

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Criminal Revision Application No.06 of 2017

The State through Deputy Attorney
General for Pakistan. Applicant

Versus

Presiding Officer, Special Judge
(Offences in Banks), Karachi and
19 others. Respondents

Applicant Through M/s Salman Talibuddin
Additional Attorney General for
Pakistan & Miss Maria Ahmed,
Advocate.

Respondent No.16 & 17 Through Mr. Zeeshan Abdullah,
Advocate.

Respondent No.5 Through Mr. Altaf Ahmed Sahar,
Advocate.

Respondents No.6 & 11 Through Mr. Ali Asghar Buriro,
Advocate.

Respondents No.18, 19 & 20 In person.

Investigating Officer SLK Shahbaz Inspector FIA/I.O.

Criminal Revision Application No.13 of 2017

Applicant Ms. Ayesha Malvina Abbasi d/o
Edward Gori (late).

Versus

Presiding Officer, Special Judge
(Offences in Banks), Karachi and
20 others. Respondents

Applicant. Through Mr. Yawar Faruqui,
Advocate.

Respondent No.7 Through Mr. Zeeshan Abdullah,
Advocate.

Respondent No.10 Through Mr. Altaf Ahmed Sahar,
Advocate.

Respondents No.3 Through Mr. Ali Asghar Buriro,
Advocate.

Respondents No.19, 20 & 21 In person.

Investigating Officer SLK-Shahbaz Inspector FIA/I.O.

Date of hearing 16.08.2018

Date of Judgment 03.09.2018

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J U D G M E N T

SHAMSUDDIN ABBASI, J:- Criminal Revision Application No.06 of 2017 has been filed by the State through Deputy Attorney General for Pakistan, at Karachi and Criminal Revision Application No.13 of 2017 has been filed by Ms. Ayesha Malvina Abbasi. Through their respective criminal revision applications, the applicants have assailed the order dated 26.11.2016, passed by learned Special Court (Offences in Banks) Sindh, at Karachi, in Case No.68 of 2015, arising out of Crime bearing FIR No.70 of 2015 registered at P.S. FIA, ACC, Karachi, under Sections 409, 420, 468, 471, 34 and 109, PPC, whereby the learned Special Judge declined to accept supplementary challan dated 20.09.2016 submitted by SLK-Shahbaz Inspector FIA/I.O. and returned the same to the Investigating Officer.

2. Facts relevant to these revision applications are that on 08.12.2015 at 1300 hours a case vide Crime No.70 of 2015 was registered at P.S. FIA, ACC, Karachi, on behalf of State through Sub-inspector Adnan Dilawar of FIA, ACC, Karachi, for offences punishable under Sections 409, 420, 468, 471, 34 and 109, PPC, wherein the incident is shown to have taken place from 2013-2014 during which period an amount of Rs.12,85,95,919/-, belonging to one Ms. Ayesha Malvina Abbasi, was misappropriated through fake correspondences, fraudulent transactions and transfer of the amount via fake bank accounts.

3. Before submission of supplementary challan dated 20.09.2016, an interim challan was submitted by Sub-inspector Amir Ismail Memon, FIA, ACC, Karachi, showing accused Saeed Ahmed Khokhar, Muhammad Habib Qureshi and Abdul Wahid in custody whereas accused Bandgi Nasir Jamil Farooqui, Irfan Ismail and Syed Muhammad Nabeel were shown in column No.2 of the challan as

absconders. The learned trial Court while accepting the interim challan took cognizance and issued NBWs against absconding accused and after completing the proceedings under Section 512, Cr.P.C. issued proclamation under Sections 87 and 88, Cr.P.C. against absconding accused and declared them as proclaimed offenders. Before framing of charge, SLK-Shahbaz Inspector FIA/I.O. submitted supplementary challan on 20.09.2016, but the same was not accepted by the trial Court with direction that I.O. and P.P. for the State should be heard first. The learned trial Court, after hearing the parties, rejected the request of the I.O. for acceptance of the supplementary challan and returned the same to the I.O. by an order dated 26.11.2016, which is impugned in the present criminal revision applications.

4. Mr. Salman Talibuddin, learned Additional Attorney General for Pakistan has contended that the crime is heinous one wherein a lady (Ms. Ayesha Malvina Abbasi) has been deprived of her huge amount of rupees 130 million by way of fraud and cheating. He further contended that the investigating officer has traced out money trail of misappropriated amount by main accused Bandgi Nasir Jamil Farooqui and Irfan Ismail, who transferred the same to the accounts of other co-accused and after thorough investigating it was proved that accused nominated in the supplementary challan are the companions of main accused and the misappropriated amount is lying in their accounts. He also contended that the learned trial Court did not consider the merits of the investigation and returned the supplementary challan to the I.O. without assigning valid reasons merely on the ground that the Court has already taken cognizance on the basis of interim challan submitted earlier. He submits that law does not provide any time frame for submission of supplementary challan, hence the findings of the learned trial Court are not just and proper and liable to be reversed. In support of his contentions, he has placed reliance on the cases of *Muhammad Hanif Pathan v The State and 3 others* (PLD 1999 Karachi 121), *Mustafa and others v The State* (2009 YLR Lahore 1375), *Raja Khurshid Ahmed v Muhammad Bilal and others* (2014 SCMR 474), *Muhammad Akbar v The State and another* (1972 SCMR 335) and *Mitho alias Muhammad Mithai v*

Province of Sindh through Secretary Home Department and 15 others (2018 P.Cr.L.J. 101).

