

IN THE HIGH COURT OF SINDH, KARACHI

Before:

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

Criminal Appeal No. 253 of 2019

Appellant: Syed Sabir Ali son of Syed Nasir Ali through Mr. S. Nadeem-ul-Haq, advocate

Criminal Appeal No. 278 of 2019

Appellant: Mumtaz Hussain son of Ghulam Habib through Mr. Mustafa Ali Safvi, advocate.

Criminal Appeal No. 300 of 2019

Appellant: Aftab Ahmed son of Mushtaq Ahmed through Mr. Raj Ali Wahid Kanwar, advocate.

Respondent: The State through Mr. Irshad Ali, Assistant Attorney General.

Date of hearing: 16.03.2022

Date of announcement: 24.03.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- By this common judgment, we intend to dispose of the above captioned criminal appeals filed by the appellants challenging the judgment dated 30.04.2019 (*impugned judgment*) passed by the Special Court (Offences in Banks) Sindh at Karachi being the off-shoot of one and same FIR bearing Crime No. 18 of 2014, registered with FIA CCC Karachi for the offences punishable u/s 409, 420, 460, 468, 471, 109 and 34 PPC r/w S. 5(2) Prevention of Corruption Act-II (PCA-II) 1947. Through the impugned judgment, the appellants were convicted and sentenced as follows:-

- a) Syed Sabir Ali was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to serve six years of rigorous imprisonment with a fine of Rs.4,900,000/-, defaulting in payment of fine whereof he was to suffer one year of further imprisonment. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years with a fine of Rs.30,000/-, defaulting in payment whereof was to lead to further imprisonment for three months.
- b) Aftab Ahmed was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to suffer rigorous imprisonment for three years and to pay

fine of Rs.30,000/-, default in payment whereof he was to suffer further imprisonment for three months.

- c) Mumtaz Hussain was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to suffer rigorous imprisonment for four years with fine of Rs.40,000/-, in default of payment whereof to undergo further imprisonment for four months. He was further convicted u/s 468 PPC and sentenced to suffer four years of rigorous imprisonment and to pay fine of Rs.40,000/-. If he were to default in paying the fine, he was ordered to suffer further imprisonment for four months. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.30,000/-, in default whereof to suffer further imprisonment for three months.

All the sentences were ordered to run concurrently and benefit of S. 382(b) Cr.P.C was extended to them.

2. Precisely, facts of the prosecution case are that the appellant Sabir Ali applied for availing Saiban loan introduced by NBP after mortgage of property and on 31.10.2007 a loan in the sum of Rs. 4.9 million was sanctioned and fake documents of the property furnished by the appellant Aftab Ahmed who assisted appellant Sabir in the process were accepted by the bank and the whole amount of loan was released in favour of the appellant Sabir Ali who then transferred the same to absconding co-accused Naik Muhammad from whom he purchased the property by showing it to be a two story house and mortgaged it with NBP. Absconding co-accused Naik Muhammad had purchased the same property from appellant Mumtaz Hussain who sold it on the basis of fake irrevocable power of attorney. The fraud surfaced after an internal inquiry post-default by the bank and the matter was reported to the FIA, as such the FIR was lodged.

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 of section 241-A, Cr.P.C, a charge was framed against the accused to which they pleaded not guilty and claimed trial. At the trial, prosecution examined as many as twelve PWs namely PW-1 Khursheed Hussain, PW-2 Suhail Akhtar Arbab, PW-3 Muhammad Mubarak Ismail, PW-4 Syed Taha Tanveer Ali, PW-5 Haseeb Ahmed Siddiqui, PW-6 Ahmed Memon, PW-7 Syed Mukhtiar Hussain Shah, PW-8 Muhammad Aijaz, PW-9 Muhammad

Rizwan Bhatti, PW-10 Muhammad Imran Shaikh, PW-11 Mansoor Ahmed and PW-12 Syed Azfar Ali. who produced various documents and other items, duly exhibited. Thereafter prosecution side was closed. Statement of accused were recorded under section 342, Cr.P.C, where they denied the prosecution case in toto and pleaded their false implication. However, they did not examine themselves on oath in disproof of the charge, nor did they examine anyone else in their defence.

