

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Criminal Appeal No. S- 08 of 2022

Appellants : Muhammad Touqeer, Naveed Hussain and
Ahmar Khan through Mr. Farhad Ali Abro,
Advocate.

Respondent : The State
through Mr. Shahzado Saleem Nahiyoon,
Additional Prosecutor General, Sindh.

Date of hearing : 29.04.2022
Date of judgment : 29.04.2022

J U D G M E N T

ZULFIQAR AHMED KHAN, J. Appellants were tried by learned Illrd Additional Sessions Judge, Hyderabad in Sessions Case No. 32 of 2017, arising out of Crime No.175/2016 registered at Police Station A-Section Latifabad for offence under Sections 489-A, 489-B, 489-C, 34 PPC. Vide judgment dated 04.01.2022, the appellants / accused were convicted for offence punishable under Section 489-B PPC and were sentenced for ten (10) years R.I and to pay the fine of Rs.500,000/- (Rupees five lac) each. In case of default in payment of fine, they were ordered to suffer SI for two (02) years more. Benefit of Section 382-B Cr.P.C. was however extended to the appellants.

2. The relevant facts of the prosecution case as disclosed in the judgment of trial court reads as under:-

“The case of the prosecution as narrated in the FIR is that on 20.10.2016, a police party headed by SIP Muhammad SaleemArain was on patrolling duty and started snap checking at PMG Chowk, Unit No. 08, Shah Latifabad, Hyderabad. He found three persons coming on motor cycle, who were signaled to stop but those persons turned

the motor cycle and attempted to flee. Being suspicious, they were apprehended at 1930 hours. On enquiry, they disclosed their names as Muhammad Touqeer, Naveed Hussain and Ahmar Khan. It is alleged by the complainant that on search of person of accused Muhammad Touqeer 96 Currency Notes of Rs. 5000/- denomination were recovered from the side pocket of his shirt and from other pocket of the shirt 58 US Dollar of 100 denomination were recovered. From the accused Naveed Hussain 66 Currency Notes of Rs. 5000/- denomination recovered from pocket of his trouser, three prize bond of Rs. 7500/- from back side pocket of his pent along with 02 Nokia and one Q Mobile and a Pakistan Passport in the name of one Anjum. From accused Ahmar Khan 100 US Dollar of 100 denomination recovered from the left side pocket and from other side pocket of the pent 99 US Dollar of 100 denomination were recovered. It is also alleged by the complainant that on scanning, he found the numbers of some Currency Notes of Rs. 5000/- denomination matched with the number of some US Dollars and on enquiry accused persons admitted that the Currency Notes and US Dollar were counterfeit currency and they used to exchange with the public. The accused persons were arrested in presence of mashirs namely PC Imtiaz Khan and PC JahanzaibMughal. Thereafter, they were brought at PS where present case was registered on behalf of the State.”

3. After usual investigation challan was submitted against accused under the above referred Sections.
4. Trial Court framed charge against accused persons at Ex.2, to which, they pleaded not guilty and claimed to be tried.
5. In order to substantiate the charge, prosecution examined PW-1 PC Islamuddin at Ex.03, PW-2 Complainant SIP Muhammad Saleem Arain at Ex.04, who produced memo of arrest and recovery, FIR, report of State Bank of Pakistan dated 11.11.2016 along with verification report of State Bank of Pakistan and the report of Pakistan Security Printing Corporation in respect of Prize Bonds at Ex4/A to 4/C. Mashir PC Imtiaz Khan was examined as PW-3 at Ex.05. Prosecution did not produce the witness PC Islamuddin whose examination in chief was recorded and gave up the said PW vide statement at Ex.06 and then the side of prosecution was closed vide statement at Ex.07).

6. Statements of accused were recorded under Section 342 Cr.P.C at Exs.8 to 10 respectively, wherein they denied the prosecution allegations and pleaded innocence. The appellants further stated that case has been managed, PWs are interested and the property has been foisted upon them. However, neither they examined themselves on Oath nor produced any evidence in their defence to disprove the prosecution allegations.

7. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record, through its judgment dated 04.01.2022 convicted and sentenced the appellants as stated supra.

8. Facts of the prosecution case as well as evidence find an elaborate mention in the judgment of the trial court as such there is no need to repeat the same to avoid unnecessary repetitions.

9. I have heard Mr. Farhad Ali Abro, advocate for appellants, Mr. Shahzad Saleem Nahiyoon, Additional Prosecutor General for the State and perused the entire evidence minutely with their assistance.

10. Learned counsel for the appellants has mainly argued that appellants are innocent and have falsely been implicated in the case in hand; that the prosecution story was un-natural and unbelievable; that the property has been foisted upon the appellants; that the learned trial court has committed error and gross illegality while passing the impugned judgment; that the evidence of the prosecution witnesses is contradictory to each other on material aspects of the case; that the learned trial court also failed to consider that the prosecution did not produce one witness PC Islamuddin for his cross examination who after recording his examination in chief was given up by the prosecution malafidely and with ulterior motive which creates serious doubt in the

prosecution case. Lastly, he has prayed for acquittal of the appellants. In support of his contentions, learned counsel has placed reliance on the case law reported as *Ismail and 2 others v. The State* (2016 P.Cr.L.J 584).

