

# **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha***  
***Mr. Justice Amjad Ali Sahito***

**Criminal Jail Appeal No.168 of 2008**

**Criminal Jail Appeal No.169 of 2008**

Appellants : Shahana Tallat W/o Syed Ali Adil in Crl. Appeal No.168/2008  
Through Mr. S. Hasan Imam, Advocate  
  
Aijaz Ali Memon S/o Imdad Ali in Crl. Appeal No.169/2008  
Through M/s. Khawaja Naveed Ahmed, Muhammad Faisal Khan & Ghulam Mustafa Abro, Advocates

Respondent : The State  
Through Mr. Irfan Ahmed Memon, Deputy Attorney General for Pakistan a/w I.O./Inspector Ghulam Ali Baladi, FIA CCC, Karachi

Date of hearing : 03.11.2020

Date of Short Order : 03.11.2020

## **J U D G M E N T**

**AMJAD ALI SAHITO, J.**— By this common order, I intend to dispose of both the Criminal Appeals filed by appellants namely (1) Shahana Tallat W/o Syed Ali Adil through Crl. Appeal No.168/2008 and (2) Aijaz Ali Memon S/o Imdad Ali through Crl. Appeal No.169/2008 on being aggrieved and dissatisfied with the judgment dated 07.08.2008 passed by learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No.22/2003 arising out of FIR No.17/2002 registered under sections 420/468/471/109/34 PPC r/w section 5(2) PCA-II, 1947 at PS FIA CBC-II, Karachi; whereby they were convicted under section 471 PPC r/w section 34 PPC and sentenced to suffer R.I. for one year and to pay fine of Rs.50,000/- each. In case of non-payment of fine, they were ordered to suffer S.I. for three months.

2. Briefly, the case of the prosecution is that complainant Aijaz Ali Memon (who is now shown as accused) of Manager ABL Nursery Branch, Karachi submitted application to Deputy Director FIA, alleging therein that:

1) On 12.11.2001 an Account No.3880-5 was opened by one Muhammad Mahmood holding NIC No.502-92-801163 and other account on the same contents was also opened by Muhammad Mahmood at ABL Kashmir Road Branch Lahore. On 14.05.2002 Muhammad Mahmood account holder deposited cheque of Rs.19 lacs in A/c No.2761-0 of Kashmir Road Branch Lahore which was sent to Lahore through OBC No.40/78 and the credit advice was received next day on 16.05.2002 and the amount was credited in the account. Muhammad Mahmood, who got encashed one cheque of Rs.7 lacs by a cheque and on 17.05.2002 Kashmir Road Branch Lahore returned back the same cheque un-paid and denied to have issued such IBCA (Inter Branch Credit Advice).

The prosecution, after examining the witnesses, came to the conclusion that accused Muhammad Mahmood had not opened an account at Karachi but some unknown persons used the particulars of his NIC for opening of both the accounts at Karachi and Lahore. Specimen signatures of accused Muhammad Mahmood were sent to handwriting expert for comparison with both the account opening forms, SS Cards and cheques in question but opinion found in negative thus according to the prosecution, bank officials have misused their official posting and have opened fake account and so also withdrawn of Rs.7 lacs unauthorizedly and caused loss to the bank.

The perusal of the record shows that interim challan was submitted on 04.11.2002 against unknown person (fake name Muhammad Mahmood) and final challan was submitted on 29.03.2003 in respect of three accused persons while name of accused Muhammad Mahmood was shown "as not sent up".

The formal charge was framed on 30.11.2004 at Ex.2; however, record further shows that after recording some evidence charge was amended on 29.09.2005 in the following manner:

That during the period from 12.11.2001 to 17.05.2002, you accused Asif Qudoos, while posted

as Manager ABL Kashmir Road Lahore, Aijaz Ali Memon Manager ABL Nursery Branch and Shahana Talat, Accountant ABL Nursery Branch, Karachi knowingly, fraudulently and dishonestly committed following illegal acts:

That you accused Asif Qudoos, being Manager ABL Kashmir Road Branch, Lahore opened a fake account No.02761-0 in the name and style of Muhammad Mahmood under your own introduction, knowledgably that the particulars of NIC are of Karachi but allowed to issue a cheque book without verifying the address and particulars of accused.

That you accused Aijaz Memon, being Manager ABL Nursery Branch, Karachi on 12.11.2001 opened a fake account No.38802-5 with fake particulars of Muhammad Mahmood and also released an IBCA of Rs.19,00,000/- without matching of Test No. of branches, under your own signature on forged IBCA.

