

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Revision Appl.No.73 of 2016

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| Date | Order with signature of the Judge |
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Present:

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Syed Fiaz ul Hassan Shah.

Muslim Commercial Bank LtdVs.....Hussain Musa Lawai & others.

Date of hearing: 13.02.2026.

Date of decision: 27.02.2026

Syed Mustafa Ali alongwith Mr. Muhammad Ali Akhtar, Advocate for applicant.

Mr. Abid S. zuberi a/w M/s Agha Ali Khan Durrani, Muhammad Arif Ansari and Imran Mnwar Mahar, advocate for respondent No.1

Ms. Shazia Hanjrah, DAG.

ORDER

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MUHAMMAD IQBAL KALHORO J: This revision application has been filed against impugned order dated 01.04.2016 whereby Special Court (Offences in Banks) Sindh at Karachi has dismissed Criminal Direct Complaint No.63/1998 filed by applicant MCB bank and has acquitted respondent No.1u/s 249-A CrPC.

2. Record reflects that the complaint was filed initially against two accused including respondent no.1 by the bank alleging that respondent No.1 was its Ex-president and the other accused was proprietor of M/s ARY Traders carrying on business at Dubai and maintaining a current USD A/C MP/067 in the bank. The bank filed a suit No.1674/1997 before this court against the latter, namely Haji Abdul Razak, for recovery of 51,066208.70 USD. He in reply, in order to seek permission to defend the suit, produced two letters before the court (Ex.4-C and 4-D) issued purportedly by respondent No.1. The bank found the letters fake, prepared without approval of the Board of Directors (BoD) for giving wrongful gain to accused Abdul Razak and loss to the bank. Hence the aforesaid direct complaint was filed.

3. The record further reveals that accused Abdul Razak filed C.P.No.D-1640/2001 for quashing of the complaint, but this court dismissed the same vide order dated 04.05.2006. The order was challenged then before the Supreme Court (CA No. 2212/2006) but during its pendency the said accused expired and hence to his extent the appeal was ordered to be abated. However, meanwhile, respondent No.1 filed an application in the said appeal seeking his impleadment as a party. The said application along with the main appeal was disposed of by the Supreme Court vide order dated 01.01.2015 holding, in respect of respondent no.1, that he has his own individual rights, liabilities and remedies as regards criminal complaint. These are separate from those of appellant (Haji Abdul Razak). Order XV Rule 6 of Supreme Court Rules, 1980 may have had relevance had dismissal of the appeal affected any right or interest of Hussain Lawai (respondent No.1). The dismissal of the appeal (to the extent of accused Haji Abdul Razak) in no way effects his rights. He may adopt and pursue any remedy available to him under the law.

4. As a result, respondent No.1 recorded his appearance before the Special Court which on its own without there being an application by him passed an order dated 09.10.2015 calling upon the parties to satisfy it on the maintainability of the complaint. It seems that after hearing the parties, the Special Court went on to pass the impugned order in the terms as stated above in para 1. Hence this revision application.

5. Learned counsel for applicant has contended that the impugned order is a result of misappreciation of relevant law and facts; the Special Court has erred in holding that the complaint is incompetent for want of compliance of section 195(1) (c) CrPC as in the given facts, the same provision of law is not attracted; the Special Court has wrongly assumed that the power of attorney exercised by the complainant, an official of the bank, had expired after retirement of the President (respondent No.1) who had delegated him such authority through the said document. To prove the point, he has referred to section 174 of the Contract Act and section 2 of Power of Attorney Act, 1882. He also referred to all the relevant documents,

which he duly filed in the course of his arguments, including a board resolution, power of attorney to establish that even after retirement of the President/Chief Executing, the power of attorney executed by him sub-delegating powers to an officer of the bank, would survive. He has emphasized that the President while delegating powers to the complainant had acted as an agent of the principal which in this case is the bank, therefore, his retirement will not matter insofar as enjoyment of authority delegated to the complainant through power of attorney is concerned.

