

**IN THE HIGH COURT OF SINDH AT KARACHI****Criminal Appeal No. 442 of 2017**

**Appellant** : **Noman Ahmed Siddiqui**  
**through Mr. Muhammad Umer Lakhani, Advocate**

**Versus**

**Respondent** : **The State**  
**through Mr. Saeed A. Memon,**  
**Assistant Attorney General**

Date of hearing : 03-04-2018

Date of judgment : 20-04-2018

**JUDGMENT**

**Omar Sial, J.:** The appellant has challenged a judgment dated 16-9-2017 passed by the learned Special Court (Offences in Banks) Sindh at Karachi. In terms of the said judgment the appellant was convicted and sentenced as follows:

- (a) For an offence u/s 409 P.P.C to suffer rigorous imprisonment of 10 years and a fine of Rs. 3,700,000 (or suffer simple imprisonment of a further 2 years in default).
- (b) For an offence u/s 420, 468 and 471 P.P.C to suffer rigorous imprisonment of 7 years on each count and a fine of Rs. 10,000 (or suffer simple imprisonment of a further 1 year in default).

2. On the complaint of Syed Haider Hussain Shah Lahooti who was an Assistant Vice President of the Fraud Investigation Unit of the Faysal Bank Limited, F.I.R. bearing number 10 of 2010 u/s 409, 419, 420, 468, 471 and 109 P.P.C was registered against Syed Taha Ali and Syed Kamran Raza Rizvi at the FIA, CBC, Karachi on 7-42010. It was reported that on 23-6-2009, one of the customers of the Bank, namely Ibadullah Khan, who had an account at the MACHS Branch of Faysal Bank complained to the Bank that an amount of Rs. 2,450,000 had been fraudulently withdrawn from an account which was in the name of Ibadullah and Kausar Parveen. In an internal enquiry held by the Bank it was discovered that the cheque book pertaining to the joint account had been issued on the basis of forged signatures and that cheque book was then used to write withdraw an amount of Rs. 1,850,000. 2 further amounts, being Rs. 400,000 and Rs.

200,000 were also withdrawn using the Bank's online facility by the issuance of cheques from the same cheque book.

3. Initially a report u/s 173 Cr.P.C was filed against Syed Taha Ali and Syed Kamran Rizvi. A charge was framed against them on 2-12-2010 to which they pleaded not guilty and claimed trial. Subsequently, Noman Ahmed Siddiqui, the appellant herein, was also indicted in the crime and an amended charge framed on 5-4-2011 to which all 3 accused pleaded not guilty and claimed trial.

4. After being granted bail, the accused Syed Taha Ali absconded but was arrested in another crime. He was granted bail again and once again he absconded. He was declared an absconder by the learned trial court on 18-1-2016.

5. The appellant recorded his statement u/s 342 Cr.P.C. on 3-5-2017 in which he pleaded his innocence.

6. When the impugned judgment was announced Syed Kamran Rizvi was acquitted.

7. PW-1 Maryum Khalid was the relationship manager at the MACHS Branch of the Bank at the relevant time. She testified that that she had received a phone call from Ibadullah asking her to confirm from the appellant whether the pay order he (Ibadullah) had asked the appellant to make was made. Some days later Ibadullah again called Maryum and said that if the cheque he had issued for preparing the pay order bounced for any reason, he should be informed. A few days later, the appellant handed over a bunch of bounced cheques to Maryum and asked her to inform the relevant customers who had issued these cheques. Amongst the cheques handed over to her was a cheque issued by Ibadullah. When Maryum called Ibadullah to inform him about the bounced cheque, Ibadullah told her that he had never issued such a cheque. Maryum was unable to remember the date or the time of the phone calls made from Ibadullah.

8. PW-2 Wazir Mohammad was a teller at the MACHS Branch of the Bank at the relevant time. He testified that on 26-5-2009, the appellant had given him a cheque drawn on the account of Ibadullah for an amount of Rs. 1,850,000 and had told him to encash the same. The cheque was encashed by Wazir Mohammad and the cash handed over to a man named Parvaiz Iqbal after retaining a copy of Parvaiz's NIC. Wazir admitted in his cross examination that it was the Operations Manager named Sadaf who had made the call back confirmation from Ibadullah whether or not he had issued the said cheque and that it was Sadaf who had endorsed the cheque as being clear for encashment. Wazir testified that the appellant did not have the requisite authority to clear the cheque.

