

## IN THE HIGH COURT OF SINDH, KARACHI

### *Before:*

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

Criminal Appeal No. 261 of 2019

Appellant: Muhammad Naveed son of Mirza Rizwan Baig  
through Mr. Ameet Kuimar, advocate.

Criminal Appeal No. 275 of 2019

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

Criminal Appeal No. 296 of 2019

Appellant: Idrees Malik son of Shafi Masih through Mr.  
Muhammad Jamil Ahmed, advocate.

Criminal Appeal No. 297 of 2019

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

Criminal Appeal No. 310 of 2019

Appellant: Muhammad Noman son of Muhammad Siddique,  
in person.

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. 14 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) Muhammad Noman 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.3,452,000/-, in default in payment of fine 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 and Muhammad Naveed were 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/- each, default in payment whereof they were to suffer further imprisonment for three months.
- c) Idrees Malik 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.3,452,000/-, 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.
- d) 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 Noman, in collusion with others, fraudulently got issued a Saiban loan by manipulating the record of National Bank of Pakistan on the basis of fabricated documentation through appellant Aftab Ahmed, got valued Plot No. 225 of Survey No. 36 Deh Digh Tapo Malir falsely and then colluded with property seller appellant Idrees Malik to cause NBP losses of Rs. 3.45 million by getting the loan approved on the basis of said fake documentation and then defaulting it. The fraud surfaced after an inquiry was conducted internally post-default and then a written complaint was filed with the Federal Investigation Agency. Then, the loan amount was shown to have been used to purchase the plot which was sold on the basis of fake irrevocable power-of-attorney that was managed by appellant Mumtaz Hussain. The matter was investigated by the FIA which further revealed that some proceeds of the fraud were

received by the co-convict Muhammad Ashraf Sunny and Muhammad Naveed too 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 Muhammad Noman, Idrees Malik, Aftab Ahmed and Muhammad Ashraf Sunny to which they pleaded not guilty and claimed to be tried. Accused Mumtaz Hussain then joined trial and the charge was amended to which the accused pleaded not guilty and claimed trial. Subsequently, accused Muhammad Naveed joined trial and the charge was amended yet again to which all the accused pleaded not guilty and claimed to be tried. At trial, prosecution examined as many as thirteen witnesses namely PW-1 Khursheed Hussain, PW-2 Haseeb Ahmed Siddiqui, PW-3 Suhail Akhtar, PW-4 Syed Taha Tanveer Ali, PW-5 Rasool Bux, PW-6 Muhammad Aijaz, PW-7 Syed Mukhtiar Hussain Shah, PW-8 Muhammad Arshad, PW-9 Syed Azfar Ali, PW-10 Irshadi Begum, PW-11 Khalid Riaz Jafri, PW-12 Aamir Anwar and PW-13 Furqan Ahmed Nizamani, all of whom produced various documents and other items which were duly exhibited. Thereafter, prosecution side was closed. Statements 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 signature of appellant Noman on the loan application is forged; 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. 225; 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 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 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. 225 of Deh Digh Tapo Malir. As per the record, the property was in the possession of PW-10 Irshad Begum and her family since 1967. This in itself was never contested by any of the appellants and despite being given the chance to cross-examine her, none of the appellants ever did so at trial. She also stated that she had never applied for any loan nor had she issued appellant Mumtaz Hussain any irrevocable power-of-attorney. She was again not cross-examined on this point. On the pretext of buying such property, the appellant Muhammad Noman 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 Muhammad Noman. PW-2 Haseeb Ahmed who worked as a credit analyst at NBP deposed that the appellant Muhammad Noman had been referred to him by the 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 Muhammad Noman. Both appellants, Noman and Aftab, have denied the prosecution case although they have failed to come up with any explanation in this regard. Appellant Noman, in his statement of accused, took the stance that he had never moved an application for obtaining a loan and had never purchased any property either, although he was controverted by the appellant Idrees who admitted that he had sold Plot No. 225 in Deh Digh Tapo Malir to appellant Muhammad Noman. He also admitted that he had received a pay order of Rs. 3.425 million which was handed to him through NBP officials. Rs. 3.425 million was the loan amount obtained by the appellant Muhammad Noman as shown in the summary sheet presented by PW-2 Haseeb Ahmed, as such it is proven that the appellant Noman had knowledge of the loan application and used the same amount to purchase Plot No. 225 from appellant Idrees as well. Appellant Aftab also claimed to be just a rider for NBP 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-2 Haseeb Ahmed and PW-6 Muhammad Aijaz, both of whom deposed that the appellant was an outsourced employee who used to bring in customers for the Saiban Loan Scheme. Appellant Idrees also shifted the blame on appellant Mumtaz while stating that he had purchased the plot in question from appellant Mumtaz and, after keeping Rs.500,000/- from the sale price, had given the rest of the amount to Muhammad Ismail. Appellant Mumtaz Hussain possessed an irrevocable power of attorney which is available on the record at Ex-13/A-7 and 13/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 Plot No. 225 to appellant Idrees were 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. It is also a matter of record that the appellant Idrees maintained an account in Soneri Bank F.B Area in which the pay order from NBP was deposited. Then, from that account an amount of Rs. 225,000/- was given to appellant Muhammad Naveed through a cheque who encashed the same. In his statement of accused, appellant Naveed rather admitted this fact while claiming that he had handed the amount to Muhammad Ismail, for whom he worked. A further amount of Rs.1,500,000/- was then received by the co-convict Ashraf Sunny from the proceeds of the fraud who has already served out his sentence and did not choose to appeal the same. He, too, did not deny receiving the same amount and claimed it was for business purpose. However, he was unable to explain the nature of the said business which appeared as a last minute excuse to avoid criminal liability. This was an elaborate scheme run by the appellants where appellant Noman initially sought loan and appellant Aftab Ahmed helped him through the process. Then, appellant Mumtaz prepared fabricated power of attorney for plot No. 225 and on the basis of the same sold it to appellant Idrees. Then, appellant Idrees kept his share and forwarded the rest of the proceeds to co-convict Ashraf Sunny and appellant Muhammad Naveed. 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 six 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) Muhammad Noman'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 also maintained being the minimum prescribed term pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984.
- b) Aftab Ahmed and Muhammad Naveed's sentences u/s 420 PPC r/w S. 34 PPC of three years as awarded by the trial Court are maintained.
- c) Idrees Malik'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.
- d) 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.
- e) 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. 261, 275, 296, 297 & 310 of 2019 stand disposed of in the above terms.

**JUDGE**  
**JUDGE**