6. While drawing our attention to the complaint, he has urged that allegations against respondent No.1 are of committing offences u/s 406, 420 PPC, the former covers criminal breach of trust and the latter caters to cheating and dishonestly inducing delivery of property, both have nothing to do as far as forgery per se u/s 468 PPC is concerned. According to him, it is not the allegation that respondent No.1 has forged record of the bank to cause wrongful loss to the bank but that he has written these letters without required approval and sanction to give wrongful gain to deceased accused. He has further argued that the Special Court has erred in holding that the resolution authorizing the complainant to file criminal proceedings lacked proper and necessary details. According to him, the delegation of powers to commence prosecution and all allied actions etc. are clearly conferred upon the complainant through the Power of Attorney and there is no vagueness in this connection. Per him, grounds on which the Special Court has acquitted respondent No.1 do not fall within domain of section 249-A CrPC. He has emphasized that it is a trite law that once allegations are brought before the court, they cannot be summarily rejected unless an exercise to find out truth behind them is carried out; section 249-A CrPC can only be invoked when there is no probability of the accused being convicted of the offence or the charge is groundless. The technical grounds: the complainant lacked power to file the complaint will not induce a presumption that the allegations are groundless or the accused cannot be convicted of the charge emanating from such allegations. He urged that such defect is curable in that the Special Court could have called upon the bank to produce the original documents for deciding the complaint on

merits. In order to support his contentions, he has relied upon the case law reported in 2017 SCMR 56, PLD 2020 SC 366, 1983 SCMR 775, 2020 SCMR 500, 2007 SCMR 1017, AIR 1991 SC 1866, 1979 PLC 320, 2010 PLC 265 2024 P Cr.L J 2020, 2010 PLC 48.

7. On the other hand, learned counsel for respondent No.1 has questioned maintainability of this revision application by referring to section 10A of the Offences in Respect of Banks (Special Courts) Ordinance, 1984. He contended that the said provision in clear terms provide a right of appeal within 30 days to an aggrieved party in this behalf before the High Court; before introduction of the said provision there was no specific law catering for acquittal orders in banking offences and hence the revision application was maintainable. But, after the enactment of the said provision through an amendment dated 09.05.2016 in the Ordinance, 1984, gazetted on 10.05.2016, filing revision application to challenge the acquittal order was not competent. He chronicled the relevant dates and said this revision application was filed on 11.05.2016, after one day, hence was not maintainable, and this court in view of specific provision begetting a right to challenge acquittal cannot convert it into an appeal. Learned counsel further supported the impugned order and referred to various case laws to vouch for his submissions that the complaint was hit by the bar u/s 195 (1) (c) CrPC; the complainant lacked due authority to file the complaint and the impugned letters, the basis of complaint, had not been declared or adjudicated to be forged by any court of law. hence, filing of complaint on the basis thereof is bad and not sustainable in law He to enforce his contentions has relied upon the case law reported in 2016 PTD 1872, 2024 PLD SC 273, 1993 SCMR 1853 1949 PLD 301 Lahore, 1991 PLC 479 Sindh, 2013 P Cr. L J 18 Quetta, 1993 PLD SC 109, 2016 PLD 872 Lahore, 2020 CLD 872, PLD 1966 SC 684, PLD 1972 SC 550, 2015 CLC 1, 2020 SCMR 414, 2007 P Cr. L J 613, 2011 PLD SC 554, 1993 PLD SC 399, 2014 MLD 1431, 2021 YLR (N) 58, 2025 P Cr.L J 1095, 2024 P Cr. L J 1081 Lahore, 2022 P Cr. L J 392 Quetta, 2016 P Cr. L J 1457, 2013 YLR 1932 Lahore and 2008 P Cr. L J 1067.

8. Learned Deputy Attorney General did not go with the impugned order and urged that dismissal of the complaint and acquittal of accused on technical grounds was not warranted in law. She further said the fact that the President, who had authorized the complainant through the PoA to lodge the complaint etc., had retired meanwhile or was himself arraigned in the case will not impinge upon the authority of the latter to launch such proceedings. She was of the view that the bank was a corporate body in which the employees come and go, such activity will not hamper smooth working of the bank or upset delegation of various authorities conferred upon relevant employees to perform certain tasks on behalf of the bank with the approval of BoD. The bank or the BoD for this matter cannot be either required or expected to go into a flurry of a fresh activity of devising various instruments again and again for delegating relevant powers to bank officials each time when the President exit the bank.

