

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 43 of 2022

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellant: Muhammad Iqbal through Mr. Aamir Nawaz,
advocate.

Respondent: The State through Pir Riaz Muhammad Shah,
Deputy Attorney General, Sindh.

Complainant: Syeda Hafsa Jawed through Mr. Khalid
Mehmood, advocate.

Date of hearing: **11.05.2023**

Date of decision: **15.05.2023**

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- The appellant Muhammad Iqbal has challenged the vires of judgment dated 12.01.2022, passed by the learned Judge, Special Court (Offences in Banks), Karachi in Case No. 18 of 2020 emanating from FIR No. 02 of 2020 of P.S. CCC, Karachi registered under sections 420, 468 and 471 PPC. Vide impugned judgment, the appellant was convicted u/s 420 PPC and sentenced to suffer rigorous imprisonment for seven (07) years and fined Rs.8,335,610/- and in case of non-payment to suffer further rigorous imprisonment for two (02) years. He was further convicted u/s 468 PPC and sentenced to suffer rigorous imprisonment for seven (07) years with fine of Rs.1,000,000 and in case of non-payment of fine to suffer further rigorous imprisonment for two (02) years. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three (03) years and fined Rs.500,000/- where in case of non-payment, he was ordered to suffer further rigorous imprisonment for one (01) year. He was extended benefit of S. 382(b) Cr.PC and all the sentences were ordered to run concurrently.

2. Syeda Hafsa Jawed filed a complaint with the FIA Corporate Crime Circle against the present appellant Muhammad Iqbal, her brother-in-law. She alleged fiscal malfeasance involving the misdirection of monies belonging to M/s Bukhari Shipping & Logistics, a commercial

entity her late husband, Muhammad Jawed, operated as the sole proprietor. Muhammad Iqbal held a managerial position within the aforementioned corporation and was entrusted with the oversight and operation of numerous corporate bank accounts. Following Muhammad Jawed's death, Muhammad Iqbal stood accused of fraudulent expropriation of funds, amounting to Rs.4,167,805/-. He did so while surreptitiously obfuscating the death of the primary account proprietor, Muhammad Jawed, an event which should have effectively terminated his mandate over the accounts. The matter was investigated by the FIA and a series of transactions were unearthed pertaining to account No. 20311714112878 and 20311714113252 of Habib Metropolitan Bank, West Wharf Road Branch, account No. 02221000229292 of Bank Al-Falah, West Wharf Road Branch, account No. 0170-0101331874 and 0170-0101313424 of Meezan Bank Limited, West Wharf Road Branch, account No. 00407900155703 of the Habib Bank Limited, West Wharf Road Branch, account No. 03461043971000 and 0346104510-1000 of the Sindh Bank Limited, West Wharf Road Branch. Following this, the appellant issued pay orders towards his company under the name and style of Bukhari Traders instead of the personal account of the deceased for its payment towards the family and legal heirs of the deceased.

3. Subsequent to the lodging of the FIR, the investigative process ensued. The investigating officer then submitted a challan against the appellant. Consequently, he was arraigned before the learned Judge of the Banking Court. During the trial, the prosecution summoned and examined a total of eight witnesses, namely: PW-1 Syeda Hafsa Jawed, the complainant; PW-2 Muhammad Altamash Yousaf, former Operations Manager in HBL, West Wharf; PW-3 Yawar Hussain, Habib Metropolitan Bank West Wharf's former Operations Manager; PW-4 Kamran Khalid, former Operations Manager of Bank Al Falah, West Wharf Branch; PW-5 Waqas Iftikhar, former Operations Manager Meezan Bank, West Wharf Branch; PW-6 Syed Muhammad Irfan, Clerk of HBL, West Wharf; PW-7 Sub-Inspector Adnan Dilawar, mashir of arrest; and finally, PW-8 Sub-Inspector Muhammad Tahir Gujjar, the investigation officer. Each witness presented various documents and artefacts as evidence, whereupon the accused's

statement was recorded u/S 342 Cr.PC. The appellant/accused proclaimed his innocence, asserting that he had been falsely implicated and that he was running a joint business with his brother. He did not deny the transactions, however claimed that the same were investment returns to the investors of the company. He examined DW-1 Muhammad Adnan, DW-2 Syed Muhammad Mohiuddin and DW-3 Muhammad Rafiq. However, he did not choose to testify under oath. The presiding judge ultimately convicted the appellant as stated supra.

4. Learned counsel for the appellant has asserted that the appellant had the mandate of his late brother Muhammad Jawed; that the appellant had not usurped any amount withdrawn from the said accounts and had instead paid the investors; that no documentary proof has been produced before the trial Court against the appellant; that there are various contradictions in the evidence of the prosecution witnesses; that the impugned judgment is based on illegalities and irregularities; that the appellant's version has been supported by DW-1 Muhammad Adnan and DW-2 Syed Muhammad Mohiuddin.

