

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.131 OF 2015

Appellant Arif Hussain Ansari through Mr. Nazar Iqbal, Advocate.

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

Date of Judgment 31.10.2024

JUDGMENT

Mohammad Karim Khan Agha, J: Appellant Arif Hussain Ansari was tried in the Court of Special Judge Anti-corruption (Provincial) Karachi in Special Case No.51 of 2005, in respect of Crime No. 34/2005 registered under Sections 465, 468, 471, 34 PPC read with Section 5(2) of Act-II, 1947 at P.S. ACE, Karachi and vide judgment dated 30.04.2015 was convicted and sentenced to suffer R.I. for 05 years with fine of Rs.3,00,000/- (Rupees Three Lacs).

2. Brief facts of the case are that late Muhammad Rafiq brother of applicant as member of P&T Cooperative Housing Society since 1957 His late brother Muhammad Rafique was allotted plot No.A-403 measuring 120 sq. yards in the said society vide order No 1202 dated 20-02-1969 and possession order was issued vide ledger account No. 1683 dated 29-02-1992. The name of Muhammad Rafiq (late) appears in the list of allottees of 2000 at Sr. No. 406 page No. 38. On 02-03-2002 the applicant being sole heir of late brother contacted through his son Mr. Saleem ur Rehman with Honorary Secretary Arif Hussain Ansari for transfer of above plot used Arif Hussain Ansari as knowing about the death of Muhammad Rafique cancelled his plot in back date and issued pre dated allotment order of said plot 403 vide No. 1642 dated 11-03-1993 (same also shows over writing). He thereafter transferred the same in the name of beneficiary Nazir Aluned who was his Taxi driver. Thus accused Arif Hussain Honorary Secretary in collusion with Nazir Ahmed committed fraud and forgery and caused loss to the original allottee. Thus violated the provisions of section mentioned above.

3. After usual investigation, the challan was submitted against the appellant accused to which the appellant pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 09 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him.

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.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.04.2015 passed by the trial court therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset learned counsel for the appellant and learned Additional Prosecutor General Sindh pointed out that at page-31 of the judgment at Point No.3 the following convictions and sentences were awarded:-

“In the light of findings on the fore-going points the prosecution has proved their case against accused Arif Hussain Ansari s/o Mehdi Hassan found guilty for having committed offences punishable under section 420/465/468/471/34 PPC r/w section 5(2) of Prevention of Corruption Act-II, 1947, is hereby convicted and sentenced to undergo Rigorous Imprisonment (R.I) for the period of Five years with fine of Rs.3,00,000 (Rupees Three Lac} will be paid by accused for the government, which the accused shall pay through this Court and in default to undergo Simple Imprisonment (S.I) for Six months.”

8. It is well settled that for each offence which the appellant has been convicted a separate sentence should be awarded for that offence. In this case trial Court in the impugned judgment amalgamated all those offences and passed a global sentence as set out earlier in respect all offences. According to learned counsel for the appellant and Additional Prosecutor this is a case of remand because of the above failure of the trial Court to award separate sentences in respect of each conviction. In support of their contentions he placed reliance on the case of **Irfan & another v. Muhammad Yousaf and another** (2016 SCMR 1190).

9. I am in agreement with the contentions of learned counsel for the appellant and learned Additional Prosecutor General Sindh that this is correct legal position and is mandatory and must be complied with. Accordingly the impugned judgment dated 30.04.2015 is set aside and the case File along with R&PS shall be remanded to the Special Court Anti-Corruption Karachi for the limited purpose of setting out separate sentences for each convictions i.e.

Section 420, 465, 468, 471/PPC and Section 5(2) of Prevention of Corruption Act-II 1947.

10. This exercise shall be completed by the concerned trial Court within 02 months of the date of this order. Copy of this order shall be sent to Special Court Anti-Corruption Karachi for compliance.

11. Appellant, present in Court, is directed to surrender before the learned trial Court however he shall remain on bail until pronouncement of judgment.

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

JUDGE