

# IN THE HIGH COURT OF SINDH, KARACHI

*Criminal Appeal Nos. 30 of 2018*

**Before:**

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio

Appellant: Yawar son of Gul Zaman through Mr. Asad  
Manzoor Halepota, advocate.

Respondent: The State through Mr. Irshad Ahmed, Deputy  
Attorney General.

Date of hearing: 10.02.2022

Date of announcement: 18.02.2022

## **JUDGMENT**

**KHADIM HUSSAIN TUNIO, J-** Through captioned criminal appeal, appellant Yawar son of Gul Zaman has challenged the impugned judgment dated 13.12.2017, passed by the learned Judge Special Court (Offences in Banks) Sindh at Karachi in Case Nos. 26/2011 (*Re-The State v. Yawar s/o Gul Zaman*) emanating from FIR No. 12 of 2011 of FIA CBC, Karachi registered under sections 420/468/471/109/34 PPC. Through the impugned judgment, appellant Yawar was convicted u/s 468 PPC and sentenced to suffer rigorous imprisonment for seven years with a fine of Rs.10,000/-, in case of default thereof to further undergo simple imprisonment for three months more. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years with a fine of Rs.10,000/-, in default whereof to further undergo simple imprisonment for three months more. He was lastly convicted u/s 420 PPC and sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500,000/-, in default whereof to suffer simple imprisonment for one year more. All the sentences were ordered to run

concurrently and benefit of S. 382(b) Cr.P.C was also extended to the appellant.

2. Precisely, facts of the prosecution case are that on 26.02.2011, one Imran Ahmed Esani, Manager of IFM NIB Bank Karachi filed a written complaint regarding several customers of their bank in different branches had complained about withdrawal of cash through encashment of cheques online which were not authorised by them and were put forward by a third party. This allegedly caused the bank a loss of Rs.315,405/-. On such information, investigation was conducted and several people were found to be involved, amongst whom was the appellant who had presented several counterfeit cheques in the bank to get them encashed and caused a loss of Rs.3,357,405/-.

3. After registration of FIR, usual investigation was conducted by the Investigating officer and on its completion a challan was submitted before the trial Court. After compliance with section 241-A Cr.P.C, a charge was framed against the accused to which he pleaded not guilty and claimed to be tried. At the trial, prosecution examined as many as ten PWs namely PW-1 **Imran Ahmed Esani**, PW-2 **Tariq Majeed**, PW-3 **Qamar Iqbal**, PW-4 **Muhammad Kazim Parcha**, PW-5 **Syed Haroon Akhtar**, PW-6 **Javed Iqbal**, PW-7 **Ashiq Ali**, PW-8 **Ali Hassan**, PW-9 **Nafees Ahmed** and PW-10 **Inspector Ahmed Jan Khan** who produced various documents and other items, duly exhibited. Thereafter prosecution side was closed. Statement of accused was recorded under section 342, Cr.P.C, where he denied the prosecution case in toto and pleaded his false implication while admitting his presence in the bank at the relevant time in relation to his office work. However, he did not examine himself on oath in disproof of the charge, nor did he examine anyone else in his defence.

4. After hearing learned counsel for the respective parties, learned trial Court convicted and sentenced the appellant through impugned judgment as stated supra.

5. Learned counsel for the appellant has contended that the fake cheques had not been recovered from the appellant; that the appellant has not presented any fake cheques in the concerned bank for encashment; that no customer/account holder has been made a witness in the case; that the person who made the initial complaint has not been examined; that no copy of CNIC has been produced at the time of encashment of the fake cheques; that several co-accused have already been acquitted; that the appellant is not beneficiary of the alleged fraud; that name of appellant does not transpire in the FIR; that the CCTV footage merely shows the presence of the appellant at the bank; that the CNIC of a different person has been recovered instead of the appellant's; that no evidence has been produced before the court to suggest that the appellant had prepared the fake cheques, as such he prays for the acquittal of the appellant while relying on the case law titled *NOTICE TO POLICE CONSTABLE KHIZAR HAYAT; In the matter of (PLD 2019 Supreme Court 527)*.

