

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 204 of 2019

Appellant : Qamar Yaseen (in person)

Respondent : The State
through Mr. Abrar Ali Khichi, Addl.P.G.

Date of hearing : 7th December, 2022

JUDGMENT

Omar Sial, J: F.I.R. No. 33 of 2017 was registered under sections 161 and 34 P.P.C. as well as section 5(2) of the Prevention Against Corruption Act, 1947 on 17.05.2017 against the appellant Qamar Yaseen on the complaint of one Muhammad Mehdi. Mehdi recorded that on 14.11.2016 he had contacted the T.E.O, Malir, a lady by the name of Shagufta Bibi Jutt, to discuss his imminent retirement. Shagufta called the appellant, who was a Naib Qasid, to her office and it was alleged that the appellant asked Mehdi to give him a bribe of Rs. 45,000. A cheque in the amount of Rs. 20,000 was given to the appellant whereas it was agreed that Mehdi would give the remaining amount later. Shagufta subsequently started calling and threatening Mehdi that if he did not give the remaining money she would create hurdles in his retirement case.

2. Shagufta Bibi and Qamar Yaseen pleaded not guilty and claimed trial. At trial, the prosecution examined 4 witnesses. **PW-1 Nasra Syed** was the headmistress of a primary school. **PW-2 P.C. Shakeel Ahmed** was a witness to recovery of the tainted money. **PW-3 Muhammad Javed Sangi** was the learned magistrate who supervised the trap proceedings. **PW-4 Badruddin Bhutto** was the investigating officer of the case. In his section 342 Cr.P.C. statement the appellant professed innocence.

3. At the end of the trial the learned Special Judge Anti-Corruption (Provincial) Karachi on 29.03.2019 acquitted Shagufta Bibi but convicted

the appellant to a 3 year prison term as well as a Rs. 25,000 fine on 2 counts. If he did not pay the fine he would have to spend another 3 months in prison on each count. It is this judgment that has been called in question through this appeal.

4. I have heard the appellant in person as well as the learned Addl.P.G. The learned Addl.P.G. after going through the evidence has half-heartedly supported the impugned judgment whereas the appellant basically argued that he was made a scapegoat in a fight between his superiors. He further argued that he was not even in a position to approve any retirement benefits etc. and that if the prosecution claimed that he was simply a front man for T.E.O. Shagufta Bibi, why was she acquitted and him punished. My observations and findings are as follows.

5. The irony in the case is that Shagufta Bibi, who was the officer in charge, and who was the person on whose demand the payment was allegedly made by Mehdi and the person who was indirectly implicated by PW-1, was found innocent by the learned trial court and was acquitted whereas the person who allegedly received money as her front man was convicted. The conviction of the appellant however is not without doubt. My reasons for so concluding are as follows:

6. The complainant Mohammad Mehdi could not appear at trial, as he had died by then. His son, Bilawal Haider, who was said to have accompanied his father to the office of Shagufta Bibi where the first instalment of the bribe was given, also was not cited as a witness or examined subsequently. While Mehdi's absence was obviously justified, the unexplained absence of the only other eye witness i.e. Bilawal Haider, raises the presumption contained in Article 129 (illustration g) of the Qanoon-e-Shahadat Order, 1984 that had Bilawal been examined he would have not supported the prosecution case.

7. The investigating officer of the case, Badruddin Bhutto, made no effort to verify Mehdi's claim that he had given a cheque of Rs. 20,000 to Shagufta Bibi through the appellant. No bank record was sought by the

investigating officer nor was any other evidence collected nor had the complainant provided details of the said cheque. No recovery on that account was effected; as a matter of fact no effort seems to have been made by the investigating officer in this regard. This allegation therefore remained unproved.

8. The appellant was convicted and sentenced solely on the ground that he was caught red handed accepting a bribe of Rs. 20,000 in cash in the presence of a judicial magistrate. I have reviewed the evidence led at trial in this regard closely. Muhammad Javed, the learned 21st Judicial Magistrate, Karachi East testified that on 17.05.2017 when he was in his Chambers, an application to supervise trap proceedings was made to him by Badruddin Bhutto, the investigating officer of the case. The magistrate along with some others went to the hotel where the money was to be handed over. He sat outside the hotel with the investigating officer whereas the complainant and the appellant sat inside the hotel. When the money was handed over by the complainant to the appellant, the complainant signaled to the magistrate and the appellant was then apprehended.

