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NFR - Conviction maintained
Sentence reduced to time undergone in
detention against Bank Case

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Amjad Ali Sahito,*

CRIMINAL APPEAL NO.159 OF 2007

Appellant	Muhammad Noorullah S/o. Abdul Sattar, presently on bail through M/s. Khawaja Shamsul Islam and Shehzad Mehmood, Advocates.
Complainant	Akbar Ali through Mr. Rizwan Ahmed Siddiqui, Advocate.
Respondent	The State through Mr. Abdul Jabbar Qureshi D.A.G.
Date of Hearing	15.10.2020.
Date of Announcement	19.10.2020.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Mohammad Noorullah son of Abdul Sattar has assailed the impugned judgment dated 13.06.2007 passed by Learned Special Court (Offences in Banks) Sindh at Karachi in a Case No.13 of 2006 arising out of Crime No.09 of 2006 U/s.409/420/477-A PPC registered at PS FIA, Crime Circle, Karachi whereby the appellant was convicted u/s.409 PPC and sentenced to undergo Rigorous Imprisonment for seven years (7 years) and to pay a fine of Rs.24,27,500/- and in default of payment of fine he has to further undergo Simple Imprisonment for 21 months. He is further convicted u/s.477-A PPC and sentenced to undergo Rigorous Imprisonment for five years (5 years) and to pay a fine of Rs.24,00,000/- and in default of payment of fine he has to further undergo Simple Imprisonment for 15 months. He is further convicted u/s.420 PPC and sentenced to undergo Rigorous Imprisonment for one year (1 year) and to pay a fine of Rs.27,500/- and in default of payment of fine he has to further undergo Simple Imprisonment for 03 months. It was also ordered that the amount of fine if recovered from accused then Rs.24,27,500/- be paid to the complainant bank and remaining amount be

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deposited to the government's treasury. All the sentences were ordered to be run concurrently. The benefit of Section 382-B was also extended to the accused.

2. The brief facts of the prosecution case as per the complaint against Muhammad Noorullah s/o Abdul Sattar is that during his tenure of posting as manager, Kagzi Bazar Branch Karachi of MCB Bank Ltd Karachi from 15.4.2005 to 11.3.2006 he cheated, defrauded, embezzled and misappropriated a sum of Rs.81,87,100 from the account of an account holder/client of the bank and used the said amount for his personal gains; that he also tampered the books of account of the bank and indulged himself into the acts of dishonesty, tampering the bank books of different customers, cheating, defrauding, misappropriating and embezzling the funds of different customers in connivance and collusion with the accountant and other unknown personnel and customers. The role of Muhammad Noorullah in the offences are that one Mr. Muhammad Umer s/o Mr. M. Farooq an account holder of M/s. MCB Bank Ltd Karachi (Kagzi Bazar Branch) having its CD A/c. NO.3528-2 lodged complaints regarding misappropriation of his money from his account. On examination it revealed that Muhammad Noorullah the then branch manager received cash from Muhammad Umer amounting to Rs.2,000,000/- and Rs.1,687,500/- on 11.3.2006 under his own signature and affixed cash stamp of the branch of this bank but the same was neither credited in the account No.CA 3528-2 of the account holder nor these amounts were handed over to the cashier for proper entry in the branch's book of account. The accused cheated the customer and the bank and misappropriated and embezzled a sum of Rs.3,687,500/- and converted it into his own personal gain and thus caused financial loss to the bank. Further Muhammad Noorullah acting as manager in Kagzi Bazar Branch received a cheque bearing No.00046618 pertaining to account No.3528-2 belonging to Mr. M. Umer through pay in slip No.1533235 for cross branch transaction (CBT) in favour of one Mr. Ikramullah A/c. No.8571 at MCB Bank Ltd Chowk Yadgar Branch Peshawar for Rs.44,99,800/- The cheque was received by Muhammad Noorullah under his own signature and branch transfer stamp on 11.3.2006 but the accused did not affect the transaction and with the criminal intention of breach of trust and cheating unauthorizedly credited the amount in another A/c. No.3474-5 belonging to one Mr. Muhammad Arshad. This act of Muhammad Noorullah constitutes intentional cheating, defrauding and misappropriation of bank's money and caused financial loss to the bank and also involved illegally tampering with the bank's book of account. All these criminal acts of the accused