That you accused Shahana Talat, being Accountant ABL Nursery branch Karachi verified the fake signature of issuing authority on forged IBCA and also allowed to release of IBCA of Rs.19,00,000/- under your own signature without matching of Test No. of branches, and thereby committed/abated offence of cheating, forgery and use of forged documents as genuine knowingly that the same are forged one, punishable under sections 420/468/471/109/34 PPC which are schedule offences and read with section 5(2) of PCA-II, 1947 within the cognizance of this Court.

3. The accused persons pleaded not guilty and claimed for the trial and their plea is available on record from Ex.10 to Ex.12.

4. Prosecution in support of its case examined PW-1 Afzalul Rehman at Ex.6, PW-2 Muhammad Arif Arab at Ex.7, PW-3 Athar Shahzad at Ex.14, PW-4 Muhammad Yousuf Zafar at Ex.15, PW-5 Syed Irfanul Haq at Ex.16, PW-6 Aijaz Ali Arabi at Ex.17, PW-7 Muhammad Intikhab Alam at Ex.18, PW-8 Javed Iqbal at Ex.19, PW-9 Muhammad Athar at Ex.20 and PW-10 I.O. Bashir Ahmed Sheikh at Ex.21. Thereafter, the prosecution closed its side vide statement at Ex.22.

5. Statements of the appellants were recorded under section 342 Cr.P.C.; wherein accused Shahana Talat stated that she verified the signature on IBCA by comparing it true on Inter Branch Bank Signature Book and matched the test which was not agreed and then she prepared the letter informing the

originating branch i.e. ABL Kashmir Road Branch, Lahore on the same day and posted the advice; whereas officer PWs Intikhab Alam or Arif Arab allowed the credit of Rs.7 lacs to the customer. She further stated that none has deposed against her and she is innocent and has falsely been implicated in this case. Accused Asif Qudoos in his statement stated that he opened the account of Muhammad Mahmood on the basis of cheque book shown to him and according to him, he was maintaining A/c No.3880-5 opened on 12.11.2001 at ABL Nursery Branch, Karachi as he was account holder of same branch therefore his account was opened by him as well as introduced by him and due to above reason he did not verify his NIC. He further stated that none has deposed against him and he is innocent and has falsely been implicated in this case. Accused Aijaz Ali Memon stated in his statement that he is innocent and had acted bonafidely without involvement of any criminality. Office fellow opened the account of Muhammad Mehmood on the basis of account already operated upon in Lahore in the branch of same bank. He further stated he had reported the matter to the police on detection of fraud. His departmental enquiry held him innocent and they also returned of Rs.7 lacs and he produced letter of department at Ex.25/A. All the three accused persons were also given an opportunity to examine themselves on oath but neither any of them examined on oath nor any witness in defence was brought by them.

6. The learned trial Court, after hearing the parties and appraisal of the evidence, acquitted the accused Asif Qudoos and convicted the present appellants vide judgment dated 07.08.2008 which has been impugned by the appellants before this Court by way of filing the instant Criminal Jail Appeals.

7. Learned counsel for appellant Shahana Tallat has mainly contended that the appellant is innocent and has falsely been implicated in this case; that the appellant has been acquitted from the charges punishable under sections 420, 468, 109 PPC but convicted for an offence under section 471 PPC read with section 34 PPC, which is not applicable in this case. He further contended that no evidence has been brought on record to connect the appellant with the alleged offence. In support of his

contentions, he has relied upon the cases of (1) Qari Muhammad Sadiq Jameel v. The State and another (2019 YLR 882), (2) Sher Dil Khoso v. The State [2011 YLR 105 (Karachi)] and (3) Farhanul Hassan v. the State (2018 PCr.LJ Note 206). Learned counsel for appellant Aijaz Ali Memon while adopting the arguments of learned counsel for appellant Shahana Tallat has argued that the appellant is innocent and has no concern with the alleged offence. Lastly, both the learned counsels have prayed for acquittal of the appellants in the instant case.

8. On the other hand, learned DAG while supporting the impugned judgment has argued that appellants are responsible for committing the offence. He has invited the attention towards Account Opening Form (AOF) as available at Ex.6/A; wherein appellant Aijaz Ali Memon had signed the fake signature of one Muhammad Mahmood and transferred the money in his personal account. He has further argued that Mst. Shahana Talat was an Accountant and she was connected with Aijaz Ali Memon. On our inquiry whether any acquittal appeal has been filed against the appellants for their acquittal in the offences punishable under sections 420, 468, 109 PPC, he replied “No”.

