

IN THE HIGH COURT OF SINDH, KARACHI

Before:

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

Criminal Appeal No. 276 of 2019

Appellant: Mumtaz Hussain son of Ghulam Habib, through
Mr. Mustafa Ali Safvi, advocate

Criminal Appeal No. 298 of 2019

Appellant: Aftab Ahmed son of Mushtaq Ahmed through Mr.
Raj Ali Wahid Kanwar, advocate

Criminal Jail Appeal No. 370 of 2019

Appellant: Syed Asif Ali son of Syed Munawwar Ali through
Mr. Raj Ali Wahid Kanwar, advocate

Respondent: The State through Mr. Irshad Ali, Assistant
Attorney General.

Date of hearing: 16.03.2022

Date of announcement: 24.03.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- By this common judgment, we intend to dispose of the above captioned criminal appeals filed by the appellants challenging the judgment dated 30.04.2019 (*impugned judgment*) passed by the Special Court (Offences in Banks) Sindh at Karachi being the off-shoot of one and same FIR bearing Crime No. 15 of 2014, registered with FIA CCC Karachi for the offences punishable u/s 409, 420, 460, 468, 471, 109 and 34 PPC r/w S. 5(2) Prevention of Corruption Act-II (PCA-II) 1947. Through the impugned judgment, the appellants were convicted and sentenced as follows:-

- a) Syed Asif Ali was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to serve six years of rigorous imprisonment with a fine of Rs.4,650,000/-, defaulting in payment of fine whereof he was to suffer one year of further imprisonment. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years with a fine of Rs.30,000/-, defaulting in payment whereof was to lead to further imprisonment for three months.
- b) Aftab Ahmed was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to serve three years of rigorous imprisonment with a fine of

Rs.30,000/-, default in payment of whereof he was to suffer further imprisonment of three months.

- c) Mumtaz Hussain was convicted u/s 420 PPC r/w S. 34 PPC and sentenced to suffer rigorous imprisonment for four years with fine of Rs.40,000/-, in default of payment whereof to undergo further imprisonment for four months. He was further convicted u/s 468 PPC and sentenced to suffer four years of rigorous imprisonment and to pay fine of Rs.50,000/-. If he were to default in paying the fine, he was ordered to suffer further imprisonment for six months. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.30,000/-, in default whereof to suffer further imprisonment for three months.

All the sentences were ordered to run concurrently and benefit of S. 382(b) Cr.P.C was extended to them.

2. Precisely, facts of the prosecution case are that the absconding accused Muhammad Ismail, in collusion with appellant Aftab Ahmed, got approved his Saiban loan of Rs.4,650,000/- on the basis of forged documentation while showing the purchase of Plot No. B-1 of Survey No. 36 Deh Digh Tapo Malir from appellant Syed Asif Ali who had allegedly purchased it from appellant Mumtaz Hussain who sold the same on the basis of fabricated power of attorney. The fraud surfaced after an inquiry post-default of load was conducted internally and a written complaint was then filed with the Federal Investigation Agency. The matter was investigated by the FIA and as such the FIR was registered.

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 they pleaded not guilty and claimed to be tried. At the trial, prosecution examined as many as thirteen PWs namely PW-1 Muhammad Ashraf, PW-2 Syed Taha Tanveer Ali, PW-3 Haseeb Ahmed Siddiqui, PW-4 Ahmed Memon, PW-5 Muhammad Aijaz, PW-6 Syed Mukhtiar Hussain, PW-7 Kashif Rasheed, PW-8 Aleem Ahsan, PW-9 Syed Hussain Haider, PW-10 Nadeem Wahab, PW-11 Gulsher Mugheri, PW-12 Muhammad Sanaullah and PW-13 Furqan Ahmed Nizami who produced various documents and other items, duly exhibited. Statement of accused were

recorded under section 342, Cr.P.C, where they denied the prosecution case in toto and pleaded their false implication. However, they did not examine themselves on oath in disproof of the charge, nor did they examine anyone else in their defence.