5. On the contrary, learned Deputy Attorney General Sindh has contended that prosecution has examined as many as eight witnesses who have all supported the prosecution case; that the appellant has not denied his signature over the cheques nor has he denied withdrawing such amount from his late brother's account; that no motive for false implication has been established; that the prosecution evidence is coherent and consistent and the judgment rendered by the trial Court does not call for any interference. Learned counsel for the complainant argued in the same line as argued by the learned Deputy Attorney General Sindh while additionally asserting that the malafide of the appellant has been proven in that he did not inform the concerned banks regarding the death of the deceased Muhammad Jawed. In support of his contentions, he has cited the case law reported as 1987 MLD 860, 2011 YLR 1825, 2012 YLR 281, 2013 CLD 1339 Sindh, 2013 YLR 548 and 2014 CLD 1493.

6. We have heard the learned counsel for the appellant, learned counsel for the complainant and the learned Deputy Attorney General Sindh and have perused the record available before us.

7. The appellant Muhammad Iqbal is accused of misappropriating an amount of Rs.4,167,805/- from several accounts of M/s Bukhari Shipping & Logistics, of which late Muhammad Jawed, his brother, was the sole proprietor and he, the appellant Muhammad Iqbal, was a Manager and had the mandate of managing the accounts. Such mandate, however, according to relevant Bank Rules was to be terminated on the death of the deceased and even cheques issued by the deceased, be it prior to his death, were to be dishonoured. The appellant Muhammad Iqbal, in hiding the fact of the death of his brother, made several transactions to his own benefit. The transactions, twenty-two in number, from eight accounts maintained by late Muhammad Jawed, of which Muhammad Iqbal had mandate, were made to account No. 20311-714-103644 titled M/s Bukhari Traders maintained at Habib Metropolitan West Wharf Road Branch and account No. 0101736413 titled M/s Bukhari Traders maintained at Meezan Bank I.I Chundrigar Road Branch, both of which were operated by appellant Muhammad Iqbal as per available record. From the accounts maintained at Habib Metropolitan Bank 20311714112878 and 20311714113252 titled M/s Bukhari Shipping & Logistics, twelve cheques numbered 78932032, 78932034, 78932035, 78932036, 78932037, 78932038, 78932039, 78932042, 78932043, 85548489, 85548490 and 85548491 amounting to Rs.1,238,805 were all transferred to Bukhari Traders Account No. 20311-714-103644, an account operated by the appellant Muhammad Iqbal with the exception of one cash withdrawal of cheque No. 78932035. From the Al-Falah Bank Account, three cheques bearing No. 66752615, 66752616 and 66752617 totalling Rs.872,000 were, through pay order, transferred in the M/s Bukhari Traders Account No. 0101736413 maintained at Meezan Bank Ltd. I.I Chundrigar Road. From the accounts maintained at Meezan Bank Ltd. by the late Muhammad Jawed, the appellant transferred into his M/s Bukhari Traders account a total of Rs.857,000/- through four cheques bearing No. 50914034, 52231869, 52231868 and 52231870. Then, from the account maintained at Habib Bank Limited, the

appellant encashed cheque No. 06223618, signed by deceased Muhammad Jawed on 16.09.2015 amounting to Rs. 1,185,000/-. It is crucial to note here that the deceased Muhammad Jawed had passed away on 14.09.2015 yet somehow the remittance application surfaced with his signatures which was dated two days after his death. PW-6 Syed Muhammad Irfan deposed that the said cheque was presented on 16.09.2015 and sent forward for preparation of pay order towards account titled M/s Bukhari Traders maintained by the appellant Muhammad Iqbal. The Operations Manager of HBL West Wharf Road Branch, PW-2 Muhammad Altamash Yousuf, deposed that the said cheque was brought before him which he supervised, counter-signed and then returned it for preparation of pay order. From the two accounts of late Muhammad Jawed maintained at Sindh Bank Limited, West Wharf Road Branch, the appellant Muhammad Iqbal made two cash withdrawals through cheques duly signed by him numbered 2787819 and 10804857 to the tune of Rs. 10,000/-. Appellant Muhammad Iqbal has not sought to refute the occurrence of the transactions in question. Rather, he has contended that these substantial withdrawals were distributions of investment returns to investors. This assertion, however, lacks credence in the absence of any corroborative evidence or relevant record. He also admitted, in his statement u/s 342 Cr.PC that he had the mandate of the accounts opened by his deceased brother Muhammad Jawed. Two defence witnesses were produced to support Muhammad Iqbal's claim. Nevertheless, their testimonies fell short of providing any tangible proof to substantiate this assertion, thereby undermining the defence's case. Mere assertions bereft of corroborating evidence cannot hold sway in a Court of law. DW-1 Muhammad Adnan deposed that him and his family had invested Rs.1,240,000 with the deceased in his company and the same was returned back to him after the death of the deceased. DW-2 Syed Muhammad Mohiuddin deposed that he had invested "60/69 lacs approximately" in Muhammad Jawed's company and on his death, he was paid the same back by appellant Muhammad Iqbal. The appellant, along with his statement, presented entries exhibited as 17/A-1 to 17/A-6 pertaining to different people to whom he had allegedly paid the amount, yet the same do not possess the date of the

entries, the details of accounts to which the said amount was transferred from the account of M/s Bukhari Traders maintained by the appellant nor are these entries signed by any of the relevant parties. When confronted, the defence witnesses could not satisfy the trial Court with these questions either as is seen pertaining from the record.

