

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Acquittal Appeal No.624 of 2021

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Appellant:- Industrial Development Bank Limited
through Mr. Masood Anwar Ausaf, advocate.

Respondents:- Muhammad Shoaib Ahmed and others through
Mr. Mukhtar Ahmed Kubar, advocate.

Date of hearing:- 01.10.2026

Date of decision:- 20.10.2026

O R D E R

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MUHAMMAD IQBAL KALHORO J: This appeal has been filed against the order dated 01.09.2021, passed by the Banking Court No. III, Karachi in Cr. Complaint No.26/2014, filed by appellant, a Financial Institution, acquitting the respondents u/s 265-K CrPC.

2. In the complaint, the appellant has alleged about granting financial facilities to the M/s. Pak Leather Crafts Limited, a public limited company, the respondents are directors of which, under various terms and conditions. Further, that, those facilities were from time to time renewed under the fresh terms and conditions. Finally, when the company committed persistent default in repayment, the bank filed the suit in 2014 for recovery of Rs.28 million besides praying for a decree for sale of pledged goods and personal decree against the respondents.

3. Next, it is alleged, the respondents failed to perform terms and conditions of various letters executed by them to secure the interests of the bank against the loan. They neither paid markup, nor accounted for

accumulated penalty imposed by the State Bank of Pakistan from time to time. When due to default, the bank sold pledged stocks after due formalities, the respondents did not allow the successful bidder to lift pledged stocks from the premises and issued threats to the bank officials. With such facts, more or less, the appellant prayed for prosecution of the respondents u/s 20 of the FIO 2001.

4. After registration of the complaint, in response to process, the respondents, who initially were five in number, appeared in the Court. Out of them, accused No. 5 Mst. Rubina Salim filed an application u/s 265-K CrPC which was allowed and she was acquitted vide order dated 07.08.2017. The remaining respondents followed suit and filed identical application which has been decided through the impugned order in the terms as above.

5. The impugned order indicates that the application has been decided after evidence of a prosecution witness, an attorney of the bank namely Nadeem Mehmood. He had actually appeared after the original attorney of the bank namely Muhammad Iqbal, who had filed the complaint, had retired. The main reason influencing the Court's mind to allow the application is his purported admission that earlier Mst. Rubina Salim had been acquitted, and further that there are no specific allegations against remaining accused i.e. the respondents. This admission has been reproduced by the Court verbatim in para. 10 of the order. Except this admission, we have not found any other reason worth mentioning in the entire order justifying premature termination of the case against the respondents.

6. Further, although, the trial Court has referred to acquittal of accused Ms. Rubina Salim to support its view, but has not discussed under what circumstances and in which context she was let off so as to determine applicability of rule of consistency in the case of respondents. Then, although, some of the paras of the order recording her acquittal

have been reproduced by the Court in the impugned order but no discussion to compare the same with the allegations against the respondents has been undertaken to draw parallel between their cases.

7. We have realized from such reproduction that she was acquitted mainly because she had already resigned from the company before commission of alleged offence, and hence was not concerned with alleged transaction. This ground is purportedly different and was apparently not available to the remaining respondents, who were still a part of the company at the time of complaint. Yet, the trial Court has put much emphasis on acquittal of Ms. Rubina Salim to invent a justification for acquitting the remaining respondents, which for obvious reasons we cannot subscribe to.

8. Besides, the trial Court has considered a revelation, as favourable to respondents, made by the said PW in his evidence that except accused Muhammad Saleem, no other accused was available in the premises of the company when the bank officials accompanied by successful bidder visited it for lifting pledged stocks. He had stopped them from entering there and threatened with dire consequences in case they pressed to go ahead.

9. Apparently, what the trial Court did not realize was that it was an isolated incident. And that, it was although relevant but not a material component of the allegations, so much so that it should be made a reason for acquittal of the accused, who were not present at that time.

10. But, in any case, before adopting such view the trial Court was firstly required to highlight difference between oral evidence and documentary evidence to determine that in the given circumstances which kind of evidence will trump the other and why. Secondly, it ought to have considered the fact that entire case of the appellant was actually based on the documents (already filed) to establish alleged violation of terms and conditions of various guarantees, letters,

persistent default etc. And that only an examination of such documents could lead to a definitive opinion about innocence or otherwise of the accused.

11. Therefore, resistance by only one accused to the lifting of the pledged stock from the premises, may be a link in the overall chain of events, was not to have any adverse impact derailing overall merits of the case.

12. The memo of complaint available in this file shows that the appellant (to support its case) had filed a number of documents, listed as under. All these documents, it seems, were completely overlooked by the court while acquitting the respondents.

