

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 31 of 2018

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellant: Yawar son of Gul Zaman through Mr. Asad
Manzoor Halepota, advocate.

Respondent: The State through Mr. Irshad Ahmed, Deputy
Attorney General.

Date of hearing: 10.02.2022

Date of announcement: 18.02.2022

JUDGMENT

KHADIM HUSSAIN TUNIO, J- Through captioned criminal appeal, appellant Yawar son of Gul Zaman has challenged the impugned judgment dated 13.12.2017, passed by the learned Judge Special Court (Offences in Banks) Sindh at Karachi in Case Nos. 47/2012 (*Re-The State v. Yawar s/o Gul Zaman*) emanating from FIR No. 31 of 2012 of FIA CBC, Karachi registered under sections 420/468/471/477-A/109/34 PPC. Through the impugned judgment, appellant Yawar was convicted u/s 468 PPC and sentenced to suffer rigorous imprisonment for seven years with a fine of Rs.10,000/-, in case of default thereof to further undergo simple imprisonment for three months more. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years with a fine of Rs.10,000/-, in default whereof to further undergo simple imprisonment for three months more. He was lastly convicted u/s 420 PPC and sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500,000/-, in default whereof to suffer simple imprisonment for one year more. All the sentences were ordered to run concurrently and benefit of S. 382(b) Cr.P.C was also extended to him.

2. Precisely, facts of the prosecution case are that one Naveed Elahi Malik of NIB Bank Karachi filed a written complaint regarding several customers of their bank in different branches who had complained about withdrawal of cash through encashment of cheques online which were not authorised by them and were put forward by a third party despite the cheques being in their possession. This allegedly caused the bank a loss of Rs.3,532,600/-. On such information, investigation was conducted and several people were found to be involved, amongst whom was the appellant who had presented several counterfeit cheques in the bank to get them encashed.

3. After registration of FIR, usual investigation was conducted by the Investigating officer and on its completion a challan was submitted before the trial Court. After compliance with section 241-A Cr.P.C, a charge was framed against the accused to which he pleaded not guilty and claimed to be tried. At the trial, prosecution examined as many as seven PWs namely PW-1 **Muzaffar Ahmed Khan**, PW-2 **Muhammad Mazahar Khan**, PW-3 **Muhammad Kashif Alvi**, PW-4 **Shamsuddin**, PW-5 **Syed Saim Abbas**, PW-6 **Muhammad Yaqoob** PW-7 **Inspector Muhammad Shoaib** who produced various documents and other items, duly exhibited. Thereafter prosecution side was closed. Statement of accused was recorded under section 342, Cr.P.C, where he denied the prosecution case in toto and pleaded his false implication. However, he did not examine himself on oath in disproof of the charge, nor did he examine anyone else in his defence.

4. After hearing learned counsel for the respective parties, learned trial Court convicted and sentenced the appellant through impugned judgment as stated supra.

5. Learned counsel for the appellant has contended that the fake cheques had not been recovered from the appellant; that the appellant has not presented any fake cheques in the concerned bank for encashment; that no customer/account holder has been made a witness in the case; that the person who made the initial complaint has not been

examined; that no copy of CNIC has been produced at the time of encashment of the fake cheques; that co-accused have already been acquitted; that the appellant is not beneficiary of the alleged fraud; that name of appellant does not transpire in the FIR; that the case of the appellant is on a better footing than that of the co-accused; that no CCTV footage has been produced to establish the appellant's presence at the concerned banks; that no evidence has been produced before the court to suggest that the appellant had prepared the fake cheques, as such he prays for the acquittal of the appellant while relying on the case law titled *NOTICE TO POLICE CONSTABLE KHIZAR HAYAT; In the matter of (PLD 2019 Supreme Court 527)*.

