

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No.255/2016

Present: Salahuddin Panhwar & Yousuf Ali Sayeed, JJ

Appellant : Syed Iqbal Rasheed, through Mr. Mehmoodul Hassan, along with Ms. Mumtaz Chandio, Advocates.

Respondent : The State, through Mr. Muhammad Aslam Butt, DAG

Date of hearing/short order : 18.10.2017

Date of Judgment :

JUDGMENT

YOUSUF ALI SAYEED, J. The Appellant has assailed the Judgment dated 07.06.2016 passed by the learned Presiding Officer of the Special Court (Offences in Banks) Sindh at Karachi in Case No. 52/2015, whereby the Appellant was convicted and sentenced under S. 409 PPC to suffer 10 years R.I. and fine of Rs.1 million, and in case of non-payment of fine to suffer further R.I for 02 years, as well as under S. 420/468/471/109 PPC to suffer 07 years R.I. on each count and fine of Rs.1 million on each count, and in case of non payment of fine, to suffer further R.I for 01 year on each count. He was extended the benefit of S. 382(B) Cr. P.C., and all the sentences were to run concurrently.

2. Briefly stated, the crux of the prosecution's case, emanating from FIR No.44/2015 registered at PS FIA CBC Karachi on 21.08.2015 at 0940 hours by the State, through SI Muhammad Mansoor Khan Mohmand of FIA, is that the Appellant abused his position as a banker and provided "illegal benefit of banking services" to one Mohammad Ahsan, alias Chunnu Mamo, for laundering the criminal proceeds of land grabbing and China Cutting.

3. As per the prosecution, between November 2013 to September 2014 the Appellant opened and operated nine separate bank accounts, either in the name of Mohammad Ahsan, or Pearl Multiple Services (allegedly a front), or in the name of Sharhrukh Ahsan (one of the dependents of Mohammad Ahsan) of which five accounts were said to have been maintained at NIB Bank Ltd, Stadium Road Branch, and the remaining four at United Bank Ltd, SMCHA, Karachi. It was averred that this was done with the active connivance and criminal intention of Mohammad Ahsan, who had absconded and been residing abroad since 05.11.2013, and that the account had been opened by fraudulently and dishonestly managing the forged signatures of the absconding accused. It was further alleged that funds aggregating to 31,450 pound sterling were remitted through these accounts via Outward Foreign Telegraphic Transfers to various other accounts maintained by the absconding accused with banks in England and the UAE. Additionally, it was also alleged that cheque books, rubber stamps and an ATM Card in relation to these accounts were recovered from the residence of the Appellant, which established that the accounts were physically opened, operated and controlled by him. On this basis, the Appellant was charged under S.409/420/468/471/109/34 PPC with having committed the offences of forgery, cheating and criminal breach of trust in the capacity of a banker, to which he pleaded not guilty. The case accordingly proceeded to trial, culminating in the impugned Judgment.

4. In the context of the case, various points for determination were framed by the trial Court, as follows:

“Point No.1: Whether the accused while posted as branch manager in NIB bank Stadium road Branch opened five fresh accounts in the name of absconding accused Muhammad Ahsan alias Chunnu Mamo and in the name of M/s Pearl Multiple Services run by absconding Muhammad Ahsan alias Chunnu Mamo and in the name of Shahrukh Ahsan maintained the same under fake signature of absconding accused Muhammad Ahsan alias Chunnu Mamo and transferred foreign currency in the account of absconding accused Muhammad Ahsan alias Chunnu Mamo and his family’s account?

Point No.2: Whether the accused while posted as branch manager in UBL SMCHA branch opened four fresh accounts in the name of absconding accused Muhammad Ahsan alias Chunnu Mamo and in the name of M/s Pearl Multiple Services run by absconding Muhammad Ahsan alias Chunnu Mamo and from the said account maintained by him the cheques as well as remittance forms were presented under fake signature of absconding accused and through outward foreign telegraphic transaction transferred remitted the foreign currency in the account of absconding accused Muhammad Ahsan alias Chunnu Mamo and his family in various Banks at London, Sharjah UAE and Emirates?

Point No.3: Whether the accused led recovery of 39 cheque books of Silk Bank DHA branch, NIB Bank Stadium road branch, UBL SMCHS branch, Karachi so also ATM card in the name of absconding accused Muhammad Ahsan alias Chunnu Mamo as well as four rubber stamps?

Point No.4: To what extent if any, the accused is responsible for the present offence?

Point No.5: What should the order be?”

5. During the course of the trial, the Prosecution examined numerous witnesses, who produced various banking documents, statements of accounts, forms, etc., as well as the material in relation to the accounts in question as was said to have been recovered from the possession of the Appellant, such as the cheque books, stamps, and ATM card. After appraisal of such evidence, the learned trial Court summarized various facts that in its estimation had come on record and which it considered stood admitted. Whilst collectively considering Points Nos. 1 to 4, this factual matrix was summarized on Pages 17 and 18 of the Impugned Judgment, as follows:

“(i) Posting of the accused being branch manager in Silk Bank 26th street DHA branch and thereafter his joining as branch manager in NIB bank stadium road branch and from there on new appointment as branch manager in UBL SMCHA branch Karachi which has been admitted by either parties.

