

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.702 of 2024

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Appellant : Naushad Ahmed son of Mushtaq Ahmed
Through M/s. Muhammad Jamil &
Sarosh Jamil Advocates.

Respondent : The State
Through Mr. Irshad Ali, Assistant
Attorney General.

Date of short order : 16.04.2026

Reasons recorded on : 21.04.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.— The appellant challenges his conviction recorded by the Special Court (Offences in Banks), Sindh at Karachi, vide Judgment dated 30.09.2024 in Case No. 73 of 2012 (FIR No. 52/2012, P.S. FIA/CBC, Karachi), for offences under Sections 409, 420, 468, 471, 109 & 34 PPC read with Section 5(2) PCA-II, 1947, whereunder he was sentenced to seven years' rigorous imprisonment each under Sections 409, 420 and 468 PPC, and three years' RI under Section 471 PPC, with a fine of Rs. 100,000/- on each count (default six months SI), all sentences concurrent and benefit of Section 382-B Cr.P.C. extended.

2. The complainant, Muhammad Ismail s/o Rasool Bux, a tailor of Nazimabad, Karachi, upon receipt of summons in Banking Suit No. 821/2011, discovered that a Saibaan Housing Loan of Rs. 44,00,000/- had been fraudulently obtained from NBP, Shaheed-e-Millat Road Branch in his name, without his knowledge, consent, or participation. He had never applied for any loan, opened any bank account, or acquired any property. He had previously reported the loss of his CNIC on 22.02.2008 to the local police. His complaint before the Director FIA, Sindh precipitated Enquiry No. 27/2012, culminating in the registration of FIR No. 52/2012.

3. The FIR disclosed a conspiracy in which the appellant Naushad Ahmed allegedly posted as Sales Officer, NBP connived with three absconding accused: Waseem Ahmed (fictitious property seller), Muhammad Ismail s/o Muhammad Umer (impersonator), and Latif-ur-

Rehman (legal consultant, M/s Gillani & Gillani). The modus operandi comprised fabrication of title documents for House No. A-116, Survey Nos. 175 & 323, Deh Digh, Tappo Malir, Karachi; forgery of the complainant's signatures on the loan and account-opening forms; producing an impersonator before the Sub-Registrar for execution of conveyance and mortgage deeds; procuring a pay order of Rs. 4.4 million dated 31.01.2008 in favour of Waseem Ahmed, deposited in KASB Bank Account No. 0014-525251-001 and subsequently withdrawn; and opening fictitious accounts in Soneri Bank and a shadow account at NBP Shaheed-e-Millat Branch. Six accused were challaned for trial; three principal beneficiaries remained absconding.

4. The prosecution examined twenty-one witnesses. The defence of the appellant rested primarily upon his appointment letter (Exh. 48/A), issued by Professional Employers (Pvt.) Ltd. on 02.02.2008, a date subsequent to the loan application (December 2007) and contemporaneous with the pay order (31.01.2008) demonstrating that he was not in NBP's employ at the material time. Neither the appellant nor any co-accused examined himself on oath or produced a defence witness.

5. Learned counsel for the appellant assailed the impugned Judgment on the grounds that the trial Court dismissed the appointment letter (Exh. 48/A) as an "afterthought" without cogent reasoning; that both Investigating Officers (PW-20 & PW-21) themselves conceded that the appellant held no authority to grant or decline the Saibaan Loan; that no handwriting expert opinion linked any forged document to the appellant; that the appellant was admittedly not a beneficiary of the misappropriated amount; and that the testimony of PW-16 was left unchallenged yet was treated as conclusively "proved" in violation of established criminal law. The State, in opposition, supported the impugned Judgment, urging that PW-1 and PW-6 had established the appellant's role as the Sales Officer who introduced the loan application.

6. Having heard learned counsel for the parties and having independently re-assessed the entire record comprising the depositions of twenty-one prosecution witnesses, all documentary exhibits, and the impugned Judgment, this Court is of the firm view that the conviction of the appellant cannot be sustained.

