

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 639 of 2021

Criminal Appeal No. 666 of 2021

Criminal Appeal No. 645 of 2021

Appellants : Faisal Islam, Muhammad Arshad, Muhammad Jalal & Muhammad Kashif
through Mr. Shoukat Ali Shehroze, Advocate

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

Date of hearing : 14th March, 2023

JUDGMENT

Omar Sial, J.: Mohammad Kashif, Faisal Islam, Mohammad Arshad, Majeed Saleem Jafri and Mohammad Anas Khan (all employees of NADRA) were accused of having accepted and processing the application and connected documents from Mohammad Jalal who was a suspected Bangladesh national. They were accused of having committed offences under section 419, 420, 468, 471 and 109 P.P.C. read with sections 3(2), 13 and 14 of the Foreigners Act, 1946 and section 5(2) Prevention of Corruption Act, 1947.

2. All the accused pleaded not guilty and claimed trial. At the trial the prosecution examined **PW-1 S.I. Qamar Zaman** was the Zone In Charge of NARA and had handed over the relevant documents in the case to the investigating officer. **PW-2 Faizan Ali** was an Assistant Professor at the NED University who had purportedly verified the form of applicant Mohammad Ahmed. **PW-3 Asif Rizvi** was an Additional Director at the KMC. He was asked to verify Mohammad Ahmed's birth certificate but informed the investigating officer that his DMC had no concern with the certificate as it had been issued by KMC. **PW-4 Khaliq-ur-Rehman** was a Deputy Director at NADRA who confirmed that the CNIC issued to Mohammad Jalal was issued at the NRC Nazimabad and that at the relevant time Majeed Saleem Jafri

was the In Charge of the NRC and Mohammad Anas was the data entry operator. **PW-5 Inspector Salman Waheed** was the first investigating officer of the case. **PW-6 Inspector Fida Mohammad Khan** was the second investigating officer of the case. In their respective section 342 Cr.P.C. statements all the accused pleaded innocence and denied all wrong doing.

3. At the end of the trial the learned Special Judge (Central 1), Karachi on 20.11.2021 acquitted Majeed Saleem Jafri and Mohammad Anas but convicted and sentenced the remaining accused as:

(i) Muhammad Jalal was sentenced to one year imprisonment for each offence under sections 468 and 471 P.P.C. He was also directed to pay a fine of Rs. 5,000 or stay a further period of one month in prison. He was also sentenced to a 3 year prison term for an offence under sections 419 P.P.C. and a similar period for an offence under section 14 of the Foreigners Act, 1946 as well as pay a fine of Rs. 5,000 or spend a further period of 4 months in prison.

(ii) The remaining appellants were sentenced for offences under sections 468 and 109 P.P.C. to a one year imprisonment as well as a fine of Rs.5,000 or spend a further month in prison. They were also sentenced to one year imprisonment on each count for an offence under section 471 and 109 P.P.C. as well as pay a fine of Rs. 5,000 or spend a further period of one month in prison. They were also sentenced to one year in prison for an offence punishable under section 5(2) Prevention of Corruption Act, 1947.

4. I have heard the learned counsel for the appellants as well as the learned Assistant Attorney General. Their respective arguments are not being reproduced for brevity but are reflected in my observations and findings below.

5. The National Alien Registration Authority (NARA), was a program of the Government of Pakistan, under the authority of the National Database and Registration Authority (NADRA) and Narcotics Control. The main purpose of this program was to legally register, document immigrants and other foreign residents in the country. In the year 2010, the Government of

Pakistan became aware that 1,106 duplicate entries had been found in the NARA records and that 5,062 persons had succeeded in obtaining a NARA as well as a Computerized National Identity Card (CNIC).

6. The appellants all, except Mohammad Jalal, were working at the NRC Pak Colony at the relevant time. Mohammad Jalal was the person who was alleged to have obtained a CNIC through fraudulent means when he had already been issued a NARA card.

Standard Operating Procedures

7. The glaring thing in this case is that while all the NADRA officials are being accused of having violated Standard Operating Procedures at NADRA in accepting and processing Mohammad Jalal's form for the issuance of a CNIC, neither were those "applicable Standard Operating Procedures" brought on record nor was it confirmed that any such SOPs existed and if they existed what exactly were those SOPs. Inspector Fida Mohammad Khan acknowledged at trial that he was not aware what the Standard Operating Procedures applicable at the time were. He stated at trial that *"It is correct that I have not mentioned in the final charge sheet which version of existing SOP was violated by accused."* The same ignorance of the SOPs applicable at that time was also demonstrated by PW-4 Khaliq-ur-Rehman (who most surprisingly was the focal person for NADRA) and PW-5 Inspector Salman Waheed. If the focal person of NADRA did not know what SOPs were in force at the relevant time, one cannot expect a data entry operator to know the same.

