

IN THE HIGH COURT OF SINDH AT KARACHI

*Present: Ahmed Ali M. Shaikh, CJ
Omar Sial, J*

**Criminal Appeal No. 327 of 2010
Criminal Jail Appeal No. 359 of 2010**

Appellant : **Muhammad Moinuddin Maklai
through Mr. Khaleeq Ahmed, Advocate**

Respondent : **The State
through Mr. Ghulam Shabbir Baloch,
Assistant Attorney General**

JUDGMENT

Omar Sial, J.The learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi on 29.6.2010 convicted and sentenced the appellant Moinuddin Maklai as follows:

- (i) 4 years rigorous imprisonment and a fine of Rs. 10 million (or a further period of 1 year simple imprisonment if he defaulted upon payment) for an offence under section 468 P.P.C.
- (ii) 1 year rigorous imprisonment for an offence under section 471 P.P.C.
- (iii) 1 year rigorous imprisonment and a fine of Rs. 2 million (or a further period of 3 months simple imprisonment if he defaulted upon payment) for an offence under section 420 P.P.C.

2. Through this judgment we intend to dispose of the captioned appeals through which the appellant has impugned the aforementioned judgment.

3. Brief facts of the case are that Jawed Iqbal who was a Manager at the Khori Garden Branch of Allied Bank Limited ("**ABL**") reported that the appellant introduced a sole proprietorship by the name of Tipu Impex for the purpose of opening an account with the Bank. That subsequent to the opening of the account, Tipu Impex established two irrevocable letters of credit in the amounts of USD 99,500 each ("**the LCs**"). Goods arrived in Pakistan against the LCs and payment to the seller was made by the Bank. Tipu Impex however failed to retire the documents and reimburse the Bank. It appears that the only security taken against the facility of establishing the LCs by ABL was a

guarantee furnished by Muzaffar Ahsan. F.I.R bearing number 1 of 2002 was registered under sections 420, 468, 471 and 34 P.P.C.

4. In order to prove its case the prosecution examined 8 witnesses. Mohammad Hanif (PW-1) and Saleem Baig (PW-2) were witnesses to certain memos of seizure of documents by the F.I.A. from ABL. Shabbir Ahmed (PW-3) was the proprietor of Tipu Impex. Syed Haider Abbas Zaidi (PW-4) was a Manager of the ABL Lea Market Branch at the time Shabbir's account was opened in that branch. Muhammad Saleem (PW-5) was an officer of ABL, Khori Garden who gave evidence in connection with the co-accused Muzaffar Ahsan. Jawed Iqbal (PW-6) was the complainant on behalf of ABL. Shakeel Ahmed Siddiqui (PW-7) was a member of ABL's internal audit team. Inspector Deedar Ali Sheikh (PW-8) was the investigating officer of the case.

5. The appellant in his statement under section 342 Cr.P.C denied all the charges against him and also submitted a written statement. The statement forms part of the record hence is not being reproduced here.

6. We have heard the learned counsel for the appellant as well as the learned A.A.G. and have also examined the record available with their able assistance. Our observations are as follows.

7. Shabbir Ahmed, the proprietor of Tipu Impex, intended to export animals to Dubai and for this purpose he applied for and obtained an export license. He also opened an account in the Lea Market branch of ABL. This account was introduced to the Bank by the appellant. Dubai stopped imports of animals in 2001 and Shabbir, in order to avoid the liability of filing sales tax returns, asked the appellant to have his trade license cancelled. The appellant told him that he was now working with the Khori Garden branch and asked Shabbir that he should transfer his bank account from Lea Market to Khori Garden. Shabbir filled out the account opening form and gave it to the appellant along with Rs. 500 so that the account could be opened. According to Shabbir, some days later, he contacted the appellant again to ask him to have both his accounts closed. The appellant informed him that the account in Lea Market had been closed whereas no account had been opened in Khori Garden because the account opening formalities had not been completed. Towards the end of 2001 a man named Moinuddin Khawaja contacted Shabbir and told him that his trade license was being misused. Upon this information Shabbir called the appellant and was told that the import/export license had been misplaced and perhaps someone has used it.

