

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.55 of 2018

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Applicant : Faisal Akram S/o Muhammad Akram Khan
Through Mr. Iftikhar Javaid Qazi Advocate.

Respondent No.1 : Ahmer Zia S/o M. Ziauddin Qureshi,
Through Mr. Nadeem A. Pirzada Advocate.

Respondent Nos.2 &3: Farhat Hussain & Shaikh Muhammad Arif
Through Mr. Mujahid Bhatti, Advocate.

Respondent No.4 : The State
Through Mr. Irshad Ali, Assistant Attorney General.

Date of short order : 12.10.2026.

Date of reasons : 15.10.2026.

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – Through the instant criminal revision application, the applicant has called in question the judgment of acquittal rendered by the learned Special Court (Offences in Banks), Sindh, Karachi, in Special Case No.120 of 2011, arising out of FIR No.59/2011 registered at FIA Commercial Banks Circle, Karachi, for offence under sections 409, 420, 468, 471, 34 and 109, P.P.C., whereby respondents Nos.1 to 3, namely Ahmer Zia, Farhat Hussain and Shaikh Muhammad Arif, were acquitted of the charges levelled against them. The applicant seeks reversal of the impugned judgment on the premise that the learned trial Court failed to appreciate the prosecution evidence in its proper perspective and consequently arrived at an erroneous conclusion.

2. Briefly stated, the prosecution case originated from a complaint lodged by Faisal Akram, Director of M/s Pakland Corporation (Pvt.) Limited, alleging that Kazim Ali Subhan, Finance Manager of the company, in connivance with officials of Soneri Bank Limited, Bahadurabad Branch, Karachi, fraudulently withdrew Rs.7,975,000 from the company's account on

04.11.2011 through four cheques bearing Nos.10025656, 10025654, 10025657 and 10025655, allegedly containing forged signatures of the authorized signatory, Mst. Sameera Faisal. It was alleged that the bank officials processed and en-cashed the instruments without obtaining the requisite call-back confirmation from the account holder. Initially, FIR No.750/2011 was registered at Police Station Ferozabad, Karachi, where after the matter was transferred to FIA for want of jurisdiction, culminating in registration of the aforesaid FIR.

3. Upon investigation, the prosecution attributed the principal act of procuring, presenting and obtaining payment against the questioned cheques to Kazim Ali Subhan, who absconded. Respondent Ahmer Zia was implicated in his capacity as Branch Manager, Farhat Hussain as Chief Cashier and Shaikh Muhammad Arif as Operations Manager, on the allegation that they processed, authorized and facilitated payment of the disputed instruments in disregard of the prescribed banking procedures. The prosecution relied upon the questioned cheques, forensic examination report, internal audit material, banking instructions and statements of the complainant, authorized signatory and other witnesses. Following submission of the challan, the learned trial Court framed the charge, to which the accused pleaded not guilty and claimed trial. The prosecution examined its witnesses and thereafter closed its side. Statements of the accused under Section 342, Cr.P.C., were recorded, wherein they denied the allegations and maintained that the transactions had been processed in the ordinary discharge of their banking functions. They neither examined themselves on oath nor produced defence evidence. Upon conclusion of the trial, the learned Special Court acquitted the respondents, giving rise to the present proceedings.
4. Learned counsel for the applicant contended that the prosecution had established the fraudulent encashment of four cheques involving a substantial amount and that the forensic opinion conclusively demonstrated that the signatures appearing thereon were not those of the authorized signatory. According to him, the respondents were responsible for verifying the instruments and ensuring compliance with banking regulations before permitting payment. Their failure to obtain call-back confirmation, particularly in respect of unusually large withdrawals, coupled with their participation in processing and disbursement of the amount, furnished sufficient circumstances to establish their complicity. He maintained that the learned trial Court had improperly treated these

circumstances as mere negligence, overlooking their cumulative effect, and prayed that the impugned judgment be set aside.