8. In addition to an abundance of documentary proof, the specter of deceit pervades all transactions orchestrated by the appellant Muhammad Iqbal. It is pertinent to note here that he has not contested his mandate over Muhammad Jawed's accounts held maintained in various banks. This mandate, conventionally, is valid during the lifetime of the account holder, and upon the individual's demise, in accordance with standard banking protocols, the account and associated facilities are suspended. Muhammad Iqbal's concealment of Muhammad Jawed's death constituted a misuse of his authority, facilitating transactions in bad faith, including those where the deceased's signature appears to have been forged. His admission to only 12 cheques also implies an unwillingness to disclose the complete truth. Through this misuse, he reaped unlawful profits that rightfully belonged to his brother and his lawful successors. Moreover, it is recorded that upon the conclusion of the Iddat period of PW-1 Syeda Hafsa Javed, she was unceremoniously evicted from her home by the appellant and his wife, resulting in the filing of a separate FIR No. 291 of 2016. This further attests to the appellant's malafide intentions to usurp the fruits of his brother's lifelong labor. This sequence of events is a clear illustration of the damaging impact of fraud in society. Fraud, in its essence, is a deceitful act carried out for personal gain, often at the expense of others. It fosters an environment of mistrust, undermining the fabric of social cohesion and respect for law and order. Every instance of fraud chips away at our collective faith in ethical behavior, leaving individuals feeling exploited and justice seemingly unreachable. The cost of fraud is not just monetary; it extends to the erosion of societal values, breeding an atmosphere of suspicion and cynicism. It discourages honest effort, as individuals may feel that deceit offers a shortcut to success. It exacerbates inequality, as those who are defrauded often belong to vulnerable sections of society, and it disrupts the rule of law, pushing us

towards a society where might is right. Every prosecution witness has squarely implicated appellant Muhammad Iqbal, highlighting his role in presenting cheques, preparing pay orders in favor of an account held in his name by Bukhari Traders. His failure to explain why the money was first transferred to his account before being paid to the investors only further corroborates the allegations against him. It is high time that Courts act against fraud with unyielding resolution, adopting a stringent stance against such acts so that a clear message is communicated to the society that deceit, manipulation and dishonesty are intolerable transgressions.

9. The pivotal issue now requiring determination before us pertains to the necessity of reassessing the sentence and the pecuniary penalty imposed on the appellant Muhammad Iqbal. The appellant's transgressions are indisputably egregious, involving fraudulent activities against not only a financial institution, but also his kin and their family. However, notwithstanding the gravity of his actions, it is incumbent upon the judiciary to maintain a firm commitment to the principles of justice, ensuring the appellant's punishment equitably reflects his criminal conduct. A seven (07) year sentence u/s 420 PPC, another seven (07) year sentence u/s 468 PPC and the three (03) year sentence u/s 471 PPC, on its face, are in proportion to the appellant's felonious acts and does not seem unduly severe. However, the financial penalty of Rs.8,335,610/- appears, in our estimation, to be somewhat excessive, particularly given that the total sum involved in the purported transactions was Rs.4,167,805/-. The legal system is constructed with the intent of guaranteeing fair and just treatment for all individuals, regardless of their societal standing. In this context, this court bears the responsibility of balancing the interests of the victim and the defendant when discerning the suitable punishment for an offense. By fulfilling this duty, the judiciary fortifies the foundational tenets of justice and the rule of law, thereby bolstering public faith and trust in the legal system. Against this backdrop, we deem the fitting financial penalty for the appellant, taking into account his culpability in the crime, to be Rs.4,167,805/-, under S. 420 PPC instead of Rs.8,335,610/-.

10. For what has been discussed above, this Court finds that the prosecution has proved the charge against the appellant beyond reasonable shadow of doubt. The decision made by the learned trial Court regarding the culpability of the appellant is just, proper and in conformity with the principles of administration of justice. However, for the reasons stated above, the fine amount u/s 420 PPC of Rs.8,335,610/- is reduced to Rs.4,167,805. The fine amount under S. 468 and 471 PPC shall remain intact.

11. Consequently, captioned criminal appeal No. 43 of 2022 is dismissed with the above modifications in the fine amount.

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