8. The gist of the case against the appellant is that he prepared a forged sale deed showing that Shabbir Ahmed had sold Tipu Impex to one Aamir Khan. He also prepared a forged Power of Attorney showing that Shabbir Ahmed had appointed Aamir Khan as his attorney. Pursuant to these documents, two letters of credit using the export license in the name of Tipu Impex for importing spare parts of zero value and Tipu Impex did not retire the documents, thus causing a loss to ABL.

9. There was no evidence led at trial to establish that the appellant had anything to do with the preparation of the sale deed or the power of attorney in the name of Aamir Khan. Aamir Khan was not called in as a witness even though specific details of his address and identity card existed. It was not even established whether Aamir Khan was a genuine person. Hand writing experts opinion was not sought to establish whether the signatures on the two allegedly forged documents were those of its proprietor Shabbir Ahmed or not. The handwriting expert was not examined at trial. The license holder i.e. Tipu Impex was solely responsible for all liabilities incurred by the registered holder of the license yet Shabbir Ahmed was let go by the investigating agency without a comprehensive investigation being held against him. The person Moinuddin Khawaja of HBL and Shakeel, the two persons who ostensibly informed Shabbir Ahmed that his license was being misused were neither investigated nor produced as witnesses. In these circumstances a presumption under Article 129(g) of the Qanun-e-Shahadat Order 1984 is raised that had the two been examined they would have not supported the prosecution case. According to Shabbir's own version the person Moinuddin Khawaja had informed him that his license had been misused to establish a letter of credit of Rs. 50,000. The record does not corroborate this assertion as the two letters of credit in question were for USD 99,000 each. The investigating officer took everything that Shabbir told him as gospel truth without bothering to investigate the truth of his assertions. No witness at trial testified that the appellant carried out the procedures required for the establishment of the letters of credit. Inspector Deedar Sheikh testified that *"it is correct that no incriminating article was recovered from accused regarding LCs"*. The manager of Khor Garden branch and the person who opened the letters of credit were not charged nor, it appears, investigated. It is simply incomprehensible that the Bank would have such lax procedures in place that would enable an individual to carry out a fraud of such a nature all alone. It appears that there were others but they were let go by the investigating officer for reasons best known to him. There was no evidence to establish that the appellant was or would have been the beneficiary of the scam. None of the clarifications which the appellant had been giving the investigating

officer appear to have been investigated leading to our observation that the investigation was lop sided, weak and far from being complete or competent.

10. That Shabbir's allegations are not of unimpeachable character as shown by the fact that in order to pin the entire blame on the appellant he lied at trial that he never went to the Khori Garden Branch of ABL to open a bank account – "it is incorrect to say that I had put my signature on the SS Card in presence of officers of ABL Khori Garden branch and on account opening form too." Syed Haider Abbas Rizvi who was the manager of the Khori Garden Branch at the relevant time testified – *"it is correct that complainant Shabbir Ahmed opened both the accounts (a reference to the Lea Market and Khori Garden accounts) in my presence. He put his signature in my presence."*

11. ABL filed a suit for recovery (being number B-18 of 2003) on 8-1-2002 against Tipu Impex in which it has categorically stated that the letters of credit in question had been established by Shabbir Ahmed. A copy of the plaint in the said suit was put on record by the appellant but no credence was given to it.

12. In view of the above, we are of the view that the prosecution was unable to prove its case against the appellant beyond reasonable doubt. The benefit of such doubt should have gone to the appellant.

13. Above are the reasons for the short order dated 15.5.2018 which was as follows:

"For reasons to be recorded later on, the captioned appeals stand allowed. Consequently, the sentence awarded to the appellant through the impugned judgment dated 29.6.2010 is set aside and the appellant is acquitted of the charge. Since the appellant is on bail, his bail bond stands cancelled and surety discharged."

JUDGE

CHIEF JUSTICE