

IN THE HIGH COURT OF SINDH KARACHI

CIMINAL APPEAL NO. 228 OF 2019
CIMINAL APPEAL NO. 229 OF 2019
CIMINAL APPEAL NO. 235 OF 2019

Appellants : Mrs. Suraya Mughal
(in Cr. Appeal No. 228 of 2019)

: Niaz Ahmed Laghari
(in Cr. Appeal No. 229 of 2019)

through Mr. Malik Waseem Iqbal,
Advocate and Mr. Muhammad
Saleem Khaskheli, Advocate,
along with Appellant Niaz Ahmed
Laghari

Nisar Ahmed Khan
(in Cr. Appeal No. 235 of 2019)
through Mr. Ali Azad Saleem and
Ms. Shamim Bano Advocates,
along with Appellant Nisar
Ahmed Khan

Respondent No.1 : The State
through Ms. Robina Qadir,
Additional Prosecutor General for
the State

Respondent No.2 : Mst. Irshad Begum
(Nemo)

Date of hearing : 24th 25th and 26th October 2023

JUDGMENT

Omar Sial, J. : Mrs. Surraya Mughal, Niaz Ahmed Leghari,
and Nisar Ahmed Khan were put on trial in Special Case No.
38 of 2016 before the Special Judge, Anti-Corruption

(Provincial) Karachi pursuant to a Direct Complaint filed by the Complainant Mst. Irshad Begum, wherein it was alleged that the accused committed forgery by preparing fake/forged handing over/taking over certificate dated 24.05.2013; by affixing forged/fake stamps; and also preparing fake/forged letter dated 17.06.2013 and used the fake/forged documents as genuine. They were accused of having committed offences under section 420, 468, 471 P.P.C. read with section 5(2) Prevention of Corruption Act, 1947.

2. All the accused pleaded not guilty and claimed trial. At the trial, only one witness was examined by the prosecution. That was Irshad Begum, the complainant. In their respective section 342 Cr.P.C. statements, all the accused pleaded innocence and denied all wrongdoing.

3. At the end of the trial, the learned Special Judge, Anti-Corruption (Provincial) Karachi, vide judgment dated 12.04.2019, convicted the accused for an offence under section 5(2) of the Prevention of Corruption Act, 1947. They were sentenced to imprisonment for nine months and to pay a fine of Rs.10,000 each or, in default, to remain in prison for two months.

4. Briefly, the facts of the case are that on 23.05.2013, the Chief Minister of Sindh issued two notifications. Through one notice, Irshad Begum was promoted from BPS-18 to BPS-19 and posted as Head Mistress of a school in Gulshan-e-Iqbal. Through the second notification, Surraya Begum was

promoted from BPS-18 to BPS-19 and posted as Principal of a school in Gulberg Town.

5. Through a notification dated 13.06.2013, Surraya Begum was transferred from the Gulberg school to the Gulshan-e-Iqbal school, and Irshad Begum transferred to the Gulberg school. Pursuant to the notification, on 17.06.2013, Niaz Ahmed Leghari issued a letter stating that Surraya Mughal take over the charge at the Gulshan school as there was only one post of BPS-19 in that school. Irshad Begum alleged that the transfer of Surraya Begum to the school in Gulshan was based on forged and fake orders and notifications. She alleged that Niaz Ahmed Leghari, the then Director of Schools, aided and abetted Surraya Begum in this whole episode and that Nisar Ahmed, the Accounts Officer, also colluded with Surraya so that for one month, she did not get the salary due to BPS-19 officer instead she was paid the salary due to a BPS-18 officer.

6. I have heard the learned counsels for the appellants and the Additional Prosecutor General. I am surprised how the learned trial court reached its conclusion in light of the evidence that led a trial.

7. This issue started in 2013, and the appeal was filed in 2019. Both the women in question have retired. Both the women ostensibly entered into litigation to retain their position in the Gulshan-e-Iqbal school because it was more “lucrative”. Not a shred of evidence was produced at trial to prove that the notifications and orders passed were fake,

forged, or unauthorised. Not a shred of evidence was produced at trial to establish corruption of any of the appellants. Not a shred of evidence was produced at trial to establish misappropriation or any financial loss to either Irshad or Surraya or the State. Both women showed no interest in these proceedings because of “old age” and stopped coming to court. Several notices were issued to Irshad Begum to effect an appearance, but she did not. Only Leghari and Khan, who appear to be victims of an ego clash between Surayya and Irshad, are the only two who diligently attended the trial and the appeal proceedings. The Additional Prosecutor General has struggled to argue and justify the impugned judgment in light of the evidence produced at trial. The only offence for which the accused were sentenced was under section 5(2) of the Prevention of Corruption Act, 1947. Not a shred of evidence was produced at trial to prove corruption.

8. Section 5(2) of the Prevention of Corruption Act, 1947 provides that any public servant who commits or attempts to commit criminal misconduct shall be punishable with imprisonment for a term which may extend to seven years or with a fine or with both. The words “criminal misconduct” are defined in section 5(1) of the Act, which provides as follows:

“(1) A public servant is said to commit the offence of criminal misconduct. (a) if he accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Pakistan Penal Code, or (b) if he accepts or agrees to accept or attempts to obtain for himself

or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business, transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any person to do so, or (d) if he, by corrupt or illegal means, or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or (e) If he, or any of his dependants, is in possession, for which the public servant cannot reasonably account of pecuniary resources or of property disproportionate to his known sources of income.”

No evidence was led at trial, which established that the appellants were guilty of misconduct.

9. This court is inundated with work. A long-drawn judgment in the matter is not required, given the observations in the preceding paragraph. Irshad Begum and the State have conveniently left the entire burden on the Court without assistance. The State is at a loss to explain how an offence was established.

10. Appeals are allowed. The appellants, who are on bail, are acquitted of the charge. Their bail bonds are cancelled and sureties discharged.

JUDGE