9. We have considered points of view of the parties expressed above, perused the entire record and sought guidance from the cited case law. First, let us take up the question of maintainability of this revision application on the ground urged by the counsel representing respondent No.1. The impugned order was passed on 1.4.2016, and the revision application was filed on 11.5.2016 roughly after one month and nine days. The endorsement of copying branch affixed on the impugned order indicates that the copy was applied for on 1.4.2016, the very day when the order was passed. The cost/fee for the copy was estimated on 14.4.2016 and on the same day it was paid and the copy was delivered to the applicant. So, the fourteen days from 1.4.2016 to 14.4.2016, during which the copying branch did not estimate the cost, will not be counted for assessing the time consumed in filing the present application. With such deduction enforced, it would not be hard to extrapolate that the revision application was filed within 30 days, the same time, mandated by section 10A for filing acquittal appeal in.

10. The date of gazette of section 10A is 10.5.2016, a day before filing of the revision application on 11.5.2016. In one day,

presumably, it cannot be practically possible for every member of the legal community, or the relevant parties for that matter, to come to know of such change and resort to it next day for seeking the remedy. No doubt, it is a well-versed command that ignorance of law is no excuse but it has a particular reference that certainly has no relevance here for various reasons. The most important, but not the only one, is proximity of two actions – the gazette of new section and filing of pleadings under old arrangement next day. This entails that instead of out-rightly rejecting this application on such lapse, we should apply our mind and decide whether it was humanly possible for the counsel to gain knowledge of a fresh amendment in the relevant laws in 24 hours and invoke it next day. Of course, it is not easy to conceive a definite answer in this respect, as possibility exists both ways. But most probably it would be negative, because otherwise there is no reason as to why despite knowledge, the counsel would file this application under a wrong provision and make his case weak on the very onset. Admittedly, before introduction of section 10A, the approach, approved by various rulings of Superior Courts, was to file a revision application to challenge acquittal of the accused. None other than that was followed by the applicant for challenging the acquittal of respondent, and he did so just a day after the change in the law altering the terms of seeking such remedy.

11. In such scenario, whether this court should insist upon strict adherence to new provision, without giving benefit of one day's ignorance to applicant and throw this application out. Letting the application fail on this ground would result into an abrupt end of an exercise meant to uncover truth behind serious allegations of criminal breach of trust leading to huge financial losses to the applicant. Even the prospect that in the final analysis, such exercise could yield a result favorable to respondent N.1 will not dither the court from undertaking it. Because, firstly, such an outlook is always possible in every case, and secondly, in such eventuality, the law will take its course, and many remedies in law would be available to respondent No. 1. But endorsing the approach of premature dismissal on account of a minor lapse of one day will set a bad

precedent in law, effectually neutering the law's impeccable command demanding decisions on merits, rather than on technicalities.

12. Another question raised in arguments was over the terms of applicability of section 10A: whether it has retrospective effect or otherwise. Learned counsel for applicant in his arguments, contrary to the view of opposite party, contended that the language employed in the said provision – if an order of acquittal is passed -- strongly suggests that it has prospective effect. He urged that when the word 'if' is used in a sentence, it will point out to a future occurrence that has still not happened. But if it occurs, as is implied, then the consequence conjured up in the following sentence will materialize. His point of view was that the acquittal orders brought about before the said provision will not be qualified by it and would be questioned under the old scheme. However, we do not find ourselves in agreement with his understanding on this issue that the impugned order was not subject to section 10A. A sentence starting with 'if' does not necessarily and invariably allude to a future mechanism. At times, it points to a fact coated with uncertainty in the mind of the speaker, and suggests his unawareness or uncertainty of the implied action. The speaker therefore, in order to express it with maximum clarity uses 'if' and says if it is done, hinting that if referred action is already effected, it should meet ensuing consequences.