7. PW-16 (Muhammad Imran Shaikh, NBP Head Office) was examined in chief without any cross-examination whatsoever, the record

bearing the endorsement "*Nil — Though chance given.*" The settled law, as authoritatively declared in *Nadeem Ramazan v. The State*¹, is that the civil-law doctrine of "deemed admission" for want of cross-examination has no application in criminal proceedings; a criminal case must be resolved upon the totality of impressions gathered from all circumstances, not upon the mechanical inference of admission from unchallenged testimony. The trial Court's reliance upon the untested evidence of PW-16 as "proved" constitutes a fundamental misapplication of criminal jurisprudence. More critically, PW-16 was the very official through whom the Head Office sanction of Rs. 4.4 million was processed, yet he was never examined as to whether the appellant had any role in influencing or manipulating that approval, a glaring prosecutorial omission that went wholly unremedied.

8. PW-20 (Inspector Muhammad Shoaib Khan, first I.O.) conceded in unambiguous terms during cross-examination that "*accused Noshad was not empowered to grant or decline the Saibaan Loan*" an admission that directly destroys the element of entrustment indispensable to Section 409 PPC. Simultaneously, his volunteered assertion that the appellant was "Incharge of Saibaan Loan" extracted not in direct answer to a question but as a gratuitous interpolation was never incorporated as a specific question in the appellant's examination under Section 342 Cr.P.C. The Supreme Court in *Qaddan V. The State*² has unequivocally held that evidence not specifically put to the accused at the Section 342 stage loses its incriminatory efficacy and cannot found a conviction. The trial Court's reliance upon this volunteered, Section 342-untested assertion was a fundamental error of law.

9. PW-21 (Sub-Inspector Muhammad Imran, second I.O.) categorically admitted that "*it is fact that accused is not beneficiary of the amount*" a concession from the mouth of the investigating officer himself that extinguishes the second indispensable pillar of Section 409 PPC, namely dishonest misappropriation. The Supreme Court in *Abdul Rehman v. The State*³ and *Abdul Rashid Nasir v. The State*⁴ has consistently held that both entrustment and misappropriation are conjunctive and mandatory ingredients; the absence of either is fatal to conviction. Furthermore, PW-21 admitted that no specimen signatures of the appellant were ever submitted for forensic examination. The handwriting

¹ 2018 SCMR 149

² 2017 SCMR 148

³ 1991 SCMR 244

⁴ 2009 SCMR 517

expert's report (Exh. 43/B) bears exclusively upon the complainant's signatures, not those of the appellant rendering the entire forensic edifice of the prosecution irrelevant to the question of the appellant's personal complicity in any act of forgery.

10. The prosecution failed to examine three witnesses whose evidence was indispensable to the factual chain: Syed Kamran Abidi (Regional Sales Manager, CW-7), Syed Salman Ali (Credit Officer, CW-6), and Mrs. Rizwana Javeed (CW-8), all given up as unserved over the course of a multi-year trial without satisfactory explanation. The Regional Sales Manager was the first official in the institutional chain to receive the loan application from the Sales Officer; his non-production entitles this Court to draw an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that his evidence, had it been produced, would not have supported the prosecution's case against the appellant.

11. The trial Court's characterization of the appointment letter (Exh. 48/A) as an "afterthought" is manifestly unsustainable. The document is a third-party instrument, bearing the date 02.02.2008, issued by an independent contracting agency, which neither the investigating officers nor the trial Court made any effort to verify from the originating source. The defence's challenge to the appellant's employment status at NBP was consistently raised before both PW-20 and PW-21 during cross-examination, a fact acknowledged in the impugned Judgment itself negating any inference of belated introduction. The Supreme Court in *Waqar Ahmed V. Shaukat Ali*⁵ has firmly held that an exculpatory document of prima facie authenticity cannot be discarded merely because it was produced at the Section 342 stage, and that the accused's statement thereunder must be considered in its entirety. The investigating officers' bare denial, unsupported by any countervailing documentary verification from the contracting agency, does not constitute disproof.

