

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeals No.188, 193, 198, 199 & 202 of 2015

Present: Mr. Justice Muhammad Saleem Jessar

Dates of hearing : 11.05.2018

Date of Judgment : 11.05.2018

Appellant : Mohammad Penah in Cr. Appeal 188/15
through Mirza Adil Baig, Advocate

Appellant : Dad Mohammad in Cr. Appeal 193/15
through Syed Muqeem Shah, Advocate

Appellant : Abdul Sattar Bhayo through his LRs in
Cr.A.198/15
through Malik Altaf Javed, Advocate

Appellant : Manzoor Ahmed Dars in Cr. Appeal 199/15
through Mr. Ahmed Pirzada, Advocate

Appellant : Ghulam Sarwar in Cr. Appeal 202/15
through Mr. Mohammad Ashraf Kazi,
Advocate

Complaint : Mohammad Yousuf Siddiqui
through Mr.Abdul Jabbar Korai, Advocate.

Respondent/State : through Ms. Robina Qadir ADPP

JUDGMENT

By this single judgment, I propose to dispose of above said five Criminal Appeals as in all the appeals, same common judgment dated 12.08.2015 passed by learned Special Judge, Anti-Corruption (Provincial), Karachi in Special Cases No.40/2008 and 40-A/2008 has been challenged by the appellants.

2. Through the instant Criminal Appeals, appellants have assailed the Judgment dated 12.08.2015 passed by learned Special Judge, Anti-Corruption (Provincial), Karachi in above said two Special Cases, whereby the appellants/accused have been convicted for an offence punishable under Sections 167/218/34 read with Section 5(2) of Prevention of Corruption Act (Act II of 1947) and each of the accused has been sentenced to undergo R.I. for three (3) years and to pay fine of Rs.3,00,000/- (Rupees Three Lac only) each. The fine was ordered to be paid to the complainant through trial Court and in case of non-payment of fine, the appellants were to suffer S.I. for one year more.

3. The appellants/accused were also convicted for an offence punishable under Sections 420/468/34 read with section 5(2) of Prevention of Corruption Act (Act II of 1947) and each of the accused/appellants was sentenced to undergo R.I. for seven (7) years and to pay fine of Rs.5,00,000/- (Rupees Three Lac only) each. The fine was ordered to be paid to the complainant through trial Court and in case of non-payment of fine the appellants were ordered to suffer S.I. for one year more. Both the sentences were ordered to run concurrently.

4. The crux of the prosecution case is that the complainant, being attorney of Shan Abdullah Siddiqui, moved a complaint stating therein that he is a Zamindar of Na class No.305 of Deh Kharkharo, Tapo Konkar, Gadap Town, Karachi for the last two decades. In the year 2004 certain land grabbers named in the complaint in connivance with revenue officials after preparing some forged documents, encroached upon his land. He moved complaint to Revenue Authorities which could not yield positive result as revenue officials namely Salik Nakrich, Ex-Mukhtiarkar/DDO Gadap Town, Haji Abdul Sattar, Supervising Tapedar, Gadap Town and Abul Bakar, Ex Tapedar, Gadap Town were providing protection to the aforesaid land grabbers.

5. It was further stated that Hon'ble Judges of this Court Mr. Justice Sarmad Jalal Usmani and Mr. Justice Amir Hani Muslim (As their lordship then was) in their ruling dated 23rd December, 2004 directed the Anti-Corruption Department, Sindh to initiate criminal proceedings against Salik Nakrich and the concerned Tapedars of the beat by lodging an FIR. Their lordships had also directed that the said officials shall remain without any field posting. It was further stated that such criminal acts were being committed again by the above named officials of Revenue Department by preparing false and bogus documents/ sketches of Na class No.305 and selling the agricultural lands in Na class No.305. It was further alleged that the *modus operandi* of the aforesaid persons was that they used to prepare false and bogus back dated documents and sketches and Haji Abdul Sattar or Abu Bakar used to show such land documents to potential buyers and informed them about the availability of lands in the area for sale. The potential buyers used to verify such facts

from the records for its genuineness being shown to them by aforesaid revenue official. The Buyer believed the authenticity of these documents, as these accused persons were working in Revenue Department and in such a manner, the people/buyers were being cheated daily and the aforesaid accused had in their possession innumerable false and bogus and maneuvered documents.

