

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 171 of 2019

Appellants : Bilquees and Hashim
through Mr. Ahmed Shakir, Advocate.

Respondents : Trade Development Authority of Pakistan &
another
through Mr. Abdullah Bhatti, Advocate
alongwith Mr. Altaf Ahmed Sahar,
Assistant Attorney General.

Date of hearing : 24th October, 2023

Date of Judgment : 31st October, 2023

JUDGMENT

Omar Sial, J: On December 31, 2002, the Embassy of the Syrian Arab Republic sent a letter to the Ministry of Foreign Affairs of Pakistan. In the letter, they said that a Syrian importer, Mazen L. Al Samman, had opened a letter of credit in favour of S.H. Tabbani in Pakistan for importing cumin seeds and dry lemon. The total price of the consignment was USD 35,650. It was alleged in the letter that S.H. Tabbani had presented a fake Bill of Lading to its banker Platinum Commercial Bank, on 30.11.2000 and had obtained the money for the consignment without having exported the goods. A Criminal Complaint was filed by the Export Promotion Bureau in the Commercial Court of Sindh and Balochistan under section 5 of the Imports & Exports (Control) Act, 1950 and section 4(a) of the Export (Quality Control) Order, 1973.

2. At trial, the first witness for the prosecution was the Tourism Development Authority of Pakistan's (TDAP) Legal Consultant, a gentleman named Mushtaq Hussain Minhas. The complaint, on behalf of the Export Promotion Bureau (the predecessor of TDAP), was filed by a gentleman by the name of Haroon H. Khalidi. Mr. Khalidi had died by the time the case

had come to trial, and thus Mr. Minhas was examined to confirm and verify the signatures of Mr. Khalidi on various documents. He also testified that the sole proprietor of S.H. Tabbani was Bilquees Hashim (one of the appellants in this appeal). The firm was registered with the EPB according to the Import and Export Registration Order 1993. The other appellant in these proceedings, Hashim, is Bilquees's husband. The record reflects that at some point in time, the registration of the firm may have been cancelled. As the legal status of S.H. Tabbani is not in dispute through the present proceedings, I have not elaborated any further on the same. Mr. Minhas was extensively questioned on whether Mr. Khalidi was even authorised to file the complaint on behalf of EPB. This aspect of the case had not been agitated before me, and thus, I have not commented any further on the same. Suffice it to say that the requisite authorisation for Mr. Khalidi to file the complaint was not produced at trial. The validity of the very complaint from its inception was doubtful.

3. The only other witness to be examined by the prosecution was Abdul Rauf. Rauf was an Assistant Vice President of the KASB Bank, the entity in which Platinum Commercial Bank (the Bank which established the letter of credit) was merged subsequently. He testified that after the merger of Platinum into KASB, the entire documentary record was not handed over to KASB. Thus, he was not in a position to assist any further. The appellants recorded their section 342 Cr.P.C. statements professing innocence. At the end of the trial, the learned trial court vide its judgment dated 28.05.2013 convicted them as charged, sentenced them to a six-month prison term and further directed them to pay back the USD 35,650 to the Syrian buyer.

4. I am baffled and confused as to how on earth the learned trial court reached the conclusion it did based on the evidence which was led at trial. It was alleged that even though a forged Letter of Credit was given to Platinum by the appellants, payment was released to S.H. Tabani. KASB's representative who appeared at trial, however, did not state or provide any documentary evidence in respect of the transaction. On the contrary, a letter from the legal advisor of Platinum Bank was brought on record,

which states, *“The contention of EPB that the B/L was issued by a shipping company which is non-existent does not appear to be correct.”* The letter further records that *“The Bank has no reason to believe that the documents submitted by the customer against the L/C were forged or fraudulent. On the face of the documents, the documents appeared to be in order.”* The Bank, the entity to whom the documents were given and through whom the foreign currency was remitted into Pakistan, and which established the letter of credit and, consequently, faced potential liability itself, appears to have confirmed that the documents were genuine.

5. The record shows that what the Syrian buyer said was taken as gospel truth by the EPB and the learned trial court. Trident Navigating Company (the company issuing the Bill of Lading nor Pan Asian Shipping Line (the entity that shipped the goods) and put the “Shipped on Board” stamp on the Bill were not examined, questioned or investigated. Not one witness was examined who provided evidence that the goods were not shipped to Syria. It was not established at trial that the Bill Of Lading was forged and fake.

6. Learned counsel for TDAP was repeatedly asked to show which document was forged and faked and what was the evidence led at trial to establish the same. The only argument he raised was that Mohammad Hashim had sworn an affidavit confirming his wrongdoing. The affidavit he refers to is on page 323 of the paper book. It is a dubious-looking affidavit that Mohammad Hashim did not even sign above his name. Learned counsel for TDAP completely failed to explain why the alleged signature of Hashim was appearing as a footnote on the document. A letter written by one Saleem Shakoor (a friend of the Syrian buyer, who too did not appear to be examined at trial) to the Syrian buyer, which was put on record, makes it amply clear that he had obtained the signature of Hashim on a blank stamp paper. Learned counsel could not explain or justify why hardball tactics were seemingly used or why the affidavit allegedly sworn by Hashim should be taken to be a document executed by Hashim with his own free will.

7. The workload of this Court prevents it from writing a lengthy judgment in a case which is a case of no evidence. I am also constrained to note that there appears to be a powerful argument that the Chairman of the Commercial Court, which passed the impugned judgment, was not qualified to be appointed as a Chairman under the law. Learned counsel for the appellants has argued extensively on this. Prima facie, his argument seems to be correct. I have, however, not given a conclusive finding on this issue, as the same cannot be agitated in a criminal appeal and without allowing the affected person to put forward his stance.

8. The prosecution failed miserably in proving its case at trial. The appeal is allowed. The impugned judgment is set aside. The bail bonds of the appellants are cancelled. Their sureties are discharged. They are acquitted of the charge.

JUDGE