

IN THE HIGH COURT OF SINDH AT KARACHI*Present : Omar Sial, J*

Criminal Appeal No. 582 of 2019
Criminal Jail Appeal No. 575 of 2019

Appellants : Mushtaq Ahmed & Muhammad Shabbir
through Mr. Noor Muhammad Dayo, Advocate

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

Date of hearing : 9th May, 2023

Date of judgment : 16th May, 2023

JUDGMENT

Omar Sial, J: A person by the name of Ayaz Ahmed on 14.09.2017 complained to the Ant-Corruption Establishment that the appellant Mushtaq Mirani had asked him for a bribe of Rs. 800,000 to issue a no objection certificate for demolition of a house bearing address 43-B, Street No. 12, Gulshan-e-Faisal, Bath Island and forwarding the approval to the SBCA for verification. A trap was set up in which a learned magistrate sat below the building where the office of the appellant was located with the investigating officer of the case whereas Ayaz and S.I. Iftikhar went up to the office. According to Ayaz, appellant Mirani took marked Rs. 500,000 from him and gave it to the appellant Shabbir to put in his desk. The investigating officer was then called upstairs and both the appellants arrested. F.I.R. No. 47 of 2017 was registered under section 161 P.P.C. and 5(2) Prevention of Corruption Act, 1947.

2. Both appellants pleaded not guilty to the charge. At trial the prosecution examined **PW-1 Ayaz Ahmed**, the complainant. **PW-2 S.I. Iftikhar Ahmed**, was the person who accompanied Ayaz to hand over money to Mirani. **PW-3 Mohammad Shahrukh** was the learned magistrate who conducted the trap proceedings. **PW-4 Inspector Badaruddin Bhutto** was the investigating officer of the case. The appellants in their section 342

Cr.P.C. statement professed innocence and denied all allegations against them. Mirani also stated that it was sheer malafide on the part of the complainant to involve him in the crime. His explanation was that the entire record of the Gulshan-e-Faisal Society was lying with the Nazir of this Court pursuant to a court order passed in C.P. No. D-392 of 2012 and that 2 members of the previous management team of the Society was behind his false involvement in the current offence.

3. I have heard the learned counsel for the appellants and the learned Addl.P.G. Nothing of substance, apart from a repetition of facts, has been argued by both counsel. While the counsel for the appellants simply says that the whole story is untrue and his clients innocent, the Addl.P.G. has argued that the appellants are both guilty. This was the extent of their arguments. Nonetheless, I have gone through the entire record on my own so that either party should not be prejudiced because of the stance and arguments of counsels. My observations and findings are as follows.

4. I am of the view that doubt had crept up in the case, the benefit of which should have been extended to the appellants in accordance with well established principles. My reasons for so concluding are as follows.

(i) The money said to be the tainted money that was given to the appellant by Ayaz Ahmed was not sealed on the spot nor was the same ever sealed. The learned trial court noted that the cash had been brought to court in an unsealed condition.

(ii) The site plan that was handed over to Ayaz (according to his own admission) in lieu of the money, and which was ostensibly signed by Mirani was not seized or produced in court in a sealed or unsealed condition.

(iii) No evidence was led at trial to show what nexus Ayaz had with the property bearing address 43-B, Street No. 12, Gulshan-e-Faisal, Bath Island. No documents to establish that he was the owner or that he had indeed given an application for demolition was produced at trial. The investigating officer PW-Badaruddin Bhutto acknowledged at trial that "it is a fact that it has not come on record that the subject property was registered in the

name of the father of the complainant”. Later in his testimony he stated that “it is a fact that neither I collected any document of subject property from complainant nor its power of attorney.”

(iv) There were 2 mushirnamas made in this case. One was dated 14.09.2017 made at 1620 hours at the ACE office in Karachi. This mushirnama records details of the notes which were in the tainted money. The memo shows that the money was handed over to Ayaz Ahmed although Ayaz admitted at trial that the memo did not bear his signature. The other mushirnama was ostensibly recording the seizure of the tainted money from the office of the appellants. The unusual thing here is that the investigating officer admitted that half of the second mushirnama (the portion which contains details of the tainted money was prepared by him in his office while the remaining half was penned down by him at the site. This very fact, coupled with the fact that the tainted money was never sealed, raises doubts whether the money marked and the money produced at trial were indeed the same notes. It does not appear that a reconciliation was made even at trial.

(v) Ayaz while claiming that he had arranged the Rs. 500,000 to be handed over to Mirani, at trial expresses his inability to show any evidence that he had arranged for the case. He however justified it by saying that the money was lying in his locker in a bank from where he had brought it. While the reason for keeping the cash in a locker of a bank instead of keeping it in a locker, would be best known to Ayaz, however this unusual conduct sheds further doubt whether the tainted money was the same as the one brought by Ayaz.

(vi) The learned magistrate who conducted the trap admitted at trial that the tainted money was not sealed after it was recovered; that he had not seen or heard the handing over of the money and that he was with the investigating officer sitting below the building when Ayaz and Iftikhar had gone up to drop of the money. While it may not be mandatory that the

magistrate hears some conversation, it has historically been the mode that is approved by the superior courts.

(vii) The defence taken by the appellant i.e. he did not even have the record of the Society as the entire record had been taken over by the Nazir of this Court was well documented and copies of court proceedings were produced at trial. While the allegation may be true, nonetheless, in light of the observations made above, doubt crept up in the prosecution case. Benefit of such doubt should have gone to the appellants.

5. Appeals are allowed. The appellants are acquitted of the charge. The bail bonds they have executed are cancelled and surety discharged.

JUDGE