

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Criminal Appeal No. S-122 of 2023

Appellants : 1. Amanullah son of Ali Gohar
2. Safiullah son of Ali Dino
Through Mr. Irshad Hussain Dharejo,
Advocate for appellant Safiullah and Mr. Mir
Ali Nawaz Jagirani, Advocate for appellant
Amanullah.

The State : Through Mr. Zulfiqar Ali Jatoi, Addl. P.G

Date of Hearing : 07.08.2025
Date of Judgment : 13.08.2025

Khalid Hussain Shahani, J:- Appellants Amanullah and Safiullah call into question the legality and propriety of the judgment dated October 30, 2023, passed by the learned IVth Additional Sessions Judge, Khairpur, whereby they were convicted for offenses punishable under Sections 467 read with section 470 & 471 PPC and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/ each. In default thereof, to suffer SI for one month more; five years for the offense under Section 468 PPC, a fine of Rs. 10,000/ and in default thereof, to suffer SI for one month more, all sentences to run concurrently, with benefit of section 382-B Cr.P.C.

2. The facts, in a nutshell, stem from an FIR lodged on May 22, 2015, at Police Station 'A' Section, Khairpur, by complainant Syed Shahdad Ali Shah. The complainant, a Tapedar in the Mukhtiarkar's office, alleged that during the verification of a land transaction, he discovered that a letter (No. AC/958, dated May 6, 2015) from the Assistant Commissioner (AC), Khairpur, and other documents related to the sale of 11,000 sq. ft. of government land by the appellant Amanullah to the appellant Safiullah were forged. The complainant further claimed that the Assistant Commissioner, upon being informed, directed him to lodge FIR.

3. Following the FIR, the investigation was conducted by PW-4, Inspector Muhammad Ameen Pathan, who ultimately submitted a challan against both appellants. The trial court, after framing a formal charge and recording the evidence of seven prosecution witnesses, found the appellants guilty as charged and passed the impugned judgment.

4. The learned counsel for the appellants launched a multi-pronged attack on the trial court's judgment, raising both legal and factual grounds. The counsel's principal argument was that the entire trial was vitiated from its inception. He contended that the offenses under which the appellants were charged, specifically Sections 468 and 471 PPC, are non-cognizable as per the Second Schedule of the Cr.P.C. He submitted that under the mandatory provision of Section 155(2) Cr.P.C., a police officer "shall not investigate a non-cognizable case without the order of a Magistrate." The record of the case, he argued, is devoid of any such order, rendering the police investigation illegal and void *ab initio*. The counsel meticulously pointed out that all key prosecution witnesses the complainant (PW-2), Ghulam Muhammad (PW-3), and Abdul Qadir Jagirani (PW-5) were employees of the same Revenue Department and subordinates of the very officer whose forged signature was the subject of the FIR. They were, therefore, "interested" witnesses, and their testimonies should have been treated with great caution. He highlighted glaring contradictions, such as the complainant's claim that he was accompanied by other witnesses to the police station, which was contradicted by the FIR author (PW-6), who stated the complainant appeared alone. The counsel emphasized that the prosecution failed to secure a handwriting expert's opinion to prove that the signature on the alleged forged letter was indeed fake. He also argued that the crucial documentary evidence (the alleged forged documents) was not specifically put to the accused during their examination under Section 342 Cr.P.C., thereby depriving them of a fair opportunity to explain or rebut the allegations. The learned counsel stressed that no independent person was associated as a witness or mashir in this case. The sole witnesses were department officials, which reinforced the defense's position that the case was a managed affair orchestrated at the instance of a superior officer. Learned advocate relied upon the case law cited at 2019 YLR 2911, 2022 MLD 456, 2005 P.Cr.L.J 906, 2024 MLD 951, 2014 GBLR 73.

