IN THE HIGH COURT OF SINDH, KARACHI

Criminal Revision Application No. 15 of 2023

PRESENT:
Justice Naimatullah Phulpoto
Justice Khadim Hussain Tunio

Gulzar Ahmed Memon ... *Applicant*

Versus

The State and *others* ... *Respondents*

For the Applicant: Ms. Paras Ali Lodhi, advocate.
Mr. Sadam Hussain Chang, advocate.

For the Respondents: Peer Riaz Muhammad Shah, DAG
Abdul Rauf Shaikh, Dy. Director FIA
Inspector Shahroz, FIA

Date of Hearing: **17.01.2024**
Date of Reasons: **24.01.2024**

JUDGMENT

KHADIM HUSSAIN TUNIO, J- This revision application challenges the vires of the order dated 29.11.2022 ("**impugned order**") passed by the Special Court (Offences in Banks) ("**Trial Court**") in a case[1] based upon FIR No. 22/2020 lodged with Police Station FIA, Commercial Bank Circle, Karachi for the offences punishable under sections 409, 420, 468, 471, 109 and 34 of the Pakistan Penal Code ("**PPC**"). In passing the impugned order, the application of Gulzar Ahmed ("**the applicant**") seeking his acquittal under section 249-A of the Code of Criminal Procedure ("**CrPC**") was dismissed. The applicant now seeks quashing of the proceedings and his own acquittal.

2. The applicant stands charged of being privy to maintenance of forged accounts which were used to transfer huge sums of government funds in the name of a fictitious Non-Governmental Organization ("**NGO**"). Facts pertaining to these transfers as disclosed

[1] Case 25 of 2020

in the FIR are that after information was received by the Federal Investigation Agency ("**FIA**"), the same was deemed credible and investigation ensued. The investigation revealed that one Muhammad Bux, working as the Treasurer of Isra Islamic Foundation ("**Isra**") and as a Clerk of the Social Welfare Department, Government of Sindh, prepared forged Social Welfare Department Registration Certificates bearing No. PCSW(S)1365-A in the name of Isra while this registration number belonged to an organization named Merit Foundation. Muhammad Bux, by means of fraud, also obtained a National Tax Number from the Inland Revenue Services in Isra's name. These forged documents were subsequently used by one Laila Ali who opened two bank accounts[2] under Isra's name at Dubai Islamic Bank Private Limited and then deposited Government cheque No. 19487029, dated 27.04.2017, amounting to Rs.29,800,000/- into account No. 0421859001 ("**primary account**") and therefrom she transferred the money to account No. 043684401 ("**secondary account**"). The secondary account was found to be maintained by Laila Ali and Muhammad Bux. The investigation also established that Gulzar Ahmed, working as a Section Officer of the College Education Department, was handed over the Government cheque for cancellation amongst others, but had passed the same on to Laila Ali and Muhammad Bux, aiding them in the elaborate usurpation of Government funds.

3. Applicant's counsels submitted that the impugned order whereby the application filed by the applicant under section 249-A CrPC has been dismissed is not sustainable in law as the Trial Court failed to consider that prior to the registration of FIR No. 22/2020, on the basis of the same set of allegations, FIR No. 15/2018 had been lodged wherein the present applicant was nominated, as such a second/subsequent FIR on the same set of evidence could not be entertained. In support of this submission, *Sughra Bibi's* case[3] was cited. They further argued that the applicant had filed a Constitutional Petition before this Court[4] wherein this Court had directed the respondents to conduct themselves strictly in accordance with law and ensure a fair right of hearing to the applicant, however

[2] Account No. 0421859001 and Account No. 043684401, titled "Isra Islamic Foundation"
[3] PLD 2018 Supreme Court 595
[4] C.P D-4661/2018

no heed was paid to the said directions and subsequent FIR was lodged regardless. It was also contended that Moazam Ali Marri, the signatory of the cheque concerned, was already acquitted[5] under section 249-A CrPC and his acquittal was not challenged, as such had attained finality, therefore the present applicant was also entitled to the same benefit. Citing the case reported as 2000 SCMR 122, Miraj Khan versus Gul Ahmed, the principle of acquittal under section 249-A CrPC was referred in order to support the contention that such acquittal could be at any stage. Lastly, it was contended that the offence, if any committed, did not fall within the ambit of offences triable by Banking Courts under the Offences In Respect of Banks (Special Courts) Ordinance, 1984 ("**the Ordinance**").

4. While controverting these submissions, learned DAG argued that it is too early to ascertain whether the applicant was involved in the offence or not and that it would be proper to allow for the trial to carry forward and be decided on merits as the charge has been framed.

