

IN THE HIGH COURT OF SINDH, KARACHI

Before:

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

Criminal Appeal No. 277 of 2019

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

Criminal Appeal No. 299 of 2019

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

Criminal Jail Appeal No. 608 of 2019

Appellant: Muhammad Ashraf Sunny son of Jameel Ahmed
through Mr. Ameet Kumar, advocate

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

Date of hearing: 16.03.2022

Date of announcement: 24.03.2022

JUDGMENT

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 offshoot of one and same FIR bearing Crime No. 16 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) Muhammad Ashraf Sunny 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.4,200,000/-, 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 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.40,000/-. If he were to default in paying the fine, he was ordered to suffer further imprisonment for four 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 co-convict S.M Mansoor Alam, in collusion with the appellants, fraudulently got issued a Saiban loan by manipulating the record of National Bank of Pakistan on the basis of fabricated documentation through appellant Aftab Ahmed, got valued Plot No. A-73 of Survey No. 51 Deh Digh Tapo Malir falsely and then colluded with property seller appellant Muhammad Ashraf Sunny to cause NBP losses of Rs. 4,200,000/- by getting the loan approved on the basis of said fake documentation and then defaulting it. The fraud surfaced after a post-default inquiry was conducted internally and then a written complaint was filed with the Federal Investigation Agency. Then, the loan amount was shown to have been used to purchase the plot which was sold on the basis of fake irrevocable power-of-attorney that was managed by appellant Mumtaz Hussain and the property was mortgaged with NBP. 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 sixteen PWs namely PW-1 Khursheed Hussain, PW-2 Haseeb Ahmed Siddiqui, PW-3 Syed Taha Tanveer Ali, PW-4 Ahmed Memon, PW-5 Rasool Bux, PW-6 Muhammad Khalid, PW-7 Abdul Qadir, PW-8

Syed Mukhtiar Hussain Shah, PW-9 Muhammad Aijaz, PW-10 Kashif Khan, PW-11 Shafi Muhammad Kalwar, PW-12 Suhail Akhtar Arbab, PW-13 Muhammad Imran Shaikh, PW-14 Mansoor Ahmed, PW-15 Furqan Ahmed Nizami and PW-16 Syed Saleem Ahmed Warsi who produced various documents and other items, duly exhibited. Thereafter prosecution side was closed. Statement of accused were recorded under section 342, Cr.P.C, wherein they denied the commission of the offence and claimed to be innocent. 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 was the valid attorney of the owners of Plot No. A-73; that the loan case was also not approved by the appellant Aftab Ahmed, instead was approved by the credit head of NBP; that the verification and survey of the Plot being sold was done by private companies; that various other officials of the NBP sanctioned the loan, however they were not joined in the investigation by the IO; that no direct evidence is available on the record against any of the appellants; that the plot's sale and purchase was based on original documents; that no evidence has been brought before the Court to prove that the documents used for obtaining the loan 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 being a case of simple loan default. 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 sixteen 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 seized by the investigation officer from the concerned 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. A-73 of Survey No. 51 Deh Digh Tapo Malir. As per the record, the property was in the possession of PW-6 Muhammad Khalid. He deposed that he had obtained a loan from UBL during his service there and then purchased the Plot and kept it on mortgage with UBL. Then in the year 2009, he paid the last instalment and through redemption deed dating to the year 2012, he gained title of the said plot. He was never cross-examined on these aspects despite the accused being given all the chances at trial. Appellant Aftab Ahmed, Mumtaz Hussain and Muhammad Ashraf Sunny appear to be the main master-minds behind countless schemes of bank loan fraud under the Saiban scheme having as many as 7 different instances of loans being issued and the present three appellants being involved. Appellant Aftab Ahmed, as always, was working as a sales officer (outsource employee) with the Saiban Loan scheme and used to present various documents to get the loan application filed by co-convict Muhammad Mansoor approved. PW-2 Haseeb Ahmed who worked as a credit analyst at NBP deposed that the applicant had been referred to him by the appellant Aftab Ahmed who then used to present documents for him and on the basis of said documents, the summary sheet was prepared and the loan was sanctioned by the credit head which was then given to the co-convict. Appellant Aftab has yet again denied the prosecution case although has failed to come up with any explanation in this regard. Appellant Aftab also claimed to be just a rider for NBP and claimed to be having no concern with bringing in customers for loans, however such an assertion was duly belied by the depositions of PW-2 Haseeb Ahmed and PW-9 Muhammad Aijaz, both of whom deposed that the appellant was an outsource employee who used to bring in

customers for the Saiban Loan Scheme. Appellant Mumtaz Hussain possessed an irrevocable power of attorney dated 05.03.1996 which is available on the record as part of the sale deed at Ex-10/A-8. 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. A-73 to appellant Muhammad Ashraf Sunny 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. 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 present appellants have time and again, due to the lust of money, defrauded the bank and caused a considerable loss. 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 three 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) Muhammad Ashraf Sunny'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. 277, 299 & Jail Appeal No. 608 of 2019 stand disposed of in the above terms.

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