

IN THE HIGH COURT OF SINDH, KARACHI

Before:

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

Criminal Appeal No. 280 of 2019

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

Criminal Appeal No. 302 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

JUDGMENT

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. 20 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) Aftab Ahmed was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.20,000/-, default in payment whereof he was to suffer further imprisonment for three months.
- b) Mumtaz Hussain was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to suffer rigorous imprisonment for three years with fine of Rs.30,000/-, in default of payment whereof to undergo further imprisonment for three months. He was further convicted u/s 468 PPC and sentenced to suffer three years of rigorous imprisonment and to pay fine of Rs.30,000/-. If he were to default in paying the fine, he was ordered to suffer further imprisonment for three 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 Aftab Ahmed, in collusion with co-accused Riaz Khan, fraudulently got issued a Saiban loan by manipulating the record of National Bank of Pakistan on the basis of fabricated documentation, got Plot No. 195 of Survey No. 36 Deh Digh Tapo Malir evaluated falsely and then colluded with property seller to cause NBP losses of Rs. 1.6 million by obtaining the loan and then defaulting the same. The fraud surfaced after a post-default inquiry was conducted internally and a written complaint was then filed with the Federal Investigation Agency. The loan amount was shown to have been used to purchase Plot No. 195 of Survey No. 36 Deh Digh Tapo which were sold on the basis of fake power-of-attorney by appellant Mumtaz to co-accused Muhammad Ashraf Sunny who then executed a sale deed with Riaz Khan. The matter was investigated by the FIA and as such the FIR was registered.

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 they pleaded not guilty and claimed to be tried. At the trial, prosecution examined as many as thirteen PWs namely PW-1 Khursheed Hussain, PW-2 Suhail Akhtar Arbab, PW-3 Ali Imtiaz Hassan, PW-4 Syed Taha Tanveer Ali, PW-5 Muhammad Aijaz, PW-6 Syed Mukhtiar Hussain Shah, PW-7 Muhammad Rizwan Bhatti, PW-8 Zafarullah Khan, PW-9 Muhammad Imran Shaikh, PW-10 Mansoor Ahmed, PW-11 Syed Azfar Ali Baqvi, PW-12 Muhammad Muzamil and PW-13 Danish Mairaj 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 Mumtaz Hussain sold the property on the basis of genuine documents and that he was the valid attorney of the title holders; that the loan case was also not approved by the appellant Aftab Ahmed who was just a rider working at the NBP; that the verification and survey of the plot being sold were done by private companies; that various other officials of the NBP sanctioned the loans including the credit head, but they were not joined in the investigation by the IO; that no direct evidence is available on the record against the appellants; that all the documents pertaining to the plot in question were genuine and original; that no evidence has been brought before the Court to prove that the documents used for the loan were forged and fabricated and that they were presented by the appellant Aftab Ahmed; that the learned trial Court had no jurisdiction in the matter as the same was pertaining to Financial Institution (Recovery of Finance) Ordinance 2001. 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 thirteen

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 recovered and produced by the 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. 195 of Survey No. 36 Deh Digh Tapo Malir. As per the record, the property was in the possession of PW-3 Ali Imtiaz Hassan and belonged to his father who had never taken any loan. He also categorically denied having given any irrevocable power-of-attorney to appellant Mumtaz Hussain. He was never cross-examined on this aspect. On the pretext of buying such

property though, co-convict Riaz Khan 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. After Riaz had been referred to the NBP by the appellant Aftab Ahmed, he then used to present documents for him and on the basis of said documents, a summary sheet was prepared and the loan was sanctioned by the credit head which was then given to the co-convict Riaz Khan. Appellant Aftab has denied the prosecution case although has failed to come up with any explanation as to how he was not involved in the fraud. He is a character that has shown up constantly in a series of these cases and has played the exact role each time a loan was fraudulently approved and then defaulted. He again claimed to be just a rider, however such an assertion was duly belied by the deposition of PW-5 Muhammad Aijaz, who once again deposed that the appellant was an outsourced employee who used to bring in customers for the Saiban Loan Scheme. Appellant Mumtaz Hussain possessed an irrevocable power of attorney which is available on the record at Ex.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. 157 and 158 did not match those present in the power of attorney present with the appellant Mumtaz Hussain 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 property to co-convict Ashraf Sunny through sale deed and that it was in fact fabricated and they were all colluding with each other to usurp the loan amount and try to remove any traces of their fraud. Appellant Mumtaz is yet another character who has maintained his presence in all of these banking fraud cases where each time on the basis of the same fabricated irrevocable power of attorney, he has sold plots to the debtors through a middle man and gotten the loan approved despite them never being in actual possession of the same. This was an elaborate scheme ran by the appellants where co-convict Riaz Khan initially sought loan and appellant Aftab Ahmed helped him through the process as he had done so with many others. Then, appellant Mumtaz prepared fabricated power of attorney for plot No. 195 and on

the basis of the same sold it to co-convict Muhammad Ashraf Sunny who then sold it to Riaz Khan. 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) Aftab Ahmed's sentence u/s 420 PPC r/w S. 34 PPC of three years as awarded by the trial Court is maintained.
- b) 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 three years as awarded by the trial Court is maintained despite it not being the minimum prescribed one pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984 which provides a sentence of not less than four years, however no such revision/appeal was filed by the complainant for enhancement of sentence. 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.
- c) 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. 280 & 302 of 2019 stand disposed of in the above terms.

JUDGE
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