

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

**Criminal Revision Application No. 86 of 2015**

**Present:-**

Ahmed Ali M. Shaikh, CJ &  
Yousuf Ali Sayeed, J

Applicant : Khursheed Anwar Habib son of Waheed Hassan Siddiqui, through Mr. Shaukat Hayat, Advocate.

Respondent No.1 : Muhammad Amin son of Muhammad Saleem through Mr. Khaleeque Ahmed, Advocate.

Respondent No.2 : The State through Mr. Ch. Muhammad Waseem Assistant Attorney General.

Date of hearing : 08.04.2021, 22.04.2021 and 06.05.2021

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Applicant, in his capacity as the authorized representative of Bank Alfalah Limited (the “**Bank**”), has invoked the Revisional jurisdiction of this Court so as to impugn the Judgment rendered by the Special Court (Offences in Banks) Sindh, at Karachi on 20.02.2015 in Case No. 32 of 2006, whereby the Criminal Direct Complaint preferred on behalf of the Bank against the Respondent No.1 under Sections 420 and 406 PPC (the “**Complaint**”) was dismissed while extending the latter the benefit of doubt.

2. The substance of the Complainant was that the Respondent No.1 had committed fraud and criminal breach of trust in respect of obligations arising towards the Bank from its registration of a Contract for the import of 75 m/ton of low-grade inedible tallow valued at USD 25,080/- on 18.02.2006 at its Jodia Bazaar Branch, where the Respondent No.1 had maintained a relationship since 03.11.2005, operating Account No. 0026-01022562 under the title of M/s. Noman Corporation, Karachi, so as to cause wrongful financial loss to the Bank in the sum of USD 11,823/- (then equating to Rs.711,562/-). Expounding on the mechanics of the alleged offence, it was averred that while the Respondent No.1 received the 1<sup>st</sup> set of import documents after clearance of the required liability, he then obtained release of the 2<sup>nd</sup> set of original documents on 03.06.2006 with regard to a consignment of 30 m/tons valued at USD 11,823/- on the basis that sufficient funds of an equivalent amount in Pak Currency were available in the aforementioned Account, which could be debited after confirmation of equivalence at the prevailing rate of exchange. It was stated that as the Respondent No.1 had pleaded grave urgency on the basis of his dire need to secure immediate release of the imported goods and insisted on delivery of the original documents against his authorization for debiting the equivalent Pak Rupee amount from his account, the concerned officer(s) of the Bank had delivered the original documents to the Respondent No.1 in good faith after verification of the available Pak Rupee balance. However, when an attempt was made to debit the Account after ascertaining the exchange rate of the day from the Bank's Head Office for calculation of the Pak Rupee amount equivalent to USD 11823/-, it transpired that there were insufficient funds. This was stated as being due to an online transfer having meanwhile been engineered on presentation of a Cheque for Rs.700,000/- issued by the Respondent No.1 in favour of M/s. Global Enterprises and presented at the Bank's North Napier Road Branch, Karachi,

where Account No.000301001555 bearing such title was maintained by his son, with the Respondent No.1 holding the operational mandate since inception. The transferred amount was then simultaneously withdrawn from the account of M/s. Global Enterprises through multiple cheques made out to cash under signature of the Respondent No.1.

3. After recording the Statement of the Complainant under Section 200 Cr. P.C, the learned trial Court referred the matter for a Preliminary Enquiry and, upon perusing the report forthcoming in that regard, then took the matter on record and registered the aforementioned Case against the Respondent No.1, who pleaded not guilty to the Charge framed against him.
4. During the course of the trial, the Complainant, namely M. Ilyas Dadoo (i.e. the then Chief Manager of the Jodia Bazar Branch and authorized representative of the Bank), examined himself as PW-1, producing the record of account in the name of M/s. Global Enterprises along with other documents, followed by two other witnesses, namely Shahzad Kharadi (PW-2) and Nooruddin Najmuddin (PW-3), both of who were also employed at the said Branch, the Complainants side then being closed vide a Statement dated 14.12.2012.
5. The statement of the Respondent No.1 was then recorded under Section 342 Cr. P.C, whereby he denied the allegations and stated that an amount of Rs.710,000/- had subsequently been paid to the Bank vide a deposit slip dated 03.06.2006, which he produced as Exh.8/A (the "**Deposit Slip**"), but did not examine himself on oath, nor produced any other witnesses in his defense.