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

5. Learned counsel for the appellants jointly contended that the appellants are innocent and have been falsely implicated in the present case; that the appellant Sabir paid nine instalments of the loan back and after that stopped paying the same when the bank refused to give the property documents back; that the appellant Mumtaz Hussain sold the property on the basis of genuine documents and that he was the valid attorney of the owners of Plot No. A-5 of Survey No. 24 Deh Digh Tapo Malir; that the loan case was also not approved by the appellant Aftab Ahmed, instead was approved by the credit head of NBP; that the verification and survey of the plot being sold was done by private companies; that various other officials of the NBP sanctioned the loan, however they were not joined in the investigation by the IO; that no direct evidence is available on the record against any of the appellants; that the plot's sale and purchase was based on original documents; that no evidence has been brought before the Court to prove that the documents used for obtaining the loan were forged and fabricated; that the learned trial Court had no jurisdiction in the matter as the same was pertaining to Financial Institution (Recovery of Finance) Ordinance 2001 being a case of simple loan default. In support of their contentions, they have cited the case law reported as *Soomar v. The State* (1999 PCrLJ 1561), *A. Habib V.M.K.G Scoot Christian and 5 others* (PLD 1992 SC 353), *Hussain*

Bux v. The State (PLD 2003 Karachi 122), *The State v. Rab Dino Shaikh and another* (2003 SCMR 341), *Ghulam Mustafa Abbasi v. The State through ACE and another* (2011 MLD 421), *Nasir Abbas v. The State* (2011 SCMR 1966), *Industrial Development Bank of Pakistan v. Abdul Latif Channa and 6 others* (2012 PCrLJ 528), *Syed Mushahid Shah and others v. Federal Investment Agency and others* (2017 SCMR 1218), *Farhanul Hassan v. The State* (2018 PCrLJ Note 206), *Muhammad Sadiq v. Dileep Kumar Chawla and 6 others* (2019 YLR Note 67), *Umar Mukhtar v. The State* (2020 MLD 696) and *Utility Store Corporation of Pakistan v. The State and others* (2021 SCMR 408).

6. Conversely, learned Assistant Attorney General has contended that the prosecution has examined as many as twelve witnesses who have all supported the prosecution case; that no suggestion has been put forth to the witnesses by the appellants regarding their false involvement; that the documents were seized by the investigation officer from the concerned bank; that no enmity or ill-will has been alleged or proved by the appellants with the prosecution witnesses; that the fabrication of documents made the nature of crime one of fraud which was triable by the learned trial Court.

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

8. Since an objection has been raised regarding the jurisdiction of the learned trial Court, it would be beneficial to address the same. It was contended by the counsel for the appellants that a Court constituted under the Financial Institutions (Recovery of Finances) Ordinance 2001 had the exclusive jurisdiction to try the case as it concerned obtaining of loan and default of the same, pursuant to the case of *Syed Mushahid Shah v. Federal Investment Agency and others* (2017 SCMR 1219). As also discussed by the learned trial Court, the 2001 Ordinance only tries offences committed by a customer who is granted a loan on the basis of genuine details and documents and then he defaults the same. However,

in the present case the loan itself was applied for on the basis of forged and fabricated documents which brought the meaning of the crime under the concept of 'fraud' and 'cheating' the two types of scheduled offences triable under the Offences in Respect of Banks (Special Courts) Ordinance 1984. Therefore, said argument advanced by the counsel for the appellants merits no further consideration.