9. "Trap proceedings" though not defined in law, is a term popularly used to denote the process of catching a corrupt public official red handed while taking a bribe. Such proceedings are to be supervised by a magistrate duly empowered in this regard. The learned magistrate who supervised the trap proceedings in this case was PW-3 Muhammad Javed Sangi. This witness at trial testified that he had gone to the hotel in the company of the complainant and 5 others which included Mehdi and the investigating officer. All, except the complainant, were police officials. The complainant and 2 police officials went inside the hotel whereas, he with the investigating officer, remained outside. Earlier, the investigating officer gave 4 marked notes of Rs. 5,000 each to the complainant to give to the appellant. The notes were said to have been marked by the learned magistrate. Contrary, to what the learned magistrate said at trial, the investigating officer revealed that the magistrate had come to the police

station where 4 notes were marked known to the investigating officer and the magistrate only, after which the magistrate went back home, and asked the investigating officer to pick him up when the time for the trap came. Testimony reveals that it seemed that not the learned magistrate, but the investigating officer was calling the shots, throughout the trap proceedings. The learned magistrate, nor the investigating officer nor the 2 police witnesses, sent by the investigating officer as witnesses inside the hotel, heard any conversation that went on between the complainant and the appellant. The learned magistrate acknowledged that the signature of the complainant did not appear on documents which were prepared by the investigating officer; strange when it was claimed that the complainant was himself present during the whole process. The investigating officer told the court that he had made a handing over/taking over memo for the tainted money when he had handed over the same to the complainant. Yet, as mentioned above, the said memo does not contain the signature of the complainant. I find it sad that while the learned magistrate said in his examination in chief that the memo of recovery of the tainted money was prepared on the spot by the investigating officer, a claim also made by the investigating officer, the learned magistrate himself in his cross examination admitted that neither was the appellant arrested on the spot nor was the memo prepared on the spot, rather it was prepared later at the police station. The learned magistrate did not at trial produce any authorization from his Sessions Judge to go for the trap proceedings. It appears from the record that the entire arrangement of the trap was made between the learned magistrate and the investigating officer without the permission of the learned Sessions Judge. The fact that the report of the trap proceedings which the learned magistrate sent to the learned Sessions Judge, also states that the appellant was arrested on the spot and the requisite memos also made there and then, does not reflect well on the prosecution witnesses. The fact that this must be one of the fastest actions taken by ACE in any case, raises doubts about its genuineness. Within 10 minutes of the F.I.R. being lodged, the learned magistrate had been

approached for the trap proceedings. The trap proceedings took place within a few hours and the case was solved, according to the ACE within several hours of its filing. Unusual, when one looks at the speed with which ACE acts in other cases which it deals with. The F.I.R. stated that the appellant was coming to the home of the complainant to receive the money; however, facts reveal that the entire episode took place at a hotel. The witnesses were also at odds at how many persons were sitting inside the hotel at the time of the money being handed over. According to the learned magistrate as there was an electricity breakdown at that time it was only the complainant, the appellant and the 2 witnesses sitting inside the hotel and nobody else. According to the investigating officer the transaction took place outside the hotel but that there were other people sitting inside the hotel. Obviously, both versions cannot be true. On balance, I am not satisfied that the trap proceedings were conducted in an unimpeachable manner and that the same can be used as the sole basis for conviction. It would have been more appropriate that the learned magistrate had fulfilled his judicial duties within the confines of the Court allocated to him and not allowed the initial proceedings to be conducted at the police station. The respect and dignity of the judiciary must at all times be paramount.

10. PW-1 Nasra Syed told the court that the complainant Mehdi, who worked at her school, had never told her that the appellant was demanding money from him. She implicated Shagufta Bibi in the case. Apart from the trap proceedings there was no other evidence produced by the prosecution to justify the conviction and sentence of the appellant. I have already, in the preceding paragraph, given my reasons for being dissatisfied by the trap proceedings. I tend to believe the explanation given by the appellant that he was made scapegoat in a professional rivalry between 2 TEO's and that he was arrested from his house and that the entire story of the trap proceedings is false as nothing of such a nature happened.

11. In view of the above, the appellant is acquitted of the charge. He is on bail. His bail bonds stand cancelled and surety discharged which may be returned to its depositor upon identification.

JUDGE