were intentional and willful hence liable to be punished. Muhammad Noorullah as manager of Kagzi Bazar Branch of MCB Bank Ltd Karachi acted and opened account in violation to the State Bank of Pakistan regulations and allowed illegal transactions in connivance and collusion with other persons with the intention to cause financial loss to the bank. He opened account No.3528-2 in the name of Mr. Muhammad Umer but the cheque book issued to him bears the name as M. Umer s/o M. Farooq in the space of signatures. This act of the accused is tantamount to cheating and further this customer was accommodated by the accused/manager unauthorizedly by way of withdrawal/remittance against cheque sent in clearing (un cleared cheques) on 11.3.2006 amounting to Rs.10.503 million which were sent in clearing against which transfer was affected in some other accounts maintained in the same branch and also on line transfer of Rs.4,800/- millions was made to account No.8571-0 maintained at Chow Yadgar Branch of MCB Bank Ltd Peshawar. The acts of the accused Muhammad Noorullah and his unknown colleagues constitute criminal breach of trust, defrauding and causing financial loss to the bank and the customer. The manager/accused Muhammad Noorullah also acted in violation to the bank laws with the intention to cause financial loss to the bank. He opened CD A/c No.3538-1 in the name of Mr. Ali Akbar on 1.3.2006 during departmental investigation it was disclosed by the accused that the account was operated by M/s. Khanani & Kalia Pvt. Ltd who are authorized money/changer and runs other business line M/s. Live Securities Pvt. Ltd at Karachi Stock Exchange. During departmental investigation about the reality of above said account one account holder produced photocopy of his employment card which disclosed that he is working as outdoor assistant with M/s. Live Securities Pvt. Ltd a company of M/s. Khanani & Kalia Group. On the employment card of the account holder name appears as Akbar Ali whereas the account was opened in the name of Ali Akbar. The photograph on employment card was different than the photocopy of CNIC. The account was introduced by M/s. M. Fraz/Zubair maintaining their account bearing No.3518-3 at Kagzi Bazar Branch of MCB Bank Ltd. Karachi. The accused manager unauthorizedly extended heavy financial accommodation again in clearing to the customer in his account. These acts of the accused constitute criminal breach of trust cheating with the intention to cause financial loss to the bank under the offences in respect of Banks. During the enquiry by the concerned executives of the bank the accused Muhammad Noorullah accepted his guilt and adjusted a sum of Rs.4.165 Million out of the misappropriated amount of Rs.1,187,1000/- which came to the knowledge of the

officials of MCB Bank Ltd. Thus, the offenses mentioned earlier in this judgment were charged against the appellant to which he pled not guilty and claimed trial.

3. The prosecution in order to prove its case examined 06 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against conviction.

4. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 13.06.2007 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

5. It is pertinent to note at this stage that the sentence of the appellant was suspended by this court and he was granted bail over 10 years ago pending disposal of his appeal.

6. After the reading out of the evidence and the impugned judgment learned counsel for the appellant candidly conceded that the prosecution had proved the charge against the appellant beyond a reasonable doubt and the appellant on instructions did not want to argue the appeal on merits but instead only requested a reasonable reduction in sentence and fine on the grounds that (a) he had served almost 2 years in jail (b) he was an old man of 72 years of age (c) that he suffered ill health including a heart condition and diabetes (d) that the appellant showed remorse for his actions by deciding not to contest the appeal (e) that he was a first time offender (f) that the appellant had used his time productively in jail in activities which could contribute towards his reformation prior to his release on bail (g) that he had paid back over half of the amount which he had allegedly embezzled/misappropriated (h) that he had been on bail for almost ten years which concession he had not misused and as such it would be inhumane to send him back to jail after such a long period of freedom keeping in view the fact that he had endured the misery, agony and anxiety of appearing before this court for the last 10 years not knowing whether he would be sent back to jail or not (i) that he had a wife and children / grandchildren who needed his financial support (j) that he was a very poor man who had already been dismissed from service and had therefore already suffered a great deal and (k)

the amount of loss which he caused was relatively minor being approximately 24 lacs.

7. Learned DAG on behalf of the State based on the mitigating circumstances put forward by the appellant agreed to a reasonable reduction in sentence and fine however learned counsel for the complainant bank did not agree to either a reduction in sentence or fine and contended that as the prosecution had proved the case against the appellant beyond a reasonable doubt, that he stood convicted and his the sentence was in accordance with law it should be maintained.