6. However, an Application under Section 540 Cr. P.C was filed by the Complainant in the wake of that development, seeking that the Branch Manager or any other officer of the Jodia Bazar Branch be called for examination and confrontation of the Deposit Slip, which was allowed notwithstanding the objections of the Respondent No.1 vide an Order dated 04.10.2013, as follows:

“This order will dispose of an application u/s 540 Cr.P.C moved by advocate for complainant bank.

Learned advocate for complainant bank argued that a deposit slip amounting to Rs.710000/- of M/s. Bank Al Falah Limited produced by accused in his statement u/s 342 Cr.P.C which is forged and fabricated document therefore he requested that for calling of branch manager Bank Al Falah Jodia Bazar branch Karachi or other officer of the bank/branch for examination of the deposit slip Exh.8/A. He further argued that it will be in the interest of justice if his request may be considered and summon may be issued to branch manager Bank Al Falah Jodia Bazar branch Karachi.

The application is objected by advocate for accused on the ground that in cross examination related question for deposit slip was put to Pws therefore there is no need to call the branch manager. He further argued that complainant bank wanted to live and linger on the matter, therefore the request of complainant may be dismissed.

Perusal of R & P reveals that in this direct complaint after recording the evidence of Pws, statement of accused u/s 342 Cr.P.C was recorded in which he has produced a deposit slip Exh.8/A amounting to Rs.710000/-. To meet the end of justice and for the purpose of fair trial it is necessary to examine the branch manager Bank Al Falah Jodia Bazar branch Karachi. Accordingly for the above reasons the application u/s 540 Cr. P.C of complainant bank is allowed. Let the summon may be issued to above mentioned witness.”

7. Consequently, one Syed Sarwar Abbas Naqvi came to be examined as CW-1, with his deposition being marked as Ex.9. Thereafter, the further statement of the Respondent No.1 was recorded, where he stated that Nooruddin, an employee of the Bank posted at the Jodia Bazaar Branch, used to pass on the receipts of payment amounts handed over to him, therefore he could not say where the amount reflected in the Deposit Slip had been deposited.

8. The examination-in-chief and cross of Mr. Naqvi is of particular significance, reading thus:

“Examination-in-chief to Mr. Shaukat Hayat Advocate for the complainant.

On 3.6.2006 I was posted as cashier in Jodia Bazar branch of Bank Al Falah. Jameel, Jamal and Siraj were also posted as cashier with me. Two amongst three have left the job of our bank and third one has transferred from our branch. In those days accused in the name of M/s. Noman Corporation was being operated in our branch. I see deposit slip Exh.8/A and say that it is not deposit slip of our bank but it is deposit slip of Napier road branch of our bank and does not pertain to our branch. The deposit slip Exh.8/A does not bear signature of any cashier of our branch. The rubber stamp affixed on deposit slip Exh.8/A is not of our branch because the rubber stamp of our branch is in oval shape.

CROSS EXAMINATION TO MR. KHALEEQ AHMED  
ADVOCATE FOR ACCUSED MUHAMMAD AMEEN.

I do not know that the account of the accused is related to the import and export through export department of our bank. It is correct to say that one Nooruddin was posted in our department of export. I see deposit slip Exh.8/A and say that it bears signature of Nooruddin of export zone of our bank. I see document Exh.4/K and say that it bears rubber stamp which rubber stamp also bears on deposit slip Exh.8/A. Nooruddin was posted in Jodia Bazar branch in those days. It is incorrect to say that I am deposing falsely.”

9. On an appraisal of the evidence, particularly the Deposit Slip and the deposition of the Court witness, as reproduced herein above, the learned trial Court concluded that his testimony undermined the evidence otherwise brought on record by the Complainant and the case was therefore not free of doubt. As such, that benefit was extended to the Respondent No.1 so as to acquit him from the Charge.
10. Learned counsel for the Applicant contended that the learned trial Court had erred in its assessment and failed to appreciate that the actions of the Respondent No.1 in transferring the sum from his account to that of his son constituted fraud and

cheating for purposes of Sections 406 and 420 PPC and demonstrated his guilt. He sought to argue that the Respondent No.1 had then also admitted his liability when contacted by the officers of the Bank as he had sought to explain the transfer as an errant transaction inadvertently undertaken by his son, and maintained that the Deposit slip was a fabricated document.