5. Conversely, learned counsel representing the respondents supported the judgment of acquittal and submitted that the prosecution had failed to establish any dishonest intention, prior agreement and intentional assistance or sharing of proceeds on the part of their clients. They argued that the entire incriminating material concerning preparation and presentation of the questioned cheques, receipt of money and its subsequent utilization related to absconding accused Kazim Ali Subhan. The respondents had merely discharged their respective official functions and, even if some procedural lapse were assumed, such omission could not, without proof of criminal intention, constitute offences under the provisions invoked. It was further submitted that neither any departmental inquiry finding nor other independent material had been produced establishing that the respondents had deliberately facilitated the fraud. Reliance was placed upon 1990 P.Cr.L.J. 1170¹ and 2011 YLR 105². Learned Assistant Attorney General was also heard.
6. We have given anxious consideration to the submissions advanced by learned counsel and have independently examined the prosecution evidence, the documents brought on record and the findings recorded by the learned trial Court. The controversy essentially requires determination whether the evidence establishes conscious participation of the respondents in the alleged fraudulent transaction or merely discloses negligence in the performance of their banking duties; whether the prosecution succeeded in proving the essential ingredients of the offences charged; and whether the impugned acquittal suffers from such illegality, perversity or material misreading or non-reading of evidence as would justify interference in revisional jurisdiction.
7. At the outset, it may be observed that the allegation of fraudulent withdrawal rests principally upon four cheques aggregating Rs.7,975,000. The forensic examination report, bearing No.FD/QD/165/11, recorded that the questioned signatures did not match the specimen signatures of Mst. Sameera Faisal. The report is undoubtedly a material circumstance concerning the authenticity of the instruments. Nevertheless, the distinction between proof of forgery and proof of the identity and participation of its perpetrators must be maintained. A finding that the

¹ Rana Iqbal Ahmad v. The State

² Sher Dil Khoso v. The State

signatures were forged does not, by itself, establish that the respondents forged them, knew them to be forged, or intentionally facilitated their use. The prosecution was required to establish such knowledge or participation through legally admissible evidence. No material has been identified demonstrating that any respondent prepared the questioned cheques, procured the signatures, altered the instruments or participated in their fabrication.

8. The prosecution evidence further indicates that Kazim Ali Subhan, being Finance Manager of the complainant company, was acquainted with the banking affairs of the company and frequently visited the branch in connection with its transactions. The disputed cheques were presented by him, and the proceeds were received by him. The investigative material also refers to his subsequent purchase of foreign currency and other financial transactions. These circumstances may furnish incriminating material against the absconding accused, but they cannot automatically be extended to the respondents merely because they were bank officials associated with processing the payments. Criminal liability is individual and cannot be inferred from official designation or departmental hierarchy alone.
9. The prosecution attributed to respondent Ahmer Zia supervisory responsibility as Branch Manager, to Shaikh Muhammad Arif the verification and authorization of the instruments as Operations Manager, and to Farhat Hussain the processing and disbursement of cash as Chief Cashier. These acts, viewed independently, were consistent with the functions ordinarily performed by officers holding their respective positions. To transform such official acts into criminal misconduct, it was incumbent upon the prosecution to establish that the respondents acted dishonestly, with knowledge of the forged signatures or in furtherance of a common fraudulent design. No evidence of any prior arrangement with Kazim Ali Subhan, receipt of unlawful consideration, sharing of proceeds and fabrication of banking entries or deliberate concealment of the transaction has been brought on record.
10. Considerable emphasis was placed upon the alleged failure to obtain call-back confirmation and to observe the bank's prescribed procedures. The relevant banking circulars and internal audit material undoubtedly assume importance in determining whether the transactions were processed with the requisite professional care. However, the legal consequences of negligence must not be confused with those of criminal participation. An

omission to follow an internal procedure, even if established, may furnish grounds for disciplinary action or other liability under the applicable law, but it does not necessarily establish dishonest misappropriation, cheating, forgery, use of a forged document with knowledge of its falsity, or intentional abetment. The prosecution was required to prove the requisite mental element by evidence, rather than presume it from the occurrence of the fraudulent withdrawal.

- 11.** The internal audit material, as referred to in the investigation, attributed the fraudulent transactions to forged signatures and deficiencies in verification and call-back confirmation. Significantly, no departmental inquiry report or other independent material has been produced showing that any respondent was found responsible for deliberate collusion, dishonest misconduct or fraudulent appropriation. We hasten to add that a departmental finding is not a legal prerequisite for criminal prosecution, nor would its absence alone establish innocence. The significance of the omission in the present case lies in the fact that the prosecution has otherwise failed to produce convincing evidence connecting the respondents with the dishonest design attributed to the absconding accused.
- 12.** The documentary evidence relating to the account maintained by Kazim Ali Subhan further shows that on 04.11.2011 an amount of Rs.160,500 was deposited into his account, where after Rs.125,000 was utilized for obtaining a banker's cheque in favour of KASB Modaraba and Rs.35,000 was withdrawn through another instrument. The relevant account statement, deposit slip, cheques and banker's cheque establish the occurrence of these transactions. However, they do not establish that the respondents were beneficiaries of the amount or that they had any dishonest arrangement with Kazim Ali Subhan. The performance of official banking functions in processing these transactions, without proof of the necessary criminal intention, cannot independently sustain the charges.
- 13.** The prosecution also relied upon statements of bank employees and other persons recorded during investigation. Such statements, however, cannot be elevated to substantive evidence merely by their inclusion in the challan. Their evidentiary worth depends upon the testimony actually recorded before the trial Court and the manner in which the relevant documents were proved. The evidence of S.I. Sher Khan is particularly significant in this respect. He admitted in cross-examination that he had not conducted any independent inquiry or investigation and had merely