8. Having gone through the evidence on record and the impugned judgment we are of the view that the prosecution has proved its case against the appellant beyond a reasonable doubt in respect of the offences for which he was charged based on both oral and documentary evidence which includes his confession and his voluntary re payment of over half of the misappropriated amount and thus the only issue before us is one of sentencing.

9. We note that sentencing is at the discretion of the court and is not a mechanical exercise. In exercising its discretion the court should consider numerous factors such as the minimum and maximum sentence which can be imposed on conviction, the role of the accused, the gravity of the offence, in a case of this nature the amount of loss caused to the State, whether the accused shows any kind of remorse, whether the accused is capable of reformation, the age of the appellant, the health of the appellant, his conduct in jail and how long he has already spent in jail etc. In this respect reliance is placed on **Muhammed Juman V State** (2018 SCMR 318) which held as under at P322;

"Inflicting conviction and imposing sentence is not a mechanical exercise but it is onerous responsibility to inflict, fair, reasonable and adequate sentence, commensurate with gravity and or severity of crime, looking at the motive, attending and or mitigating circumstances that provoked or instigated commission of crime and it involves conscious application of mind. No mathematical formula, standard or yard stick could be prescribed or set out to inflict conviction and sentence, such factors vary from case to case and while undertaking such exercise Court must keep in light provisions contained in Chapters-III and IV of the P.P.C. Unfortunately, no sentencing guideline is laid down in Pakistan, though Courts have set out certain parameters in many cases as to what is mitigating and or aggravating circumstances that may warrant alteration and or varying in conviction and or sentence within the parameters provided under the charging or penal provision".

10. After carefully considering the same we find that the mitigating factors mentioned above by the appellant have been made out and are significant in terms on reduction of sentence and fine and do justify a reduction in sentence of imprisonment from 7 years keeping in view the fact that the complainant counsel for the bank was unable to give any cogent reason as to why the 7 years sentence of imprisonment imposed on the appellant should be not be reduced keeping in view the mitigating factors raised by the appellant and the NOC very fairly given by the learned Deputy Attorney General for some reasonable reduction in sentence and fine. This is especially so keeping in view the various factors mentioned above which should be taken into account whilst exercising our discretion on sentencing and the mitigating factors put forward by the appellant.

11. Thus, whilst taking into consideration the arguments/mitigating factors justifying a reduction in sentence of the appellant we hereby whilst exercising our judicial discretion under S.423 Cr.PC maintain the appellant's conviction for the various offenses set out in the impugned judgment but modify all the sentences of imprisonment for each offense for which the appellant was convicted to time already undergone in custody as we are also of the considered view that taking into account the very minor amount of loss caused to the State a maximum sentence of 7 years for one offense in any event was too harsh and disproportionate to the offences for which the appellant was convicted. With regard to the fine imposed on the appellant this is reduced to RS 12 lacs on account of his age, health, financial hardship and the fact that the bank has not been able to persuade us that the remaining loss to the bank is grater than 24 lacs which shall be paid by the appellant within two months of his release which **Mr. Khawaja Shamsul Islam** advocate has agreed to act as surety and shall forthwith execute a surety bond to that effect with the Nazir of this court. As such the bail bonds of the petitioner stand released and he is free to go **however** it is made clear that in the event that the appellant does not pay the aforesaid RS 12 lacs within two months of the date of this Judgment he shall be re arrested and returned to Central Jail Karachi where will will serve out a further 12 months of SI in default of payment of the fine of RS 12 lacs.

12. We are further fortified by our decision in reducing the appellant's sentence of imprisonment based on the particular facts and circumstances of this case by the recent supreme court case of **Tariq Saeed v State** (2020 SCMR 1177) which was also an appeal against conviction, albeit in a NAB case, where despite the appellant not showing any remorse and arguing his case on merits it was held as under at P.1181 Para 9 which reads in material part as under:

".....However, while relying on case titled "Muhammad Ashraf alias Chaudhry v. The State" (1994 SCMR667) and while taking into consideration that the petitioner is an old man with poor health condition, whereas he has already undergone substantial part of sentence recorded by both the courts, we deem it appropriate to meet the ends of justice reduce the sentence already inflicted upon the petitioner from seven years to five years while maintaining the sentence of fine of Rs.1,63,00,000/- and confiscation of farm-house belonging to petitioner in favor of the State. In the above said terms, this petition is converted into appeal and partly allowed."

13. The appeal, any constitution petitions and listed applications stand dismissed **except** as modified above.