9. PW-3 Nazia Riaz worked as an Issuer at the MACHS Branch of the Bank at the relevant time. She testified that the appellant had given her a piece of paper with the account number of Kausar Parveen written on it and asked her to issue the cheque book of the said account. Nazia asked the appellant for the official requisition slip, which was handed over to her by the appellant who also took the cheque book with him. A few days later, the appellant brought her a cheque issued from the same cheque book for an amount of Rs. 1,820,000 and asked her to prepare a pay order for the said amount. The application for issuance of pay order was endorsed by the appellant and Sadaf Azhar. Nazia prepared the pay order after obtaining the requisite authorization. She handed over the pay order to the appellant. She testified that the Operations Manager, Sadaf Azhar had verified the application for issuance of the pay order as she was the person duly authorized to do so. The pay order that was issued was in favour of one Mohammad Asif. Asif's NIC was on file. We have observed that the application for the issuance of the pay order has been made by Kausar Parveen but has been purportedly signed by Ibadullah.

10. PW-4 Syed Haider Hussain Shah Lahooti was the complainant on behalf of the Bank in this case. Lahooti revealed that in his enquiry he had discovered that a phone call was received by the appellant from a woman who identified herself as Kausar Parveen asking him to initiate the process of issuance of the cheque book of her account and that when she comes to pick the cheque book up she will give the requisite requisition slip duly signed. Lahooti testified that subsequently, the appellant had received another phone call, this time from Ibadullah, who asked him to prepare a pay order in the name of Mohammad Asif for an amount of Rs. 1,850,000. Lahooti further testified that the appellant had again received a call from the purported Ibadullah who then instructed the appellant that he did not want the pay order but that he will collect cash instead. The appellant told him that he must come to the Bank for this purpose. The following day a man named Parvaiz Iqbal came to the Bank and told the appellant that he had come to collect the cash. Parvaiz gave his cell phone to the appellant and on the other end was the purported Ibadullah. Ibadullah confirmed that he had sent Parvaiz and that the appellant can give him the cash. Parvaiz while taking the cash also deposited a cheque in the amount of Rs. 3,000,000 to be credited into the account of Kausar Parveen. The cheque was subsequently dishonoured and when Kausar was told about it she denied that she had ever deposited such a cheque in her account. Lahooti further testified that accused Syed Kamran Rizvi had confessed that he had taken a digital image of Ibadullah's signature and then handed it over to accused Taha Ali and then Taha hatched the entire plan.

11. PW-5 Muneer Ahmed Leghari was a Teller at the Saddar Branch of Faysal Bank in Hyderabad at the relevant time. He testified that he had received a cheque in the amount of Rs. 200,000 online for encashment, which he encashed after due verification and handed over to a

person who claimed to be Ibadullah. The same was the testimony of PW-6 Shahzad Khawaja who was a Teller at the same Branch and who encashed the cheque verified and presented in a similar manner by him.

12. PW-7 Rasheed Ahmed Sheikh only testified that the signatures on the FIR and the arrest memos were that of Inspector Zia Hassan Rizvi, the investigating officer of the case.

13. Above was the evidence led in trial. We observe as follows.

14. Neither Ibadullah nor Kausar Parveen, the two persons in whose account the alleged misappropriation was committed were examined at trial. Whether or not the two account holders or even one of them issued the instructions that led to the unraveling of the whole incident was therefore never proved at trial. It was not proved that whether or not it was Ibadullah himself who encashed the cheques from Hyderabad (as testified by the Tellers) and upon whose instructions the cheques were encashed in Karachi. The requisite signatures on various documents and cheques purportedly signed by Ibadullah were not sent to a hand writing expert to determine whether the same were forged. It could not be said conclusively that Ibadullah himself was not the beneficiary of the amounts withdrawn.

15. Sadaf Azhar whose signatures and authorization appeared on the documents for the issuance of the pay order was not examined at trial. Neither Mohammad Asif (the person in whose name the pay order was issued) nor Parvaiz Iqbal (who took the cash after encashment of the cheque) were examined at trial or as a matter of fact investigated. This appears odd and suggests either malafide or dishonesty or incompetence on the part of the investigating officer as the FIA was also in possession of their respective national identity cards.

16. Rasheed Sheikh apart from the signatures of the investigating officer on the F.I.R and the memo of arrest (both being documents not disputed in any case) did not verify anything else.

17. No nexus was established at trial between the appellant and the 2 cheques encashed in Hyderabad.

18. While the appellant seems to have carelessly facilitated his clients in their various banking requirements, he seems to have done so in good faith. There was no evidence on record that he even had the requisite authority to single handedly pull off the entire preparation and encashment of cheques. In fact, evidence was led to the contrary.

19. The Bank's internal enquiry, in our opinion based on the evidence led, had correctly concluded that, *"In view of the foregoing, we feel that the customer's cheque was paid in good*

*faith as the instrument was in order. The customers claim for fraudulent withdrawals is not based on concrete facts. Hence, payment to customer is not recommended.*" It appears that, at best, this was a case of negligence on the part of several of the Bank's employees. No cogent evidence was led that would establish criminal liability against the appellant.

20. The prosecution was unable to prove its case against the appellant.

21. In view of the above, the appeal is allowed. The appellant is acquitted of the charge(s). He may be released forthwith if not required in any other custody case.