13. However, as suggested above, it could mean both the parameters, an action already performed and a future action. In our view both, depending upon the overall context in which it has been used, would stand qualified by upcoming stipulation following the sentence starting with 'if'. The sentence 'if an order of acquittal is passed' employed in section 10A would not mean only a future order. Since it is followed by express jurisdiction of this court to grant leave to appeal within thirty days of such order, it would also imply the order that has already been passed has a thirty days' time as a period of limitation to get questioned in this court. Otherwise, the provision would have simply said that an aggrieved party may file an application for a leave to appeal in this court within thirty days of

an order of acquittal, without explicitly mentioning that if the order is passed, which would have sufficiently and adequately conveyed that in future the acquittal orders would be subjected to this provision.

14. But when specific provision qua acquittal appeals has been introduced in the law and is specifically accompanied with a reference to order of acquittal that is passed, it would cover all such orders which had either come into being and yet not challenged, or the orders yet to be passed. It could not be the object of the legislatures, nor could it be understood to be the idea behind, that all such orders would continuously be questioned under the old dispensation, regardless of specific provision enacted in this regard in the relevant law. With such structure in mind, we may say that on the day section 10A was enacted, it became applicable. Thereafter, all acquittal orders, both, the ones already passed and not yet assailed, and the ones to be passed in future, befell to the condition coined therein, and subjected to new dispensation.

15. But, be that as it may, we have already held that due to one days lapse – which of course is not akin to a *lis* filed with a delay of one day of limitation, although that too is condonable in exceptional circumstances -- in resorting to new provision of law in peculiar facts of this case, this application cannot be thrown out. Not the least, when we know the cost otherwise would be very high and unconscionable: non-suiting the party without looking into *vires* of the impugned order dismissing prematurely the complaint alleging fraud and criminal breach of trust. Apart from above, since it is already discovered that filing of this application occurred within 30 days' time, the period stipulated in section 10A for seeking such remedy, in our view, its convergence into appeal shall not be held up by an exigency regardless of its authenticity. For a favor of this view various case law could be cited¹.

16. The Supreme Court in one of the cited cases (1983 SCMR 775) has elaborated eloquently that “jurisdiction of the High Court is wide

¹ 1983SCMR 775, 2007 SCMR 1017, 2020 SCMR 500.

and its revisional jurisdiction is, in its real purpose, not a mere power but a duty. This duty cannot effectively be discharged unless the High Court sees to it that the subordinate criminal courts conduct their proceedings strictly in accordance with law. The provisions of the procedural law are intended to achieve the principal purpose of the administration of criminal justice viz. that all infractions of the criminal law are duly and properly investigated and inquired into. It will be, therefore, startling proposition that the High Court should be disabled from discharging this very necessary duty simply because a party who could and should have appealed, makes the mistake of filing a revision or a party who is adversely affected by the result of the proceedings has not right to invoke the revisional jurisdiction to the High Court''.

17. In the light of such commentary on the point by the Supreme Court and our discussion above, we find this application maintainable on both the counts i.e. its filing under the old dispensation just a day after introduction of a new provision giving right of appeal to an aggrieved party within thirty days of acquittal order; or High Court's power to convert it into an appeal by considering that filing of this application, instead of an appeal, could be a bona fide mistake. Because, otherwise there is no reason why a party would intentionally invoke a wrong provision and invite wrath of the court over maintainability of its case. We therefore, finding the application competent overrule objection to its maintainability.

18. Now, we proceed to examine the grounds helping the trial court form an opinion against competence of the complaint. The trial court has found the complaint barred by section 195 (1) (c) CrPC on realization that the two letters giving rise to the complaint are subject matter of a civil suit which is still pending before this court and any findings on such letters could reflect (adversely) in the case of either party before this court. Irrespective of the fact that there is no bar in law to use a document in a criminal case already relied upon in a civil suit or vice versa, and it is not the subject matter of *ibid* provision, we have decided to look into the said provision in the context of the present case.

