

JUDGMENT SHEET.
IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-235 of 2016.

Date of hearing: 06.12.2021.
Date of Judgment: 06.12.2021.

Appellant : Gul Baig S/o Morio Khan Laskani (on bail)
Through Mr. Muhammad Rahim Gaju,
Advocate.

The State: Through Mr. Muhammad Humayoon Khan,
Deputy Attorney General of Pakistan.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J: This judgment will dispose of the aforesaid appeal filed against the impugned judgment dated 08.12.2016 passed by Special Judge, Anti-Corruption (Central) Hyderabad in Case No.24 of 2003 emanating from Crime No.13 of 2003 of PS FIA Hyderabad, whereby appellant has been convicted for the offences under Sections 409, 420, 468, 477-A PPC r/w Section 5(2) Act-II, 1947 and sentenced to suffer R.I for four years with fine of Rs.15000/- to be paid to postal authorities as compensation in terms of Section 544-A Cr.P.C, however, with benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that a written complaint of Divisional Superintendent Postal Services Mirpurkhas was made to Deputy Director FIA Hyderabad, reporting that present appellant while working as Postmaster Khipro District Sanghar had been involved in corruption and corrupt practices and had caused loss of Rs.47,080/- to the government exchequer. After usual enquiry, the present FIR was lodged against him.

3. Learned trial Court, after completing all the formalities, framed formal charge against the appellant at Ex.4, he pleaded not guilty and claimed his trial vide his plea at Ex.5.

4. In order to substantiate the charge, the prosecution has examined as many as 10 PWs namely Ghulam Mustafa, Haji Shafi Muhammad, Karim Bux Siyal, Syed Irshad Ali, Muhammad Ibrahim, Muhammad Ishaque, Gul

Hassan, Ali Khan, Muhammad Aslam and Ghulam Shabbir. Thereafter, prosecution side was closed.

5. Learned trial Court after hearing the parties and assessing the material available on record passed the impugned judgment and convicted the appellant as stated above.

6. Learned Defence Counsel has pleaded that appellant is innocent and has been falsely implicated in this case; there is no confidence inspiring evidence against him; the charge of misappropriation of the alleged amount has not been proved against him and he has been wrongly convicted by the learned trial Court.

7. Learned Deputy Attorney General although has supported the impugned judgment but regarding anomalies pointed out by learned Counsel he has no answer.

8. I have considered submissions and perused the material available on record. The charge against the appellant, posted as Postmaster, Khipro from 27.02.2003 to 15.09.2003, is that he by misusing his official position fraudulently and dishonestly caused a loss of Rs.47,080/- to National Exchequer by using fake books of arms and driving licenses and short crediting amount in post office account. PW-01 Ghulam Mustafa (Ex-04) Assistant Postmaster General at Sukkur during the relevant period, in his evidence has stated that besides the aforesaid amount an additional amount of Rs.11,850/- was found misappropriated by appellant but the same he voluntarily remitted through money order, which was deposited in a proper head and hence the same amount stands recovered. However, no documentary evidence regarding deposit of the said amount by the appellant has been brought on record.

9. PW-02 Haji Shafi Muhammad (Ex-05) Assistant Postmaster in Post Office Sanghar, has stated that he had held a preliminary inquiry on receiving a complaint against the appellant and found appellant having misappropriated an amount of Rs.11,850/- in saving bank account, and further on checking of the record, the appellant was found liable to pay Rs.13,005/-. However, no evidence as to on what basis this estimation was made and what documents led him to make such conclusion have been produced. Although he has produced a number of documents including 41 arms licenses and 03 driving licenses but they are attested photostat copies and there is no

explanation about the original ones. Seizure memo Ex-5/M shows that I.O of the case had secured all these documents from this PW and not from the appellant. Under what authority, PW Shafi Muhammad had conducted the inquiry and collected the documents has not been brought on record. Further, there is no record showing as to how and in what manner these documents were secured by this PW. In cross-examination, he has admitted that inquiry conducted by him was under the verbal directions of Divisional Superintendent, Post Office, Mirpurkhas. However, in support of such assertion neither the evidence of Divisional Superintendent was recorded during investigation nor he was produced in the Court as a witness to support this statement. Appellant has denied to have signed these documents during a formal inquiry conducted by PW-3 Karim Bux Siyal who was Senior Postmaster at Sanghar but Investigating Officer failed to refer his signature on the papers and his specimen signatures to handwriting expert for an opinion in order to divest his refusal of any authenticity.

10. The Inquiry Officer (PW-03) Karim Bux Siyal has stated that he found appellant to have misappropriated an amount of Rs.45,925/-. This figure does not tally with the figure either stated by other PWs or confronted to the appellant in the charge. Further, this PW-03 has admitted in his cross-examination that appellant had showed no confidence over him and one Muhammad Arshad was appointed as Inquiry Officer, yet he submitted inquiry report against him for misappropriating the amount as stated above and on the basis of which he was booked in this case.