12. Section 409 PPC demands, as co-extensive and conjunctive elements, entrustment of property and dishonest misappropriation thereof. No evidence establishes that the pay order of Rs. 4.4 million was ever entrusted to or received by the appellant; the instrument was made out to, and encashed by, the absconding accused Waseem Ahmed through his KASB Bank account (Exhs. 26/A, 28/A-1 to 28/A-8). Sections 420, 468, and 471 PPC are equally not strict-liability offences. The Supreme Court in

⁵ 2006 SCMR 1139.

Nadar Ali V. Sumaya Gul⁶ has firmly declared that the mens rea for Section 420 PPC, fraudulent or dishonest intention must subsist at the very inception of the transaction; subsequent breach of duty or negligence does not suffice. Not a single forged document bears the appellant's signature; no financial instrument was created in his favour; not a single rupee is traceable to him. The mens rea essential for conviction under all charges stands wholly unproved.

13. The trial Court itself, while acquitting co-accused Hamid Ali, candidly observed: "*I am unable to understand as to why the I.Os had not made PW Musarat Jehan an accused whose role is similar to that of accused Jannat Ali, Karim Jaffer Ali and Muhammad Dawood.*" This observation lays bare an arbitrary investigative methodology incapable of supporting the differential treatment meted out to the appellant. The Supreme Court in *Ghulam mustafa V. The State*⁷ has reaffirmed that where a co-accused with a materially similar role has been acquitted, the benefit of doubt must equally be extended to an accused whose case is not factually distinguishable. The appellant's connection to the alleged crime is, on the evidence, considerably weaker than those who were acquitted; equal or greater protection is therefore warranted in his case.

14. The prosecution's case against the appellant disintegrates upon the cumulative weight of irreconcilable infirmities: the appellant was not employed at NBP at the time the offence was committed (Exh. 48/A); he received no portion of the misappropriated funds (conceded by PW-20 & PW-21); no forensic evidence links any forged document to his hand; the decisive witness regarding who introduced the loan application was never produced; the volunteered assertion of "Incharge" status was never tested under Section 342 Cr.P.C.; the principal beneficiaries of the fraud remain absconding; and the forgery of official Sub-Registrar documents and signatures points to organized criminal expertise wholly beyond the capacity or opportunity of a junior contractual sales officer. The Supreme Court in *Tariq Pervez v. The State*⁸ has held that even a single genuine doubt compels acquittal; a multiplicity of such doubts as exists in the present case admits of no other result. The Supreme Court further reiterated in *Muhammad Riaz v. Khurram Shehzad*⁹ and *Maqsood Alam v. The State*¹⁰ that conviction must rest upon unimpeachable, trustworthy,

⁶ 2020 SCMR 414.

⁷ 2025 SCMR 1633.

⁸ 1995 SCMR 1345.

⁹ 2024 SCMR 51.

¹⁰ 2024 SCMR 156.

and reliable evidence, and that any doubt arising in the prosecution's case must be resolved in favour of the accused as a matter of legal right, not judicial grace.

15. For the foregoing reasons, this Court is/was of the firm view that the learned trial Court committed grave and manifest errors in the appreciation of evidence, misapplied settled principles of criminal law, and convicted the appellant upon conjectural, incomplete, and legally deficient proof. Accordingly, this Criminal Appeal was allowed vide short order dated 16.04.2026, the conviction and sentence of the appellant Naushad Ahmed, recorded in Case No. 73 of 2012 vide Judgment dated 30.09.2024, were set aside. The appellant was acquitted of all charges under Sections 409/420/468/471/109/34 PPC read with Section 5(2) PCA-II, 1947. These are the detailed reasons thereof.

JUDGE

JUDGE