19. Section 195 (1) (c) CrPC stipulates that no court shall take cognizance of the offence u/s 463, or punishable u/s 471, 475 and 476 PPC when such offence is alleged to have been committed by a party to proceeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such court or of some other court to which such court is subordinate. For the present exposition, only sections 463 and 471 PPC are relevant, the remaining two provisions pertain to counterfeiting device or mark for authenticating documents.

20. In section 463 PPC, forgery has been defined to mean whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Then, when a person fraudulently or dishonestly uses any document in the court proceedings as genuine although he knows or has reason to believe that such document is forged one commits an offence u/s 471 that in terms of S. 195 (1) (c) CrPC cannot be taken cognizance of unless the court in which it is so used or the court higher to it makes a complaint in this regard.

21. From a joint reading of aforesaid provisions of law, few estimations are hardly avoidable. That a document or part of it has been forged, it has been used as genuine by the accused with the knowledge that it is forged one, and that it has been used in the court proceedings to hoodwink or misguide the court. The object of such forgery ostensibly is to deceive the court into believing the document as a genuine, so that the court, influenced by it, record a favorable opinion. When all such elements are available coupled with the fact that the court subsequently gains knowledge of such fraud, and realize that it has materially led it astray, it may decide to lodge a complaint against the accused for committing such an offence (u/s 471). All other cases of forgery (forgery for cheating purpose u/s 468 PPC et al), it may be noted, are not qualified by the condition in S.

195 (1) (c). They are treated normal cases and cognizable by the court on a complaint filed by the relevant person invoking the due process.

22. We may remind here that the current complaint was filed against the accused for committing offences u/s 406 and 420 PPC, the former provision prescribes punishment for criminal breach of trust and the latter for cheating and dishonestly inducing delivery of property. Both the provisions have nothing to do with the forgery of a document or the same being used in the course of a trial as a genuine one and deceiving the court to forge a lopsided opinion by relying upon it. The allegations are that respondent No.1 in the capacity of President of the Bank issued the two letters to deceased accused, who had been granted financial and over-draft facilities against, among others, execution of a promissory note, virtually relieving him of his obligations to repay the same.

23. When the deceased accused defaulted, the banking suit (1674/1997) for recovery was instituted against him and he as a defense filed those two letters and claimed that he was not liable to pay the said amounts. When the bank visited its record to verify such fact, it found no reference, and realized that respondent No.1 had written those letters personally without BoDs' approval to wrongfully benefit deceased accused and to cause wrongful loss to the bank, thereby breaching the trust of his office. There is no suggestion that the two letters are a result of some forgery per se in the original record, or that they were forged with an object to use them in a trial and deceive the court into forming a favorable opinion; or that the same have been used in evidence. On the contrary, these letters were prepared purportedly for a use to evade fulfillment of obligations that arose in the year 1994, much prior to production of the letters by deceased accused as a defense in the above suit filed in the year 1997. Hence, we do not find any apparent connection between allegations and the scheme both u/s 463 and 471 PPC warranting enforcement of section 195 (1) (c) CrPC in the present case.

24. There is another dimension to this aspect, before the Special Court found S. 195 (1) (c) CrPC attracted, and threw the complaint out on this score, deceased accused had already sought quashing of the complaint in CP No. 1640/2001 before this Court on the same ground. A Divisional Bench of this court while dismissing such ground has dilated upon it in depth in its order dated 4.5.2006, and held:-

“We have considered the arguments advanced at bar and are unable to subscribe to the plea raised by the learned counsel for the petitioner on the premises that the jurisdiction of the respondent No.2 was barred for taking cognizance in private complaint. The object of provision of law is to prevent prosecution by private process. Following requirements are required, to be satisfied before invoking provisions of Section 195 (1) (c) CrPC:-

Offence is alleged to have been committed by a party to any proceedings in any court.

That the offence is committed in respect of a document produced.

That the said document falls under sections 463 or 471,475,476 PPC.