6. During the Course of enquiry it came on the surface that an area of 16 acres out of Na-class No.305, Deh Khurkharo was originally leased out to Mr. Abdul Samad S/o Abdul Qayyum for a period of 10 years in the year 1987-88 for *barani* cultivation purpose under the order of the then Assistant Commissioner Karachi East. Subsequently lease of the said land was renewed for a further period of 30 years in open Kachahry of the then DC East Karachi viz. on 14.09.1992. Thereafter, on the basis of Order passed by DC Malir bearing No.PA/DC/52/97 dated 04.04.1997 said land was transferred to Shan Abdullah Siddiqui son of Muhammad Yousuf Siddiqui vide entry No.2033 dated 04.08.1997. Later on the Survey Department carried out demarcation of the land on 24.10.2003 and issued such letter bearing No.SSK/GO/1066 dated 13.02.2004. Thereafter, in the year 2004 land grabber namely Muhammad Panah Jokhio in connivance with Tapedar Ghulam Sarwar Kaladi changed the original sketch ignoring the area of original sketch and accused Ghulam Sarwar submitted report in favour of Dad Muhammad Jokhio as owner of the land depriving the actual legal owner namely Shan Abdullah Siddiqui s/o Muhammad Yousuf Siddiqui although Entry No.2044 dated 04.08.1997 in the record of rights did exist in favour of Shan Abdullah Siddiqui but also ignoring the said entry, Tapedar Ghulam Sarwar Kaladi and Muhammad Panah Jokio have committed the alleged offence in connivance with other accused persons and such offences fall under Sections 217/218/420/468/166/167/34 PPC, read with Section 5(2) Act-II, 1947. Consequently, challan was submitted before the concerned court and the accused were sent to face the trial.

7. A formal charge was framed against the accused/appellants and was read over to them vide Ex. 2, however, the accused persons vide Ex.3, to Ex.7 pleaded not guilty and claimed their trial.

8. In order to prove its case, prosecution examined PW-1/ Complainant Muhammad Yousuf at Ex.8 who produced copies of order of EDO Revenue dated 19.12.2006 and Form VII showing cancellation of entry being suspicious and fabricated dated 26.12.2006 as Ex.8/1 to Ex.8/3, complaint as Ex.8/4, copy of FIR as Ex.8/5, photocopy of General Power of attorney as Ex.8/6, copy of identity card, receipt of payment and original application for transfer of lease as Ex.8/7 to Ex.8/9. Advocate for accused Abdul Sattar Bhaio filed application u/s 249-A Cr.P.C. as Ex.9, whereas Advocate for accused Muhammad Pannah filed application u/s 540-A Cr. P.C. as Ex.10 for calling witness namely Abdul Samad. Advocate for accused Dad Muhammad filed application u/s 540 Cr. P.C. as Ex. 11 for proceeding with the trial in absence of the said accused. PW-2, Niaz Muhammad S/o Haji Ghulam Muhammad was examined at Ex.12, who produced attested copy of Order dated 26.12.2006 regarding cancellation of Entry No.2337 dated 15.06.2004 as Ex.12/1, attested copy of Form VII, Entry No.1862 dated 27.10.1992 showing the land measuring 16 acres having been allotted by the Government to Abdul Samad s/o Abdul Qayoom with 30 years lease as Ex.12/2 and attested copy of Entry No.2044 dated 04.08.1997 at Ex.12/3. PW-3 Muhammad Saliq, Deputy District Officer (Rev) Baldia Town, Karachi was examined at Ex.13, who produced application (with copy of NOC) and Ijazatnama of Abdul Samad with property identification by Tapedar of the beats as Ex.13/2, photocopy of letter dated 02.04.1997 with endorsement of Deputy Commissioner East Karachi and application of Abdul Samad in English as Ex.13/3 and Ex.13/4. PW-4 Muhammad Hanif was examined at Ex.14. Application u/s 249-A Cr.P.C was moved on behalf of accused Iqbal Ahmed Meerani vide Ex.15. PW-5 Irshad Ahmed Qazi was examined at Ex.16, who produced photocopies of outward register showing entries No.2786/2004 and 3404/2004 as Ex.16/1 to Ex.16/3. Another application under Section 249-A Cr.P.C was moved by accused Manzoor Ali Dars as Ex.17. PW-6 Chandan Kumar was examined at Ex.18, who produced photocopy of site plan/sketch as Ex.18/1. PW-7 Abdul Jabbar was examined vide Ex.19, who produced attested copies of allotment order in the name of Dad Muhammad issued by Assistant Mukhtiarkar as Ex.19/1, attested copy of report of Tapedar as Ex.19/2, attested copy of land-report of Na-Class No. 305 as Ex.19/3, attested copy of order showing transfer

