

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

***Mr. Justice Aftab Ahmed Gorar***  
***Mr. Justice Amjad Ali Sahito***

Criminal Appeal No.286 of 2014

Appellant : Atif Ahmed S/o Nafees Ahmed  
Through Khawaja Naveed Ahmed,  
Advocate

Respondent : The State  
Through Mr. Muhammad Ahmed  
Assistant Attorney General

Date of hearing : 24.01.2019

Date of order : 24.01.2019

**J U D G M E N T**

**AMJAD ALI SAHITO, J.**— Being aggrieved and dissatisfied with the judgment dated 30.10.2014 passed by learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No.31/2012 arising out of the FIR No.19/2012 for offence under sections 420/468/471/477-A/109 PPC registered at PS FIA CBC, Karachi, whereby the appellant was convicted and sentenced to suffer R.I. for 07 years and to pay fine of Rs.100,000/- (one lac) and in case of default thereof, he shall further suffer R.I. for 01 year. The benefit of section 382-B Cr.PC was also extended in favour of the appellant.

2. The case of the prosecution as depicted in the FIR is that consequent upon enquiry conducted by the FIA, CBC Karachi in the instant FIR dated 19.04.2012 stating therein that Mst. Ayesha Mirza, who was maintaining Account No.01532009838001 in Faisal Bank, Gulshan Chowrangi Branch, Karachi and has a joint Account No. 2001705-001 with her ex-husband, had planned to commit bank fraud and in furtherance of her intention, she got issued a pay order No.2241061 dated 05.03.2011 for Rs.100/- in favour of her

mother Miss Abida Barlas from Faisal Bank from her aforementioned account. On submission of application on prescribed form and subsequently tampered the said pay order and substituted it for Rs.10,00,000/- and deposited it in the account of her mother Miss Abida Barlas in Bank of Punjab, main branch Karachi for clearance but the said pay order was returned by the bank due to fake and forged instrument. It is further stated in the FIR that Mst. Aisha Mirza on subsequent date had also managed another fake pay order of same number in the name of Mr. Atif Ahmed in the sum of Rs.10 lacs and deposited in account number No.0183067801000276 dated 31.03.2008 in MCB Gulshan-e-Jamal Branch, Karachi on 15.04.2013 but this pay order was also returned duly fake and FIR as stated above was registered. During the course of investigation and subsequently in final challan, accused Atif Ahmed S/o Nafees Ahmed was also found involved in the present crime as such he was also challaned as absconder in final challan.

3. The learned trial Court framed the charge against the accused persons at Ex.5, who pleaded not guilty and claimed to be tried. In order to establish the accusation against the accused, the prosecution examined the following witnesses:

- (i) PW-1 Ahmed Ahsan Alvi examined at Ex.8, he produced application form of pay order vide Ex.8-A, carbon copy of pay order in the sum of Rs.100/- in the name of Abida Barlas at Ex.8-B, photocopy of tampered pay order at Ex.8-C, photocopy of another fake pay order at Ex.8-D, bank statement of accused Aisha Mirza at Ex.8-E
- (ii) PW-2 Osama Bin Hussain examined at Ex.9
- (iii) PW-3 Abdul Khalil examined at Ex.10
- (iv) PW-4 Asim Mustafa Khan examined at Ex.11

- (v) PW-5 Sagheer Ahmed examined at Ex.12
- (vi) PW-6 Muhammad Shahid Nadeem examined at Ex.16
- (vii) PW-7 Ahmed Jan Khan examined at Ex.17, he produced seizure memo of the documents at Ex.17-A
- (viii) PW-8 Inspector Muhammad Shoaib Khan, FIA examined at Ex.19, he produced various documents including FIR at Ex.19-A to 19-G.
- (ix) PW Shahid Raza s/o Muhammad Raza also given up at Ex.14
- (x) PW Razia Kamal also given up at Ex.15

4. All the prosecution witnesses were cross-examined by the learned counsel for the accused. Thereafter, Public Prosecutor FIA/State closed the side of the prosecution vide statement at Ex.20.

5. Statements of the accused persons were recorded under Section 342 (1) Cr.PC. by the learned trial Court at Ex.21 and Ex.22 in which they denied the allegations as leveled against them by the prosecution and claimed to be innocent.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the present accused as stated above vide judgment dated 30.10.2014 which is impugned before this Court by way of filing the instant Criminal Appeal.

7. Mr. Khawaja Naveed Ahmed, learned counsel for the appellant mainly contended that the impugned judgment is against the law and facts of the case; that the present appellant is innocent and has been falsely implicated in this case; that on the same set of evidence, learned trial Court has acquitted the

co-accused Mst. Ayesha Mirza and convicted the appellant without considering the facts that Mst. Ayesha Mirza was an account holder and pay order was issued in the sum of Rs.100/- in favour of her mother namely Miss Abida Barlas from Faisal Bank; that the appellant has no concern with the alleged pay order; that the prosecution witnesses have not deposed against the appellant. He lastly contended that prosecution has miserably failed to prove the case against the appellant and thus, according to him, under the above mentioned facts and circumstances, the appellant is entitled for his acquittal.

8. On the other hand, Mr. Muhammad Ahmed, learned Assistant Attorney General has argued that there is no malafide on the part of complainant, but the appellant was found involved while presenting the pay order in bank. He further argued that the learned trial Court has rightly appreciated the evidence with regard to the conviction and sentence of the appellant. He lastly prayed for dismissal of the instant appeal.

