

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Ahmed Ali M. Shaikh, C.J. and Omar Sial, J.

Crl. Revision Application No. 60 of 2011

Applicant : Habib Bank Limited
through Mr. Wazeer Hussain Khoso, Advocate

Respondent No.1 & 2 : Abdul Shakoor Ismail Kaloodi;
Abdullah Kaloodi;
through Mr. Muhammad Saleem Thepdawa, Advocate

Respondent No.3 : The State
through Mr. Muhammad Nadeem Khan,
Assistant Attorney General

ORDER

Omar Sial, J.: Habib Bank Limited has impugned a judgment dated 8-2-2011 passed by the learned Special Court (Offences in Banks) Sindh at Karachi in Criminal Case No. 40 of 1994. In terms of the said judgment, the respondents in these proceedings (Abdul Shakoor Ismail Kaloodi and Abdullah Kaloodi) were acquitted.

2. Broadly, the case against the Kaloodis was that they were extended finance facilities by HBL and as security for the facilities they pledged to the Bank their stock comprising of general merchandise. In 1994 the Bank discovered that the pledged stock had been misappropriated. An F.I.R. bearing number 198 of 1994 was thus registered under sections 34, 406, 409 and 420 of the P.P.C as well as section 5(2) of the Prevention of Corruption Act, 1947 against the Kaloodis. The Kaloodis were indicted on 12-4-1994. After 7 prosecution witnesses were examined at trial, an application under section 227 Cr.P.C. was moved by the prosecution praying therein that an offence under section 409 P.P.C. had not been made out thus the charge may be suitably amended. The learned trial court proceeded to amend the charge on 15-6-2005 to the extent of section 409 P.P.C. being deleted after the defence counsel had recorded his consent to the amendment. After a full dress trial, the learned trial court acquitted the Kaloodis vide its judgment dated 8-2-2011.

3. We have heard the learned counsel for the Bank. He has argued that the charge was amended at a late stage; that the amendment praying that section 409 P.P.C. be deleted from the charge should not have been allowed; that the learned trial court should have reached a decision of conviction solely on the testimony of the complainant of the case; that the Kaloodis had not produced any defence witness.

4. Section 227 Cr.P.C. empowers the court to amend the charge at any stage before the announcement of judgment. As regards the deletion of section 409 P.P.C. was made at the request of the public prosecutor himself. No challenge was raised to the said order at that stage and it was only 6 years when respondents are acquitted and while filing this revision application that the Bank as an obvious afterthought took exception to the amendment in these proceedings. Further, the testimony of the complainant cannot in such cases be treated as gospel truth unless the same is corroborated by independent evidence. Learned counsel has failed to point out any non-reading, mis-reading or jurisdictional issues in the impugned judgment. He has also failed to point argue or establish that the said judgment was capricious or perverse in any manner. Needless to say that a double presumption of innocence also works in the favour of the Kaloodis at this stage.

5. None of the grounds raised by the learned counsel merit an interference with the judgment of the learned trial court. Accordingly, this criminal revision application was dismissed vide our short order dated 17.09.2019 along with pending applications and these are the reasons for the same.

JUDGE

CHIEF JUSTICE

4. Section 227 Cr.P.C. empowers the court to amend the charge at any stage before the announcement of judgment. As regards the deletion of section 409 P.P.C. the learned counsel has not been able to explain to us as to how the same would have been applicable as the category of persons to which it applies are a public servant or in the way of his business, a banker, merchant, factor, broker, attorney or agent. In any case the order of the learned trial court to delete section 409 P.P.C. was made at the request of the public prosecutor himself. No challenge was raised to the said order at that stage and it was only 6 years later while filing this revision application that the Bank as an obvious afterthought took exception to the amendment in these proceedings. Further, the testimony of the complainant cannot in such cases be treated as gospel truth unless the same is corroborated by independent evidence. Learned counsel has failed to point out any non-reading, mis-reading or jurisdictional issues in the impugned judgment. He has also failed to point argue or establish that the said judgment was capricious or perverse in any manner. Needless to say that a double presumption of innocence also works in the favour of the Kaloodis at this stage.