

IN THE HIGH COURT OF SINDH AT KARACHI

Present : Ahmed Ali M. Shaikh, CJ
Omar Sial, J

Criminal Appeal No. 156 of 2009

Appellant : Abdul Majeed Soomro
Through Nemo

Respondent : The State
through Mr. Ghulam Shabbir Baloch,
Assistant Attorney General

JUDGMENT

Omar Sial, J.: Abdul Majeed Soomro, the appellant, has impugned a judgment dated 23.7.2009 passed by the learned Special Court (Offences in Banks) Sindh at Karachi. In terms of the said judgment, the appellant was convicted under section 409 P.P.C. and sentenced to suffer 7 year rigorous imprisonment and pay a fine of Rs. 400,000 or suffer another 1 year of simple imprisonment if he failed to pay the fine.

2. The background to the case is that on 15-9-1996 one Nisar Ahmed made a complaint to the F.I.A. in which it was stated that a motor vehicle that he had taking over obtained with a finance facility extended to him by Habib Bank Limited was seized by HBL on 1-3-1996 as he had failed to pay an installment on it. On 15-8-1996 he paid the entire outstanding to HBL. He was issued an order for the release of his vehicle seized earlier; however, when he went to get his vehicle, he was informed that somebody else had already taken the vehicle. Three persons were nominated as accused in the case. Pir Deedar Ahmed Sarhandi, Abdul Majeed Soomro and Maqsood Khan. The first two were employees of the Bank and at the relevant time were entrusted with the task of impounding vehicles that were in possession of defaulters and it was alleged that after seizing Nisar Ahmed's vehicle they had released it to the third accused i.e. Maqsood Khan. It appears that Maqsood Khan was declared an absconder and that on 15-4-2002 a charge under section 409 and 109 P.P.C read with section 5(2) of the Prevention of Corruption Act, 1947 was framed against the remaining two accused. Both pleaded not guilty and claimed trial.

3. The prosecution examined Inspector Muhammad Hanif Awan as its first witness. He was the second investigating officer of the case. The second prosecution witness was Muhammad Azeem Memon. He was the Vice President of the Bank working at the Frere

Road Branch in Sukkur. He was the officer who had revealed to the complainant Nisar that his vehicle had already been released prior to the complainant coming to seek its release. The third prosecution witness was the complainant Nisar Ahmed. The fourth prosecution witness was also named Nisar Ahmed. He was an officer of the Bank who had co-signed the letter of impounding the complainant's car along with accused Abdul Majeed Soomro and a person who was also present when the vehicle was released to Maqsood Ahmed. The fifth prosecution witness S.I. Muhammad Daud was the first investigation officer. The sixth prosecution witness was S.I. Syed Mushtaq Ali Shah who recorded the F.I.R and was also an investigation officer.

4. The accused recorded their section 342 Cr.P.C. statement on 5-7-2008 in which he stated that he had received a release order for the release of the vehicle and that he simply complied with the instructions issued to him. He further stated that an internal inquiry had cleared him of any wrong doing and that he was innocent.

5. After trial, Peer Deedar Sarhandi was acquitted and the appellant convicted and sentenced as above.

6. We have heard the appellant in person as well as the learned Assistant Attorney General and have examined the record with his assistance. Our observations are as follows.

7. It is an admitted position that the vehicle in question was impounded on 1.3.1996 by the staff of HBL that included Abdul Majeed Soomro (the appellant) and Nisar Ahmed (P.W. 4). The vehicle was then taken by the HBL staff and kept in its warehouse, the acting in charge of which at that time was the appellant. He was covering for Muhammad Azeem Memon (P.W. 2) who was the warehouse in charge but was on leave that particular day. It is also an admitted position that after the complainant had paid back the loan money to HBL, co-accused Pir Deedar Ahmed Sarhandi in his capacity as Assistant Vice President & Incharge of the Vigilance Division of the Bank, issued a release order for the vehicle. The Release Order on file is undated and has been written by Pir Deedar Ahmed Sarhandi to Muhammad Azeem Memon (P.W.2). The Release Order also does not contain the name or details of any person to whom the vehicle is to be released. It is also admitted that the vehicle in question was released to one Maqsood Khan on 3-6-1996 upon him presenting the Release Order of the vehicle to the then warehouse in charge (who was the appellant).

8. There was no evidence led at trial which could establish any wrong doing on the part of the appellant. To the contrary, Muhammad Azeem Memon (P.W.2) testified that

there were no rules and regulations of the Bank at the time that would govern procedures of impounding or releasing vehicles. He testified according to the practice prevailing at that time a Release Order signed by Pir Deedar Ahmed Sarhandi was necessary for the release of any impounded vehicle. He further testified that *"It is correct to suggest that the accused Abdul Majeed released the vehicle No. 2181 under the same procedure which was adopted by me for release in other impounded vehicles."* Later in his cross examination he testified once again *"It is correct that said vehicle was released according to the procedure"*. Another prosecution witness Nisar Ahmed (P.W.4) testified that Maqsood Ahmed had brought the Release Order to Abdul Majeed Soomro (the appellant). Soomro asked Nisar to obtain a photocopy of the national identity card of Maqsood and a receipt from Maqsood before handing the vehicle to him. Nisar did the same and after complying with the formalities prevailing at that time handed over the keys of the vehicle to Maqsood. During cross-examination, this prosecution witness also testified that *"It is correct that vehicle in question was released in the same way as other vehicle released. It is correct that vehicle used to be released to the person who used to brought the release order from the Head Office. Then NIC obtained and other document used to be completed and vehicle is handed over to the bearer of the release order, as per direction of the head office."* It appears from the foregoing that Abdul Majeed Soomro (the appellant) followed the procedure that was in vogue at that time to release impounded vehicles. It appears that the only requirement at that time was a Release Order signed by Pir Deedar Ahmed Sarhandi. The Release Order in the present case was signed and issued by Pir Deedar and the original of the same was on the record of the warehouse. It was not alleged that the appellant had forged the signatures of Pir Deedar. It was also not proved at trial that the appellant derived any benefit from the release of the vehicle to Maqsood Ahmed. As mentioned above, the prosecution witnesses testified that the process for impounding and releasing vehicles was not in writing and that a practice was followed (which the appellant admittedly followed). In light of the evidence led at trial, the ingredients necessary to be convicted for an offence under section 409 P.P.C were not established. Not an iota of investigation was conducted by any of the investigating officers as is evident of a bare reading of their testimonies. We are actually surprised that the learned trial court reached the decision that it did in the impugned judgment. The prosecution failed to establish its case against the appellant.

9. Above are the reasons for our short order dated 30-8-2018 which was as follows:

"Heard the appellant as well as Mr. Ghulam Shabbir Baloch, Assistant Attorney General. For reasons to be recorded later on, captioned appeal stands allowed. Consequently, the

sentence awarded to the appellant through the impugned judgment dated 23.7.2009 passed by the Special Court (Offences in Banks) Sindh at Karachi in Case No.52/1997 is set aside and he is acquitted of the charge. The appellant is on bail, his bail bonds stand cancelled and surety discharged. Office is directed to restore the surety documents to the surety on his proper identification.”

JUDGE

CHIEF JUSTICE