of land as Ex.19/4, allotment order in the name of Muhammad Panah Jokhio signed by Abdul Samad and Muhammad Panah along with the Soorat-e-Hall / site plan, Challan and receipt of possession as Ex.19/5 to Ex.19/8, cancellation of entry in Form VII by EDO (Rev) Saleh Muhammad Farooqui vide order dated 20.12.2006 as Ex.19/9. Thereafter, as accused Ghulam Sarwar Kaladi had appeared and joined the trial, charge was amended vide Ex.20 and plea of accused was recorded vide Ex.21 to Ex.25. After amendment of charge prosecution examined PW-8, Muhammad Faizan, Sub-Inspector ACE Karachi at Ex.26, who produced verification report, along with its annexure as Ex.26/1 (in 14 leaves), allotment order of complainant approved by Committee as Ex.26/2, application to the Deputy Commissioner for allotment of land by Abdul Samad s/o Abdul Qayoom as Ex.26/3, allotment order in favour of Abdul Samad s/o Abdul Qayoom Jokhio by Deputy Commissioner Gaddap Town as Ex.26/4, letter of acceptance of land "Qabolitat-letter" as Ex.26/5, Dhal-Receipts / lease money dated 25.10.1992 paid by Abdul Samad as Ex.26/6. Transfer order and allotment order issued in favour of Shan Abdullah Siddiqui s/o Muhammad Yousuf Siddiqui dated 04.04.1997 as Ex.26/7, payment receipts showing the name of Shan Abdullah as Ex.26/8 (in two leaves), demarcation of 16 acres by Shan Abdullah dated 15.10.2003 as Ex.26/9 along with its challan paid by Shan Abdullah, demarcation of Na-Class No. 305 dated 17.10.2003 as Ex.26/10, an order dated 12.10.2005 issued by Executive District Officer Revenue Director City District Govt. Karachi as Ex.26/11, vacating the show cause notice against Shan Abdullah and CFR as Ex.26/12. PW-9 Rao Amir, Inspector of ACE Karachi, was examined at Ex.27, who produced letter of Deputy Director ACE addressed to him vide Ex.27/1 and letter dated 14.02.2009 at Ex.27/2. PW-10 Ali Akbar Hingoro, retired government servant of Revenue department, was examined at Ex.28, who produced letter dated 28.02.2004 as Ex.28/1, letter dated 04.05.2004 as Ex.28/2, letter dated 29.11.2004 as Ex.28/3 and letter dated 29.05.2004 as Ex.28/4. Statement of advocate for accused Ghulam Sarwar Kaladi was placed on record as Ex.29, another statement of advocate for accused Ghulam Sarwar Kaladi adopting previous statement / evidence of witness as Ex.30. Thereafter, side of prosecution was closed by DDPP vide Ex.31.

9. Thereafter, statements of accused persons under Section 342 Cr. P.C were recorded vide Ex.32 to Ex.36 respectively wherein they denied the allegations of prosecution. They further stated that no prosecution witness had deposed against them and that they are innocent and have been falsely implicated in this case by I.O.

10. After recording evidence of the prosecution witnesses, formulating the points for determination and hearing counsel for the parties, learned trial Court vide impugned judgment convicted and sentenced the accused/appellants as stated above. Against the said judgment the appellants have preferred instant Criminal Appeals.

11. I have heard learned counsel for the appellants, learned counsel for the complainant as well as learned ADDP appearing for the State and perused the material available on the record.

12. Learned advocates for the appellants have contended that the appellants are innocent and have been falsely involved in the present case. They further contended that learned Special Judge, while delivering the impugned judgment has erred in law and on facts and has passed the impugned judgment in a hasty and mechanical manner on the basis of surmises and conjectures without appreciating the relevant law as well as the submissions made on behalf of the accused, as such the same is liable to be set aside.