11. PW-04 Syed Irshad Ali, serving as Senior Postmaster, Mirpurkhas, has deposed that he had received an amount of Rs.10,000/- on 05.03.2003 through money order from the appellant and on next day received an amount of Rs.1850/- through same mode from the appellant. Then the same amounts were deposited in account No.6059. However, he has not clarified the circumstances behind sending of this money or the need and reason for sending this money by the appellant. His silence in this regard is surprising and does not inspire confidence as his evidence does not seem to suggest that the amount which he received from the appellant through money order has any nexus with the amounts allegedly misappropriated by the appellant.

12. PW-05 Muhammad Ibrahim, who was serving as Clerk at Post Office Khipro, has deposed that PW Haji Shafi Muhammad had come to visit

the office at Khipro and prepared the inventory / list of the licenses Ex-5/B and 5/C/1 to 5/C/41 and 5/D/1 to 5/D/3 (arms and driving licenses). However, he does not state as to under what authority these licenses were secured by him and why when these documents were secured were not sealed to ward off any likelihood of tampering.

13. Evidence of PW-06 Muhammad Ishaque, who was Mail Peon at Post Office, Khipro, is to the effect that the arms and driving licenses were secured from a shop of painter situated opposite to the gate of post office by PW Haji Shafi Muhammad. He prepared a statement of recovery of licenses and obtained his signature. He further states that at that time appellant Gul Baig was Postmaster at Khipro. However, it has not been brought on record as to how these licenses ended up at the shop of painter and what nexus the painter had with the appellant. That under what circumstances and what conditions these licenses were found in a shop of the said painter and why he has not been made either accused or as a witness. If he had no connection with appellant, he should have been made a witness to testify against him. But, if he was in league with him, he should have been made as an accused. The prosecution has not explained as to why he was neither made a witness nor an accused in the above circumstances.

14. PW-07 Gul Hassan (PW-7) was a Postmaster at Post office Kandiaro, who has deposed that PW Haji Shafi Muhammad had confronted him arms licenses Ex-5/C/1 to Ex-5/C/41 and 5/D-1 to 5/D/3 and asked him whether they bore his signature but he denied. It is however mysterious that on his denial of his signature, he has been made witness but when this fact was pleaded by the appellant he was ignored and made accused. Even his denial was not found worth verifying as prosecution has failed to refer his signature to handwriting expert for confirmation and report.

15. PW-08 Ali Khan (Ex-12) serving as Assistant Postmaster, GPO Mirpurkhas, has submitted that money orders of Rs.10,000/- and Rs.1850/- sent by appellant were deposited at Shahdadpur. His evidence does not seem to connect appellant with the commission of offence.

16. PW-09 Muhammad Aslam (Ex-13) was posted as a Clerk in Saving Bank, Mirpurkhas. He submits that the money orders of the aforesaid

amount were deposited in Saving Bank. His statement also does not seem to connect the appellant with the commission of offence.

17. PW-10 Ghulam Shabir (Ex-14) has deposed that he was posted as a Postman in Post Office, Khipro on contract basis. He has deposed that PW- Haji Shafi Muhammad had brought 41 forged receipts of arms licenses and three driving licenses from a painter's shop situated in-front of Post Office, Khipro in his presence. His evidence suggests that those licenses were neither recovered from the appellant nor were sealed by PW Haji Shafi Muhammad at the spot. His authority to conduct such inquiry and secure the documents is not explained.

18. I have also examined the statement of the appellant recorded under Section 342 Cr.P.C, in which appellant has denied the allegations made against him and has pleaded innocence. His statement (Ex-15) available at Page-266 of paper book reflects that only a simple question of misappropriation of Rs.47,080/- has been asked from him and the entire incriminating evidence as discussed above, available in the form of documentary evidence, has not been confronted to him. It is settled law that if a piece of evidence is not confronted to the accused at the time of recording of his statement under Section 342 Cr.P.C, the same cannot be used against him. Surprisingly, the trial Court while convicting and sentencing the appellant has relied upon the documentary evidence which was never confronted to the appellant to seek his explanation. More than that, the trial Court has found the appellant guilty of misappropriation of an amount of Rs.13,005/- in respect of shortage found in post office account as well as temporary misappropriation in saving accounts of post office, which is not even the charge against the appellant. The allegation against the appellant is of misappropriation of an amount by using fake books of arms and driving licenses and short crediting the amount.

19. These facts if put together would make it abundantly clear that case against the appellant is not free from doubt. It is settled law that when there is a single circumstance creating a doubt in favour of the accused, the benefit of which has to be extended to him not as a matter of grace or concession but as a matter of right. In the above discussion, so many discrepancies have been pointed out in the prosecution case and the appellant's connection with the offence has not been proved beyond a doubt.

20. Accordingly, this appeal is allowed and appellant Gul Baig is acquitted of the charges. He is present on bail, his bail bond stands cancelled and surety is hereby discharged.

JUDGE

Shahid