

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Rev. Application No. 62 of 2015

Applicant : In person

Respondent : The State
through Mr. Muntazir Mehdi, DPG

Date of hearing : 1st. December, 2022

ORDER

Omar Sial, J.: Abdul Karim Patni was convicted under section 489-F P.P.C. and sentenced to spend a year in prison as well as pay a fine of Rs. 35,000 and if he did not pay the fine he would have to remain in prison for a further period of one month. The conviction and sentence was handed down by the learned 9th Judicial Magistrate, Karachi South on 28.11.2013. The judgment was challenged in appeal before the learned Sessions Judge, Karachi East; however the appeal was dismissed on 05.05.2015.

2. A background to the case is that one Junaid Raza Rao alleged that Patni, along with one other named Muhammad Jaffar Lone entered into an Investment Agreement with him on 29.12.2011. Pursuant to the Agreement, Patni and Lone gave Rao a cheque for Rs. 4 million, which cheque when presented at the bank counter for clearance was not honored on the ground that the bank account to which it related did not exist anymore with the bank. F.I.R. No. 379 of 2012 was registered under section 489-F and 420 P.P.C. on 03.07.2012 at the Ferozabad police station.

3. Patni pleaded not guilty and claimed trial. At trial the prosecution examined **PW-1 Junaid Raza**, the complainant. **PW-2 Abdul Raheem** and **PW-3 Aijaz Ahmed**, the two witnesses to the Agreement. **PW-4 S.I. Qamar-uz-Zaman** was the officer who registered the F.I.R. **PW-5 Amir Bin Yaqoob** was a representative of the bank. **PW-6 H.C. Haseeb Khan** witnessed the arrest of Patni and Lone. **PW-7 Ghulam Sarwar** was the investigating officer of the case. Both, Lone and Patni recorded their respective section 342

Cr.P.C. statements in which they professed innocence. Patni further stated that he was not even in the country when the Agreement is said to be signed by him.

4. At the end of the trial, Patni was convicted and sentenced as stated in the first paragraph; whereas, Lone was acquitted. The judgment of the learned trial court was upheld by the learned appellate court. Patni has now filed this revision application challenging the orders of the learned trial and appellate courts.

5. Patni had already served his sentence by the time the appeal was heard. He however wanted to contest the appeal to rid himself of the stigma of a conviction. A lawyer represented him during the initial hearings but then Patni filed a request that he be allowed to argue the case himself. The request was allowed once his counsel had withdrawn his vakalatnama. None appeared on behalf of the complainant despite notice. The learned DPG supported the impugned judgment. I have heard the appellant in person as well as the learned DPG. My observations and findings are as follows.

6. The complainant alleged that he stood guarantor in a trade of rice between Patni/Lone and a third party. Patni/Lone had therefore issued him a cheque for Rs. 4 million. In order to show that there was an agreement between the parties, the complainant, at trial, produced an Investment Agreement purportedly recording the transaction. Patni, on the other hand denied that he ever issued a cheque or as a matter of fact an Investment Agreement was ever entered into between the parties. He also denied that there was an underlying transaction of trade of rice behind the Investment Agreement.

Signature on the cheque disputed

7. Patni denied that the cheque in question had his signature on it. Whether or not the cheque in question was issued by the complainant should have been looked into by the courts below. The learned trial court was of the view that because Patni had not filed a suit for cancellation of

the cheque, he was precluded from raising an objection to his purported signatures on the cheque.

8. Article 78 of the Qanun-e-Shahadat Order, 1984 provides that:

78. Proof of signature and handwriting of person alleged to have signed or written document produced. *If a document is alleged to be signed or to have been written wholly or in part by any person, the signature of the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.*

9. The above was admittedly not done. Article 84 of the Order further provides that where parties had not brought forward any expert witness to given opinion about genuineness of signatures in question (as was the situation in the present case), the trial Court would be competent to form its own opinion by comparing disputed signatures with admitted signature. If the learned trial court in its wisdom was of the view that a hand writing expert's opinion was not required, it should have then formed an opinion based on powers given to it by Article 84 of the Order. It appears from the record that this was also not done.

10. Upon the applicant raising the issue once again in appeal, this Court has compared Patni's signatures on various documents and it appears that his signatures as they appear on various other documents are the same as the one on the Investment Agreement. I am also not convinced with the reason which has been given for the cheque to be in possession of the complainant. Patni submits that there had been a robbery in his house in which the cheque book together with other valuables was stolen from his house. Neither at trial, nor in appeal has Patni been able to show any evidence in this regard. I find it unusual that a robber would want to take a blank cheque book away from Patni and even if he did, I find it even more strange, unbelievable and odd that Patni did not inform anybody regarding the robbery, let alone register an F.I.R. for the same. I agree with the learned trial court that it is also odd that for a period of more than a year,

Patni did not inform the bank that his cheque book had been stolen nor did he seek cancellation of the same.

Patni was not present in Pakistan

11. Though Patni in his section 342 Cr.P.C. statement said that he was not in Pakistan when the Investment Agreement was executed, unfortunately, both the learned trial court as well as the learned appellate court seem to have missed out on giving a finding on this plea. Patni says that on 28.12.2011 he had left Pakistan for Dubai and hence it was not possible for him to sign the Investment Agreement on 29.12.2011. During these proceedings, in a quest to do justice, Patni was given an opportunity to produce evidence to prove his plea of alibi. He filed photocopies of a few pages of purportedly his passport, the genuineness of which I was not satisfied with. In response to directions that Patni produces the original passport, he submitted that although he is was in possession of passports issued before and after, the applicable passport with the F.I.A.'s exit stamp, he had left behind in Uganda and therefore does not have it with him. Once again, I am not satisfied with his argument. Once again, he was unable to show any report he made informing the authorities that he had misplaced a passport. How was he in possession of a photocopy of the misplaced passport was also not satisfactorily explained. It is pertinent to also point out that at trial too, no evidence of his plea of alibi was produced by Patni.

Section 489-F P.P.C.

12. For an offence under section 489-F P.P.C. to have occurred it has to be shown that a cheque was issued; the cheque was not honored; that the cheque was given for the satisfaction of a loan or fulfilment of an obligation and lastly that the bank was not at fault and that that the issuer had made adequate arrangements. In the current case, all the ingredients of the offence were fulfilled. Once the prosecution had proved its case, the onus shifted upon Patni to prove a believable defence. Unfortunately, he could neither show that the cheque was not issued by him nor that the Investment Agreement was not signed by him nor what animosity did

Junaid Raza have to falsely accuse him nor that the cheque was stolen in a robbery nor the claim that he was not in Pakistan when the Agreement was signed.

Opinion of the Court

13. In view of the above, I find no reason to interfere with the wisdom of the learned trial and appellate courts. The bail granted to the applicant earlier is cancelled and the revision application stands dismissed. Upon proof that the applicant has already completed his sentence, the surety may be returned to its depositor upon identification.

JUDGE