

**IN THE HIGH COURT OF SINDH AT KARACHI**

I.A No. 20 of 2007

Present:

Mr. Justice Irfan Saadat Khan  
Justice Ms. Sana Akram Minhas

Industrial Development Bank,  
Appellant:

Mr. Salman Hamid,  
Advocate for the Appellant.

..Vs..

Suleman Bin Muhammad  
Respondent No.1:

Shoaib Ahmed  
Respondent No.2:

Shafi Ahmed  
Respondent No.3:

Muneema Khatoon,  
Respondent No.4:

Nemo for Respondents.

Date of hearing: 26.05.2023.

Date of decision: 31.05.2023

**J U D G M E N T**

**IRFAN SAADAT KHAN, J.** This First Appeal (1<sup>st</sup> Appeal) has been filed against the judgment dated 27.02.2007 passed by the Banking Court No.II, Karachi in Criminal Complaint No.16/2002, filed against the following accused persons namely;

- (i) Suleman Bin Muhammad
- (ii) Shoaib Ahmed
- (iii) Shafi Ahmed
- (iv) Muneema Khatoon

2. The learned Single Judge after detailed deliberation observed that the complainant bank proved its case beyond any shadow of doubt and the accused were found to have dishonestly

committed the breach of the terms and conditions of the agreement of the hypothecation. The learned Single Judge thereafter by looking to the old age and ailing health of the accused persons namely Mst. Muneema Khatoon and Shafi Ahmed awarded them sentence till the rising of the Court and fine of Rs.25,000/- each and in case of nonpayment to suffer R.I. for one month. However, so far as accused Suleman Bin Muhammad and Shoaib Ahmed are concerned the learned Judge found them guilty of committing criminal breach of trust, as defined under Section 405 PPC. It is against this order that the present 1<sup>st</sup> Appeal has been filed.

3. Mr. Salman Hamid, Advocate has appeared on behalf of the Complainant Bank and stated that so far as the conviction of Shafi Ahmed and Mst. Muneema Khatoon is concerned, he does not press this appeal and stated that the sentence awarded by the learned Judge, though was quite meager, however by looking to their ailing health and advanced age, bank has no objection with regard to the sentence awarded to them. He however argued that the amount of fine imposed by the learned Judge is not in accordance with law. He stated that if provision of Section 20(d) of the Ordinance XLVI of 2001 is examined, it clearly describes the amount of fine, which is to be imposed in the like matters. Learned counsel states that the fine imposed by the learned Judge amounting to Rs.25,000/- on each accused is not backed by the law. He therefore, stated that under the same circumstances when two persons were found to be guilty of the offence fine to the extent as prescribed under the law was to be imposed upon the said accused persons also. He stated that since the order of the learned Single Judge is not in accordance with

law, therefore, the same may be set aside and fine to the extent of the value of the property or the market value; whichever is higher, is to be imposed upon the said accused persons.

4. Nobody has appeared on behalf of the Respondents despite given several chances.

5. We have heard Mr. Salman Hamid, Advocate at length and have also perused the record.

6. Before proceeding any further, we would like to reproduce hereinbelow the relevant provision of the Ordinance 2001, upon which much emphasis has been laid down by the learned counsel appearing on behalf of the Appellant.

**20. Provisions relating to certain offences.\_\_(1) Whoever:--**

- (a) .....
- (b) .....
- (c) .....

(d) subsequent to the passing of a decree under section 10 or 11, sells, transfers or otherwise alienates, or parts with possession of his assets or properties acquired after the grant of finance by the financial institution, including assets or properties acquired benami in the name of an ostensible owner.

shall without prejudice to any other action which may be taken against him under this Ordinance or any other law for the time being in force be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to a fine which may extend to the value of the property or security as decreed or the market value which is higher and shall be ordered by the Banking Court trying the offence to deliver up or refund to the financial institution, within a time to be fixed by the Banking Court, the property or the value of the property or security. (emphasis provided).

Perusal of the above provision of law clearly stipulates that whoever dishonestly committed the breach of the terms of law of hypothecation, makes fraudulent misrepresentation and commits breach of obligation or subsequent to the creation of the mortgage in favour of the financial institution dishonestly alienates or parts with the possession of mortgaged goods is punishable with imprisonment of either description with a term which may extend to three years and shall also be liable to fine which may extend to the value of the property or security as decreed or the market value whichever is higher.

7. The crux of the arguments of Mr. Salman Hamid was that the above law is couched with the word 'shall' which is mandatory in nature. His main thrust of argument was that imprisonment and fine both are to be imposed in case any person is found guilty of the charges leveled and proved, as provided under Section 20 of the Ordinance. According to him the word 'and' used in the proviso to section 20(d) of the Ordinance is to be read as conjunctive and in cases where a person is found guilty imprisonment and imposition of fine are sine qua non to each other. According to him, if, for argument's sake, it is presumed that by looking to their advanced age and ailing health their conviction was pardoned by the learned Judge but the fine cannot be remitted when they were found guilty of the offence.

8. We are of the view that the law has given ample powers to the learned Judge that while dealing such like cases punishable under the provision of Section 20 of the Ordinance 2001, the sentence may extend to three years and fine also may extend to the value of the property or security as decreed or the market

value whichever is higher. This provision of the law, in our view, stipulates that the maximum punishment could be to the extent of three years and the maximum fine could also be to the extent of the value of the property or security as decreed or the market value, whichever is higher. However in the said provision of law no lower limit has been prescribed. Hence in our view a discretion has been entrusted by the law makers to the Court that by looking to the fact and circumstances of the case, it could award imprisonment and fine, as the case may be, but this imposition of imprisonment and fine should not exceed the limit as prescribed under the said proviso. In our view the law makers have purposely not prescribed the minimum limit, since in a case there may arise a situation of awarding lesser sentence or awarding lesser fine by looking to the facts and circumstances of that case. Hence in our view the law makers have left the matter open to the discretion of the Court to impose fine without there being a minimum threshold in this regard.

9. While arguing the case Mr. Salman Hamid has candidly conceded that he has no objection with regard to the award of sentence which though was only till the rising of the Court but only objects in respect of the amount of fine imposed upon the accused persons by the learned Judge.

10. In our view when the learned Judge has taken a lenient view with regard to awarding of sentence there was a valid justification for imposing fine to the extent of Rs.25,000/- only, as per the circumstances of the case in his view. Hence in our view the submission of the learned counsel appearing for the Complainant/Bank that the fine equivalent to the amount of

value of the property or security as decreed should have been imposed by the learned Single Judge does not appear to be the true intention of the law makers while drafting this section. Had the words “may extend to” not been present or a minimum threshold had been provided then the proposition, as advanced by Mr. Salman Hamid, could have been correct but as stated above the law makers have categorically used the word “may extend to” which in our view could not be considered that the sentence and fine is to be awarded to the maximum extent as provided under the law but it could be less than that depending upon the facts and circumstances of each case. Hence, we do not find any illegality or irregularity in the judgment passed by the learned Single Judge, whereby he has awarded the fine to the extent of Rs.25,000/- on each accused which in our view was done by looking to the facts and circumstances of that case in accordance with law.

We therefore do not find any merit in the instant appeal, the same therefore stands dismissed.

JUDGE

JUDGE

Karachi:  
Dated:31.05.2023

*SM*