

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Revision Application No. 272/2022

Cr. Revision Application No. 283/2022

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Cr. Revision Application No.01 /2023

Applicant : Mubarak Ali Heerani
Cr. Rev. No.283/2022 Through Mr. Muhammad Azhar, advocate.

Applicant : Suleman Virani
Cr. Rev. No.272/2022 Through M/s Aftab Ahmed, Owais Ali Shah &
& 01/2023 Khadija Azizullah, advocates

Respondents 1 to 3 : The State
Through Mr. Neel Parkash Parmer, APG

Respondent No.4 : Mst. Malika Nazim & others
Through Mr. Shamim Alam, advocate

Date of hearing : 16.04.2025

Date of order : 12.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant Mubarak Ali Heerani has preferred Criminal Revision Application No. 283 of 2022, whereas the applicant Suleman Virani has filed Criminal Revision Application No. 01 of 2023, both calling in question the judgment dated 16.11.2022, passed by the learned Sessions Judge, Malir, Karachi, whereby the conviction and sentence recorded by the learned Judicial Magistrate/Magistrate Consumer Protection, Malir, Karachi in Criminal Case No. 122 of 2021, emanating from FIR No. 127 of 2021, registered at Police Station Sachal, offence under Sections 420, 468, 471, 506, and 34 PPC were maintained. In the said proceedings, both applicants were convicted under Section 420 PPC and sentenced to two years' simple imprisonment along with a fine of Rs.30,000/- each, with a further sentence of three months' simple imprisonment in case of default in payment of fine. They were also convicted under Section 471 PPC and

sentenced to one year's simple imprisonment, with all sentences ordered to run concurrently. In addition, Criminal Revision Application No. 272 of 2022 has been filed against the order dated 24.11.2022, whereby the learned Sessions Judge dismissed an application under Section 426 CrPC seeking suspension of sentence pending appeal.

2. The learned counsel appearing for the applicants have contended that the applicants have been falsely implicated in a case that, in essence, is rooted in a civil dispute. It is asserted that the prosecution has failed to bring on record any cogent evidence establishing criminal intent or culpability of the applicants. Particular emphasis has been laid on the fact that the FIR was registered after an inexplicable and inordinate delay of nearly fifteen years, without satisfactory explanation for such lapse of time. This delay, it is argued, erodes the credibility of the prosecution's version and taints the reliability of the evidence tendered.

3. It is further contended that the complainant herself is an educated lady who failed to take timely steps to safeguard her interests and only approached the police years after the transaction. It is pointed out that the co-accused, Qamar Iqbal, was acquitted on the same set of facts. It is further asserted that the applicants were associated with a different project, namely "Noorani Villas," and not with "Noor-e-Ali Residency," which is the subject of the complainant's grievance. The complainant, despite claiming to have paid a sum of Rs.800,000/-, has not produced any receipt or written acknowledgment bearing the signatures of either of the present applicants, particularly Suleman Virani. Moreover, during cross-examination, the complainant admitted to having filed Civil Suit No. 954 of 2019 against certain accused persons, in which applicant Suleman Virani is not even impleaded as a party.

4. Conversely, the learned Prosecutor General Sindh and the learned counsel for the complainant have supported the impugned judgment and submitted that the prosecution had discharged its burden through documentary evidence, including bank record reflecting the transfer of Rs.800,000/- to a joint account of the accused, and a letter from the Sindh Building Control Authority (SBCA) indicating that Noor-e-Ali Residency was an unapproved project. It is argued that the applicants

misled an overseas Pakistani into investing in a fraudulent scheme using false documents.

5. On perusal of the record, it emerges that the FIR pertains to events alleged to have occurred in or around the year 2006, whereas the FIR itself was lodged on 02.02.2021, thus indicating an unexplained delay of about 15 years. It is a settled principle of criminal jurisprudence that such inordinate and unexplained delay in lodging the FIR, particularly in offences involving allegations of documentary fraud or inducement, substantially weakens the prosecution's case. The trial Court appears to have overlooked the material effect of this delay and failed to accord due consideration to this aspect, despite the complainant being an educated individual with ample opportunity to initiate legal proceedings earlier.