5. The learned DPG for the State strongly opposed the appeal, asserting that the trial court's judgment was well reasoned and based on a thorough appreciation of the evidence. He contended that, the prosecution witnesses were truthful and had fully supported the allegations. Any minor discrepancies in their statements were natural and inconsequential, especially given the lapse of time since the incident. The overwhelming evidence,

including the testimony of the Sub-Registrar (PW-7) and the departmental witnesses, clearly established that the appellants had produced a bogus document to defraud the government. The appellants' defense of false implication was baseless and not supported by any evidence, whereas the prosecution had successfully proven its case beyond a reasonable doubt. Learned advocate relied upon the case law cited at PLD 2005 Karachi 528.

6. According to the prosecution, on 21.05.2015 the accused Safiullah (as buyer) and Amanullah (as seller) attempted to execute a sale transaction of 11000 square feet situated in Deh Bugro, on the basis of a forged letter purportedly issued by the Assistant Commissioner, Khairpur. The complainant, a Tapedar in the Revenue Department, alleged that the said letter No.AC/958/2015 was fake and never issued by the competent authority. Upon verification from the record, the FIR was lodged on 22.05.2015 at about 02:00 p.m.

7. All material witnesses (PWs 1 to 3) are employees of the same Revenue Department which was allegedly affected by the forgery, PW-1 Imtiaz Hussain (Tapedar) acted as mashir of inspection. PW-2 Nazeer Ahmed (complainant Tapedar). PW-3 Ghulam Muhammad (mashir of arrest and recovery). The Investigating Officer, PW-4 Muhammad Ameen, is a police official who did not associate any independent person at any stage of the investigation. The site inspection, memos, and recovery proceedings were all conducted in the presence of these departmental colleagues. The record shows a complete failure to comply with Section 103 Cr.P.C., which mandates the association of independent and respectable inhabitants of the locality as mashirs. The explanation offered that all work was conducted in office premises is unconvincing. The offices were within public access and independent persons were admittedly present. The deliberate omission to include neutral witnesses raises a legitimate doubt regarding fairness of the investigation. There is inconsistency in the witnesses' account of where the forged document was allegedly presented and seized. PW-1 states the inspection memo was prepared in the AC office, which is "separate from Mukhtiarkar's office." PW-2 says both offices are "within the same boundary wall" but separate. PW-3 fixes the distance as 30–35 feet. Such discrepancies, though relating to location, are significant in a case where the very production of the document and the place of its seizure are central issues. A striking weakness in the prosecution case is

the complete absence of forensic verification. All PWs candidly admit that, the letter was never sent to a handwriting or document examiner. The signatures and official seals were never compared with admitted specimens. The prosecution relies solely on internal office record to declare the letter “fake.” It is trite law that when forgery is alleged, expert opinion, though not always indispensable, becomes critical if available but deliberately withheld. The unexplained failure to obtain such verification entitles the accused to benefit of doubt. Reliance is placed in case of *Yameen Kumhar vs. The State* (PLD 1990 Karachi 275), wherein this court held that Section 103 Cr.P.C. embodies rule of prudence and justice, intended to eliminate 'chicanery' and 'concoction', to minimize manipulation and false implication.

8. The incident allegedly occurred on 21.05.2015. The FIR was lodged on 22.05.2015 at about 02:00 p.m., reflecting a delay of about 22 hours. The complainant admits that the police station is only half a kilometre away and that he met the accused in the office on the same date. No plausible explanation is offered for this delay, which creates room for deliberation and consultation before implicating the accused. In case of *Zeeshan @ Shani v. The State* (2012 SCMR 428), the Supreme Court held that delay of more than one hour in lodgement of FIR gave rise to inference that occurrence did not take place in manner projected by prosecution and in case of *Muhammad Asif vs. The State* (2017 SCMR 486), the Supreme Court held that even one or two days unexplained delay in recording statements of eye witnesses would be fatal.

