

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Criminal Appeal No. 109 of 2017

Appellant	Farhan Saeed son of Saeed-ur-Rehman Through M/s Kumail Ahmed Shirazi and Asad Hussain Rizvi, Advocates.
Respondent	The State Through Mr. Muhammad Shoaib Mirza Assistant Attorney General.
Dates of hearing	11.05.2018, 11.06.2018, 22.06.2018, and 25.06.2018.
Date of Judgment	26.06.2018 <><><><><>

J U D G M E N T

SHAMSUDDIN ABBASI, J:- Appellant Farhan Saeed has assailed convictions and sentences recorded by the learned Judge of Special Court (Offences in Banks) Sindh, at Karachi, vide judgment dated 18.02.2017, passed in Case No.59 of 2013, arising out of FIR No.27 of 2013 under Sections 409, 420, 468,471 and 477-A of Police Station FIA, CBC, Karachi.

2. FIR in this case has been lodged on 05.12.2013 at 1440 hours whereas the incident is shown to have taken place from 23.01.2012 to 10.10.2015. Complainant Khurram Shahzad Dar is the Head of FIU, Samba Bank, Head Office, Karachi, on whose complaint an enquiry was conducted by FIA, CBC, Karachi, under the orders of Director, FIA Sindh, Karachi, wherein it was established that appellant Farhan Saeed, who was posted as Branch Relationship Manager at Samba Bank, Shahbaz Branch, Defence Housing

Authority, Karachi and dealing with foreign currency accounts of the Branch, during the period from 23.01.2012 to 10.10.2012 received US\$ from time to time from Navaid Afzal, nephew of Ahmed Waseem, who was maintaining his foreign currency account No.6580350610 with the said branch, through various deposit slips and returned the customer's copies (duplicate) of deposit slips to Navaid Afzal, duly signed /stamped and filled in record the copies showing meager amount in PKR. He actually deposited the amount in other accounts and pocketed entire US\$ 205300, received from Navaid Afzal, details whereof have been given in the FIR. It is further stated in the FIR that as many as eight (8) deposit slips were secured under the handwriting and signature of Farhan Saeed and during investigation such handwriting and signatures of appellant were verified from handwriting expert, thus he has committed offences of criminal breach of trust, fraud and forgery with the bank documents punishable under Sections 409, 420, 468, 471 and 477-A, PPC.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction for the trial under above referred Sections.

4. A charge was framed against appellant at Ex.2, to which he pleaded not guilty and claimed trial.

5. At trial, the prosecution has examined as many as eight (08) witnesses namely, Haris Saleem at Ex.3, who produced seizure memo of documents as well as documents mentioned in seizure memo from Ex.3/A to 3/B-11, PW.2 Navaid Afzal at Ex.4, who produced seizure memo as well as deposit slips from Ex.4/A-1 to Ex.4/A-8, PW.3 Meer Mehmood Ali at Ex.5, who produced seizure memo of documents alongwith AOF and paid up cheques etc from

Ex.5/A to Ex.5/B-32, PW.4 Khawaja Ghayoor Nasir at Ex.6, who produced photocopy of cheque and its return memo as well as copy of his report from Ex.6/A to Ex.6/C, PW.5 Mohammad Aslam at Ex.7, PW.6 Khurram Shahzad Dar at Ex.8, who produced initial investigation report, complaint of Ahmed Waseem, statement of account of complainant at Ex.8/A, PW.7 Umar Mansoor at Ex.9 and PW.8 SIP Nafees Ahmed, investigating officer of the case, at Ex.14, who produced a copy of FIR, seizure memos of documents, report of handwriting expert and specimen signatures of accused from Ex.14/A to Ex.14/G. PWs Ahmed Waseem, Zainab Ali Fatima, Rizwan Ali Khawaja, Umer Bilal Nasir and Faizan Alvi could not be examined and in this context statements of process servers FC Ali Asghar and FC Nafees Azhar of FIA, who were entrusted with the summons of said PWs, were recorded as CW.1 Ex.10 and CW.2 Ex.11, wherein it has been stated that first two PWs namely, Ahmed Waseem and Zainab Ali Fatima could not be served in near future as they are residing abroad whereas the remaining PWs namely, Rizwan Ali Khawaja, Umer Bilal Nasir and Faizan Alvi are not residing at their given addresses as such they could not be served in near future. Thereafter, the prosecution closed its side of evidence vide statement Ex.15.

