

NAB Acquitted:

Owais - put his signature in good faith and not person who sanctioned loans

Nadeem - Pros failed to prove his signature

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IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Accountability Acquittal Appeal No.07 of 2017

Present:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Mohammad Karim Khan Agha

Appellant	The State, through Chairman, National Accountability Bureau, through Mr. R.D. Kalhoro, Special Prosecutor, NAB.
Respondents	Owais Asif Khan and Nadeem Ilyas through Mr. Muhammad Rafiq Kamboh, Advocate
Date of hearing:	01.04.2019
Dated of Announcement	09.04.2019

JUDGMENT

Mohammad Karim Khan Agha, J.- The National Accountability Bureau (NAB) filed Reference No.32 of 2007 the State v. Latif Baig and others for corruption and corrupt practices under Section 9 of the National Accountability Ordinance, 1999 (NAO). Initially there were 14 accused in the aforesaid reference who were sent up for trial. However, all of these accused apart from the respondents (Owais Asif Khan and Nadeem Ilyas) and Latif Baig (who died during the course of trial) either entered into a plea bargain with the NAB as approved by the trial court and as such stood convicted or remained as absconders with the result that the trial only proceeded against the respondents and Latif Baig who died during trial.

2. After a full dressed trial, where the NAB examined 10 witnesses and exhibited numerous documents and other items in order to prove its case and the respondents through their statements under S.342 Cr.PC denied the allegations leveled against them and claimed their innocence through judgment dated 27.03.2017 the respondents were acquitted of the charge (impugned judgment) and hence the NAB being aggrieved and dissatisfied with the impugned judgment has filed this appeal against the acquittal of the respondents.

3. The brief facts of the prosecution case as per NAB Reference No.32 of 2007 in essence are that numerous banks officials of the National Bank

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of Pakistan (NBP) including Latif Baig and respondent Owais Asif Khan colluded and connived with other private co-accused including respondent Nadeem Ilyas to, amongst other things, fraudulently process loans which benefited the accused and caused a loss to the NBP through the misuse of authority of the bank officials.

4. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 27.03.2017 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

5. Learned counsel for the NAB contended that the impugned judgment suffered from a number of legal infirmities and should be set aside and the respondents be convicted. With regard to respondent Owais Asif Khan he submitted that he had prepared some of the pay orders which had caused a loss to the bank and as such he should be convicted. With regard to respondent Nadeem Ilyas he submitted that the trial court had found that Nadeem Ilyas' signature on the relevant documents had not been proven whereas there was more than sufficient evidence on record which had proved the signature of Nadeem Ilyas on the documents as being genuine and as such he should also be convicted

6. This appeal against acquittal had not been admitted for regular hearing although Mr. Muhammad Rafiq Kamboh put in his appearance on behalf of the respondents and contended that the impugned judgment had been decided in accordance with the law and did not require any interference.

7. We have heard the Special Prosecutor NAB and considered the record as well as the impugned judgment.

8. From the impugned judgment it seems that the learned trial court acquitted respondent Owais Asif Khan for the following reasons at typed page-25 of the impugned judgment which is set as under:-

"Complainant in his statement did not implicate accused Owais Asif Khan in the commission of the offence as well as PW Syed Najam ul Hassan deposed that the accused had signed the pay orders in good faith. The Investigating Officer also supported the statement of the complainant to the effect that the complainant did not produce any incriminating evidence against accused Owais

Asif Khan. The I.O. also deposed that as per circular bearing No.92 dated 11.04.1992, it was the sole responsibility of the Bank Manager to process the loan application and forward the same to the sanctioning authority to which accused Owais Asif Khan has no concern as he was not associated with the grant of Finances. In cross examination the Investigating Officer had admitted that accused Owais Asif Khan did not put his signature on pay order in capacity of passing authority, therefore, the case against him was setup on presumption and surmises. Mere preparation of pay orders and signing would not constitute the offence of corruption. Abundance of evidence is available that accused Owais Asif Khan prepared / signed instrument in good faith as per routine practice. Moreover, none of the prosecution witness appearing from bank even uttered a single word against conduct as well as criminal intent of accused if he was indulged in any monetary gain in connivance with co-accused Latif Baig. Despite of the pendency of the Reference accused Owais Asif Khan was allowed to serve the bank and presently he is serving as Vice President at National Bank of Pakistan. There is no evidence on record that accused had intention to get any benefit or favour for himself for any other person or to render the attempt to do so."