6. Moreover, the trial Court failed to take note of several contradictions and material omissions in the testimony of the complainant (Mst. Malka). During her cross-examination, the complainant conceded that she did not possess any receipt or documentary proof evidencing direct payment of any amount to applicant Suleman Virani. She also acknowledged that she did not nominate him in any complaint before the Aga Khan Arbitration Board, Assistant Commissioner's office, or the Deputy Commissioner's office. Her evidence regarding who received the money, whether Mubarak Ali or Suleman Virani, remains inconsistent and ambiguous. These inconsistencies were neither addressed nor resolved by the learned trial Court.

7. It further appears that no incriminating material was recovered from either applicant to substantiate the allegation that they had forged or used forged documents as genuine. No printing material, stamps, or forged seals of the purported "Noor-e-Ali Residency" project were found in their possession. The mere production of documents bearing the alleged project name, without proof of their origin, authenticity, or connection to the accused, cannot suffice to satisfy the rigours of criminal law, particularly in the absence of recovery or identification of the means used for such alleged forgery.

8. Insofar as the conviction under Section 471 PPC is concerned, the legal requirements of the said provision are well settled. Section 471 PPC reads:

“Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.”

9. Thus, in order to sustain a conviction under Section 471 PPC, the prosecution must prove three essential ingredients: (i) that the document in question was forged; (ii) that the accused used it as genuine; and (iii) that the accused knew or had reason to believe that the document was forged. In the instant case, the prosecution has failed to establish any direct use of forged documents by either of the applicants. No specific forged document has been demonstrated to have been used by the applicants as genuine with the requisite knowledge or intention.

10. The SBCA letter, relied upon by the prosecution, merely states that Noor-e-Ali Residency was not an approved project. However, there is no document or evidence indicating that either of the applicants submitted or used any forged document to secure such approval or to induce the complainant. The record also reflects that the applicants were associated with Noorani Villas, a separate housing project, and not Noor-e-Ali Residency. The distinction between the two projects has not been adequately addressed by the prosecution. Mere association with a housing venture, without more, cannot amount to use of a forged document as genuine within the meaning of Section 471 PPC.

11. Furthermore, the pendency of a civil suit (Suit No. 954/2019) by the complainant herself concerning the same subject matter clearly indicates the existence of a contractual dispute, which, in the absence of evidence of dishonest or fraudulent inducement, militates against the prosecution's attempt to convert what is essentially a civil matter into a criminal offence. It is a well-entrenched principle that criminal law should not be used to enforce civil obligations or as a pressure tactic in civil disputes.

12. The right to fair trial and defence guaranteed under Article 10-A of the Constitution was also compromised during trial proceedings. The learned defence counsel was not afforded a fair opportunity to fully cross-examine the complainant, which further vitiates the proceedings.

13. Having regard to the totality of circumstances, namely the prolonged and unexplained delay in initiating criminal proceedings, contradictions and inconsistencies in the prosecution evidence, absence of proof of forgery or use of forged documents as genuine by the applicants, failure to establish dishonest inducement ab initio, the civil nature of the dispute, and material irregularities in trial, the conviction of the applicants under Sections 420 and 471 PPC cannot be sustained on the touchstone of criminal jurisprudence and the standard of proof required in criminal cases.

14. It is also a matter of record that the complainant appeared before this Court and categorically stated that she had grown weary of the prolonged and cumbersome process of litigation. She further deposed that the accused persons had returned the disputed amount and settled the matter with her amicably, and she, therefore, had no objection if the instant revisions were allowed. In view of the above, it is significant to note that the principal offence under Section 420 PPC is compoundable, whereas the ancillary offence under Section 471 PPC is not compoundable. The punishment awarded under Section 420 PPC is two years, while only one year's sentence has been awarded under Section 471 PPC. Since the complainant has expressed no objection regarding the major offence under Section 420 PPC and the accused have remained incarcerated for a substantial period, it would serve the ends of justice not to remand the matter for compromise proceedings in respect of the non-compoundable offence under Section 471 PPC. Furthermore, the record reflects material contradictions, omissions, procedural lapses, and flaws in the prosecution case. Taking an overall view of the matter, and particularly in light of the complainant's stance, the age of the case, and the incarceration already suffered by the appellants, both revisions are hereby allowed. The conviction and sentence awarded to the applicants Mubarak Ali Heerani and Suleman Virani by the learned Judicial

Magistrate/Magistrate Consumer Protection, Malir, Karachi in Criminal Case No. 122 of 2021 and upheld by the learned Sessions Judge, Malir, Karachi vide judgment dated 16.11.2022 are hereby set aside. The applicants are acquitted of the charges. All three Criminal Revisions stand disposed of along with pending application(s).

J U D G E