

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

**BEFORE:
MR. JUSTICE MAHMOOD AHMAD KHAN
MR. JUSTICE MUHAMMAD HASAN (AKBER)**

1st Appeal No.D-07 of 2016

Appellant: National Bank of Pakistan, through Mr. Waseem Hussain Jaffery Advocate

Respondent: Mr. Muhammad Saleem in-person.

Date of hearing: 12.03.2025

Date of decision: 12.03.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- By way of the instant appeal, the Appellant/bank has assailed the Order dated 05.03.2016 passed by the learned Banking Court No.II at Hyderabad, in Banking Criminal Complaint No.43 of 2012 whereby while allowing the Application under section 249-A Cr.PC., the Respondent (Accused No.5) was acquitted.

2. The prosecution's case as per the criminal complaint are that Respondent company M/s. Fateh Textile Mills Limited (FTML) availed various finance facilities from the Appellant Bank and during course whereof, created Pledge and hypothecation of various movable assets. The allegation was that on 22-12-2009, the complainant Bank was informed by their Muccadam that in the previous night (i.e on 21-12-2009), the accused persons, dishonestly, fraudulently and in breach of their representations made to the complainant, in active connivance with each other removed 370 motorcycles which were pledged with the complainant through duplicate/ forged keys. Upon receipt of the information, the complainant immediately approached the accused No.01, being the responsible controlling officer of the company, to clarify the misappropriation and embezzlement of pledge goods, who assured the Bank to deposit the equivalent amount of misappropriated pledge goods in a short time. Per the appellant, despite various requests, the accused persons did not fulfill their commitment and failed to deposit any money as promised, hence on 30-01-2010, the complainant once again called upon the company/accused persons to make good the shortage of 370 units of Hero 70cc motorcycles. As per the appellant, on 20-02-2010, the Muccadam again informed the complainant that the accused persons, once again have dishonestly and

without the permission of complainant Bank, lifted 149 units of Hero 70cc motorcycles which were pledged with the complainant Bank. Again on 10-03-2010, the Muccadam informed the complainant Bank that on the night of 07th and 08th March, 2010 some of the employees of the company, had for the third time, unauthorizedly removed 94 RF 70 CC Motorcycles which were pledged with the bank. Again on 27-04-2010, the Muccadam informed the complainant Bank that on the nights of 23rd and 24th April 2010, some employees of the company, with the blessings and on the order of the accused persons, broke the sealed lock on the godowns wherein the pledged motorcycles were placed and dishonestly removed 429 motorcycles of RF 70cc and 05 motorcycles from the pledged goods. That on 27-04-2010, the Muccadam lodged a report/complaint with the District Police Officer, Hyderabad for the aforesaid misappropriation of the pledge goods but as the accused persons are influential and powerful people, hence no action was taken against them. It was claimed that after the above four incidents of the unauthorized removal of the pledge goods, the accused persons promised to make the payment of lifted pledged goods but the accused persons failed to do so despite repeated requests/reminders of complaint in this regard. It was in the above background that Criminal Complaint No.43 of 2012 under Section 20(1)(b) read with Section 20(5) of the Financial Institution (Recovery of Finances) Ordinance, 2001 was registered against the accused persons Goharullah, Assadullah Barkat, Humayoon Barkat, Maqsood Ahmed Khan, Muhammad Saleem, Muhammad Ayub and Soofi Taj Muhammad, being Directors of Fateh Textile Mills Limited. However, upon an application under section 265-K Cr.PC. filed by accused No.5 (Muhammad Saleem), he was acquitted by the learned Court.

3. it is the case of the appellant against the impugned Order that clear offence of removal of pledged goods of hundreds of motorcycles was committed by the customer, which includes the present accused person as a director of the company; that the application under section 265-K Cr.PC. was filed by the accused with ulterior motives and by concealment of true facts of the case; that there is nothing on record to prove the innocence of the accused person; that the prosecution/Bank has prima facie a very strong case; that hearing of the application requires deeper appreciation of evidence; that the observations made by the learned Banking Judge amounts to finally deciding the criminal complaint on merits of the case, which is not permissible under the law at the stage of hearing of application under section 249-A Cr.PC.; and that such observations have been made by the learned Judge in the impugned Order, which has completely damaged and adversely impacted the case of the

Bank on merits of the complaint viz a viz other accused persons in the same offence.

