

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Ahmed Ali M. Shaikh, CJ and Omar Sial, J*

Criminal Acq. Appeal No. 296 of 2014

Amir Ali Charania vs. Asim Asif & another

Mr. S.M. Jehangir, advocate for the appellant
Mr. Shaukat Hayat, advocate for the respondent Asim Asif
Mr. Gulfaraz Khattak, Assistant Attorney General for the State

Date of short order : 12th March, 2021Date of detailed reasons : 1st April, 2021**ORDER**

Omar Sial, J: Aamir Ali Charania has impugned an order dated 26-9-2014 passed by the learned Special Court (Offences in Banks) Sindh at Karachi. In terms of the said order, the learned trial court acquitted the accused Asim Asif under section 249-A Cr.P.C while declining to record the statement of the accused under section 342 Cr.P.C.

2. A background to the case is that Charania filed a direct complaint against Asim Asif alleging offences under sections 406 and 409 having been committed by him. The specific details of the complaint are not important for deciding the present application. Suffice to say that Charania alleged that Asif, being the manager of the Defence branch of the Bank Al-Falah, had made unauthorized withdrawals from Charania's account.

3. The learned counsel has argued that the defect with the impugned order is that the same was passed without the section 342 Cr.P.C. statement having been recorded nor the complainant given an opportunity to lead evidence.

4. We have heard the learned counsel for the appellant as well as the learned DPG. Our observations and findings are as follows.

5. The learned counsel for the appellant has admitted the following facts:

- (a) The charge against Asif was framed on 3-12-2010.
- (b) Charania failed to lead any evidence despite several opportunities given to him thus his side was closed on 24-6-2011.
- (c) On an application filed by Charania his side was opened again on 30-9-2011.
- (d) Charania once again failed to lead evidence on a number of opportunities given to him thus his side was closed again on 24-5-2013.
- (e) The order dated 24-5-2013 was challenged by Charania before this Court through CrI. Revision App. No. 150 of 2013 but the same was dismissed on 19-12-2013.
- (f) The order dated 19-12-2013 was impugned before the Honorable Supreme Court through CrI. Petition No. 4-K of 2014, which too dismissed the same on 5-2-2014.

6. In our view as absolutely no evidence was recorded in the complaint proceedings and it was Charania who was entirely at fault for this lapse and his plea of being permitted to record evidence was turned down by the apex court, no purpose would have been served to only record a statement under section 342 Cr.P.C. of the accused Asim Asif. Learned counsel has failed to raise even a single argument in this regard nor has he cited any authority that would support his stance that a section 342 Cr.P.C. statement must mandatorily be recorded even when the prosecution/complainant did not produce or record a shred of evidence. Needless to say that there was no chance of a conviction in the matter. We do not find any reason to interfere with the impugned order.

7. Above are the reasons for our short order of 12-3-2021.

JUDGE

CHIEF JUSTICE