9. We have heard the learned counsel for the parties and have gone through the material available on record. Admittedly, the appellants have been acquitted from the charges punishable under sections 420, 468, 109 PPC but convicted for an offence under section 471 PPC read with section 34 PPC. From the perusal of section 471, it appears that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document. Now we have to see that what kinds of evidence have been brought on record by the prosecution. The case of the prosecution is that one saving account No.3880 with fake particulars of Muhammad Mahmood was opened in the name of Muhammad Mahmood and a cheque of Rs.19 lacs was sent to his fake account from the account of Muhammad Mahmood which was sent as Outward Bill for Collection {“hereinafter referred OBC”} at ABL Kashmir Road Branch, Lahore in the same account the advice was received which did not tally with the test message despite of that the

amount has been credited in the account of account holder. In order to prove the charge, the prosecution examined PW-1 Afzal-ur-Rehman. According to him, on 17.05.2002 he received a call from appellant Aijaz Ali Memon, who asked him to reach to the Nursery Branch immediately as something has gone wrong, as such, he reached in the branch where he has been informed that in the account 3880 one cheque of Rs.19 lacs was sent for OBC at ABL Kashmir Road, Lahore in the same amount the advice was received which did not tally with the text message despite of that the amount has been credited in the account of account holder as the record of the branch was destroyed due to heavy rain, as such, in number of cases, the test number was not agreed even then the amount was used to be credited in the account of valuable clients in good faith. As far as the above is concerned, the account holder brought a cheque of Rs.17 lacs which was not encashed whereas the payment was made only for Rs.7 lacs through another cheque. He was further informed by the Manager that the Kashmir Road Branch, Lahore had not confirmed the text message. In the evening, he alongwith appellant Aijaz Ali Memon, PWs Arif Arbab, Irfanul Haq and appellant Shahana Tallat went to the address of account holder i.e. Muhammad Mahmood and met with him but none of us recognized him to be the same account holder. In cross-examination, he admits that it is the duty of the messenger to take the post from one branch to another branch. He further admits that AOF processed after signing of the account holder, introducer and verification of signature of account holder and finally it was approved by the Manager. He has also admitted that **“it is correct I was immediately informed by the appellant Aijaz Ali Memon regarding fraud in branch.** Prosecution also examined PW-2 Muhammad Arif Arbab, who in his deposition states that on 14.05.2001, an OBC was received by appellant Shahana Tallat in the branch. The said OBC was cheque pertaining to ABL Kashmir Road Branch, Lahore amounting to Rs.19 lacs and also received its advice on 16.05.2001 by her. After completing the formalities by appellant Shahana Tallat, the advice was given to him. After some time, account holder Muhammad Mahmood arrived in the branch and

presented a cheque for encashment of Rs.17 lacs. The payment could not be made to him for want of cash in the branch but he insisted to the Manager for payment of whole amount of the cheque; however, he was paid only Rs.7 lacs. On the very next day, in the morning Manager/appellant Aijaz Ali Memon came to his counter and inquired from him whether any payment has been made by way of clearing or cash. He verified and informed him that no payment has been made then he disclosed that a telephone call received from Lahore that they have not issued any advice in respect of payment of Rs.19 lacs. He advised him/appellant Aijaz Ali Memon if anybody came to him for withdrawing the amount from the concerned account he made the person sit and informed him accordingly. Accountant/appellant Shahana Tallat had already sent a letter that the test of advice is not agreed to Lahore Branch. In cross-examination, he admits that Muhammaad Mehmood opened an account on 11.11.2001 and he lastly operated it on 16.05.2002. It is important to note here that prior to this, the said account holder had produced two advices of the OBS of Rs.1 lac and Rs.20 lacs respectively, which were produced by the witnesses as Ex.7/C. Both cheques were encashed; hence, the question that he/appellant Aijaz Ali Memon opened the fake account on behalf of account holder Muhammad Mahmood does not arise as the account holder had withdrawn the cash twice from the said branch. Further, when the cheque was presented before the accountant appellant Shahana Tallat she wrote a letter dated 14.04.2005 to the Manager, ABL Kashmir Road Branch, Karachi, which was produced at Ex.7-A/6 in which she stated as under:

*“With reference to the Pak Advice No.108254 received from today but our manager and accountant test are not agreed with. Please repeat Test Manager & Accountant as soon as possible.”*

By way of writing a letter to the Manager, ABL Kashmir Road Branch, Lahore the appellant Shahana Tallat had completed her job and was waiting for reply of the Manager. According to PW-4 Muhammad Yousuf Zafar OG-II Regional Audit Officer at ABL Karachi, on 18.05.2002 he was present in ABL Amber Palace Branch where at about 10 AM he received a telephone call from the regional audit head to report ABL Nursery

