

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Ahmed Ali M. Sheikh, CJ and Omar Sial, J*

Crl. Revision Application No. 88 of 2016

Bank Alfalah Limited v. Mohammad Ameen Bandukda

Mr. Abdul Ahad, Advocate for the applicant.

Mr. Jamshid Malik, Advocate for the respondent.

ORDER

Omar Sial, J.: Bank Al-Falah Limited on 17-10-2011 filed a criminal complaint (No. 45 of 2012) against Ameen Bandukda (respondent in these proceedings) before the learned Special Court (Offences against Banks) in Karachi.

2. Al-Ameen Denim Mill (Pvt.) Ltd., of which Bandukda was a director, availed a pre-shipment export finance facility from the Bank. The Bank's grievance was that instead of repatriating the export proceeds into the company account maintained with the Bank, the company repatriated the proceeds to its account maintained with Habib Metropolitan Bank. Such a repatriation, according to the Bank, was not only unlawful but also caused loss to the Bank. Negotiations with Habib Metropolitan Bank did not bear any fruit. The Bank filed a suit for recovery against the company (No. B-29 of 2009) and subsequently also filed criminal complaint (No. 45 of 2012) for offences under sections 409, 420 and 403 P.P.C.

3. We have heard the learned counsels for the parties.

4. The Bank's grievance was that the company had availed a loan facility from the Bank and that in default of its contractual obligations with the Bank, the company had in breach of trust and by cheating the Bank, repatriated the export proceeds into another bank. The Bank therefore initiated civil suit for recovery as well as file a criminal complaint for the offences which the Bank felt had been committed by the company. The learned trial court however dismissed the complaint primarily on the ground that the Bank has filed a recovery suit in which the Bank has relied upon the same documents as those it had attached with the complaint and as the civil suit had been filed earlier in time to the criminal complaint and hence the trial court could not take cognizance of the complaint as it was only a court under section 195(1)(c) Cr.P.C. which was competent to take file a complaint.

5. Section 195(1)(c) provides that no court shall take cognizance of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

6. We have reviewed the memo of complaint filed by the Bank before the learned trial court and its grievance appears to be that the company of which the applicant is a director has committed a criminal breach of trust by diverting the export proceeds to Habib Metropolitan Bank instead of to the Bank; for dishonestly misappropriating for its own use the funds of the Bank as well as cheating. The applicant had thus allegedly committed offences under sections 403, 409 and 420 P.P.C. read with section 2(d) and 5 and 6 of the Offences in Respect of Banks (Special Courts) Ordinance, 1984. Nowhere was it alleged that the company had committed an offence in respect of a document produced or given in evidence in any proceeding before the trial court. The legislative interpretation of section 195 is contained in section 476 Cr.P.C. Sub-section 1 of section 476 stipulates that When any offence referred to in section 195, subsection (1), clause (b) or clause (c), has been committed in or in relation to, a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII. Sub-section 3 of section 476 provides that the powers conferred on Civil, Revenue and Criminal Courts under section 476 may be exercised in respect of any offence referred to in subsection (1) and alleged to have been committed in relation to any proceeding in such Court by the Court to which such former Court is subordinate within the meaning of subsection 3 of section 195. Further clarification is provided in section 476-A which provides that *“If the Court in any case considers that the person accused of any of the offences referred to in Section 476, subsection (1), and committed in, or in relation to, any proceedings before it, should not be tried under that section.....”*. In a nutshell section 195(1)(c) would be invoked if the offences mentioned in section 195(1)(c) are committed during proceedings before that Court. In the present case neither has it been alleged that the

offences mentioned in section 195(1)(c) have been committed nor that the said offences were committed in proceedings before the Court. In this regard we have also been persuaded by a decision of the Lahore High Court in a judgment reported as **Muhammad Shafi vs Deputy Superintendent of Police (PLD 1992 Lahore 178)**. The learned trial Court has erred in its findings on this issue.

7. There is another aspect to the case. The Bank initiated the complaint in the Special Court (Offences against Banks) in Karachi instead of the Banking Court under the Financial Institutions (Recovery of Finances) Ordinance 2001. The Honorable Supreme Court in Syed Mushahid Shah vs Federal Investigation Agency (2017 SCMR 1218) had held that:

8. *In conclusion, we find that the provisions of the Ordinance, 2001 are to have an overriding effect on anything inconsistent contained in any other law for the time being in force, including the ORBO, the Code (read with the P.P.C.) and the Act, 1974 (read with the Ordinance, 1962). In essence, whenever an offence is committed by a customer of a financial institution within the contemplation of the Ordinance, 2001, it could only be tried by the Banking Courts constituted thereunder and no other forum. The Special Courts under the ORBO, the ordinary criminal Courts under the Code and the Agency under the Act, 1974 read with the Ordinance, 1962 would have no jurisdiction in the matter.*

9. In view of the above observations, the impugned order is set side. The parties are however at liberty to pursue their grievances at the appropriate forum.

JUDGE

CHIEF JUSTICE