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

5. Learned counsel for the appellants jointly contended that the appellants are innocent and have been falsely implicated in the present case; that the appellant Mumtaz Hussain sold the plot on the basis of genuine documents and that he possessed genuine irrevocable power of attorney with respect to the plot; that the loan case was also not approved by the appellant Aftab Ahmed who was just working as a rider at the NBP; that the verification and survey of plot being sold was done by private companies; that various other officials of the NBP sanctioned the loans, but were not joined in the investigation by the IO; that no direct evidence is available on the record against any of the appellants; that no evidence has been brought before the Court to prove that the documents used for the loans were forged and fabricated; that the learned trial Court had no jurisdiction in the matter as the same was pertaining to Financial Institution (Recovery of Finance) Ordinance 2001. In support of their contentions, they have cited the case law reported as *Soomar v. The State* (1999 PCrLJ 1561), *A. Habib V.M.K.G Scoot Christian and 5 others* (PLD 1992 SC 353), *Hussain Bux v. The State* (PLD 2003 Karachi 122), *The State v. Rab Dino Shaikh and another* (2003 SCMR 341), *Ghulam Mustafa Abbasi v. The State through ACE and another* (2011 MLD 421), *Nasir Abbas v. The State* (2011 SCMR 1966), *Industrial Development Bank of Pakistan v. Abdul Latif Channa and 6 others* (2012 PCrLJ 528), *Syed Mushahid Shah and others v. Federal Investment Agency and others* (2017 SCMR 1218), *Farhanul Hassan v. The State* (2018 PCrLJ Note 206), *Muhammad Sadiq v. Dileep Kumar Chawla and 6 others* (2019 YLR Note 67),

Umar Mukhtar v. The State (2020 MLD 696) and *Utility Store Corporation of Pakistan v. The State and others* (2021 SCMR 408).

6. Conversely, learned Assistant Attorney General has contended that the prosecution has examined as many as thirteen witnesses who have all supported the prosecution case; that no suggestion has been put forth to the witnesses by the appellants regarding their false involvement; that the documents were recovered and produced by the bank; that no enmity or ill-will has been alleged or proved by the appellants with the prosecution witnesses; that the fabrication of documents made the nature of crime one of fraud which was triable by the learned trial Court.

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

8. Since an objection has been raised regarding the jurisdiction of the learned trial Court, it would be beneficial to address the same. It was contended by the counsel for the appellants that a Court constituted under the Financial Institutions (Recovery of Finances) Ordinance 2001 had the exclusive jurisdiction to try the case as it concerned obtaining of loan and default of the same, pursuant to the case of *Syed Mushahid Shah v. Federal Investment Agency and others* (2017 SCMR 1219). As also discussed by the learned trial Court, the 2001 Ordinance only tries offences committed by a customer who is granted a loan on the basis of genuine details and documents and then he defaults the same. However, in the present case the loan itself was applied for on the basis of forged and fabricated documents which brought the meaning of the crime under the concept of 'fraud' and 'cheating' the two types of scheduled offences triable under the Offences in Respect of Banks (Special Courts) Ordinance 1984. Therefore, said argument advanced by the counsel for the appellants merits no further consideration.

9. Having gone through the material available on the record, it is revealed that the incident stems from Plot No. B-1 of Survey No. 36