9. PW-2, the complainant, admits he is uncertain whether a Tapedar is legally competent to initiate proceedings under Sections 468 and 471, PPC, and concedes that the Assistant Commissioner is the competent authority. This uncertainty goes to the root of maintainability and casts doubt on whether cognizance could validly be taken on such a complaint. In case of *Muhammad Panah Jokhio v. The State* (2019 YLR 2911), it is held that a conviction for forgery cannot be sustained on the basis of photocopies alone. The original forged document must be produced in evidence to prove the charge. The reliance on a mere photocopied sketch (Ex. 18/1) was deemed insufficient and could not be equated with an original document. While a court has the power under Article 84 of the Qanun-e-Shahadat Order, 1984, to compare signatures, it is considered dangerous and unsafe to do so without the aid of a handwriting expert, especially when the signatures being compared are on disputed

documents. The court clarified that private individuals cannot be convicted under sections of the PPC (e.g., Sections 217, 218) and the Prevention of Corruption Act (e.g., Section 5(2)) that are specifically meant for public servants. An accused person is entitled to the benefit of the doubt as a matter of right, not as a grace or concession. Even a single circumstance that creates a reasonable doubt is sufficient for acquittal. The Anti-Corruption Police lacks the power to investigate disputes concerning private lands and cannot entertain complaints regarding title disputes between private parties. The principles laid down in *Muhammad Panah Jokhio v. The State* are remarkably befitting and directly applicable to the circumstances of the case against Amanullah and Safiullah. This case law provides a strong legal precedent that reinforces the arguments for the appellants' acquittal. Just as in the cited case, the prosecution in the present matter failed to produce the alleged forged document (the letter from the Assistant Commissioner) for a forensic handwriting expert's opinion. The Investigating Officer (PW-4) admitted that he did not send the document for verification. The trial court's finding, therefore, lacks a solid legal foundation, and the precedent set in *Muhammad Panah Jokhio* clearly establishes that a conviction for forgery cannot stand on such weak evidence. The court in the cited case emphasized the danger of relying on a court's own comparison of signatures without expert aid, a point directly relevant here. In *Muhammad Panah Jokhio Case (Supra)*, the court noted that the Anti-Corruption Police did not have the authority to investigate a private land dispute. A similar parallel exists here, where the police's investigation into offenses like Sections 468 and 471 PPC, which are non-cognizable, without a Magistrate's order, is a fundamental illegality that renders the entire proceedings void. The precedent reinforces that jurisdictional defects in the investigation process can be a standalone ground for acquittal. The judgment in *Muhammad Panah Jokhio (Supra)* also underscores that legal flaws and lacunas in the prosecution's evidence make the case doubtful. In our case, the prosecution failed to prove the essential ingredients of forgery (Section 467), forgery with intent to cheat (Section 468), and the use of a forged document (Section 471). The absence of a handwriting expert's report, combined with the other procedural and factual flaws, creates a reasonable doubt that must, as a matter of right, be resolved in favor of the appellants.

10. The complainant admits that, Civil Suit No.131/2015 filed by accused Safiullah against the complainant's colleagues is pending regarding the same property. The land in question is partly owned by the National Highway Authority and partly by the Irrigation Department. The name of accused Amanullah does not appear in the revenue record. This supports the defence plea that the matter is of civil nature and the criminal case is a counterblast to the pending litigation. The Investigating Officer admits that he did not visit the disputed property. He did not verify ownership from Municipal or Excise departments. He did not join AC Khairpur as a witness despite being the purported issuer of the letter. All witnesses are departmental colleagues of the complainant. Such lapses show a one sided investigation designed to support the departmental version rather than uncover the truth.

11. The prosecution has failed to prove, Recovery of the forged letter from the personal possession of the accused or that the accused prepared the letter or caused its preparation or the accused used the document to gain a benefit or cause loss. The element of mens rea remains unproved. Mere presence of the accused at the office, without proof of use or authorship of the document, is insufficient. Therefore, provisions of Section 468 PPC, which speak about forgery of documents, cannot be attracted against appellants when there's no allegation about cheating of any document.