6. Conversely, learned Deputy Attorney General has contended that prosecution has examined as many as seven witnesses who have all supported the prosecution case; that no suggestion has been put forth to the witnesses by the appellant regarding his false involvement; that the cheques were recovered and produced by the bank; that no enmity or ill-will has been alleged or proved by the appellant with the prosecution witnesses. He has placed his reliance on case law reported as *GHAZANFAR alias PAPPU v. The STATE (2012 SCMR 215)*.

7. We have heard the learned counsel for the appellant, learned Deputy Attorney General and have perused the record available before us with their assistance.

8. Perusal of record shows that several incidents of false cheque encashment were reported by the one Naveed Elahhi Malik from NIB Bank Karachi through a written complaint. The matter was looked into by the FIA and it was found that the appellant along with the rest of his gang had encashed several forged cheques belonging to different accounts at various branches of NIB Bank while the originals leaves of the said cheques had remained with the owners. As such, the appellant along with co-accused namely Munira Ghanchi, Ghulam Raza Mithani, Muhammad Raheel Qureshi, Imran Memon and Syed Arif Hussain were

arrested for causing a total loss of Rs. 3,532,600/-whereas the rest of their accomplices became fugitives of the law. The appellant Yawar was convicted by the trial Court, whereas the co-accused were acquitted of the charges levelled against them. PW-1 Muzaffar Ahmed Khan, former counter service supervisor at NIB Bank's Khalid Bin Waleed Road branch identified the appellant in Court at the time of trial and also pointed out that the appellant had presented a cheque before him on 15.11.2010 which PW-1 had duly cleared and gave the cash to appellant Yawar, therefore he squarely put the appellant as the culprit of the crime. To back up his deposition, he produced the cheque produced by the appellant while also producing the original blank cheque having the same number which suggests that one of these cheques was in fact a counterfeit. Appellant Yawar had also presented a cheque on the same day before a different branch *i.e.* DHA Phase-I where PW-2 Muhammad Mazhar Khan worked as a counter service officer. He had cleared the cheque presented by the appellant and handed him the cash after such clearance which was admitted by him in his depositions. The appellant presented another cheque on the same day at the Rashid Minhas Road branch of NIB which was cleared by PW-5 Syed Saim Abbas as the cashier. He squarely identified the appellant like PW-1 and PW-2 before him and deposed that he too had given the amount encashed after the cheque was cleared. All these witnesses maintained their stance regarding the guilt of the appellant even after being cross-examined and despite being given the chance, the appellant did not dispute the depositions of the PWs regarding the appellant presenting the said cheques. Oral as well as eye-witness accounts furnished found support by various documents produced by the prosecution *i.e.* the forged cheques and their original cancelled out cheques having the same numbers. The appellant raised no defence plea besides a stereotypical one being of his false implication by the FIA authorities, however he failed to point out any enmity or ill will rhyme or reason for the FIA to falsely implicate him. Sufficient evidence is available on the record to connect the appellant with the alleged offence and the prosecution has

duly discharged its burden to prove the appellant's guilt beyond reasonable shadow of doubt, as such the present appeal against conviction, being meritless, is dismissed. It may be mentioned here that the acquittal of the appellant's co-accused is of no assistance to the appellant as there was much lesser evidence against them and as such their cases are distinguishable from that of the appellant.

9. However, considering the mitigating circumstances before us, such as the appellant facing the agony of a long trial, the amount of fraud itself being comparatively on the lower end and the beauty of our legislature in always allowing a chance for reformation, the sentence of the appellant originally awarded is converted to one already undergone by him, being a substantial portion in itself. However, the appellant still has to pay the fine amount of Rs. 520,000/- (*five lac and twenty thousand only*) or in default to suffer imprisonment for one year more as ordered by the trial Court vide impugned judgment. Therefore, until the appellant pays off the fine amount of Rs. 520,000/- or undergoes further imprisonment of one year in case of failure, he shall remain in custody. The appellant is present on bail and shall be taken into custody and be returned to Central Prison Karachi until he pays the fine amount or serves the additional sentence of one year imprisonment.

10. Criminal Appeal No. 31 of 2018 stands disposed of in the above terms.

J U D G E

J U D G E