IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.659 of 2026

Appellant	:	Muhammad Arif son of Noor Muhammad *Through* Mr. Shoukat Ali Shehroze, Advocate.
Respondent	:	The State *Through* Mr. Muhammad Ahmed, Assistant Attorney General.
Date of hearing	:	11.11.2026
Date of judgment	:	11.11.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. **-** Appellant Muhammad Arif assails the judgment dated 22.10.2026, rendered by the learned Special Judge (Central-I), Karachi, in Case No.19 of 2026, arising out of FIR No.156/2026 of Police Station FIA Anti-Human Trafficking Circle, Karachi, whereby the appellant was convicted pursuant to Section 265-H(2), Cr.P.C. for an offence punishable under Section 22(b) of the Emigration Ordinance, 1979, and sentenced to rigorous imprisonment for one year with a fine of Rs.100,000, or, in default, to undergo simple imprisonment for one month, with the benefit of Section 382-B, Cr.P.C., if applicable.

2. The prosecution case emanated from a complaint lodged through the Pakistan Citizen's Portal, alleging that the appellant, in connivance with absconding co-accused Syed Danish Hassan Jafri alias Shayan, had obtained money from several persons on the pretext of securing employment for them in Dubai, but neither arranged their departure nor refunded the amounts. The accusation principally rested upon the appellant's alleged introduction of Danish to the intending emigrants, his participation in certain meetings, and the credit of Rs.100,000 to his bank account. Following investigation, the appellant was charged under Section 22(b) of the Emigration Ordinance, 1979. He denied the accusation. The prosecution examined four witnesses, whereafter his statement under Section 342, Cr.P.C. was recorded. The learned trial Court, considering the oral and documentary evidence sufficient, recorded conviction and sentence as noticed above.

3. Learned counsel for the appellant contended that the conviction proceeds upon a fundamentally erroneous appraisal of evidence, inasmuch as none of the prosecution witnesses consistently attributed to the appellant any independent demand for money or representation concerning foreign

employment. It was argued that the disputed banking transaction stood explained by PW-1 himself, whereas PW-2 and PW-3 materially disowned the allegation of connivance. The supposed admission before the Investigating Officer was challenged as legally inadmissible, and the non-examination of material witnesses and absence of independent corroboration were emphasized. Conversely, learned Assistant Attorney General supported the impugned judgment, maintaining that the appellant's introduction of Danish, his presence at relevant meetings, and receipt of money, when considered cumulatively with his unregistered status as an Overseas Employment Promoter, established his culpability.

4. Heard. Record examined. The pivotal question is whether the prosecution established beyond reasonable doubt that the appellant demanded, received or attempted to receive money, whether for himself or another person, for providing or securing employment abroad, or on the pretext thereof, within the contemplation of Section 22(b) of the Emigration Ordinance, 1979. The provision does not necessarily require personal enrichment, nor does it exclude liability merely because another person was to arrange the employment. What remains indispensable, however, is trustworthy proof connecting the accused's conduct with the prohibited purpose. Acquaintance, introduction or presence, bereft of such nexus, cannot independently sustain criminal liability.

5. Reappraisal of the evidence reveals that PW-1 Tahir Jibran (Ex.6) identified Danish alias Shayan as the person who offered employment abroad, demanded consideration and supplied the purported visa and offer letter. He admitted paying Rs.50,000 directly to Danish and transferring Rs.100,000 into the appellant's account. The circumstances of the latter transaction were explained by him in unequivocal terms, "*Shayan suggested me to withdraw cash from ATM on which I told him that it was difficult to draw huge amount and bring cash, on which accused Arif offered me to pay Rs.100,000/- to Shayan on my behalf and asked me to transfer such amount to his bank account.*" More significantly, during cross-examination by the defence, PW-1 admitted, "*It is correct that accused Arif never promised with any of us to send abroad or either demanded any amount from any of us."* He further acknowledged that the appellant was absent from the initial meeting, subsequently assisted in tracing Danish, and disclosed having lodged FIR No.447/2023 against him. The witness also conceded that the appellant's implication was initially influenced by the belief that he was acting in connivance with Danish, a belief subsequently found to be unfounded. These admissions

were not peripheral; they directly qualified the criminal purpose attributed to the admitted banking credit.

6. PW-2 Akbar Khan (Ex.7), although acknowledging during cross-examination by the prosecutor that Rs.100,000 had been given to the appellant and Rs.50,000 to Danish, furnished a materially different account when cross-examined by the defence, "*It is correct that I paid entire amount to absconding accused Danish @ Shayan. V.S. but I paid in presence of accused Arif."* The distinction between receipt of consideration and mere presence when payment is made is legally substantial. PW-2 further admitted that the employment documents were furnished by Danish; that the appellant had assisted in locating him; that Danish had also defrauded the appellant's relatives; and that the appellant had instituted criminal proceedings against Danish. The witness attributed the original suspicion of connivance principally to Samran, whose perception influenced the inclusion of the appellant's name in the complaint. The learned trial Court relied upon the inculpatory portion without satisfactorily reconciling its contradiction with these material admissions.

7. PW-3 Ali Haider Naqvi (Ex.8) similarly attributed the employment offer, demand for consideration and supply of documents to Danish. Although he initially acknowledged payment of Rs.100,000 to the appellant, he admitted that the first meeting with Danish took place in the appellant's absence and that subsequent payments were made to Danish. Of particular importance is his categorical admission, "*It is correct that subsequently I came to know neither accused Arif is cousin of accused Danish @ Shayan nor he was working in his connivance."* The witness further acknowledged that the allegation of relationship and concert originated from information supplied by Samran and that the appellant's relatives had themselves suffered financial loss at Danish's hands. Such admissions substantially impaired the foundational allegation of a common design, which the prosecution failed to independently establish.

8. PW-4 Sub-Inspector Rafia Altaf (Ex.9), the Investigating Officer, produced banking records and the report of the Bureau of Emigration and Overseas Employment. She also attributed to the appellant an admission of having received money along with Danish and asserted that he failed to satisfactorily explain why Rs.100,000 credited to his account had not been transferred onward. During cross-examination, however, she admitted that no statement under Section 164, Cr.P.C. concerning the alleged admission was recorded; no bank official was examined; no documentary

proof of the various alleged payments to the appellant was produced; and the statutory complaint under Section 24(6) of the Emigration Ordinance neither specified any amount as having been paid solely to the appellant nor described him as guarantor for Danish. She also acknowledged that the banking record disclosed no transaction between the original complainant Samran and the appellant.

9. The alleged admission before the Investigating Officer could not lawfully be employed as a confession against the appellant in the face of Article 38 of the Qanun-e-Shahadat Order, 1984. Its evidentiary character could not be transformed merely by describing it as an admission obtained during enquiry. Even otherwise, an acknowledgment of receipt of money, without an unequivocal admission of the prohibited purpose, does not establish the offence. The Investigating Officer's dissatisfaction with the appellant's explanation was no substitute for affirmative prosecution evidence.

10. The banking record, particularly Ex.9/C and Ex.9/D, constituted the principal documentary foundation of the conviction. Although its production was questioned because no official of either bank was examined and portions of the record comprised photocopies or computer-generated statements, it is unnecessary to determine the entire controversy concerning its mode of proof. Even accepting the transaction in the prosecution's favour, the record establishes, at its highest, a credit of Rs.100,000 to the appellant's account. It does not independently establish the purpose of its receipt. That purpose had to be gathered from the surrounding evidence, and PW-1 himself furnished an explanation that the amount was transferred on an arrangement whereby the appellant would pay Danish on his behalf. The absence of a corresponding bank transfer to Danish could raise suspicion; it could not conclusively negate every other mode of payment or establish the appellant's knowing participation in the alleged unlawful scheme. Proof of a monetary credit and proof of its prohibited criminal character are distinct propositions; the former cannot dispense with the latter.

11. Ex.9/E, the report of the Bureau of Emigration and Overseas Employment, establishes that neither the appellant nor Danish was registered as an Overseas Employment Promoter. This satisfies the question of their unregistered status but does not, independently, establish demand or receipt of money for securing foreign employment. The learned trial Court treated the absence of registration as corroborative of the appellant's alleged criminal purpose without first resolving the material contradictions

concerning his precise role. Such reasoning conflates an essential statutory condition with proof of the prohibited act itself.

12. Equally material is the non-examination of Samran, whose information, according to PW-2 and PW-3, supplied the initial foundation for attributing relationship and connivance to the appellant. The prosecution also withheld Shamsuddin, whose alleged payment formed part of the accusation. Though non-examination of every witness is not invariably fatal, withholding a witness whose evidence bears directly upon the origin and reliability of an essential disputed allegation assumes significance, particularly when the witnesses examined have substantially disowned that allegation. In the circumstances, the permissive presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984, reinforces the doubt already emerging from the prosecution evidence.

13. The appellant's defence, as disclosed in his statement under Section 342, Cr.P.C., was that he and his relatives were themselves victims of Danish's deception and that he had lodged FIR No.447/2023 against him at Police Station Defence, Karachi. The learned trial Court declined to accord substantive evidentiary value to the copy of that FIR because it had not been independently proved. While mere production of a document cannot, ordinarily, establish the truth of its contents, the Court overlooked that PW-1, PW-2 and PW-3 had themselves acknowledged the appellant's assertion regarding the FIR and the financial loss suffered by his relatives. These admissions constituted evidence recorded during trial and merited consideration independently of the unproved copy. The defence was not required to demonstrate innocence; it was sufficient if the prosecution evidence, viewed in conjunction with the explanation advanced, generated reasonable doubt concerning the accusation.

14. The impugned judgment further reveals that the appellant's receipt of Rs.100,000, introduction of Danish and participation in meetings were regarded as collectively decisive, while his subsequent assistance in tracing Danish and the material admissions of the complainants were assigned comparatively little significance. The difficulty is not merely one of evidentiary preference. The learned trial Court failed to identify a coherent and legally sufficient basis for concluding that the appellant knowingly received the disputed money for the prohibited purpose, notwithstanding PW-1's explanation and the materially inconsistent accounts of PW-2 and PW-3. A hostile witness's evidence may

undoubtedly be relied upon to the extent found trustworthy; the prosecution-favouring portions cannot, however, be isolated from their material qualifications without adequate reasons. The evidence must be evaluated as a whole, not selectively.

15. There is an additional procedural infirmity. The appellant's examination under Section 342, Cr.P.C. principally confronted him with the general accusation of having demanded and received money in concert with Danish. The particular significance subsequently assigned to the banking credit, its alleged non-transfer to Danish and the inference concerning the appellant's knowledge of Danish's identity were not distinctly put to him. Incriminating circumstances not fairly presented to an accused for explanation cannot ordinarily be employed to his prejudice. Although this omission further weakens the sustainability of the conviction, the deficiencies in the substantive prosecution evidence are independently sufficient for disposal of the appeal; a remand would therefore serve no justifiable purpose.

16. The authorities relied upon before the trial Court concerning appreciation of hostile testimony and the standard of proof enunciate principles whose application depends upon the quality of evidence in the particular case. The decision in 1995 SCMR 1345[1] reiterates that even a single circumstance creating reasonable doubt entitles an accused to its benefit as of right. The rule is neither confined to any particular category of offence nor dependent upon the existence of numerous contradictions. Conversely, the principle permitting reliance upon trustworthy portions of hostile testimony cannot legitimize conviction where material contradictions concerning the essential ingredients remain unresolved. The distinction is between accepting a credible portion of evidence and treating an inherently equivocal circumstance as conclusive proof.