12. The next point of contention is a fundamental legal one. Section 155(2) of the Cr.P.C. is a mandatory provision that acts as a check on the powers of the police. It is a well settled principle that a contravention of this provision is not a mere irregularity but a fatal illegality that renders the entire investigation and subsequent trial null and void. In the present case, the police proceeded with the investigation without obtaining the necessary magisterial order, as required for non-cognizable offenses. This jurisdictional defect cannot be overlooked and, by itself, is sufficient to set aside the conviction.

13. The trial court's judgment placed implicit trust in the prosecution witnesses, but a closer examination reveals their testimonies are far from credible. The entire case rests on the statements of officials from the same department, who are inherently "interested" parties. More importantly, their statements contain significant and material contradictions.

14. The complainant (PW-2) stated that he went to the police station with PW-3 and PW-5, but the FIR author (PW-6) testified that the complainant came alone. This is not a minor slip but a contradiction on a crucial point of fact. There is a further discrepancy regarding who directed the lodging of the FIR. The complainant mentioned both the Assistant Commissioner and the Mukhtiarkar, which creates confusion and undermines the prosecution's narrative of a clear chain of command. In case of Jan Muhammad vs. The State and Others (Crl. Appeal No. 77 of 2020), the Honorable Supreme Court held that piece of evidence produced by prosecution against accused, if not put to accused while examining him under Section 342 Cr.P.C., cannot be used against him.

15. The prosecution's case is built on the premise that the AC's signature on the letter (Exh. 7/A) was forged. However, the Investigating Officer (PW-4) admitted in cross-examination that he never sent the document to a handwriting expert. In the absence of such expert opinion, the court cannot substitute its own opinion on the genuineness of a signature. This is a fatal lacuna in the prosecution's case. Furthermore, the appellants were not specifically confronted with the alleged forged documents during their examination under Section 342 Cr.P.C., which is a serious procedural flaw. As noted in numerous judgments of the superior courts, an accused person must be given the opportunity to explain every piece of incriminating evidence against them. In a case of Muhammad Ishaque Qureshi v. Sajid Ali Khan (2016 SCMR 192), the Honorable Supreme Court observed that opinion of handwriting expert was one piece of evidence that could not be extended enormous value to circumvent regular process.

16. The learned trial court failed to appreciate these fundamental flaws and irregularities. While the learned DPG correctly referred to the principle that minor contradictions should be ignored, the contradictions in this case are far from minor; they strike at the very heart of the prosecution's case and the credibility of its witnesses.

17. Based on the totality of the evidence, the prosecution has failed to discharge its burden of proving the charges against the appellants beyond a reasonable doubt. The glaring illegalities and inconsistencies in the prosecution's case compel this court to extend the benefit of the doubt to the

accused. Reliance is safely placed in case of Tariq Pervaiz vs. The State (1995 SCMR 1345), the Supreme Court held that for giving benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in prudent mind about guilt of accused, then accused will be entitled to benefit not as a matter of grace but as matter of right.

18. The law is settled that if a single circumstance creates reasonable doubt regarding the guilt of an accused, he is entitled to the benefit of that doubt as a matter of right. Here, multiple serious infirmities absence of independent witnesses, contradictions in location, non-production of expert evidence, unexplained FIR delay, jurisdictional doubts, pending civil litigation, and investigation lapses cumulatively shatter the prosecution case. The trial court failed to appreciate these weaknesses.

19. On reappraisal, I find that the prosecution has not proved its case against the appellants beyond reasonable doubt. The conviction is therefore unsafe. For the reasons stated above, this appeal is allowed. The judgment dated October 30, 2023, passed by the learned IVth Additional Sessions Judge, Khairpur, is hereby set aside. The appellants, Amanullah and Safiullah, are acquitted of the charges. The appellants are presently confined in District Jail Khairpur. They shall be released from custody forthwith, unless required in any other case.

J U D G E