out by the DDO and the Accountant and as such it cannot be said that any money/property was entrusted to him.

(b) That there is no direct ocular evidence that the appellant encashed any of the cheques in question as the person who was in the best position to point out the appellant as the person who encashed the cheques namely the branch manager of the bank for reasons best known to the prosecution was not called to give evidence. Only inadmissible hearsay evidence is available in this regard.

(c) The case revolves around the encashment of nine cheques at UBL bank at its Minara branch in Sukkur and at least one of such cheques was signed on the back by the appellant at the time of the encashment as per

the prosecution case. However PW 11 Afoze Ahmed who was the IO of the case states in his evidence as under;

"It is correct to suggest that of these 9 checks neither signature of accused Abu Bakar nor his CNIC are available".

This completely refutes the prosecution case of the appellant having signed any cheque which is the subject matter of this case.

(d) There is one cheque dated 30.09.2009 for an amount of RS 232242 which the prosecution claim was signed on the back by the appellant which signature he denies however we note that as per the charge that it was in the year 2011 onwards in which the offences were committed which is two years after the date of the cheque and as such keeping in view the statement of the IO that none of the 9 cheques had been signed by the appellant it is apparent that this cheque is not part of the charge in this case even if the signature of the appellant stood proven which it has not been as it was not subject to a handwriting expert and as such his signature on this cheque in respect of the offence so charged is of no relevance.

(e) That the CCTV footage produced in USB form even if admissible is undated and although it does show the appellant at the concerned branch of the bank it cannot be said on which date he is seen at the bank, how many cheques he was encashing and whose cheques he was encashing. The significance of this is that the appellant in his S.342 Cr.PC statement has claimed that his personal bank account is held at that bank branch and as such it was not out of place for him being at the branch carrying out his own private banking transactions. In short the prosecution has not been able to link the appellant to encashing a particular cheque which forms the subject matter of this case. He might be encashing one of his own cheques. No effort appears to have been made by the IO to investigate this aspect of the case. Even the IO in his evidence has stated in respect of the CCTV footage that,

"It is correct that the accused is not seen signing the cheques at the time of encashment."

(f) That 11 other co-accused who included bankers working at the branch as well as accounts working in the SEPCO accounts office who had more, if not equal, involvement in the offences so charged were all acquitted. The only extra piece of evidence against the appellant was the CCTV footage and alleged signature on one cheque which as already discussed above is of no help to the prosecution based on the particular facts and circumstances of this case.

(g) 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),

11. For the reasons discussed above we find doubt in the prosecution case and by extending the benefit of the doubt to the appellant he is acquitted of the

charge, the impugned judgment is set aside, the appeal is allowed and resultantly the bail bonds of the appellant stand discharged.

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