Deh Digh Tapo Malir. As per the record, the property was in the possession of PW-8 Aleem who presented the original sale deed dating 28.04.1980, whereas the sale deed for his property on file was shown to be 22.03.2007, having different parties and witnesses. None of the appellants ever disputed his claims of ownership and did not even cross-examine him on this aspect. On the pretext of buying such property though, absconding co-accused Muhammad Ismail applied for a loan with the National Bank of Pakistan through the appellant Aftab Ahmed who was working as a sales officer (outsourcer employee) with the Saiban Loan scheme and used to present various documents to get his loan approved. On the basis of said documents, a summary sheet was prepared and the loan was sanctioned by the credit head which was then given to Muhammad Ismail. Appellant Aftab has denied the prosecution case although he has failed to come up with any explanation how once again he was involved in the same fraud scheme with a different debtor. It is also a matter of record that he has been convicted in numerous other cases pertaining to Saiban Loan fraud schemes which also does not help his case. He claimed, in his statement of accused, to be a rider for the bank albeit his claims were belied by PW-5 Muhammad Aijaz who categorically deposed that appellant Aftab was an outsourcer employee who used to bring in customers for the Saiban Loan scheme and used to help them out. The appellant Syed Asif Ali admitted that he had purchased the plot bearing No. B-1 of Survey No. 36 Deh Digh Tapo Malir. He claimed that the said sale was based on genuine documents and titles, however nothing was brought on record by him to prove the same. He also admitted that he had received a pay order of Rs. 4.650 million which was handed to him through NBP officials. Rs. 4.650 million was the loan amount obtained by the co-accused Muhammad Ismail as shown in the summary sheet. Appellant Mumtaz Hussain possessed an irrevocable power of attorney which is available on the record with the sale deed dated 22.03.2007. It is a matter of record that the survey numbers shown on the power of attorney and those mentioned in Revenue Entry No. 2797 and 2978 did not match and had

variations. On this basis alone, it can safely be concluded that the power of attorney on the basis of which appellant Mumtaz sold Plot No. B-1 to Syed Asif Ali were in fact fabricated and they were all colluding with each other to usurp the loan amount and try to remove any traces of their fraud. Appellants Aftab Ahmed and Mumtaz Hussain have once again shown up in a loan fraud case where appellant Aftab has helped speed up the process by presenting fake documents for loan approval and appellant Mumtaz has sold a property he was not authorized to through a fabricated power of attorney. This was an elaborate scheme run by the appellants and co-accused Ismail where he initially sought loan. Then, appellant Mumtaz sold plot No. B-1 on the basis of fake power-of-attorney to appellant Asif Ali who then sold it to Ismail. The documents claimed to have been genuine that were presented before the bank were also deemed fake by PW-4 Ahmed Memon, the custodian of the record being the Mukhtiarkar. The prosecution has undeniably proven the guilt of the appellants beyond reasonable shadow of doubt, as such present appeals against convictions, being meritless, are dismissed.

10. However, considering the mitigating circumstances before us, such as the appellants facing the agony of a long trial, the amount of fraud itself being comparatively on the lower end when shared amongst the appellants, to maintain uniformity in sentencing and the beauty of our legislature in always allowing a chance for reformation, the sentences of the appellants are altered as follows:-

- a) Syed Asif Ali's sentence u/s 420 PPC r/w S. 34 PPC is reduced to three years of rigorous imprisonment from the six years originally awarded by the trial Court. His sentence u/s 471 PPC of three years is also maintained being the minimum prescribed term pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984.
- b) Aftab Ahmed's sentence u/s 420 PPC r/w S. 34 PPC of three years as awarded by the trial Court is maintained.
- c) Mumtaz Hussain's sentence u/s 420 PPC r/w S. 34 PPC is reduced to three years of rigorous imprisonment from the four years originally awarded by the trial Court. His sentence u/s 468 PPC of four years is maintained being the minimum prescribed one pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984. His sentence u/s 471 PPC of three years is also maintained being the minimum

prescribed term pursuant to Schedule 2 of the Offences in Respect of Banks Ordinance 1984.

- d) The fine amounts originally awarded by the learned trial Court are however maintained.

All sentences shall run concurrently and the appellants shall have the benefit of S. 382(b) Cr.P.C and any remission applicable to them under the law. The appellants shall be taken into custody and be returned to Central Prison Karachi for serving out their sentences if any remain to be undergone.

11. Criminal Appeals Nos. 276, 298 and Jail Appeal No. 370 of 2019 stand disposed of in the above terms.

JUDGE **JUDGE**