Admittedly copies of the disputed letter are placed on record, whereas clause (c) contemplates production or giving in evidence the original document and not a copy thereof manipulated to defraud the respondent No.3, through cheating and fraud with intent to cause financial loss to the bank. The petitioner has been charged for commission of offences under section 406 and 420 of Pakistan Penal Code whereas provision of section 463 PPC are not attracted to the complaint, order of the respondent No. 2 dated 10.7.1998 explicitly reveals that the complaint was registered under section 403 and 420 PPC. In these circumstance bar contained in section 195 (1) (c) CrPC does not operate.

25. Noticeably, this order was challenged in the Supreme Court by deceased accused in the appeal but the same was abated on his demise. But, in the meantime, respondent here had filed an application to become a party therein with an intention to seek the same remedy on the said premises i.e. the complaint is incompetent in terms of S. 195 (1) (c) CrPC. The Supreme Court, however, instead of granting his request or even finding him entitled to a hearing on this score suggested him to pursue any remedy available to him under the law. Thereby, virtually choosing to not upset finding by a previous divisional bench of this court that the bar u/s 195 (1) (c) CrPC was not enforceable in this case.

26. After both the High Court and the Supreme Court had opted to not quash the complaint on this score, it utterly ill behoved the Special Court to choose to rebel against such findings and form a contrary opinion and acquit the accused u/s 249A CrPC on its own by ruling that dispensation u/s 195 (1) (c) was applicable in the case. We find such conclusion therefore unsustainable and set it aside.

27. The other ground influencing the special court to acquit respondent No1 u/s 249-A CrPC is lack of competency of the complainant to file the complaint. In this respect, it has observed that the power of attorney empowering the complainant to launch such proceedings was given by the accused himself in the capacity of being President of the bank. After his retirement, such power should come to an end, and thereafter the complainant should have no lawful right, power to sign, verify and present the direct complaint in the court of law.

28. The power of attorney dated 7.9.1992, available at page 309 of the file, clearly reflects that it is the bank mainly that appointed the complainant to be its true and lawful attorney for performing all acts, detailed therein, on behalf of the bank. The President only in the capacity of the Chief Executive had signed the said document. It was not an independent act by the President without the approval or knowledge of the BoD. He indeed followed what he had been instructed to follow. Therefore, it is clear that the complainant had acted, by filing the complaint, as a representative of the bank, and not an attorney of the office of the President of the bank. There is stark distinction between the two positions: a representative of the bank and a representative of the office of the president of the bank. The power of attorney given by the President subjectively to an official to run errands pertaining to bank affairs on his behalf may lose its authenticity once the said President leaves the office. But, the power of attorney executed by the President, in the capacity of himself a delegate, to any official of the bank to represent the bank on his behalf should not logically expire on exit of the President from the office. It shall survive, until and unless, some other official of the

bank is delegated the same powers by the President with the approval of the BoD.

29. Such delegation is not contingent upon incumbency of the President, who signs such document, because he does so as the Chief Executive of the bank under the authority conferred on him by the BoD. It goes without saying that even during tenure of the same President the delegation can be withdrawn and assigned to some other official of the bank. Therefore, the opinion of the Special Court that on exit of the then President – who himself is arraigned in the case -- the power of attorney in favour of the complainant should expire is not spot on.

30. To further elucidate this point and get support for our opinion, we may refer to Articles of Associations of the bank, a copy of which was filed by learned counsel for the applicant in arguments. Article 117 shows that general powers of the bank are vested in Directors. Article 120 (a) states that general control, direction and superintendence of affairs and business of the bank shall vest in the BoD which may exercise all such powers and functions and do all such acts, etc. And further, BoD may, through an appropriate resolution, decide to delegate all or any of powers to the Chief Executive and/or Executive Committee. The resolution passed in the BoD meeting dated 8.4.1991, a copy of which was produced by applicant's counsel in arguments, depicts that vide items IV and VI, a General Power of Attorney was to be executed in favour of the then President (respondent No.1), and he was to be vested with the power to manage and carry out management administration and control of the bank. In compliance, a GPoA dated 8.5.1991 was executed in favour of the President, and, among others, he was allowed to act for, on behalf of and in the name of the bank in relations to functions, businesses, etc. of the bank, and to such end was empowered to sign and execute all necessary deeds and documents. Through that resolution, he was also vested with the power to commence, prosecute, defend and/or appear in all suits, actions and legal proceedings filed in any court of law.