- (ii) The opening of five accounts in NIB Bank by the accused being branch manager and one amongst them in the name of M/s Pearl Multiple and another account in the name of Shahrukh Ahsan is also an admitted fact which all were opened in absence of the customers.
- (iii) The maintaining of the account of absconding accused Muhammad Ahsan in NIB bank and UBL bank is also not disputed by the parties which were being run by the present accused.
- (iv) The debit and credit entries and transactions in the account of absconding accused Muhammad Ahsan in his absence.
- (v) Departure of absconding accused Muhammad Ahsan on 5.11.2013 from Pakistan to U.K
- (vi) Departure of Shahrukh Ahsan s/o absconding accused Muhammad Ahsan on 6.12.2011 from Pakistan to U.K.
- (vii) Opening of the account in UBL SMCHS branch on 18.10.2014, 17.11.2014, 2.10.2014 and 13.1.2015 in absence of absconding accused remained admitted by the defence side and likewise opening of five accounts in NIB Bank in the name of absconding accused remained admitted.
- (viii) The sending of funds in foreign currency in the name of absconding accused Muhammad Ahsan and his family to London, UAE, and Emirates in his statement u/s 342(1) Cr.P.C by the accused.
- (ix) The recovery of cheque books, rubber stamps, ATM card in the name of absconding accused Muhammad Ahsan though disputed by the accused but the said fact has been satisfactorily substantiated through the evidence of mashir of recovery namely PW-15 F.C Malik Nasir Iqbal and PW-16 Muhammad Mansoor Mohmand I.O.”

6. In this backdrop, Points Nos.1 to 4 were all answered in the affirmative, and in respect of Point No.5 the learned trial Court thus held that the opening and operation of the bank accounts in question as well as the remittances made therefrom had been satisfactorily established, that the allegation of money laundering had accordingly been proven beyond any reasonable doubt, and that the accused had committed the offence for which he had been charged, as such he was convicted and sentenced as mentioned hereinabove.

7. Learned counsel for the Appellant contended that neither of the banks in question nor any depositor had sustained any monetary loss, nor had any evidence connecting the present accused to an act of money laundering been brought on record by the prosecution, and that, even otherwise, Sections 409, 420 and 468 PPC were wholly inapplicable to the case of the Appellant. He pointed out that the maximum sentence that could have been awarded under S.471, read with S.465 PPC, was that of imprisonment of either description of a term of up to 2 years, or with fine, or with both, and thus submitted that as the Appellant had been in confinement since 08.09.2015, for a period of over 2-years, he would be satisfied to that extent if the sentence awarded under S.471 was reduced simply to 2 years, and would only press the Appeal as regards the convictions under Sections 409, 420, 468 and 109.

8. Having considered the record and the submissions advanced at the bar by learned counsel for the Appellant, particularly with reference to the inapplicability of Sections 409, 420 and 468 PPC, we concede to being at a loss to comprehend as to how the said sections (or by extension S.109) were attracted under the facts and circumstances of the case so as to result in the Appellant being charged thereunder. For ease of reference, the said sections, as well as those provisions on which they are predicated, are reproduced below:

Section-405

Criminal breach of trust. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Section-409

Criminal breach of trust by public servant, or by banker, merchant or agent. Whoever being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section-420

Cheating and dishonestly inducing delivery of property. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section-468

Forgery for purpose of cheating. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

9. Since, the Appeal was not pressed in relation to the charge and ensuing conviction under S.471 PPC, we have confined the scope of our examination to the case of the Appellant as regards the remaining offences, as reproduced hereinabove. From a plain reading of these penal provisions, it is evident that even if the entire parcel of facts referred to and relied upon by the learned trial Court are taken as true and correct, even then the basic elements of such offences are not satisfied in the exigencies of the given situation in as much as there was neither any misappropriation or conversion of property, or dishonest use or disposal thereof in violation of any direction of law prescribing the mode in which the trust thereof was to be discharged, as is a prerequisite of S. 409. On the contrary, it is the case of the prosecution that the funds in the local accounts were remitted to or for the benefit of the holder of such accounts or his

dependents, and, admittedly, there is no complaint of the account holder(s) in that regard. Similarly, there is nothing on record to indicate that any property or pecuniary advantage was obtained by the Appellant by way of deception for the purposes of the offence of cheating in terms of S.420 PPC or that any forgery was committed by the Appellant for such purpose, as envisaged under S.468. When queried in this regard, the learned DAG was unable to make any submission to support the applicability of these Sections or the conviction recorded thereunder.

10. In our opinion, Sections 409, 420 and 468 PPC do not *stricto sensu* relate to cases of money laundering, which is a separate offence in terms of Sections 3 and 4 of the Anti-Money Laundering Act, 2010, with its own distinct elements, as follows:

Section-3

Offence of money laundering. A person shall be guilty of offence of money laundering, if the person: —

- (a) acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;
- (c) holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or
- (d) participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in clauses (a), (b) and (c).

Explanation-I.— The knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).

Explanation II.- For the purposes of proving an offence under this section, the conviction of an accused for the respective predicate offence shall not be required.

Section-4

Punishment for money laundering. Whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than one year but may extend to ten years and shall also be liable to fine which may extend to one million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

Provided that the aforesaid fine may extend to five million rupees in case of a company and every director, officer or employee of the company found guilty under this section shall also be punishable under this section.

11. Suffice it to say that in our view the aforesaid provisions of the PPC were not attracted under the particular facts and circumstances of the matter at hand, and if, as the record suggests, the intent was to proceed against the Appellant for money laundering, the Appellant would have then had to be charged and proceeded against under the aforementioned provisions of the Anti-Money Laundering Act, 2010.

12. As such, the impugned Judgment cannot sustain as regards the convictions under Sections 409, 420, 468 and 109 PPC, and this Appeal succeeds to that extent. These are the reasons for our short Order dated 18.10.2017, whereby the Appeal was partly allowed with the result that the sentence awarded to the Appellant under S.471 was reduced to that of 2 years and the Appellant was acquitted of the charges under Sections 409, 420, 468 and 109 PPC and his conviction and sentences awarded to him in that regard were set aside.

JUDGE

JUDGE

Karachi
Dated _____