6. Conversely, learned Deputy Attorney General has contended that prosecution has examined as many as ten witnesses who have all supported the prosecution case; that no suggestion has been put forth to the witnesses by the appellant regarding his false involvement; that the cheques were recovered and produced by the bank; that no enmity or ill-will has been alleged or proved by the appellant with the prosecution witnesses; that the CCTV footage has also shown the presence of the appellant at the concerned bank; that the appellant was arrested red-handed while committing the alleged offence. He has placed his reliance on case law reported as *GHAZANFAR alias PAPPU v. The STATE (2012 SCMR 215)*.

7. We have heard the learned counsel for the appellant, learned Deputy Attorney General and have perused the record available before us with their assistance.

8. Perusal of record shows that several incidents of false cheque encashment were reported by the Manager of NIB Bank Karachi

namely Imran Ahmed Esani through a written complaint on 26.02.2011. The matter was looked into by the FIA and it was found that the appellant along with the rest of his gang had encashed a total of 55 forged cheques of 16 different accounts at various branches of NIB Bank while the originals leaves of the said cheques had remained with the owners. As such, the appellant along with co-accused namely Imran Memon, Syed Arif Hussain and Muhammad Raheel Qureshi were arrested for causing a total loss of Rs. 3,357,405/-whereas the rest of their accomplices became fugitives of the law. The appellant Yawar was convicted by the trial Court, whereas co-accused Imran, Syed Arif Hussain and Muhammad Raheel were acquitted of the charges levelled against them. PW-4 Muhammad Kazim Paracha, former cashier at NIB Bank's Boulten Market branch not only identified the appellant in Court at the time of trial, but also pointed him out on the CCTV footage while getting encashed an amount of Rs.27000/- through a cheque which PW-4 allegedly cleared and he squarely put him as the culprit of the crime while further stating that the appellant Yawar had received the cash from him after the cheque's encashment. PW-8 Ali Hassan, former teller at NIB Bank's Shah Faisal Colony Branch also implicated the present appellant while stating that the appellant Yawar had presented, before him, two cheques dated 23.11.2009 and 25.11.2009 which were cleared by PW-8 and the cash was received by appellant Yawar. Both these witnesses maintained their stance regarding the guilt of the appellant even after being cross-examined and despite being given the chance, the appellant did not dispute the depositions of the PWs regarding the appellant presenting the said cheques. Oral as well as eye-witness accounts furnished not only found support by the CCTV footage presented, but also by various documents produced by the prosecution *i.e.* the forged cheques and their original cancelled out cheques. It is also pertinent to note here that the appellant Yawar never denied his presence at the bank, rather admitted the same in his statement u/s 342 Cr.P.C. However, he claimed that he was present at the relevant time, in the Banks, in connection of his office work. However, he has failed to

disclose what work that was or where he worked. As such, the same holds little, if any, weight before this Court. Sufficient evidence is available on the record to connect the appellant with the alleged offence and the prosecution has duly discharged its burden to prove the appellant's guilt beyond reasonable shadow of doubt, as such the present appeal against conviction, being meritless, is dismissed. It may be mentioned here that the acquittal of the appellant's co-accused is of no assistance to the appellant as there was much lesser evidence against them and as such their cases are distinguishable from that of the appellant.

9. However, considering the mitigating circumstances before us, such as the appellant facing the agony of a long trial, the amount of fraud itself being comparatively on the lower end and the beauty of our legislature in always allowing a chance for reformation, the sentence of the appellant originally awarded is converted to one already undergone by him, being a substantial portion in itself. However, the appellant still has to pay the fine amount of Rs. 520,000/- (*five lac and twenty thousand only*) or in default to suffer imprisonment for one year more as ordered by the trial Court through the impugned judgment. Therefore, until the appellant pays off the fine amount of Rs. 520,000/- or undergoes further imprisonment of one year in case of failure, he shall remain in custody. The appellant is present on bail and shall be taken into custody and be returned to Central Prison Karachi until he pays the fine amount or serves the additional sentence of one year imprisonment.

10. Criminal Appeal No. 30 of 2018 stands disposed of in the above terms.

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