5. Before adjudging the merits of the case, it would be proper if we address the contentions raised regarding the jurisdiction of the Banking Court to try the applicant, the concept of double jeopardy and whether the second/subsequent FIR could have been lodged in the present case. A reference was made to the *Sughra Bibi*[6] case to argue that a second FIR could not have been lodged for the same incident. It is important to understand the facts of that case before understanding the ratio of the judgment rendered therein by the Supreme Court of Pakistan. Precisely, Sughra Bibi's son had been killed in an encounter and an FIR pertaining to this incident had been lodged against the police officers involved by the State. Dissatisfied, however, Sughra Bibi first filed a criminal complaint and then sought to file a second/subsequent FIR on her own version of facts. Supreme Court placed cases into two categories and referred to legal jurisprudence in each of these categories; the first category was where only one FIR could be allowed and the second category was where multiple FIRs could be registered. In conclusion, while referring to a case of Privy Council,[7] Supreme Court held that **each**

[5] Order dated 21.11.2019, passed in Special Case No. 32/2018
[6] *Ibid, 3*
[7] Emperor v Khawaja Nazir Ahmed, AIR (32) 1945 Privy Council 18

statement could not be treated as a separate information report. The ratio of the judgment rendered therein was that the first category cases were made a "general rule" whereas second category cases were made "exceptions" which meant that the matter was left to the circumstances of each case. It is important to note that a large majority of category one/first category cases pertained to offences against persons and so did Sughra Bibi's case itself. That is a distinguishing factor, as the decision of the Supreme Court in no way barred all subsequent FIRs, rather left the matter to be determined by the Courts whilst laying out a general rule for guidance. In the present case, the "statement" or the version provided in both the FIRs stays the same when it comes to its body, however the assertions therein and the offences differ. In the FIR prior in time[8] and the case that was its outcome were trying the applicant for misuse of his authority as a Government functionary whereas the subsequent FIR and the case that followed tried the applicant as an accomplice to a fraud carried out through banks. These offences differ and carry their own punishments even though the substance of the same remains consistent. Such types of cases are an exception to the general rule; as such a subsequent FIR was competent. Therefore, contention with respect to lodging of a subsequent FIR and of "double jeopardy" which only attracts after the conclusion of a trial in this context are, both, meritless grounds. Now to address the objection regarding jurisdiction of the Banking Court, Banking Courts are competent to try scheduled offences as set out in article 3 of the Ordinance. Article 2(d) defines scheduled offences as an offence specified in the First Schedule when committed "in respect of, or in connection with the business, of a bank." The offences punishable under the PPC involved in the FIR herein are available in the first schedule of the Ordinance and the term "in connection with" is often substituted with "concerning" which, the term, is defined[9] in the legal context as "*relating to; pertaining to; affecting; involving; being engaged in or taking part in.*" The act of the applicant in aiding maintenance of bank accounts based on forged documents and supplying the cheque which was then deposited in two scheduled banks satisfies, to a

[8] FIR 15/2018
[9] Concerning Definition, *Black's Law Dictionary* (9th ed. 2009)

sufficient degree, the requirement of bringing his case within the ambit of an offence triable by Banking Courts.

6. Coming to the merits of the application under section 249-A CrPC and the premature acquittal of the applicant, learned counsels for the applicant cited numerous cases[10] to support their stance on acquittal, however we have perused each of the cited cases and could not find one that was squarely applicable to the present case. Herein, the appellant provided the cheque which ought to have been cancelled by him, but was processed by the bank - an act being in respect of the business of a bank. Supreme Court, in the case of *A. Habib Ahmed versus MKG Scott Christian,* PLD 1992 Supreme Court 353, held that the connotation of the term "in respect of" and "in connection with" the "business of the bank" is very broad and there would hardly be any cases left out of the ambit of Banking Courts. Undoubtedly, the main consideration in an application under section 249-A CrPC is whether the continuance of proceedings would be a futile exercise, wastage of time and abuse of the process of the Court OR if not that then on the basis of facts available, no offence is made out.[11] A bare reading of the facts alone and as per observations made herein, a prima facie offence is made out. Evidence of the prosecution witnesses has been recorded and the matter is pending further adjudication before the Court and in such circumstances, we find it futile to order premature acquittal when the trial can instead be decided on merits and the matter can be resolved for good. While acknowledging that there exists no bar in an application under section 249-A CrPC to be filed, Supreme Court in the case of *The State through Advocate General Sindh versus Raja Abdul Rehman*, 2005 SCMR 1544, observed that the facts will have to be kept in mind and considered while deciding such an application; that "special or peculiar facts and circumstances of a prosecution case may not warrant filing of an application at a stage when the entire prosecution evidence had been recorded," further holding while citing the case of *Bashir Ahmed*[12] that cases ought to be determined on merits and provisions of section 249-A, section 265-K and section

[10] Arif Kamal v The State (2022 CLD 902/2023 YLR 207), Muhammad Hashim v Presiding Officer, Special Court (2006 PCrLJ 1886), Rehmat Khan v DG Intelligence and Investigations (PLD 2000 Karachi 181) and Mushtaq Hussain v The State (1986 PCrLJ 567)
[11] See Miraj Khan v Gul Ahmed, 2000 SCMR 122
[12] PLD 2004 Supreme Court 298

561-A CrPC should not normally be used. A learned division bench of this Court while hearing a constitutional petition[13] followed the dictum laid down in the Raja Abdul Rehman case[14] and further observed that it did not deem it appropriate to adjudicate any further on merits given that the situation was likely to conclude before the Trial Court. We see no reason not to follow such observations either nor do we find it necessary to delve any deeper into the evidence available on the record as that was due on the Trial Court.

7. Given these observations, the instant revision application was dismissed by our short order dated 17.01.2024 and these are the reasons for the same.

Judge

Judge

[13] SBLR 2024 Sindh 101
[14] 2005 SCMR 1544