9. We have heard the learned counsel for the appellant as well as learned Assistant Attorney General and have minutely perused the record with their able assistance.

10. The prosecution in order to substantiate its version has examined PW-01 Ahmed Ahsan Alvi, Manager Faisal Bank, who in his evidence deposed that on 05.03.2011, a lady accused Ayesha Mirza visited the branch and taken pay order amounting to Rs.100/- from her account maintained in the branch in the name of Abida Barlas. On 09.03.2014, a fake pay order of same number was presented through Bank of Punjab amounting to Rs.1 million but same pay order was un-passed and the said pay order was presented in the name of Atif Ahmed but same was found fake. In cross-examination, he admitted that the pay order

issued from the bank with number and same number pay order presented in the bank which was fake pay order and not cleared. He further admitted that lady Mst. Ayesha Mirza was seen by him when she appeared in branch for preparation of pay order and second time when she was called in respect of fake pay order.

11. Prosecution also examined PW-2 Osama Bin Hussain, Remittance Officer, Faisal Bank Gulshan Chowrangi Branch, Karachi who in his evidence deposed that accused Ayesha Mirza was an account holder and on 05.03.2011, a pay order of Rs.100/- was prepared by him on the request of lady accused Mst. Ayesha Mirza and on 09.03.2011, a pay order amounting of Rs.1 million reached in his branch for clearance but same was scanned and declared as forged one. In cross-examination, he admitted that the original pay order was not presented in branch for clearance.

12. PW-03 Abdul Khalil, Manager CPU Clearance Unit of Faisal Bank in his evidence deposed that on 09.03.2011, a fake pay order was presented which was in favour of Abida Barlas from the account of lady accused Mst. Ayesha Malik, Gulshan Chowrangi Branch, Karachi. The said pay order was received by the bank for clearance but same was not cleared being a bogus one.

13. PW-4 Asim Mustafa Khan in his evidence deposed that on 14.04.2011, a pay order of Rs.1 million was deposited in the account of Atif and it was received by assistant Sagheer. The alleged pay order was sent for clearance which was subsequently returned back. PW-5 Sagheer Ahmed Khan also narrated the same story.

10. PW-6 Muhammad Shahid Nadeem, Operation Manager in Bank of Punjab, in his evidence deposed that on 08.03.2011, Saleem Mirza brought a pay order of Rs.1 million deposited in the account of Abida Barlas and subsequently the said pay order in process was returned as un-passed from Faisal Bank. In his cross-examination, he admitted that I cannot say that account number quoted in my statement is incorrect.

14. Lastly, prosecution examined PW-8 Muhammad Shoaib Khan, Inspector FIA, who in his evidence deposed that during inquiry it was transpired that from pay order of Rs.100/- which was subsequently tampered and two pay orders were prepared in the name of accused/appellant Atif Ahmed and second was in the name of Miss Abida Barlas. It was transpired that one was deposited in the Bank of Punjab and second was presented in MCB, Gulshan-e-Jamal Branch, Karachi, however both pay orders were not encashed and the same were found fake.

15. It is pertinent to mention here that from the perusal of record, it reveals that co-accused Mst. Ayesha Mirza had been acquitted by the learned trial Court and the role attributed to her by the witnesses was identical to the role attributed to the present appellant. The acquittal of the co-accused had not been challenged by the complainant party. Acceptance of such acquittal on the part of complainant party shows that the witnesses have not supported version of the complainant.

16. Record further reveals that Mst. Ayesha Mirza was an accountholder and was maintaining her account in Faisal Bank, Gulshan Chowrangi Branch, Karachi and on 05.03.2011 she visited the branch and taken pay order amounting to Rs.100/- from her account and the said pay order was deposited in the account of Abida Barlas. The prosecution has failed to collect the

evidence regarding the present appellant that he dishonestly prepared the pay order and same was deposited by him in his account in order to cheat the complainant party nor any evidence has been produced that he has made falsely for the purpose of cheating the public at large. The witnesses have admitted that Mst. Ayesha Mirza appeared in bank and taken pay order of amounting to Rs.100/- which is lying with her and no evidence has been brought on record and in whose presence appellant has prepared the fake pay order in the sum of Rs.1 million. The witnesses are admitting that it was Mst. Ayesha Mirza, who has obtained the pay order from the bank. Furthermore, the prosecution also failed to produce that after preparing the forged and fake pay order and same was presented by the appellant in the bank nor any document evidence has been produced by the prosecution to connect the present appellant with the commission of the offence.

17. The rule of benefit of doubt is essential rule of prudence, which cannot be ignored while dispensing justice in accordance with law. The conviction must be passed on any impeachment evidence and certainty of guilt and in case of any doubt arising in the prosecution case must be resolved in favour of the accused.

18. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellant/accused beyond reasonable doubt and it is settled proposition of law that for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts, if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of **MUHAMMAD MANSHA v. THE STAE**

reported in **2018 SCMR 772**, wherein the Hon'ble Supreme Court of Pakistan has held that:

***“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).*”**

19. In this case, the learned trial Court has not followed the evidence in its true perspective and thus arrived at conclusion by holding the appellant guilty of the offence. Resultantly, the instant appeal is allowed. The conviction and sentence awarded to the appellant were set aside and he was acquitted by extending charge of benefit of doubt. The appellant was on bail and his bail bond was cancelled and surety was discharged.

20. These are the detailed reasons of the short order announced by us vide order dated 24.01.2019.

**JUDGE.**

**JUDGE**