31. Respondent No.1, on assuming office of the Chief Executive and concomitant powers, himself executed the Power of Attorney dated 7.9.1992 delegating a portion of his powers pertaining to looking after litigation in the courts to the complainant. He did not derive such authority from air, or acted on his whims, but only in terms of clause 71 of GPoA that empowers him to appoint substitute(s) and delegate to such substitute all or any of the powers so conferred upon him. Thereafter, as is clear, whether or not respondent No.1 remained in the office of the President had no relevance or effect insofar as delegation of such power on the complainant was concerned. Because, essentially, when he executed relevant PoA in favour of the complainant, he did not act independent of, or above and over powers conferred to him by the BoD for running the businesses of the bank, but only as a delegate himself in compliance to what had already been bestowed upon him.

32. This view that PoA will survive in such circumstances finds favour in none other than a provision of law. Section 194 of the Contract Act guides impeccably in this connection and says that where an agent (the President here), holding an express or implied authority to name another person to act for the principal (the bank here) in the business of the agency, has named another person (the complainant here) accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

33. Section 196 of *ibid* law further spawns this scheme by conferring a right of ratification (implied or express) to a person without whose authority certain acts are done for him. It says that where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effect will follow as if they have been performed by his authority. In this case, the bank has never disowned or ever took exception to authority of the complainant to lodge the instant complaint and pursue it accordingly, on the contrary by filing this revision application against the impugned order the

bank has ratified such authority to him expressly, and has confirmed in fact that the complainant has acted under its instructions.

34. This whole concept of executing Power of Attorneys by Heads or BoDs of corporate bodies generally revolves around idea of providing substitution to such officers at times when due to complexities of their working or for any other valid reason, they are not able, although required, to be physically present at the given place and time and represent the corporation. Its main object is to ensure the smooth and unhindered day to day working of relevant body and avoid all possible situations that may throw a spanner and create bottlenecks affecting adversely its production. The courts are required to keep in mind such aims and objects while approaching the relevant documents and substitutions generated by them, and avoid attempting to find some loophole in them and disregard the privilege conferred by such documents.

35. In order to further understand the relevant scenarios surrounding working of incorporeal bodies such as the banks and the problems faced by them in the courts while either instituting litigation or defending the ones pending against it, we are referring to the case law² cited by the counsel for the applicant. A single bench of this court in this case has observed that there is no cavil in it that corporeal person, who is capable of making a physical appearance, should appear in the court himself to file a complaint. But if a complaint is made in the name of an incorporeal person (eg. a company or corporation), the situation is different. A company is a legal entity and being a body corporate, it does not have a soul, body, mind, limbs to walk into the Court for filing a complaint. It is the demand of common sense and practical wisdom that in such a situation even for a criminal complaint, the Court should allow a company to present a criminal complaint in the Court represented by some corporeal or natural person connected with the affairs of the company having complete knowledge about the issue or nature of the complaint. The person connected with the affairs of the company,

² PLD 2019 Sindh 670 *Mir Shakil UR Rehman Vs. Messers Creek Devekopers and another.*

in the normal course of business, may be either its manager, partner, managing partner, director, managing director or any other person authorized by the company.

36. In the same decision, this court has further observed that for moving the criminal law in motion, rather than such an authority usually required for a civil action in shape of power of attorney or a resolution, it is more important that the matter is reported by a person who is well aware with the facts and if he is connected with the company in any of the aforesaid position, even a formal authority is not necessary. However, if he does not have some key position in the company, then an authority given to such person is sufficient to file a criminal complaint on behalf of a company.