13. Learned counsel for appellant Mohammad Pannah Jokhio contended that the said appellant is simply a bonafide transferee and he had no personal acquaintance with the complainant or official accused, as such no nexus is established against him. He further contended that the learned Special Judge in a hasty and mechanical manner convicted all the accused persons under all the Sections mentioned in the challan without appreciating the fact that the alleged role of all the accused was of different nature. According to him, Sections 217 and 218 PPC as well as Section 5(2) of Prevention of Corruption Act, 1947 are specifically meant for '**public servant**' as such conviction of the appellant under the said sections is totally illegal and unlawful.

14. Learned counsel for appellant Dad Mohammad contended that the name of the said appellant was neither mentioned by the complainant in his complaint nor in the FIR even in the interim

challan his name was mentioned as an accused, however, due to some ulterior motives his name as well as name of Mukhtiarkar Iqbal Meerani was mentioned in the final challan. He further contended that thereafter although Mukhtiarkar Iqbal Meerani was acquitted and proceedings against him were quashed on the basis of order passed in Cr. Misc. Application filed by him, however, after conclusion of the trial, appellant Dad Mohammad was convicted although case of the appellant was on the same footage.

15. Learned counsel for appellant Abdul Sattar Bhayo contended that the said appellant had been charged with the allegation of preparing forged documents and then using the same as genuine and although no document was produced by the prosecution which reflects signatures of the appellant rendering him liable for preparing and/or manipulating any document, despite that the trial Court while convicting the said appellant has not appreciated this aspect of the case and has given such finding against the appellant. He further contended that the trial Court also ignored the fact that most of the documents produced during the evidence were Photostat copies and not the original, therefore, such evidence was not sustainable in law.

16. Learned counsel for appellant Manzoor Ahmed Dars contended that the complainant neither in his complaint, nor in the FIR and not even in his deposition has named the present appellant in the commission of the alleged offences as such his conviction is totally illegal and unlawful. He further contended that after conclusion of Enquiry in Complaint No.207/2007, FIR was recommended to be lodged against certain persons but the name of the appellant was not included in such recommendation. According to him, there were material contradictions, improvements and alterations in the evidence adduced by the prosecution benefit whereof must have been extended to the accused but the trial Court also did not follow such golden rule which is to be extended to the accused/appellants as a matter of right and not as a grace or concession.

17. Learned counsel for appellant Ghulam Sarwar Kaladi contended that this is a case of no evidence against the said appellant. According to him, learned Special Judge while comparing the signature of the appellant on his 342 Cr.P.C. statement with the documents in question erroneously concluded that both the

signatures tally with each other. He submitted that while doing so, learned Special Judge misinterpreted the provisions of Article 84 of Qanoon-e-Shahadat Order 1984, as the said Section does not provide an overriding mode of proving signature in supersession of the mode provided under Article 79 of Qanoon-e-Shahadat Order 1984. He further contended that there is violation of Section 233 Cr.P.C. as each offence, alleged in the charge is distinct offence, therefore, according to him, the impugned judgment has not been written in terms of Section 367 Cr.P.C.

18. All the advocates appearing for the appellants prayed for allowing the instant appeals, setting aside the impugned judgment of conviction and acquittal of the appellants.

19. Conversely, learned counsel appearing for the complainant supported the impugned judgment. He contended that the impugned judgment is in accordance with the law and learned Special Judge has discussed in detail each and every point involved in the case and has given cogent and sound reasons for the findings given by her. According to him, prosecution witnesses have involved the accused/ appellants in the commission of the alleged offence and they have rightly been convicted by the trial Court. He prayed for dismissal of the appeals and maintaining the impugned judgment.

20. Learned ADPP appearing for the State also supported the impugned judgment and submitted that there is no illegality and material irregularity in the impugned judgment as such there is no justification for this Court to interfere into the findings arrived at by the trial Court. He further contended that minor contradictions are ignorable and such contradictions cannot be made basis for acquittal of the accused. He prayed for dismissal of the appeals and maintaining the impugned judgment.

21. I have taken into consideration the contentions raised on behalf of the accused/appellants by their respective advocates and have also gone through the material available on the record.