4. Conversely, in support of the impugned Order, the sole argument presented by the Respondent/ accused Muhammad Saleem who is present in person, was that he was neither the Chief Executive of the company nor had signed any of the Letters of Pledge whereby the said motorcycles were pledged with the Bank. Further submitted that the subject complaint was filed by the bank against all the directors of the company, including the accused No.05, who had no role in the hypothecation or removal of the pledged motorcycles. Lastly argued that filing of such baseless criminal complaint against him was an abuse of court process.

5. We have heard and perused the record. Section 20 (1) (a) of the Ordinance provides that:

“20. Provisions relating to certain offences.

(1) Whoever--

(a) dishonestly commits a breach of the terms of a letter of hypothecation, trust receipt or any other instrument or document executed by him whereby possession of the assets or properties offered as security for the re-payment of finance or fulfilment of any obligation are not with the financial institution but are retained by or entrusted to him for the purposes of dealing with the same in the ordinary course of business subject to the terms of the letter of hypothecation or trust receipt or other instrument or document or for the purpose of effecting their sale and depositing the sale proceeds with the financial institutions;”

Whereas, sub-section (5) of the same provision provides,

“(5) Where the person guilty of an offence under this Ordinance is a company or other body corporate, the Chief Executive by whatever name called, and any director or officer involved shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly.”

6. In the present case, the borrower/customer is a company and a body corporate, hence sub-section 5 of section 20 of the Ordinance 2001 would be applicable, which clearly puts a pre-condition of involvement of a director or officer, for deeming to be guilty of the offence and liable to prosecution and punishment. Case of the Respondent before the learned Banking Court under section 265-K Cr.PC. was that, although he is a director of the customer/ borrower company, however even as per bank’s claim and documents, he was

neither involved in creation of the hypothecated goods, nor executed any Letter of Hypothecation, nor was ever involved in the alleged offence of removal of hypothecated goods, and therefore, sub-section 5 of section 20 is fully applicable to his case. Upon query, learned counsel for the appellant concedes that neither Letter of Hypothecation was signed by the respondent nor was any allegation of his personal involvement in the said offence of removal of hypothecated goods and there is nothing on the record to establish otherwise. In an identical case of *'Irslan Siddiq and 3 others v. The State and another'* (2005 CLD 1794), it was held that before any prosecution can be launched, it would have to be shown that the accused, as director of the company, was involved in the offence in question viz. violation of the letter of hypothecation. Based upon the above, it appears that the Respondent has been able to make out a case for grant of his application under section 265-K Cr.PC. During course of the hearing, learned counsel for the appellant has emphasized that while passing the impugned Order, certain observations and remarks have been made by the learned Banking Judge which are likely to seriously prejudice the merits of the case of the bank as against other accused persons, so also likely to adversely affect the case of the bank in other proceedings against the said company. The request appears to be fair. It is therefore ordered that the observations made in the Order dated 05.03.2016 passed by the learned Banking Court shall not be treated as a precedence in any proceedings, while dealing with the case of the appellant against the said customer company or its directors. It is further expressly observed that this Order shall also not prejudice the rights of the appellant bank as against the present Respondent, in any other proceeding, which shall be decided on its own merits in accordance with law.

7. Hence, in the peculiar facts and circumstances of the present case and based upon the statement of the learned counsel for the bank, this appeal stands disposed-off in the above term, which was accordingly disposed-off by our short order dated 12.03.2025 and these are the reasons for the short order, which was as follows:

“Heard learned counsel for the Appellant and the Respondent-in-person and for reasons to follow, the instant appeal stands disposed-off, with no order as to costs.”

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