9. From our review of the record and appreciation of the evidence it would appear that the accused Latif Baig who was the Bank Manager of NBP and who died during the trial was the main accused in the scam. It appears that no incriminating evidence has been brought on record against the respondent Owais Asif Khan. It was also the sole responsibility of the Bank Manager (accused Latif Baig and not respondent Owais Asif Khan) to process the loan applications and forward them to the sanctioning authority to which respondent Owais Asif Khan had no concern. Respondent Owais Asif Khan seems to have simply put his signature on the pay orders in good faith as a matter of routine practice without any criminal intent on his part. Under these circumstances we are of the considered view that the trial court vide the impugned judgment has rightly acquitted respondent Owais Asif Khan by extending to him the benefit of the doubt and thus we do not find any legal infirmity in the impugned judgment with respect to respondent Owais Asif Khan which would justify our interference with the same. .

10. With regard to respondent Nadeem Ilyas it appears that the trial court has acquitted him for the reasons as set out at typed page-27 of the impugned judgment which reads as under:-

"Reverting to the case of accused Nadeem Ilyas, the learned defence counsel contended that none of the Prosecution witness has implicated him in the commission of offence except the

Investigating Officer Javed Ahmed Khan, who deposed that accused Nadeem Ilyas in connivance with co-accused Syed Mumtaz Rizvi processed the loan in advance on the basis of fake documents. The learned defence counsel pointed out that the I.O. in his cross examination has admitted that the accused Nadeem Ilyas was neither borrower nor Guarantor or Introducer. Moreover, the I.O. has further admitted during his cross examination that he cannot say that the signatures appearing on the application of Nadeem Ilyas pertain to him are fake. Per learned defence counsel there is no incriminating document which may connect him with the alleged offence.

On the other hand the learned Special Prosecutor NAB argued that accused is liable to be convicted on the basis of documentary evidence.

On appraisal of the evidence more particularly application dated 18.09.2006 Ex.14/10 on which accused has denied his signature, the Investigating Officer has deposed that it was not confirmed whether the signature of accused Nadeem Ilyas are genuine. It was the duty of prosecution to send the signature of accused upon the document with admitted signature to handwriting expert. It is established principle of criminal administration of justice that before convicting any person, the prosecution is required to establish beyond any reasonable doubt the ingredients constituted the offence and if there is any lacuna, infirmity or doubt it should always been resolved in favour of accused person."

11. From our review of the record and appreciation of the evidence the key aspect with regard to respondent Nadeem Ilyas is whether his application dated 18.09.2006 Exh. 14/10 bears his genuine signature. In his statement under S.342 Cr.PC respondent Nadeem Ilyas has denied the signature. The I.O. has also not been able to confirm that the signature on the application is the genuine signature of Nadeem Ilyas. As the learned judge has rightly pointed out it was the duty of the prosecution to prove the genuineness of Nadeem Ilyas signatures. However, the prosecution did not call a handwriting expert to prove the genuineness of the signature and as such it could not be proved beyond a reasonable doubt that the signature on the application was the genuine signature of Nadeem Ilyas. Furthermore, the Judge, as he (she) is entitled to do under the law may make a comparison of Nadeem Ilyas' signatures on the aforesaid application with his signatures on his Section 342 Statement and found them to be dissimilar. Under these circumstances in our considered view the trial court has rightly extended the benefit of doubt to the respondent Nadeem Ilyas and acquitted him of the charge and thus we do not find any legal infirmity in the impugned judgment with respect to

respondent Nadeem Ilyas which would justify our interference with the same.

12. In reaching the above conclusion in respect of each of the respondents we have kept in view that it is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is double as held by the Honorable Supreme Court of Pakistan in the above referred judgment.

13. Thus, keeping in view the above law and our analysis of the evidence on record and the impugned judgment, we find that the respondents have rightly been acquitted of the charge by the impugned judgment as the findings of the trial court are neither perverse nor speculative but rather well reasoned and we find no reason to interfere with the same and as such the appeal against acquittal of the respondents is dismissed in limine.

14. The appeal against acquittal of the respondents is disposed of in the above terms.