11. On the other hand, learned Additional Prosecutor General opposed the appeal on the ground that appellants have been apprehended by a police party having been found in large numbers of fake Pakistani Currency Notes, US Dollars and the Prize Bonds which they were intending to use it as genuine; that the said counterfeit currency was verified by the complainant from State Bank of Pakistan and positive report is received. Lastly, it is argued that though there are minor contradictions in the evidence of prosecution witnesses but the same are not fatal to the case of prosecution. He prayed for dismissal of the appeal.

12. I have carefully heard the learned counsel for the parties and scanned the entire evidence in the light of case law cited by the counsel for the appellant.

13. In my considered view, prosecution has failed to prove its' case against the appellants for the reasons that as per FIR, complainant party was on patrolling duty and started snap checking at PMG Chowk Unit No.8, Latifabad Hyderabad where they saw the present appellants coming on a motorcycle who tried to run away but were apprehended and recovery of huge number of counterfeit currency and prize bonds was affected from their possession. It is well settled that in cases of recovery, police has to associate private persons as mashir if they are available on the spot to maintain the transparency of the recovery rather than to hire the police personnel in this regard. Allegedly, accused persons were arrested from thickly populated area of Hyderabad City but

complainant did not attempt to associate any available private person on the spot to act as mashir of recovery which is utter violation of the dicta laid down in the case of State v. Bashir and others, (PLD 1997 SC 408), wherein the Hon'ble Supreme Court while dealing with the provisions of section 103, Cr.P.C., has observed as under:-

"As regards the above second submission of Mr. M.M. Aqil, it may be observed that it has been repeatedly held that the requirement of section 103, Cr.P.C. namely, that two members of the public of the locality should be Mashirs to the recovery, is mandatory unless it is shown by the prosecution that in the circumstances of a particular case it was not possible to have two Mashirs from the public. In this regard, it will suffice to refer to a recent Judgment of this Court in the case of Mushtaq Ahmed v. The State, PLD 1997 SC 574. In the case in hand SIP Muhammad Rafique has not been able to give any cogent explanation as to why he was unable to secure two Mashirs from the public."

There is also no explanation on record why no any independent person from the vicinity has been joined to witness the recovery proceedings. Here in this case, I have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside.

14. Apart from above, it has also come on record that the examination in chief of one witness namely PC Islamuddin was conducted on 24.08.2017 but his cross examination was not conducted and he was given up by the prosecution for the reasons best known to it which creates reasonable doubt in the prosecution case. It has also come on record that no customer was found available there, though as per prosecution case, accused admitted that they used to exchange these fake currency notes with simplest persons. The complainant in his cross examination has admitted that FIR was lodged prior to verification report from the State Bank which was received on 11.11.2016 hence malafide

is obvious. He further admitted in his cross examination by replying that **“I lodged FIR. I see the parcel of the property neither it bears the date nor the time of sealing and without signatures of mashirs. It is correct that no private person was found available in contact with the accused at the time of arrest. It is correct that I have not produced anything in black-and-white including the station diary or the property register confirming that the property was simply deposited in malkhana.”** Furthermore, no investigation with regard to the alleged motorcycle used by accused in the commission of offence has been made nor the owner of said motorcycle was made as an accused in this case while it was seized u/s 550 Cr.P.C. There are also discrepancies and flaws in the evidence of complainant and mashir of arrest and recovery. All the above factors suggest the false implication of appellants in this case which cannot be ruled out.

15. Perusal of the material available on record further reveals that neither there was any source of information regarding the possession of counterfeit currency and prize bonds by the appellants nor any complaint was made by any person against accused persons. PWs have also not deposed about the numbers of counterfeit currency and prize bonds in their evidence. Allegedly, the currency notes were recovered from the possession of accused though they have denied the said recovery, but prosecution has failed to establish that the accused were intending to use those notes or attempted to pass on the same to anybody else, as such element of criminal mensrea is entirely missing. The onus lies on the prosecution to prove circumstances which lead clearly, undoubtedly and irresistibly to the inference that the accused had the intention to foist the notes on the public.

16. Considering the above facts and circumstances, prosecution has failed to bring guilt at home, while the appellants have succeeded to

make out their case, as there are solid reasons to believe their plea of innocence. It is well settled that any slightest iota of doubt if created in prosecution case, shall be counted in favour of the accused and then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance can be placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

"For giving benefit of doubt to appellant 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 matter of right".

17. For the aforementioned reasons, I have no hesitation to hold that the prosecution has miserably failed to prove its case against the appellants / accused. Resultantly, by our short order dated 29.04.2022, the conviction and sentence recorded by the trial court vide judgment dated 04.01.2022 was set aside and the appeal was allowed. Appellants Muhammad Touqeer, Naveed Hussain and Ahmar Khan were acquitted of the charges. They were ordered to be released forthwith if not required in any other custody case.

These are the reasons of the said short order.

JUDGE

Tufail