6. Appellant was examined under Section 342, Cr.P.C. at Ex.16, wherein he denied the commission of offence and pleaded his innocence. He, however, admitted his posting in Samba Bank, Shahbaz Branch, DHA, Karachi, as relationship officer, but denied deposit of US\$ on various dates in the account of Ahmed Waseem and used to pass on dummy deposit slip to PW Navaid Afzal, nephew of Ahmed Waseem (customer) from Ex.3/B to Ex.3/B-4, Ex.3/B-7 and admitted filing of deposit slip Ex.3/B-7 with his signature while

rest of deposit slips have been denied by him. The appellant has further stated that he has not issued any pay order in the sum of US\$ 65000 in the name of Ahmed Waseem as it was not his job and operation department of bank deals such matters. He denied bouncing of pay order (Ex.3/B-9) and also his signature on it, he, however, admitted his signatures on Vakalatnama and various applications filed on his behalf in Court. He further denied issuance of statement of account by making fraudulent entries to the account of customer Ahmed Waseem through his nephew, Navaid Afzal, but admitted that statement of account Ex.3/B-10 was issued from the printer of customer relationship officer. He denied to have obtained any cheque or cash from PW Navaid Afzal for deposit after conversion of US\$ into Pak rupees in the account of Ahmed Waseem and also denied his signature on deposit slips from Ex.4/A-1 to Ex.4-A-8. He admitted maintaining of Account in MCB Tower Branch, Karachi and AOF Ex.5/A-1 as well as cheque drawn by him under his signature from Ex.5/A-2 to Ex.5/A-6 and admitted to have deposited handsome amount in his account vide deposit slips from Ex.5/B-22 to Ex./5/B-32 and also admitted his signatures on deposit slips. The appellant has explained that since he was Relationship Manager in Samba Bank, therefore, he has deposited such amount in millions of rupees through deposit slips Ex.5/B-22 to Ex.5/B-32 just to facilitate his customers and such deposit slips have no nexus with the present case. The appellant has further stated that PW Khawaja Ghayoor Nasir invested an amount of Rs.18,00,000/- in his business on profit basis and in lieu of such investment the appellant disposed of his car to him, but mistakenly his cheque book was left in the car and as per his practice the said blank cheque was signed by him, which was misused by PW Khawaja Ghayoor Nasir by preparing

cheques Ex.6/A and Ex.6/B, but he has not stopped said cheque book nor lodged any complaint. He further stated that police report Ex.6/C was lodged after inordinate delay of bouncing of cheque. The appellant has admitted that his specimen signature and handwriting were obtained before Judicial Magistrate, but he is not aware of the report of handwriting expert Ex.14/G. The appellant opted not to examine himself on oath under Section 340(2), Cr.P.C. and did not lead any evidence in his defence.

7. The trial Court, on conclusion of trial, and after hearing the learned counsel for the parties and evaluating the evidence on record, convicted the appellant under Sections 409, PPC and sentenced him to undergo rigorous imprisonment for fourteen (14) years and to pay a fine of Rs.205300 US\$ or equivalent to PKR, in default whereof he was ordered to suffer rigorous imprisonment for five (05) years. The appellant was further convicted under Sections 420, 468, 471 and 477-A, PPC and sentenced to undergo rigorous imprisonment for seven (07) years on each account and to pay a fine of Rs.5,00,000/- (Rupees five lac only) on each account, in default where he was ordered to suffer rigorous imprisonment for two (02) years on each account. However, benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellant and the sentences on each count were ordered to run concurrently.