9. Having gone through the material available on the record, it is revealed that the incident stems from Plot No. A-5 of Survey No. 24 Deh Digh Tapo Malir. As per the record, the property was in the possession of PW-3 Muhammad Mubarak Ismail. This in itself was never contested by any of the appellants and despite being given the chance to cross-examine him, none of the appellants ever did so at trial. He also stated that neither he nor his father had ever applied for a loan with NBP nor had they issued appellant Mumtaz Hussain any irrevocable power-of-attorney. He was again not cross-examined on this aspect. On the pretext of buying such property, appellant Sabir Ali applied for a loan with the National Bank of Pakistan through the appellant Aftab Ahmed who was working as a sales officer (outsourced employee) with the Saiban Loan scheme and used to present various documents to get the loan approved for the appellant Sabir Ali like he did for other applicants in many cases before. PW-5 Haseeb Ahmed who worked as a credit analyst at NBP deposed that the appellant Sabir Ali had been referred to him by appellant Aftab Ahmed who then used to present documents for him and on the basis of said documents, the summary sheet was prepared and the loan was sanctioned by the credit head which was then given to the appellant Sabir Ali. Both appellants, Sabir and Aftab, have denied the prosecution case although have failed to come up with any explanation in this regard. Sabir, in his statement of accused, took the stance that he had purchased the property and had paid nine instalments whereafter he stopped paying once the bank did not give him title documents. He also claimed that he had sent the entire amount of loan (4.9 million) to absconding co-accused Naik Muhammad who had sold him the said property. However, his stance was belied by

the evidence of I.O of the case Muhammad Rizwan who had collected the bank statement pertaining to the appellant Sabir's Account No. 0131185481000051. A perusal of the bank statement showed that after appellant Sabir had transferred Rs. 4.9 million to absconding co-accused Naik Muhammad, he had received the same back through two cheques dated 30.01.2008 and 22.02.2008 which speaks volumes about the dishonesty brewing between the appellant Sabir and absconding co-accused Naik Muhammad. Appellant Aftab also claimed to be just a rider for NBP again and claimed to be having no concern with bringing in customers for loans, however such an assertion was duly belied by the depositions of PW-6 Muhammad Aijaz who deposed that the appellant Aftab was an outsource employee who used to bring in customers for the Saiban Loan Scheme. Appellant Mumtaz Hussain, another accused showing up over and over in loan fraud schemes pertaining to Saiban NBP possessed an irrevocable power of attorney which is available on the record at 10/A-8. It is a matter of record that the survey numbers shown on the power of attorney and those mentioned in Revenue Entry No. 2797 and 2978 did not match and had variations. On this basis alone, it can safely be concluded that the power of attorney on the basis of which appellant Mumtaz sold the plot to absconding co-accused Naik Muhammad was in fact fabricated and they were all colluding with each other to usurp the loan amount and try remove any traces of their fraud. The documents claimed to have been genuine that were presented before the bank were also deemed fake by PW-6 Ahmed Memon, the custodian of the record being the Mukhtiarkar. Prosecution has undeniably proven the guilt of the appellants beyond reasonable shadow of doubt, as such present appeals against convictions, being meritless, are dismissed.

10. However, considering the mitigating circumstances before us, such as the appellants facing the agony of a long trial, the amount of fraud itself being comparatively on the lower end when shared amongst the appellants, to maintain uniformity in sentencing and the beauty of

our legislature in always allowing a chance for reformation, the sentences of the appellants are altered as follows:-

- a) Sabir Ali's sentence u/s 420 PPC r/w S. 34 PPC is reduced to three years of rigorous imprisonment from the six years originally awarded by the trial Court. His sentence u/s 471 PPC of three years is maintained being the minimum prescribed term pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984.
- b) Aftab Ahmed's sentence u/s 420 PPC r/w S. 34 PPC of three years as awarded by the trial Court is maintained.
- c) Mumtaz Hussain's sentence u/s 420 PPC r/w S. 34 PPC is reduced to three years of rigorous imprisonment from the four years originally awarded by the trial Court. His sentence u/s 468 PPC of four years is maintained being the minimum prescribed one pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984. His sentence u/s 471 PPC of three years is also maintained being the minimum prescribed term pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984.
- d) The fine amounts originally awarded by the learned trial Court are however maintained.

All sentences shall run concurrently and the appellants shall have the benefit of S. 382(b) Cr.P.C and any remission applicable to them under the law. The appellants shall be taken into custody and be returned to Central Prison Karachi for serving out their sentences if any remain to be undergone.

11. Criminal Appeals Nos. 253, 278 & 300 of 2019 stand disposed of in the above terms.

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