1. Sanction letter of 19.06.2001
2. Agreement of 24.07.2001 and extract of minutes of the Board meeting of the Limited Company held on 23.06.2001.
3. DP Note dated 24.07.2001
4. (i) Two undertakings dated 24.07.2001
(ii) Agreement of floating charge dated 24.07.2001
(iii) Letter of pledge dated 24.07.2001
(iv) Certificate of registration of charge by SECP dated 30.07.2001
5. Joint guarantee by accused Nos.1 to 5 dated 24.07.2001
6. Renewal Letter dated 10.09.2003 by the bank
7. Letter of limited company dated 30.12.2005
8. Bank's letter of 25.03.2006
9. Letter of Limited Company dated 07.06.2007
10. Duly accepted letter of the bank dated 29.08.2007
11. Bank's renewal letter dated 14.07.2009
12. Notice of the bank dated 12.03.2011
13. Letter of Limited Company dated 04.04.2011
14. Letter of offerer M/s. Razit Company dated 05.05.2011
15. Request letter of limited company containing a proposal dated 12.05.2011
16. Proposal letter dated 24.06.2011
17. Accepted packed letter of 11.07.2011
18. 2 letters of limited company dated 10.08.2011 and 30.09.2011
19. 2 letters of Mr. Muhammad Tariq dated 13.12.2012 and 26.12.2012
20. Letter of limited company dated 08.06.2013 and letter of the advocate of the bank dated 24.06.2013
21. Letter of the advocate of the bank dated 12.07.2013
22. Letter of the bank dated 17.07.2013
23. Letter of the advocate of the bank dated 18.07.2013
24. Report of the official of the bank regarding the visit
25. Bank's letter of 12.08.2013 and letter of the advocate of the ltd. Co 13.08.2013
26. Bank's letter of 18.08.2013
27. Sub-power of attorney, resolution etc.

13. A perusal of section 20 of the FIO 2001 shows that it does not align with some individual and/or personal act of an accused done in the course of the offence. Rather, it speaks broadly of breach of the terms of a letter of hypothecation, trust receipt etc. executed by customer as

a security for the re-payment of finances, or fulfilment of obligations; the customer making fraudulent mis-representation to a financial institution; or customer dishonestly alienating or parting with the possession of the mortgaged property either by creation of a lease or otherwise contrary to the terms thereof, without the written permission of the financial institution etc.

14. Not permitting the bank officials to lift and deliver pledged stocks kept by the company to the successful bidder by one accused would not mean that other accused are exempted from overall effect of violations of terms and conditions set out in various letters/agreements signed or authorized by them. In terms of section 20(5), where the accused is a company etc., the Chief Executive and any Director or Officer involved will be deemed to be guilty of the offence. Unless and until, an exercise to look into all documents to understand a role, if any, played by each one of respondents is undertaken to see whether or not he is involved in the commission of the offence, no such conclusion can be derived on the basis of above incident.

15. The entire impugned order is silent about such attempt, or an endeavour to discuss the scope and import of the above quoted provision of law (section 20(5) FIO, 2001), its relevance to the allegation, and, based on it, the question qua respondents' involvement. Or that in presence of documentary evidence, which if considered to be valid and relevant, how section 265-K CrPC to the case of respondents was attracted.

16. Next, as to alleged admission of the PW that there are no specific allegations against the respondents. We do not want to appreciate the same in detail, lest it may impact the case of the either party on merits ultimately. But *prima facie* it is clear that the witness was only referring to individual acts of the respondents, which according to him, were not specifically mentioned in the complaint. But, as alluded above, it would

not imply that what has been alleged against them in terms of violations of terms and conditions of the letters etc. was not there and that they are innocent as declared.

17. Furthermore, the trial Court has not even discussed that in which context and in reply to what question such admission was made in order to qualify it as fatal to the entire prosecution case. Or that how the alleged admission of the PW, would be considered in isolation and independent of entire documentary evidence presented by the bank. Not the least, when *prima facie* such admission had a little impact, when seen through the documents, over the offence as defined u/s 20 of the FIO 2001.

18. Further, the trial Court after reproducing the said admission, has simply reproduced the entire examination-in-chief of the PW/attorney of the bank in para No.16 without pointing out to its relevancy, however. In para 17, the Court has referred to its power u/s 265-K CrPC and while discussing para 18 has acquitted the respondents.

19. No doubt, section 265-K CrPC can be invoked at any stage when there is no probability of the accused being convicted on the material available on record. But it does not imply that the Court would not feel obliged to discuss documentary evidence (if the case is based on it) for deciding an application u/s 265-K CrPC and that even if such evidence was produced and considered, still there was no probability of the conviction to the accused.

20. Without undertaking such discussion and a conclusion reached in favour of respondents, the benefit of section 265-K CrPC could not have been contemplated. Hence, we feel that the trial Court has acted in haste in not letting the appellant to present its full evidence, and has terminated the case prematurely against the respondents.

21. We, therefore, set aside the impugned order, remand the case back to the trial Court with direction to examine the witnesses and

documents, as soon as possible and after providing a full opportunity to the parties to present their case decide it in accordance with law.

The Criminal Acquittal Appeal is accordingly disposed in above terms along with pending applications.

JUDGE

JUDGE

HANIF