22. It appears that the allegation against appellant Mohammad Pannah Jokhio is that he purchased the land in question by fraudulent means in connivance with revenue officials. However, from the perusal of the evidence recorded by the trial Court it seems that he had purchased the land in question from Dad Mohammad and the

same was not directly transferred in his name. There is no evidence on the record that appellant Mohammad Panah made any efforts in collusion with the revenue officials to get the land in question transferred in his name. He was a bonafide purchaser having paid valuable sale consideration for the land. This fact also gets strength from the following admission of PW-2 Niaz Mohammad, a revenue official:

“It is correct that in my statement I have stated that Mohammad Panah has deposited the lease amount for the year 1992/1993 to 2021/2022 amounting to Rs.23,200/- to the then Tapedar Mohammad Hassan vide Deh Form IX-B receipt No.75, dated 24.06.2004 and Challan lNo.134, dated 24-06-2004 in National Bank District Counsel branch Karachi Govt. Account No.0124, revenue Land Seven, Land Revenue.

23. It also seems that the complainant has made certain admissions which go in favour of the accused/appellant. The complainant in his cross-examination admitted as under:

*“It is correct that I purchased the land in question from one Abdul Samad. It is correct that I also obtained the documents NOC, NIC and other relevant documents from the buyer. It is correct that I had produced the documents to the Revenue Office. It is incorrect that at the time of transfer of plot I did not produce the transfer order, issued by D.C. **It is correct that Abdul Samad, the seller was not present at the time of transfer of land. It is correct that I had never brought the seller Abdul Samad to Revenue Office.....** It is incorrect that property in question was bought through sale agreement. Again says **it was oral agreement of sale.**”*

24. It is not understandable that when the seller did not appear before the concerned authorities, then as to how the land allegedly purchased by on an **oral agreement of sale** was transferred in the name of the complainant.

25. The evidence of PW-07 Abdul Jabbar, who was subsequently entrusted investigation in Crime No.33/2008 is also of much importance. He in his cross-examination made following admissions:

*“It is correct that on 18.11.2007 I had recorded the statement of said Abdul Samad. It is that in his statement the witness Abdul Samad stated that he did not sign the allotment order of land Na-class No.305, 16 acres. **Vol. says this land has no concerned with accused Panah Jokhio and I recommended for registration of separate***

cases against Shan Abdullah, Saleh Nukrich and five others. This land was infact purchased by Shan Abdullah (through attorney) from Abdul Samad, on the basis of forged documents. It is correct that accused Panah Jokhio is innocent and had no concernred with the land of Shan Abdullah, the complainant's alleged land."

26. So far as appellant Dad Mohammad is concerned, it appears that in the complaint filed by the complainant there is, at all, no allegation against the said appellant and neither in the complaint, nor in the F.I.R. name of appellant Dad Mohammad has been mentioned. Not only this, but even in the interim challan no allegation has been leveled against him and he has not been arrayed as an accused. However, it was only in the final challan that his name was shown as an accused. It may be observed that the interim challan was submitted on 8th October, 2008 and thereafter final challan was filed after about five months i.e. on 3rd March, 2009. Inclusion of the name of appellant Dad Mohammad in the delayed final challan was not legally justified. It has been admitted by the complainant that Abdul Samad from whom he allegedly purchased the land in question did not ever appear before the concerned revenue authorities for the purpose of transfer of the land in question in his name. In this view of the matter, serious doubts are created as to the transfer of the land in question in the name of the complainant. The I.O. Abdul Jabbar, too, in his evidence stated that the land in question was, in fact, purchased by complainant Shan Abdullah through his attorney from Abdul Samad on the basis of **forged documents**. This also strengthens the case of appellant Dad Mohammad.

27. Apart from above, it also appears that the trial Court has erred in convicting the aforesaid two appellants namely, Mohammad Panah Jokhio and Dad Mohammad Jokhio, under Sections 217, 218 and 467 PPC and Section 5(2) of Prevention of Corruption Act, 1947, inasmuch as Sections 217 and 218 PPC are specifically meant for '**public servant**' and not for private persons. Section 217 PPC is in respect of an offence committed by a **public servant** by disobeying direction of law with intent to save any person from punishment or property from forfeiture. Likewise, Section 218 PPC also relates to an offence committed by a **public servant** who frames incorrect record or writing with intent to save any person from punishment or

