

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 510 of 2018

Mst. Shabana Shahid Khan W/O Shahid Khan Appellant

V e r s u s

The State Respondent

J U D G M E N T

Date of hearing : 05th July, 2019.
 Date of Judgment : 16th September, 2019.
 Appellant through : Mr. Abdul Wahab, Advocate
 The State through : Ms. Amna Ansari, Addl. P.G.

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Kausar Sultana Hussain, J.:- The instant appeal has been preferred under Section 410 Cr.P.C. against the impugned judgment dated 03.10.2018, passed by learned Special Judge Anti-Corruption (Provincial), Karachi in Special Case No. 12 of 2017 arising out of FIR No. 04 of 2017 of ACE Karachi, under Sections 161, 420, 468, 471 PPC read with section 5(2) of Prevention of Corruption Act-II, 1947, whereby the appellant was convicted under Section 245(2) Cr.P.C for the offence under Section 161 PPC R/W Section 5(2) of Prevention of Corruption Act, 1947 to suffer R.I. for 09-months so also to pay a fine of Rs. 10,000/- or in default to suffer S.I. for 02-months more. The benefit of section 382(b) Cr.P.C is also extended to the appellant. Through the captioned appeal, the appellant has prayed to set aside the impugned judgment on the facts and grounds averred in the memo of appeal.

2. Compendium of facts mentioned in the FIR are that ASIP Khuram Shehzad Butt of PS Shah Latif Town, Karachi on the written complaint of complainant Fareeda Shakeel D/o Shakeel Ahmed, lodged FIR No. 248 of 2016, under Section 489-F, 420, 468, 471 PPC, stating therein that she was a teacher by profession, she gave

Rs.80,000/- to Mst. Shabana W/O Shahid Khan, Resident of House No.L-16, Jamal Ibrahim for the purpose of Government job. Then said Shabana delivered her offer letter, joining order and medical certificate with interval. After receiving these documents the complainant went to School for joining but Head Master of the School did not allow her joining and told her that these orders are fake/forged and incomplete. After that she went to appellant/accused Shabana and narrated the facts and demanded her money back. The appellant lame excuses refused to return her money. Thereafter, the complainant filed an application in the office of SSP Malir in result of which the complainant and appellant were called at Khuldabad Police Post, where the appellant gave her three cheques for Rs. 25,000/- each. The details of same are as under :-

- i. Cheque No.59986411 of amount of Rs. 25,000/- dated 27.2.2016, NBP Swedish College Branch.
- ii. Cheque No.59986412 of amount of Rs. 25,000/- dated 27.2.2016, NBP Swedish College Branch.
- iii. Cheque No.59986413 of amount of Rs. 25,000/- dated 27.2.2016, NBP Swedish College Branch.

3. She presented these cheques in the Bank for encashment, but the cheques were bounced due to the reasons of insufficient funds and stoppage of payment. She again approached to appellant and asked her for refund of her amount, but she refused. Therefore, a FIR No. 248 of 2016, under Section 489-F, 420, 468, 471 PPC at PS Shah Latif Town, Karachi was lodged. During investigation, it was transferred to Anti-Corruption Establishment, Karachi for want of jurisdiction. The enquiry was conducted by the I.O/IP Arshad Hussain Leghari of ACE East Zone, Karachi and recommended for registration of the case against appellant / accused. Hence this FIR.

4. The charge against the appellant was framed by the Special Judge Anti-Corruption (Provincial), Karachi on 26.1.2018 to which the appellant pleaded not guilty and claimed to be tried. At the trial

prosecution examined at the most 5 PWs namely Dr. Muhammad Taufeeq (Pw-1 at Exh.3), Saeed Ahmed (Pw-2 at Exh.4) , Ali Zaman (Pw-3 at Exh.5), Fareda Shakeel (Pw-4 at Exh.6) and Arshad Hussain IP-ACE (Pw-5 at Exh.8). The accused in her statement recorded by the learned trial Court under section 342 Cr.P.C. (Ex.10) has simply denied the allegations against imposed by the complainant and claimed herself as innocent and prayed for justice. The accused neither examined any witness in her defense nor examined herself on oath in disproof of the charge.

5. Arguments advanced by the learned counsel for the appellant and Additional Prosecutor General, Sindh are considered. I have also gone through the material available on record including the impugned judgment.

6. Learned Counsel representing the appellant submitted that the complainant has failed to associate a single private witness of the alleged incident, which is clear violation of section 103 Cr.P.C. He further argued that there are material contradictions in the depositions of prosecution witnesses. He further argued that the learned trial court only believed one sided version of the prosecution. Lastly, he contended that appellant is innocent and has falsely been implicated in the above case and prayed that impugned judgment being not sustainable in law be set aside and appellant may be acquitted.

7. On the other side, Ms. Amna Ansari, Additional Prosecutor General, Sindh did not controvert the aforementioned submissions of learned Counsel for the appellant, being matter of record, however, she strongly supported the impugned judgment.

8. Perusal of the impugned judgment it reveals that the learned counsel for the appellant *inter alia* submits the learned Trial Court has failed to consider many aspect of the case during trial and

passed the impugned judgment horridly without touching the merits of the case. The learned counsel for the appellant put forth many generalised grounds in support of his contention, however, he could not cite even a single assistance in favour of his case and case related either in his written appeal or during the course of arguments.

9. It was also observed that the complainant also does not have clean hands. She paid certain amount to the appellant lady for her appointment in education Department as Teacher although it is a known fact that there is a certain procedure for appointment in Government. A lady teacher cannot appoint or get appointed another lady as teacher being not competent authority and without following the due procedure as contemplated by law.

10. The complainant also disclosed during her cross-examination conducted by the learned counsel for the appellant / convict that the appellant refunded her amount after registration of FIR at local police station under compromise deed dated 6.9.2017. The I.O Inspector ACE deposed in his evidence that on his letter to Director Education, they sent verification report of appointment order, vide letter dated 12.6.2017, where it was reported that no any appointment record was available with them, hence it could not be verified. He produced the said report as Exh.8/B. The Pws also did not confirm her joining as teacher in their school.

11. In view of forgoing reasons, there appears no cogent ground on the basis of which the impugned judgment can be found to be suffering from any defect in law. Consequently, appeal is dismissed and the conviction is maintained to the extent the appellant lady already undergone in the prison. She should also pay a fine of Rs. 5000/- (Rupees Five Thousand only) or in default she will serve Simple Imprisonment for seven days more. The appellant is directed

to deposit such fine within seven days from the date of announcement of this judgment before the Nazir of this Court and the Nazir is directed to submit the compliance report within eight days.

Faheem/PA.

JUDGE