11. Conversely, learned counsel for the Respondent No.1 defended the impugned Judgment whilst arguing that in light of the testimony of the Court witness, it was clear that the Complaint was marred by doubt and had correctly been dismissed as such.
  
12. As may be appreciated from the sequence of events marking the proceedings at trial, the outcome of the Complaint turned principally on the testimony forthcoming from the Bank's own employee, who was summoned as a witness by the Court at the behest of the Bank on the application of the Complainant. Hence it cannot be said that he had been set up by the Respondent No.1, nor was there any suggestion during the course of his deposition that he had otherwise been won over. The stated purpose of that witness being summoned was to depose as regards the Deposit Slip, which as per the contention of the Complainant was a forged and fabricated document.
  
13. However, when his testimony is considered, what comes to the fore, as observed by the trial Court, is that the Deposit Slip bore a stamp which albeit said to be different from that used by the Jodia Bazaar Branch of the Bank, nonetheless corresponded to the stamp used by the Bank on certain admitted documents introduced from the Complainant's side. Furthermore, the Deposit Slip also inexplicably bore a

signature that was recognized by that witness as being that of one Nooruddin, another employee of the Bank then posted at that Branch. Although not clearly stated as part of the record, it transpires from the statement made in the instant Revision Application that said Nooruddin is none other than PW-3. The learned trial Court held that the coincidence of those factors, coupled with the absence of any enquiry undertaken in that regard by the Bank, gave rise to doubt as to the Complainant's case. In our assessment, it cannot be said that that this conclusion could not reasonably have been drawn under the given circumstances. Indeed, no attempt was even made on the part of the Complainant to seek referral of the Deposit Slip for forensic analysis by a handwriting expert.

14. It also falls to be considered that the Complaint and the Statement recorded under Section 200 Cr. P.C are couched in general terms so as to broadly mention that the Respondent No.1 "approached the Bank", but do not disclose the details of what transpired on the relevant date in terms of identifying who was responsible for custody of the documents and/or instrumental in their release. Furthermore, whilst the depositions of PW-2 and PW-3 suggest that the Respondent No.1 appeared for obtaining the documents shortly after commencement of the working day and suggest that the rate of exchange was therefore not readily ascertainable at the time of their release, both the Complaint and Statement recorded under Section 200 Cr.P.C disclosed that the Respondent No.1 made such approach "at late working hours". Additionally, while it was specified in the Statement recorded under Section 200 Cr. P.C that the documents were received on 18.03.2006, the Complainant contrarily replied under cross-examination that it was correct that they had been received on 24.03.2006, and could not even remember the exact date on which they were collected by the Respondent No.1, but could only say that it was during the month of June 2006. Be that as it may,

whichever of those two dates is considered, it beggars belief that when the Respondent No.1 then approached the Bank for release of the documents as belatedly as 03.06.2006, he could have demonstrated such urgency as to prevail upon the Bank's functionaries to accede to the release of the documents without following necessary formalities by way of securing prior payment, as required under the Contract, or at least marking a lien over the account to be debited. Suffice it to say, a run of the mill customer of the Bank could scarcely have had such leverage as to prevail on its functionaries to make an accommodation of that nature, and neither the period of his banking relationship nor Statement of Account suggest any special circumstances due to which the Respondent No.1 would have been able to command such a privilege.

15. It is well-settled that a presumption of double innocence arises in favour of an acquitted party, with interference being warranted only when the decision to that effect is found to be capricious, arbitrary and perverse. By way of authority in that regard, one need no look no further than the judgment of the Honourable Supreme Court in the case reported as the State v. Abdul Khaliq PLD 2011 Supreme Court 554, where after examining the case law on the subject it was held that:-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is



rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.”

16. Under the given circumstances, no interference is warranted and the Revision, being devoid of merit, stands dismissed accordingly.

JUDGE

CHIEF JUSTICE

Karachi.

Dated: