

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 745 of 2019

Appellants : through Mr. Shaukat Ali Shehroze, Advocate

Respondent : The State  
through Mr. Muhammad Ahmed, Assistant  
Attorney General.

Ms. Samina Iqbal, Advocate for NADRA

Date of hearing : 9<sup>th</sup> December, 2022

### JUDGMENT

**Omar Sial, J.** Syed Hassam Hamid was the In Charge of the NADRA Centre situated in Haroonabad, Karachi whereas Mohammad Bakhtiar Ahmed, Zaheer and Raheel Mehtab were data entry operators at the same Centre. They were accused of fraudulently and in collusion with each other having processed and approved 51 applications and issued CNICs to persons who subsequently were suspected of being non-nationals.

2. F.I.R. No. 170 of 2016 was registered under sections 3(2), 13 and 14 of the Foreigners Act, 1946 and 419, 420, 468, 471 and 109 P.P.C and section 5(2) of the Prevention of Corruption Act, 1947 at the F.I.A., AHT Circle police station in Karachi. The F.I.R. was registered on behalf of the State by Inspector Muhammad Mubeen on 23.05.2016 which reported an offence that had occurred in Feb to April of 2012.

3. All the 4 accused pleaded not guilty and claimed trial. At trial the prosecution examined 12 witnesses. **PW-1 Dr. Mohammad Ilyas, PW-5 Dr. Zaheer Ahmed, PW-6 Muhammad Idrees, PW-9 Salah Mohammad** had attested the forms of 15 of the 52 persons. **PW-2 Kifayat Ali Mirani** and **PW-3 Rizwan Ahmed** were NADRA officials and members of a team which had conducted an internal inquiry. **PW-4 Inspector Mohammad Shoaib** witnessed the arrest of Hassam Hamid. **PW-7 Yasir Zaib** was a NADRA official who had liasoned with the F.I.A. in this case on behalf of NADRA.

**PW-8 Mohammad Mobin** was F.I.A.'s first inquiry officer. **PW-10 Minhaj-ul-Hasan** was F.I.A.'s second inquiry officer. **PW-11 Mohammad Shoaib** was the officer who arrested Hassam Hamid. **PW-12 Ghulam Akbar Zardari** was the investigating officer of the case.

4. In their respective section 342 Cr.P.C. statements all the 4 accused denied any wrong doing and stated that they had done their job in line with the standard operating procedures. The learned Special Court (Central-I) Karachi on 07.11.2019 found the accused guilty and convicted and sentenced them as follows:

- (i) For an offence under section 468 P.P.C. to a year in prison and a fine of Rs. 5,000 and if they did not pay the fine they would have to spend a further 2 months in prison;
- (ii) For an offence under section 14 of the Foreigners Act, 1946 to a year in prison and a fine of Rs. 5,000 and if they did not pay the fine they would have to spend a further 2 months in prison;
- (iii) For an offence under section 5(2) of the Prevention of Corruption Act, 1947 to fourteen months in prison.

5. Learned counsel for the appellants has argued that the appellants were merely following the standard operating procedures of NADRA and that it was not their responsibility or duty to verify the details given by an applicant for a CNIC issuance. They cannot be held responsible for the misdeeds of the applicants. The learned Assistant Attorney General was of the view that CNICs had been issued to 52 persons on the basis of false documents and thus the appellants were liable. I have heard the learned counsels and with their able assistance have gone through the record. My observations and findings are as follows.

6. It was essential for the prosecution to show what the job description of the accused was to determine whether they were responsible for verifying the details filled out on a form by the applicant or not. It was also essential that the specific standard operating procedures which had been violated by the accused be identified. Neither of the two important aspects

was proved at trial. There would be a difference between an incorrectly filled out form by an applicant for a CNIC and the accused themselves manipulating the filled out forms of applicants to change and amend the details contained therein. This was not the case. Forms were admittedly filled out and furnished by the suspect applicants. The allegation against the accused is that they knowingly did not take the required documents from the applicants. What these required documents were and what was the appellants' responsibility vis-à-vis such documents was not shown satisfactorily at trial. To the contrary, throughout the case, the accused were not informed as to the breach of which rule or directive of NADRA was violated by them. The NADRA official who appeared at trial (PW-2 Kifayat Ali Mirani) very honestly testified that *"It is correct that I have not stated in my evidence before the Court specifically of the job description assigned to the accused with its date."* *"It is correct that I did not produce the copy of the SOPs, rules and procedures in Court during my examination-in-chief."* *"It is correct that in my examination-in-chief I have not given the specific rules and procedures which were violated by the accused while issuing the alleged CNICs."* *"It is correct that no specific rule is mentioned in the F.I.R. which was violated by the accused person."* PW-7 Yasir Zaib acknowledged however that *"It is correct that it is duty of data entry operator to feed the information in the system whatever provided by the informant."* Let alone the NADRA officials who did not produce the applicable SOPs, the first inquiry officer (PW-8 Mohammad Mobin) who was entrusted with the task to see what the violations were, quite candidly admitted at trial that *"I do not know the version of SOP existed at that time."* The second inquiry officer was as oblivious of what SOPs had been violated - *"I do not remember that which of the version of SOP was in existence at the time of processing and approving the above CNICs. It is correct that charge sheet is silent that which of the rule of SOP was violated by the accused."* It was also accepted by the NADRA representative (PW-2 Kifayat Ali Mirani) that while conducting an internal inquiry none of the persons to whom the CNICs were issued was called for questioning or to

record their stance. *"It is correct that I did not record the statement of those persons in whose favor the alleged CNICs were issued."* The second NADRA witness (PW-3 Rizwan Ahmed) said *"It is correct that no persons/applicants out of 52 applicants whose forms for CNICs were processed were called during the inquiry. No witness was examined during the inquiry. No attester was called and examined during inquiry."* Lapse on the part of NADRA is indicated when Mirani at trial acknowledged that *"It is correct that no software is provided to the data entry operator to check the wrong information whatsoever provided by the applicant for issuance of CNIC."* The enquiry report shows that the Board concluded, inter alia, that *"in all most all the cases, fake/doubtful documents have been accepted without verification."* What these documents were not identified or produced at trial.

7. Obviously, none of the attesters of the application form owned up at trial that they had signed and stamped the respective application forms. It would have been appropriate for a proper investigation in the matter that the inquiry officer would have checked whether the statement they made was correct or not. To the contrary, the second inquiry officer (PW-10 Minhaj-ul-Hasan) categorically conceded at trial that *"It is correct that I have not produced any document in my evidence which show that I forwarded the signatures of the attesters for verification of the hand writing."*

8. As far as the Centre In charge Syed Hassam Hamid was concerned none of the suspected forms admittedly had his signature or stamp on it, the second inquiry officer PW-10 Minhaj-ul-Hasan admitting that *"I see all forms attached with the Ex12-A and Ex. 12-B and say that none of the CNIC application forms bears the signature and seal of the office In charge."* This witness further admitted that *"It is correct to suggest that in the interim charge sheet [this was treated as final challan] I produced no evidence that accused managed all the verifications and attestation in the CNIC forms."*

9. Another odd thing in the present case is that the F.I.R. was registered by Inspector Muhammad Mobin on an unidentified source report. No complaint in this regard had been made by NADRA. PW-2 Kifayat Ali Mirani candidly admitted that the F.I.R. had been registered prior to the internal inquiry. The investigating officer of the case PW-12 Ghulam Akbar Zardari acknowledged that he had conducted no investigation in the matter and that he had relied completely on the inquiry conducted by PW-10 Minhaj-ul-Hasan. The proper course would have been for the inquiry officer to first seek NADRA's input on whether according to it an offence had occurred or not. As mentioned earlier, the F.I.R. had been registered against the appellants without NADRA, at that point in time, having raised any complaint. In fact, it appears that the will of the Parliament was actually to do exactly that i.e. NADRA should be the first port of call for looking into such cases. In this regard the provisions of the National Database and Registration Authority Ordinance, 2000 are relevant.

10. Section 30(2)(g) of the Ordinance provides that a person who is an employee of NADRA, and is involved in the issuance of a fake National Identity Card, or the officer in charge of that Branch; will be guilty of an offence under the Ordinance. The allegation against the appellants is that being NADRA employees at the relevant time they facilitated the issuance of fake identity cards. They would thus fall within the ambit of section 30(2)(g).

11. Section 31 of the Ordinance stipulates that *No court shall take cognizance of any offence under this Ordinance except upon complaint in writing made by the Authority or any officer authorised by it in this behalf.*

12. The reading of the above 2 sections of law reflects that in the present case too, a complaint in writing by NADRA or any officer authorized by it was a condition precedent before the learned trial court had taken cognizance. It is an admitted position, re-confirmed by the learned Assistant Attorney General during these proceedings, that no such authorization or complaint was on record when cognizance was taken. In fact, no such complaint or

authority were even produced during trial. In accordance with well settled principles of law, it appears that in the absence of the requisite authorization from NADRA, the proceedings against the appellants should have, in all probability, been quashed. It is however pertinent to note that in addition to the Ordinance, another law that could also be applicable was the Foreigners Act, 1946. The Act does not make any permission from any authority as a pre-requisite to register a case under that Act. The appellants were challaned, inter alia, under sections 13 of the Act.

13. Section 13(1) of the Act provides that any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention, of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of the Act.

14. Section 13(2) of the Act provides that any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of the Act, gives that other person any assistance with intent thereby to prevent hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that offence.

15. Absolutely no evidence was led at trial to show that the application forms with incorrect details had been uploaded by the appellants with a view to save the appellants from arrest, trial or punishment, the appellants case would therefore fall out of the ambit of section 13(2). Section 13(1) of the Act, prima facie, could have come into play but establishing the *mens rea* i.e. the forms were uploaded by the appellants with the *knowledge* or *reasons to believe* that the details in the forms were incorrect, was necessary for an offence to have occurred under section 13(1). In the present case, the appellants have at all stages outright denied that they had knowledge or reasons to believe that an applicant was in breach of any provision of the Act. The prosecution, on its part, completely failed to

establish as to what was required of the appellants in the performance of their duties, let alone the fact that they had the knowledge of the wrong doings of the applicants.

16. Section 419 P.P.C. with which the appellants were charged provides that whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to 7 years, or with fine, or with both. The record does not reflect that it was the prosecution case that the appellants had impersonated anybody. Section 420, 468 and 471 P.P.C. are all offences which require the coincidence of *actus reus* and *mens rea* before a person can be held guilty of an offence under these sections. In the absence of evidence that it was the appellants who manipulated the signatures of the attesters on the application forms, they could not have been convicted under these sections. Though the prosecution produced the attesters of the applications forms, none of the attesters indicated that the appellants were involved with the attestation. Obviously, they would not do that as according to the attesters, they did not sign the application forms though one of them did acknowledge that the stamp on the form was his. As mentioned above, neither NADRA nor the investigation officer deemed it appropriate to probe further this aspect.

17. Learned Assistant Attorney General does not refute or rebut any of the above testimonies and statements however says that the appellants are guilty. They very well might be but the evidence led at trial does not prove the same beyond reasonable doubt. It is also to be kept in mind that there could be negligence on the part of the appellants in fulfilling their duties but that would not ipso fact mean that they had a criminal intent while processing the forms. No criminal intent or benefit that the appellants gained from processing the forms was shown or proved at trial. For the sake of argument, if a data entry operator or an In Charge of a Centre has been given such unbridled powers by NADRA that they can take any application form, manipulate it at will and then have a CNIC issued on such an application form, without any checks or safety provisions deployed, then it is cause of great concern not only for NADRA but for the whole country.

18. Above are the reasons that made me conclude that the prosecution had failed to prove its case beyond reasonable doubt. These are also the reasons for the short order dated 9-12-2022 in terms of which the appeal was allowed and the appellants acquitted of the charge.

**JUDGE**