17. The prosecution undoubtedly established that the intending emigrants dealt with Danish for overseas employment, paid substantial amounts and did not obtain the promised employment. It also established the appellant's acquaintance with Danish, his presence at certain meetings and a banking credit in his favour. What remained unproved was the indispensable nexus between those circumstances and the appellant's conscious commission of the prohibited act under Section 22(b) of the Emigration Ordinance, 1979. No satisfactory evidence demonstrated that

[1] Tariq Pervez v. The State

he independently demanded employment charges, made a representation that he could secure overseas employment, retained the disputed amount for the prohibited purpose, or knowingly acted as an intermediary in an unlawful arrangement. The evidence concerning his alleged common design with Danish was substantially undermined by the prosecution witnesses themselves.

18. It bears emphasis that Section 22(b) extends to receipt of money for another person and does not invariably require proof of personal profit or an independent promise by the recipient. The appellant's exoneration therefore cannot rest merely upon the absence of such promise or personal enrichment. It rests upon the prosecution's failure, on the particular evidence presented, to establish beyond reasonable doubt that the appellant's receipt of money was consciously connected with the prohibited purpose. The essential statutory nexus cannot be inferred from an isolated credit entry when the very witness effecting the transfer furnishes a materially different explanation and the remaining witnesses provide irreconcilable accounts of the appellant's participation.

19. The learned trial Court, while acknowledging certain circumstances favourable to the appellant, proceeded substantially upon the premise that his inability to satisfactorily explain the credited amount supplied the missing link in the prosecution case. This effectively displaced the burden of proof. A deficient explanation may assume relevance where incriminating circumstances are otherwise independently established; it cannot create criminal liability where the foundational elements remain uncertain. Suspicion, regardless of its strength, cannot be elevated into proof through the inadequacy of an accused's defence.

20. The contradictions in the present case do not concern peripheral details or ordinary failures of recollection. They strike at the identity of the person who demanded consideration, the recipient of the disputed payments, the alleged relationship and common design between the accused persons, and the criminal character of the appellant's participation. The non-examination of a material witness, the inconclusive probative value of the banking record regarding purpose, the legally impermissible reliance upon an alleged police confession, and the failure to meaningfully evaluate the prosecution witnesses' material admissions, when considered cumulatively, render the conviction unsafe.

21. The seriousness of offences involving exploitation of persons seeking foreign employment is beyond question. Such conduct warrants rigorous investigation and effective prosecution. Yet the gravity of the alleged wrong cannot dilute the indispensable requirements of criminal proof. The law protects victims by punishing established criminal conduct; it does not authorize conviction upon association, suspicion or presumed complicity. Every accused must be judged upon evidence establishing his own culpability to the standard required by law.

22. In the circumstances, the prosecution has failed to establish the charge against the appellant beyond reasonable doubt. The impugned judgment is affected by material misreading and non-reading of evidence and by an erroneous attribution of conclusive significance to circumstances which, at their highest, generate suspicion. The conviction, therefore, cannot be sustained. The appellant is entitled to the benefit of doubt, not as a matter of indulgence but as an enforceable entitlement flowing from the presumption of innocence.

23. Consequently, Criminal Appeal No.659 of 2026 is allowed. The impugned judgment dated 22.10.2026, passed by the learned Special Judge (Central-I), Karachi, in Case No.19 of 2026, arising out of FIR No.156/2026 of Police Station FIA Anti-Human Trafficking Circle, Karachi, is set aside to the extent of the appellant. Muhammad Arif son of Noor Muhammad is acquitted of the charge under Section 22(b) of the Emigration Ordinance, 1979, by extending him the benefit of doubt. He shall be released forthwith, if not required in any other case. The fine, if deposited, shall be refunded in accordance with law.

24. The acquittal shall not prejudice proceedings against absconding co-accused Syed Danish Hassan Jafri alias Shayan, whose responsibility shall be determined independently upon legally admissible evidence. M.A. No.18502/2026 stands disposed of as infructuous. Office shall communicate this judgment to the learned trial Court and the Superintendent, Central Prison, Karachi, for compliance.

J U D G E

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