37. The above ruling qua the point that we endorse utterly finally settles the dust when it holds that for lodging a criminal complaint for or on behalf of an incorporeal body even a formal authority is not required to be bestowed upon the complainant, if he in any way is connected with the company and is aware of the relevant facts constituting the alleged offence. And it is only when he is not holding a privileged-position, making him a part of decision-making process, and granting him ingress to the facts necessary for launching such proceedings, such authority may be needed. Going by it, we are clear in mind that the finding of the Special Court that the complaint was incompetent for want of due authority to lodge the complainant is not sustainable.

38. The last ground which prevailed upon the Special Court to dismiss the complaint and acquit the accused is so-called vagueness i.e. absence of necessary details in the resolution through which the BoD disowned the two letters cited by deceased accused in defense in the banking suit, and decided to pursue criminal remedy. The objection of the Special Court is that it does not bear names of the directors endorsing it, nor does it have signatures of them, nor does it have a detail of process through which authority was given to the complainant. How the complainant got the authority to file the complaint, we have, in preceding paras, thoroughly explained by pointing out chronologically to, among others, relevant items of

Articles of Association, clauses of General Power of Attorney executed by BoD in favor of the then Chief Executive of the bank, and him executing Power of Attorney delegating relevant powers including the power of lodging the complaints to the complainant.

39. Aside from such detailed analysis leading us to discover power of the complainant to undertake lodging of the complaint, we are of the view that any question to dependability of resolution shall not in ordinary course be made a basis of premature dismissal of a criminal complaint, once it is registered and brought on regular file, unless all such questions are properly enquired by the court with an opportunity given to the complainant to satisfy it. It is only after such process when the court is still not convinced, it can take a penal action such as the one impugned here. In the present case, the Special Court could have sent for original copy of the resolution or minutes of the meeting in which such resolution was passed to satisfy itself of its legitimacy, if it had any qualms about its validity in respect of authority of the complainant, and proceeded with the trial on merits.

40. Choosing to dismiss the complaint on this ground, in our humble view, precipitated miscarriage of justice because the Special Court instead of undertaking rigor of calling necessary record and seeing it through for making a decision on merit preferred a shortcut and laid its hands off prematurely. Without even realizing that even if any of such prospects existed (some ambiguity over authority of the complainant to represent the bank in the case), it was not sufficient to lead to any presumption of the charge being groundless, or absence of probability of conviction of the accused, the two indispensable stipulations, the presence of which is foremost essential for giving a benefit to the accused u/s 249-A CrPC.

41. The Special Court did not appreciate either that, as is held above, a formal authority was not needed to make the complaint maintainable. Unless the court had reasons to assume that the complainant did not enjoy such a position in the company making him conversant with the facts of the case and capable of adducing the relevant evidence. But before forming such a view and dismissing the case in haste, the court, as we have ruled above, will first demand

production of original documents in an attempt to dispel its suspicion about maintainability of the complaint or the authority of the person who has brought it. Only in the cases, when despite an opportunity and notice, the complainant fails to comply with such directions, or is unable to satisfy the court on such score, the court would resort to penal dispensation and dismiss the complaint.

42. The reason of our observation that the Special Court acted hastily in this case without demanding production of relevant record to satisfy itself is the fact that learned counsel for the bank in his arguments has produced a complete copy of the resolution dated 18.2.1998. It not only bears the names of attendee directors but also their signatures. They have categorically disowned the two letters and have observed that the said letters have been written by Ex-President (respondent N0.1) in breach of trust and are manipulated with the intention to defraud the bank, were contrary to the Banking Companies Ordinance, and were ultra vires the powers of the bank. On a perusal of the said copy, it has become clear to us that there is no ambiguity in the resolution or the decision made thereby by the BoD relating to the said two letters and initiating criminal prosecution against those responsible for them.

43. In view of above discussion, we are of a humble view that the impugned order and the conclusions drawn therein on relevant points are not sustainable, and acquittal of respondent No.1 based on them is not justified. We accordingly set aside the impugned order and restore the complaint to its original position for a trail to be held in accordance with the law.

The Revision Application is disposed of in above terms along with pending applications.

JUDGE

JUDGE