5. Mr. Yawar Faruqui, learned counsel for applicant Ms. Ayesha Malvina Abbasi, submits that the applicant is a household lady and the amount so misappropriated was inherited from her mother's shares of Uniliver Pakistan, which were invested in various saving schemes, but accused Bandgi Nasir Jamil Farooqui, who was the Manager of the bank, and co-accused Irfan Ismail, who was broker/agent of stock exchange, have misappropriated the amount of Rs.12,85,95,919/-. It is next submitted that investigating officer has concluded the investigation and submitted supplementary challan against accused persons, who are closely related to main accused Bandgi Nasir Jamil Farooqui and Irfan Ismail, and both have cleverly transferred the amount to the accounts of their near relatives; both have been declared proclaimed offenders by the trial Court and they are enjoying the misappropriated amount of Ms. Ayesha Malvina Abbasi through their close relatives, who are either wives, sons and brothers of the main accused. It is also submitted that Section 173, Cr.P.C. empowers the investigating agency to conclude the investigation and there is no bar on it.

6. On the other hand, Mr. Zeeshan Abdullah, learned counsel for the respondents, has contended that the investigating agency in the first instance submitted interim challan, which was treated as final challan and cognizance was taken, hence the trial Court has rightly declined to accept the supplementary challan. He further contended that the criminal revision applications are not sustainable in law and liable to be dismissed for the sole reason that the applicants have concealed the material facts of the case viz submission of interim challan on 22.12.2015, then first supplementary challan on 20.09.2016 and thereafter second supplementary challan on 21.11.2016, which was returned to the I.O. on 26.11.2016. Learned counsel submits that once the trial Court has taken the cognizance on the basis of interim challan by treating the same as final challan, the doors for further investigation are closed. It is next submitted that after treating the interim challan as final challan, the further investigation in the matter, without

permission of the Court, is inadmissible in the eyes of law and prayed for dismissal of the revisions applications being meritless. In support of his submissions, he has relied upon the cases of *Asif Ali v Province of Sindh and 10 others* (2016 P.Cr.L.J. {Sindh (Hyderabad Bench)} 1484, *Bahadur Khan v Muhammad Azam and 2 others* (2006 SCMR 373), *Rao Muhammad Shakir v Province of Sindh and 6 others* (PLD 2015 Sindh 213) and *Munir Ahmad v Additional Inspector General of Police, Punjab and 6 others* (2016 MLD {Lahore (Multan Bench)} 2039.

7. Mr. Altaf Ahmed Sahar, learned counsel appearing on behalf of respondent No.5, has adopted the same submissions as raised by Mr. Zeeshan Abdullah, Advocate. He, however, added that the subsequent supplementary challan is after thought, based upon malafide intention and without lawful authority as there is no provision under Section 173, Cr.P.C. to submit supplementary challan.

8. Mr. Ali Asghar Buriro, learned counsel for respondents No.6 and 11, submits that respondent Murtaza was first cited as prosecution witness in the interim challan, but in the supplementary challan he has been shown as accused with malafide intention and ulterior motives.

9. Heard learned counsel for the respective parties and perused the entire material available on record with their able assistance. The case is of fraud and cheating in which a lady has been deprived of huge amount of Rs.12,85,95,919/-, by main accused Bandgi Nasir Jamil Farooqui, who was bank manager, with the active connivance of co-accused Irfan Ismail, who was share broker. Both have cleverly misappropriated such amount by transferring the same to the accounts of their near relatives, who are shown as absconders and are enjoying the misappropriated amount as emerged from the investigation. The record also reflects that out of 20 accused, only 04 accused are shown on bail while 10 accused have been shown as absconders and 06 accused are shown in custody in the supplementary challan. It is pertinent to mention here that on 17.01.2017 an interim order was passed, whereby the proceedings pending before the trial Court were stayed. Learned

counsel for the respondents has placed on record photocopies of the diary sheets. A bare perusal of case diary dated 21.11.2016 reveals that after declining the supplementary challan dated 20.09.2016, the trial Court commenced proceedings in terms of interim charge sheet submitted on 22.12.2015 by treating the same as final. The case pertains to white collar crime allegedly committed by the accused, who have been declared as proclaimed offenders and the nominated accused shown in the supplementary challan are the beneficiary of the misappropriated amount, hence they are also liable to be prosecuted. The trial Court has out rightly rejected the supplementary challan without giving due weight to the documents and evidence collected during investigation by the I.O. Such an approach of the trial Court is not tenable under the law because the law stipulates the decision of controversies on merits rather than on technicalities. The reinvestigation of the case even after submission of the final challan is not barred under the law but the trial Court completely ignored this aspect of the matter. In this respect, we place reliance on a case of *Raja Khurshid Ahmed v Muhammad Bilal and others* (2014 SCMR 474), wherein it has been held as:-

“It would be seen that as per settled law, there is no bar to the reinvestigation of a criminal case and the police authorities are at liberty to file a supplementary challan even after submission of the final report under section 173, Cr.P.C.”

In another case of *Bahadur Khan v Muhammad Azam and 2 others* (2006 SCMR 373), it has been held as under:-

“It is well settled proposition of the law as also held consistently in the important judgments of this Court and those cited by the learned Advocates on Record, in view of the provision of section 173, Cr.P.C. that no legal bar existed for reinvestigation of a criminal case even after submission of final report under Section 173, Cr.P.C. and the police could carry out the fresh investigation and submit its report to the Court”.

10. For what has been discussed herein above, we are of the considered view that the impugned order dated 26.11.2016 is unjust and improper and cannot be sustained in the eyes of law. Consequently, the same is hereby set-aside. The trial Court shall

accept the supplementary challan and proceed with the matter in accordance with law.

11. With the above observations, both criminal revision applications stand allowed.

JUDGE

JUDGE

Naeem