8. Feeling aggrieved by the convictions and sentences, referred herein above, the appellant has preferred the present appeal.

9. Learned counsel for the appellant, after arguing the matter at some length, submits that he would not press this appeal on merits if the conviction and sentences awarded to the appellant are reduced to the period he has already undergone contending that the appellant has no previous criminal record and is not a

dangerous, desperate and hardened criminal as well he is not a previous convict and served sufficient punishment and due to his confinement in jail since 13.02.2014, his family members are passing a miserable life, and that the appellant undertakes that he will prove himself as a law abiding citizen and will not indulge in any unlawful act.

10. On the other hand, learned Assistant Attorney General, while supporting the impugned judgment, has argued that prosecution has successfully proved its case against the appellant beyond shadow of a reasonable doubt, therefore, the appeal merits no consideration and liable to be dismissed. He, however, extended his no objection to the submission of learned counsel for the appellant with regard to conversion of sentence into the period already undergone.

11. We have heard the learned counsel for the appellant and the learned Assistant Attorney General on behalf of the State and gone through the entire material available before us with their assistance.

12. As regards the contention of learned counsel for the appellant that he is not a dangerous, desperate and hardened criminal as well he is not a previous convict, therefore, sentence may be reduced into the period already undergone, is concerned, it is a matter of record that the appellant is in jail for a period of more than four years and the family of the appellant, per learned counsel, is passing a miserable life due to confinement of the appellant in jail. Needless to say that normally, it is very difficult for a family to survive without support of earning member of the family. The position, being so, would be nothing but causing misery to the family of the appellant on account of his act. The peculiar facts and circumstances, so

pleaded by the counsel for the appellant, having gone unchallenged by prosecution may well be taken into consideration for departing from the normal practice. Further, as per jail roll dated 21.06.2018 the conduct of the appellant during confinement is “satisfactory”. The appellant also undertakes that he will prove himself a law abiding citizen and will not indulge in any unlawful act. He is the first offender and has no previous criminal history in his credit. Besides, the appellant claims himself to be only male member of the family and has also served more than four years of imprisonment, therefore, it is appropriate that appellant may be given an opportunity to improve himself as a law abiding citizen.

13. Keeping in view the above facts and circumstances of the case, we are of the considered view that prosecution has discharged its burden of proving the guilt of the appellant beyond shadow of reasonable doubt, thus the appeal is liable to be dismissed on merits. However, in view of discussion made hereinabove on plea of reduction of sentence, we find it a fit case for departure from the normal practice of determining quantum of sentence. The jail roll dated 21.06.2018 reflects that the appellant has served the sentence for five (05) years, eight (08) months and twenty three (23) days up to 21.06.2018, including remissions and by now the appellant has to undergo the remaining sentence of twenty one (21) years, three (03) months and seven (07) days, which calculation is against the mandate of the impugned judgment which provides all the sentences to run concurrently and the major portion of sentence is fourteen (14) years only out of which the appellant has served five (05) years, eight (08) months and twenty three (23) days up to 21.06.2018, including remissions. It seems that the jail authorities have misread and miscalculated the convictions and sentences awarded to the

appellant and treated the same as “consecutive” instead of “concurrent” as ordered by the trial Court. Nevertheless, since the appellant has served imprisonment of five (05) years, eight (08) months and twenty three (23) days up to 21.06.2018, including remissions, therefore, in our humble view it would serve both the purposes of deterrence and reformation, if the sentences, awarded to appellant, are modified and reduced. Accordingly, the sentences awarded to the appellant on all counts are modified and reduced to a period of five (05) years. As to the sentences awarded in lieu of fines are concerned, the same are modified and reduced to ten (10) months on all counts in case of default of the appellant to pay the same and shall run concurrently after the expiry of substantive sentence of five (05) years, which sentence as above has already expired. The appellant shall be released, after he serves out the above modified sentences, if not required to be detained in connection with any other case.

14. With the above modifications, the appeal stands dismissed.

JUDGE

JUDGE

Naeem