

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 134 of 2018

Appellant : Jawaid Roomi
through Mr. Habib Ahmed, Advocate

Respondent : The State
through Ms. Robina Qadir, Addl.P.G.

Date of hearing : 19th December, 2022

JUDGMENT

Omar Sial, J: Mohammad Sohail on 25.02.2014 filed a complaint with the Anti-Corruption Establishment in which he recorded that he was Razia Begum's husband and that in the year 1997 Razia Begum had purchased a plot bearing number R-87 situated in the B-Block of the Alamgir Co-operative Housing Society in Karachi. He further alleged that after the purchase Razia and he had moved to Kenya. When he returned in 2005 he found out that the plot of land had been sub-leased to one Kamal Ahmed and that Kamal Ahmed had then sold the plot to one Mujahid Hussain. The ACE inquired into the complaint and came to the view that the plot of land had indeed been sub-leased to Razia Begum and the said sub-lease has been registered at No. 114 on 22.03.1997 in the office of the concerned sub-registrar. The same plot was also found sub-leased to Kamal Ahmed and the said sub-lease was registered at No. 78 on 07.01.2004 in the office of the concerned sub-registrar. As the appellant, and one Mohammad Siddique, in their capacities as authorized officers to execute the sub-lease, had acted on behalf of the Society in both the sub-leases, a case under sections 161, 420, 468, 471 and 34 P.P.C. along with section 5(2) of the Prevention of Corruption Act, 1947 was registered against the 2 individuals on 04.03.2014, being F.I.R. No. 7 of 2014.

2. Mohammad Siddique died during the proceedings whereas Javed Roomi pleaded not guilty and claimed trial. At trial the prosecution examined 3 witnesses. PW-1 Inspector Fareed Ahmed Khan was the officer who conducted the inquiry. PW-2 was Syed Kamal Ahmed, the person in whose favour the second sub-lease was executed; whereas PW-3 Inspector Waheed Ahmed Kalwar was the investigating officer of the case.

3. In his section 342 Cr.P.C. statement the appellant denied any wrong doing and stated that forged signatures of his were appearing on the second sub-lease.

4. **PW-1 Inspector Fareed Ahmed Khan** testified that during the process of inquiry neither Mohammad Sohail (the complainant) nor Syed Kamal Ahmed had appeared before him; however, as there were 2 copies of sub-leases in front of him, he recommended registration of the case. This was the extent of the inquiry.

5. **PW-2 Syed Kamal Ahmed**, who appeared at trial, merely testified to the extent that the plot was sub-leased to him and that he had then sold it to Mujahid Hussain through a sale deed.

6. **PW-3 Inspector Waheed Ahmed Kalwar** testified that according to the records of the sub-registrar, he had found that the property in question had been sub-leased to Razia Begum and that the same was subsequently transferred in the name of Syed Kamal Ahmed. The witness did not support the prosecution case and was declared hostile. He admitted that none of the signatures on the disputed document was verified as being genuine by him.

7. Based on the above evidence the learned Special Judge, Anti-Corruption (Provincial) Karachi on 20-2-2018 convicted and sentenced the appellant as follows:

- (i) For an offence under section 468 P.P.C. to imprisonment of 3 years and a fine of Rs. 10,000 or in default spend another 3 months in prison.

- (ii) For an offence under section 471 P.P.C. to imprisonment of 3 years and a fine of Rs. 10,000 or in default spend another 3 months in prison.

8. I have heard the learned counsel for the appellant as well as the learned Addl.P.G. The learned Addl.P.G. has supported the impugned judgment without offering any cogent explanation for her support. My observations and findings are as follows.

9. It is an admitted position that the complainant of the case, Mohammad Sohail, himself did not appear at trial to testify. Neither did Razia Begum his wife, said to be the first sub-lessee and the affected person. No explanation for their absence was given although it was said that Mohammad Sohail was no longer traceable. It would be presumed pursuant to Article 129 illustration (g) of the Qanun-e-Shahadat Order, 1984 that they did not any longer support the prosecution case. Further, no evidence was produced at trial or during these proceedings to show that Razia or Sohail had filed a suit for cancellation of documents even.

10. It is an admitted position that the concerned sub-registrar, in whose office the 2 sub-leases were allegedly registered also did not appear as a witness nor was his statement recorded. It was therefore not proved at trial that there were indeed 2 sub-leases that had been registered in his office. In fact, what record existed at the office of the sub-registrar was also not proved. Consequently, the allegation of forging documents was not proved.

11. The investigating officer of the case admitted that hand writing samples were not sent to the expert to determine whether the signatures of the appellant on the alleged 2nd sub-lease were his or not. I notice from the judgment impugned that the learned trial court reached the view pursuant to Article 84 of the Order that the signatures on the documents were that of the appellant. Be that as it may the onus of proof was on the prosecution to discharge its burden first. Only then would the burden shift to the accused. In the present case, in view of the evidence produced at

trial, I am of the view that the prosecution had completely failed to discharge its burden.

12. The appeal is allowed and the appellant acquitted of the charge. The appellant is on bail. His bail bonds stand cancelled and surety discharged which may be returned to its depositor.

JUDGE