Branch whereby he was informed that fraud of Rs.7 lacs has been committed, as such, he reached the above said branch and on inquiry, appellant Aijaz Ali Memon, Manager of the Branch informed him regarding the fraud and showed him OBCA/realization advice of amount of Rs.19 lacs. The said OBCA was generated from ABL Kashmir Road Branch Lahore and its test key/code was disagreed. He further deposed that generally on the disagreement of the test key, branch does not honour the OBC but in the instant case, OBC was honoured. On inquiry, appellant Shahana Tallat informed the officer that when her test code was disagreed then she had written a letter to the Manager of Kashmir Branch Lahore for confirmation of code but despite of that, the cheque was cashed. On further inquiry, the appellant Aijaz Ali Memon informed that Rs.7 lacs has been paid to him. He further deposed that I was informed by appellant Aijaz Ali Memon that the test code has agreed with the branch in question and they are using duly test as one is old and another is new and test code on the instruments is agreed with one code only. In inquiry, he came to know that OBCA in question was prepared from the stationery of the Karachi Branch which was issued from the Nursery Branch. In cross-examination, he admits that **“it is correct that the bank has held after completing the audit report as it is a minor negligence on the part of bank employee and that is why the fraud has been committed.... I had seen account No.3885 (disputed account) and found two or three transactions of Rs.1 lac and 20 lacs. It is correct both the amounts were remitted from Lahore to Karachi. I did not visit Lahore branch nor I see the account. I did not record the statement of Manager of Lahore Branch. He further admits that it is correct that when the cheque was not honoured, the account holder Muhammad Mahmood made hue and cry.** According to PW-7 Muhammad Intekhab Alam, Banker in ABL Nursery Branch, on the very next day they came to know that the IBCA which was received by them was not genuine. In cross-examination, he admits that **“it is correct that the cheques were honoured by bonafide mistake and there was no criminal intention.** It is important to note here that the entire story is moving around the account holder

Muhammad Mahmood of Account No.3880 as his account was used for committing fraud with the bank though, he was joined the investigation but he was not sent up for trial. He was a beneficiary of Rs.17 lacs which was not encashed for want of cash but he made hue and cry and finally Rs.7 lacs were issued to him but he was not made an accused person and the appellants have joined this case. Further, PW-1 Afzal-ur-Rehman admitted that record of the branch was destroyed due to heavy rain as such in number of cheques in number of cases, the test number was not agreed even then the amount was used to be credited in the account of valuable clients in good faith. As far as account holder Muhammad Mahmood is concerned, he was made payment of Rs.7 lacs through another cheque; however, the cheque of Rs.17 lacs was not encashed. Furthermore, when the invoice was received by appellant Mst. Shahana Tallat, she had written a letter to the manager ABL Kashmir Road Branch Lahore for confirming of the said OBC and on very next day they received the OBC and payment was made to Muhammad Mahmood; but subsequently they came to know that the OBC in question was prepared from the stationery of the Karachi Branch which was issued from the Nursery Branch. Nothing has been brought on record to believe that the appellants are the beneficiary of the said amount nor any amount was recovered from them. On the other hand, on the very next day they came to know about the fraud and informed their high-ups. Now the only allegation against the appellants is that they have fraudulently or dishonestly used as genuine the document(s) which they knew or had reason to be that the said document was forged. No evidence has been brought on record that the OBC prepared by the appellants has been used by them and the amount herein withdrawn by them. Admittedly, the amount was received by the account holder Muhammad Mahmood and he did not join as an accused but the present appellants were booked in this case. PW-7 Muhammad Intikhab Alam admitted that it was bonafide mistake and there was no criminal intention. Furthermore, in the audit report, it was disclosed that it is a minor negligence, as such, the punishment given under section 471 PPC to the appellants is not proved.

10. It is a well-settled proposition of law that the prosecution is bound to prove its case beyond any shadow of a doubt. If any reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as grace or concession, but a matter of right. Likewise, it is also the well-embedded principle of criminal justice that there is no need of so many doubts in the prosecution, rather any reasonable doubt arising out of the prosecution evidence pricking the judicious mind is sufficient for the acquittal of the accused. In this respect, reliance is placed upon the case of **Mohammad Mansha v. The State (2018 SCMR 772)** the Hon'ble Supreme Court of Pakistan has held as under:

***“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”***

11. For the above reasons, the convictions and sentences awarded to appellants Shahana Tallat and Aijaz Ali Memon by the learned trial Court vide impugned judgment dated 07.08.2008 were set aside. The instant Criminal Appeals No.168 & 169 of 2008 were allowed. Appellants named above were acquitted from the charge levelled against them in this case by extending the benefit of doubt. The appellants were on bail, their bail bonds were cancelled and their sureties were discharged.

12. These are reasons of our short order dated 03.11.2020

**JUDGE**

**JUDGE**

Karachi  
Dated. \_\_\_\_-11-2020.