submitted the final challan after receiving the technical report. Similarly, Inspector Rasheed Ahmed Sheikh identified the signatures of the earlier investigating officer upon certain documents but did not claim personal knowledge of the material investigative steps. These circumstances do not automatically invalidate the prosecution case, but they reinforce the necessity of examining whether the essential ingredients of the offences were independently proved through admissible evidence.

- 14.** The prosecution was required, for an offence under Section 409, P.P.C., to establish entrustment or dominion over property in the requisite capacity and dishonest misappropriation, conversion or disposal in violation of the governing obligation. For Section 420, P.P.C., dishonest or fraudulent inducement resulting in delivery of property was essential. Sections 468 and 471, P.P.C., required proof of the relevant forgery-related acts and the requisite knowledge or intention. Likewise, sections 34 and 109, P.P.C., could not be invoked merely on the basis of association or official relationship; common intention or intentional aid, instigation or conspiracy, as applicable, had to be established. Upon examining the prosecution evidence against these requirements, we find no sufficient material establishing the necessary criminal intention or conscious participation of the respondents. The evidence may raise questions concerning professional care, but it does not establish the offences charged beyond reasonable doubt.
- 15.** In 1990 P.Cr.L.J. 1170³, the learned Lahore High Court considered a case involving payment made by bank officials through an error in the maintenance and verification of an account. It was held that where the payment resulted from a mistake attributable to the bank, without proof that the accused had dishonestly induced the officials or participated in the mistake, the ingredients of cheating were not established. The Court drew a distinction between an erroneous banking transaction and a criminal offence requiring dishonest intention. Although the factual circumstances of that case were not identical, the principle that criminal liability cannot be founded merely upon an error or negligence, without proof of the necessary dishonest conduct, is relevant to the controversy before us.
- 16.** Similarly, in 2011 YLR 105⁴, a Division Bench of this Court examined allegations against a bank employee involving verification of signatures and the passing of banking instruments. It was observed that erroneous

³ Rana Iqbal Ahmad v. The State

⁴ Sher Dil Khoso v. The State

verification or gross negligence, depending upon the circumstances, might justify departmental proceedings, but could not by itself establish cheating or criminal breach of trust. The Court emphasized the necessity of proving the ingredients of the offences through reliable evidence and extended the benefit of doubt where such proof was lacking. The principle emerging from the judgment is that professional negligence and criminal culpability occupy distinct fields, and one cannot be substituted for the other without evidence satisfying the requirements of the penal law.

17. Applying these principles to the present case, we find that the prosecution has failed to bridge the evidentiary gap between the fraudulent acts attributed to Kazim Ali Subhan and the alleged criminal participation of the respondents. The mere processing, verification, authorization and payment of cheques, even if attended by procedural irregularities, cannot establish a common intention to commit fraud unless the surrounding circumstances convincingly demonstrate conscious participation. The record does not disclose any such circumstance. The prosecution has neither established that the respondents knew the signatures to be forged nor proved that they deliberately disregarded such knowledge to facilitate payment. To hold otherwise would amount to substituting conjecture for proof.
18. The settled principle governing criminal trials is that the prosecution must establish its case beyond reasonable doubt and that any reasonable doubt arising from the evidence must operate in favour of the accused. Such doubt need not arise from numerous circumstances; even a single circumstance creating reasonable uncertainty concerning guilt is sufficient to entitle an accused to its benefit. Reference may be made to 1995 SCMR 1345⁵ and 2009 SCMR 230⁶. In the present case, the deficiency is not confined to an isolated discrepancy. The prosecution has failed to establish the fundamental connection between the respondents' official acts and the dishonest intention necessary to constitute the offences charged.
19. The matter must also be examined in the light of the principles governing interference with an acquittal. In PLD 2011 SC 554⁷, the Hon'ble Supreme Court reiterated that an acquitted accused enjoys a double presumption of innocence and that an acquittal cannot ordinarily be disturbed unless the judgment is perverse, arbitrary, and capricious or founded upon material

⁵ Tariq Pervez v. The State

⁶ Muhammad Akram v. The State

⁷ The State and others v. Abdul Khaliq and others

misreading or non-reading of evidence. The revisional Court is not empowered to substitute its own view merely because another conclusion may also be possible. In the present case, the conclusion reached by the learned trial Court is reasonably supported by the evidentiary deficiencies discussed above. No material illegality or perversity has been demonstrated warranting interference.