property from forfeiture. So far as Section 5(2) of Prevention of Corruption Act, 1947 is concerned, although preamble of the Act, 1947 provides that it applies to all citizens of Pakistan, however, now it is a settled law that Anti-corruption Police is neither conferred with any power nor authority to investigate into a dispute regarding private lands, nor does Prevention of Corruption Act, 1947 permits the Anti-Corruption Police to entertain any complaint with regard to the title dispute between the private parties. If any authority is needed, reference can be made to the cases of *Dilbar Hussain Vs. Habib ur Rehman and another* (2017 P. Cr. L.J. Note 218), *Mohammad Moosa Vs. State* (2005 CLC 487) and *Khadim Hussain Vs. The State* (2001 P. Cr.L.J. 1006).

28. Now coming to the case of appellant Ghulam Sarwar Kaladi, it seems that the allegation against him is that while posted as Tapedar, Tapo Konkar, Gadap Town, he in connivance with co-accused persons changed the original sketch of demarcation of land of complainant and prepared a fake report in favour of accused Dad Mohammad. The main defence taken by the counsel appearing for appellant Ghulam Sarwar Kaladi is that the said site-plan in respect of 30 years lease in Na-Class No.305, Deh Kharkhero, Tapo Konkar, Gadap Town, Karachi produced by P.W. Chanden Kumar, Surveyor (Ex.18/1) does not bear the signature of appellant Ghulam Sarwar Kaladi, as such there is no evidence/material available with the prosecution to establish the above allegation against this accused/appellant. Learned Special Judge while dealing with this point observed as under:

“However, during consideration of signature of accused Ghulam Sarwar Kaladi at Ex.18/1 with his signature available over his statement u/s 342 Cr.P.C. placed at Ex.34. It is reveals from the both documents that both signatures are seems same, therefore, claim of defence counsel cannot be consider. For comparing of signature by the Court, Article 84 of The Qanoon-e-Shahadat Order 1984 empowered the court for comparing the signatures on the documents.”

29. In this respect, it may be observed that the said Site-plan/sketch produced by PW-6 Chanden Kumar was not original but the same was only Photostat copy of the said site-plan/sketch which cannot be equated with the original. Learned counsel for appellant Ghulam Sarwar Kaladi contended that Article 84 of Qanoon-e-

Shahadat Order, 1984 does not provide an overriding mode of proving signature in supersession of the mode provided under Articles 73 and 79 of The Qanoon-e-Shahadat Order, 1984. In the case reported as *Syed Hamid Saeed Kazmi Vs. State (2017 P. Cr. L.J. 854 [Islamabad])* it was held that “any document which is not original or primary cannot be tendered in evidence”.

30. In the case reported as *Nasir Abbas vs. The State and another (2011 SCMR 1966)* it was held by Hon’ble Supreme Court as under:

*“In the afore-referred circumstances, the existence of mens rea either for forging the documents or using knowingly cannot be said to have been proved. No wonder even the Police Officer who initially investigated the case namely Muhammad Nawaz SI declared the appellant innocent. **The Non production of the original forged documents further eroded credibility of the prosecution case.** In *Gopalakrishna Heggade (11 CrL. L.J. Reports 401)* the Court took a similar view and acquitted the accused by holding as follows:*

*“The documents Exhibit D, **is merely a copy** of the alleged false document and does not come within the definition of a false document. The conviction under section 71 Indian Penal Code, cannot, therefore, stand”*

31. Of course, the court has the power to compare the two signatures or handwritings, however, the safe mode for comparing such signatures or handwritings is to refer the same to handwriting expert. In the case of *Muhammad Nural Haq Mia and another Vs. The State reported in PLD 1958 Dacca 341* it was held as under:

“Under section 73 of the Evidence Act, it is true that the Court can compare signatures, writing or seal with other signature admitted or proved but it is the established law that it is dangerous to rely on such comparison without the aid of an expert, more so, in the case of comparison between signatures taken before the court with certain other disputed signatures.”

32. In another case reported as *Muhammad Anwar vs. The State. (1984 P. Cr. L.J. 1324 [Lahore])* it was held as under:

“In view of what, all has been discussed and noted above, I do not consider it to be safe to rely upon the conclusions arrived at by trial Court about signatures and hand writing of appellant on bare comparison, in the circumstances of this case.”