Responsibilities of the accused NADRA officials

8. Inspector Salman Waheed acknowledged that the original registration form of Mohammad Jalal was dated 21.01.2003 and that he had been validly registered in the NARA database since 2003. He also acknowledged that the family tree of Mohammad Jalal was available in the NADRA records. He further admitted that no mechanism or system existed until the year 2009 for liaison between the NARA database and the NADRA database. This effectively meant that if a person's registration details were

inserted in one of the databases, there was no mechanism to find out whether the details also existed in the NADRA database and vice versa. Mohammad Jalal was issued a CNIC in the year 2014 on the basis of an MNIC that had been issued to him in 2003. Inspector Salman Waheed admitted that when the CNIC was issued by NADRA in 2014 at that time the relevant Union Council record and the NADRA record reflected that Mohammad Jalal's birth certificate showing him born in Pakistan existed in the said record. He however alleged that the birth certificate which was entered into the record was not genuine. This prosecution witness also acknowledged that the job function of appellant Faisal Islam was merely to enter details of applicants registration form along with the supporting documents into the system. It was therefore not his duty to verify the authenticity of the details provided or the genuineness of the supporting documents with an application.

9. The data entry operator was not the whole sole authority for the issuance of a CNIC. What I understand, in the absence of any job descriptions being produced at trial by any witness, that his job was to merely enter the data and check whether the requisite documents required at that time were submitted by the applicant. The allegation against them is not that they did not take the requisite documents but that the birth certificate of Mohammad Jalal was not genuine and that the verification on his registration form was not genuine. While the attesor of Mohammad Jalal's registration form came and testified at trial that the signature and stamp on the application form was not his, the investigating officer did not take any steps to verify the truth of his claim. Of course, when faced with a situation that the person for whom he may have verified the form has had a criminal case against him initiated, the attesor would in all probability deny that he ever signed the verification form.

10. It was also acknowledged at trial by PW-4 Khaliq-ur-Rehman (the focal person for NADRA) that the CNIC in question was issued by the competent authority in Islamabad. He testified that *"it is correct that Islamabad until the facial expression and AFIS of applicant was not cleared,*

the card was not issued." In such an eventuality, if the allegation against the appellants is to be believed it is bewildering that the persons in Islamabad, who admittedly had their own mechanism to check the veracity of an applicant's details, and who were the final authority to issue a CNIC, were not even included in the probe. Instead, data entry operators were piled with the entire blame. A discriminatory investigation has taken place and a pick and choose of who to accuse seems to have taken place. Indeed, it is the weakest link in the hierarchy that has been targeted by the investigators.

National Database and Registration Authority Ordinance, 2000

11. I notice from the record that the present case was initiated on the basis of a vague complaint made by the Government of Pakistan citing reports that duplicate cards had been issued. No complaint in this regard had been made by NADRA. The proper course would have been for the inquiry officer to first seek NADRAs 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.

13. 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 an unauthorised CNIC. They would thus fall within the ambit of section 30(2)(g).

14. 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.*

15. 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 working at NADRA 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.

16. 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.

17. Section 13(2) of the Act provides that any 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.

18. 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. No evidence of cheating or forgery of any documents was produced at trial.

The case of Mohammad Jalal

19. The case against Mohammad Jalal is extremely vague. Jalal claims that although he was a Pakistan citizen he was forced to register his details in the NARA database by the police. It appears that his parents may have been issued MNICs as far back as 2003. He also claims that at some stage in his life he changed his name to Mohammad Ahmed. Apart from the registration form being verified by a person who says that he had not verified it (I have commented on the unreliability of such a denial earlier in this opinion), no other document was brought on record to show that it was forged and fake. Be that as it may it would not be the role of a criminal court to make a declaration regarding citizenship. Not enough evidence was produced at trial to conclusively show that Mohammad Jalal had resorted to cheating or forgery.

20. The prosecution did not do a convincing job in this case. Many areas of the case were left unattended. The chain of evidence was not linked logically. The requisite evidence was not produced. Investigation was non-existent.

21. The evidence led at trial does not prove the guilt of the appellants 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 facto 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.

22. The prosecution had failed to prove its case beyond reasonable doubt. The appeals are therefore allowed and the appellants acquitted of the charge. They are all on bail, their bail bonds stand cancelled and sureties discharged. The acquittal in this case will however not be a bar on any investigating agency to probe further the status of Mohammad Jalal as a citizen or resident of Pakistan. Any finding or observation made herein will impact no proceedings initiated by either Mohammad Jalal or any agency competent to do so in connection with the citizenship or residency status of Mohammad Jalal. I understand from the learned AAG that the disputed CNIC has been suspended by NADRA. It shall remain suspended until and unless a court of competent jurisdiction declares him to be entitled to possess a CNIC.

JUDGE