20. Apart from the foregoing appraisal of the prosecution evidence, a question of considerable legal significance arises concerning the maintainability of the instant criminal revision application. The impugned judgment has been rendered by the Special Court constituted under the Offences in Respect of Banks (Special Courts) Ordinance, 1984, which is a special enactment prescribing its own appellate mechanism. Section 10 thereof expressly excludes the ordinary revisional jurisdiction of the High Court in respect of proceedings before the Special Court. Furthermore, by virtue of the Offences in Respect of Banks (Special Courts) (Amendment) Act, 2016 (Act XXII of 2016), Section 10-A was inserted, providing a specific remedy against an order of acquittal. The provision reads as under:

“10-A. Appeal in case of Acquittal. If an order of acquittal is passed by the Special Court in any case, the High Court may, on an application made within the thirty days by an aggrieved party in this behalf, grant special leave to appeal from the order of acquittal, whereupon the aggrieved party may present such an appeal to the High Court.”

A harmonious construction of Sections 10 and 10-A makes it abundantly clear that the legislature has consciously provided a distinct remedy for challenging an acquittal while excluding the ordinary revisional jurisdiction. The expression employed in Section 10-A is explicit and leaves no room for invoking revisional powers as an alternative to the prescribed appellate procedure. An aggrieved party seeking to challenge an acquittal must approach the High Court by an application for special leave to appeal within the period prescribed by law. The availability of a specific statutory remedy, coupled with the express exclusion of revisional jurisdiction, renders the instant criminal revision incompetent. The applicant could not circumvent the legislative mandate by resorting to a remedy which the special law does not recognize. The proceedings, therefore, suffer from a fundamental defect of maintainability, independently of the merits of the challenge to the acquittal.

21. It is also pertinent to observe that the distinction between appellate and revisional jurisdiction is not merely one of nomenclature. The two remedies differ in their statutory foundation, scope and conditions

governing their exercise. Where the legislature has expressly prescribed the manner in which an order of acquittal may be assailed, such procedure must be followed. The Court cannot assume a jurisdiction expressly excluded by the governing statute merely because the applicant has chosen to institute proceedings under an incorrect provision of law. Equally, the power to treat proceedings instituted under one provision as proceedings under another cannot be exercised in disregard of the express requirements governing special leave to appeal, including limitation and other statutory conditions. The present proceedings must therefore be examined according to their true legal character, and not merely by reference to the relief sought by the applicant.

22. For the foregoing reasons, we are of the candid opinion that the instant criminal revision application is not maintainable in view of the express statutory scheme embodied in Sections 10 and 10-A of the Offences in Respect of Banks (Special Courts) Ordinance, 1984. Even otherwise, the examination of the prosecution evidence, undertaken in the preceding discussion, does not disclose any manifest perversity, material misreading or non-reading of evidence, or other substantial illegality in the impugned judgment of acquittal. The incriminating evidence principally relates to the absconding accused Kazim Ali Subhan, whereas the material attributed to the present respondents does not establish anything beyond alleged negligence or procedural lapses in the performance of their official duties. No reliable evidence has been brought on record establishing their dishonest intention, conscious participation, criminal conspiracy or intentional facilitation of the alleged fraudulent transactions. Nor has any material been produced demonstrating that they were found responsible for the alleged negligence in departmental proceedings. The prosecution, therefore, failed to establish the requisite ingredients of the alleged offences against the respondents beyond reasonable doubt. In such circumstances, neither the presumption of innocence reinforced by their acquittal nor the findings recorded by the learned trial Court can be displaced on the strength of suspicion or conjecture. Consequently, the instant criminal revision application is dismissed. The impugned judgment of acquittal remains undisturbed.

23. Before parting with the matter, it is clarified that the observations made herein are confined to the criminal liability attributed to the present respondents and shall not prejudice or influence any proceedings pending or to be initiated against the absconding accused Kazim Ali Subhan, whose case shall be determined independently, strictly in accordance with

law and upon the evidence brought before the competent Court. The office shall communicate a copy of this judgment to the learned trial Court for information and record.

- 24.** These are the reasons for our short order dated 12.10.2026, whereby the instant Criminal Revision Application was dismissed.

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