33. Besides, from the perusal of the evidence of the prosecution witnesses, it transpires that none of the witnesses has made any direct allegation against the accused/appellant Ghulam Sarwar Kaladi. It also seems that neither in the complaint nor in the F.I.R. and nor even in the interim challan any allegation has been made against the said appellant.

34. As regards other two official accused viz. Appellants Abdul Sattar Bahyo and Manzoor Ahmed Dars are concerned, it appears that the allegation against appellant Abdul Sattar Bahyo was that he being Supervising Tapedar at the relevant time, is alleged to have helped in preparation of the sketch in question, whereas the allegation against appellant Manzoor Ahmed Dars is that he had attested the disputed documents.

35. From the record it appears that the complainant has made no allegation against appellant Manzoor Ahmed Dars in his complaint. Likewise the FIR is also silent and no allegation has been made against him in the FIR too. Not only this, even in his evidence, the complainant has not implicated this accused in the commission of the alleged offence. It is also a matter of record that an Enquiry in respect of Complaint No.207/2007 was conducted and after completion of the said enquiry, the concerned Enquiry Officer/Police Official recommended that FIR should be registered against certain persons, but the name of this accused/appellant was not included in the list of such persons and no action was proposed to be taken against him.

36. Likewise, appellant Abdul Sattar Bahyo is alleged to have helped in preparation of fake sketch in question but by virtue of Article 39 of Land Revenue Act, 1967 such sketch could not be termed as an 'official document', as such there is no foundation of the said allegation. Even otherwise, no original sketch was ever produced during the course of evidence. It is also an admitted position that no signature of this accused/appellant has been found on any of the documents. There is also no evidence on the record that any such document ever remained in the custody of the said appellant. In this view of the matter, the allegation of preparing forged or fake document has not been established against him.

37. Furthermore, the main custodian of the documents alleged to be manipulated/ forged is the concerned Mukhtiarkar who, in the instant case at the relevant time was accused Iqbal Meerani whose name was mentioned in the final challan by the I.O. of the case. However, the said accused was acquitted and proceedings against him were quashed by this Court on the basis of order passed in a Cr. Misc. Application filed by him, however, after conclusion of the trial official accused/appellants have been convicted by the trial Court although case of these appellants was on the same footings. Therefore, Rule of consistency demands that if an accused has been acquitted from the charge on the basis of certain evidence and has been extended benefit of material discrepancies/contradictions in the evidence, other accused charged with similar allegations is also entitled to the same concession/treatment.

38. In the case of *Mohammad Akram vs. The State* reported in 2012 SCMR 440, Honourable Supreme Court while holding that same set of evidence which was disbelieved qua the involvement of co-accused could not be relied upon to convict the accused on a capital charge, acquitted the accused.

39. In another case reported as *Umar Farooque v. State* (2006 SCMR 1605) Honourable Supreme Court held as under:

“On exactly the same evidence and in view of the joint charge, it is not comprehensible, as to how, Talat Mehmood could be acquitted and on the same assertions of the witnesses, Umer Farooque could be convicted.”

40. The above said legal flaws, lacunas and discrepancies in the evidence of the prosecution witnesses make the case of prosecution doubtful. It is a well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. Even an accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case reported as *Tariq Pervaiz vs. The State* 1995 SCMR 1345 the Honourable Supreme Court held as under :-

“The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable

doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

41. In view of above, by a short order dated 11.5.2018 instant appeals were allowed and the impugned judgment dated 12.08.2015 passed by Special Judge Anti-Corruption (Provincial), Karachi in Special Cases No.40/2008 and 40-A/2008 (Re: The State Vs. Dad Mohammad Jokhio & Others), emanating from FIR No.33/2008 of ACE, Karachi under sections 217/218/420/468/166/167/34 PPC read with Section 5(2) of Act II of 1947 was set aside. Appellant Abdul Sattar Bahyo had expired during the pendency of his appeal and his case was abetted in terms of order dated 10.04.2017, as far as fine imposed upon him is concerned his appeal has been contested by his legal heirs. While, rest of the appellants in Criminal Appeals No.188/2015, 193/2015, 199/215 and 202/2015 were acquitted of all the charges. They were present on bail, their bail bonds stood cancelled and sureties furnished by them were discharged.

42. Above are the reasons for the said short order.

JUDGE