

IN THE HIGH COURT OF SINDH KARACHI

CIMINAL APPEAL NO.208 OF 2018

Appellant : **Sikandar Ali**
through Mr. Zakir Laghari,
Advocate

Respondent : **The State**
through Mr. Zahoor Shah,
Additional Prosecutor General for
the State along with Complainant
present in person

Date of hearing : 28th November 2023

JUDGMENT

OMAR SIAL, J.: Sikander Ali Kallar is an employee of the Malir Development Authority. He was an Assistant Director at the MDA at the time relevant for these proceedings. Ghulam Sarwar accused him of taking Rs. 500,000 from him as sale consideration for three plots of land, which were subsequently found to be in someone else's name. F.I.R. No. 46 of 2016 was registered on 20-10-2016 for the incident in 2012-2013. The F.I.R. was registered on behalf of the State by Abdul Jabbar Kaim Khani under sections 161, 420, 467, 468, 471 and 34 P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947.

2. Ghulam Sarwar (PW-1) was the complainant. In his testimony in court, he said that an estate agent (Alimuddin) had shown him two plots of 80 square yards each (Nos. 249 and 346) for sale for an aggregate price of Rs. 400,000. Ghulam Sarwar gave him Rs. 300,000, and it was decided that the remaining Rs. 100,000 would be paid at the time of the transfer. Alimuddin did not honour his part of the deal and

was arrested in another case. When he was released from jail some six to seven months later, Ghulam Sarwar asked for his money back but was told by Alimuddin that instead of cash, he would give Ghulam Sarwar another plot (No. 471). Ghulam Sarwar agreed and gave him a further Rs. 200,000. The property could not be transferred again, so Alimuddin gave Sarwar Rs. 200,000 back. This time, Alimuddin told Sarwar that if he gave him Rs. 500,000 (Rs. 100,000 as remaining payment for Nos 249 and 346 and Rs. 400,000 for No. 471), all three plots would be transferred to him. Ghulam Sarwar arranged the Rs. 500,000, and some relatives visited a hotel to meet Alimuddin. Alimuddin then called somebody on the phone, and soon afterwards, allegedly, the appellant appeared. Alimuddin asked Ghulam Sarwar to give him the Rs. 500,000 and was told that the plots would be transferred in Ghulam Sarwar's name in a matter of days. Alimuddin handed over three files to Ghulam Sarwar six months after this event. When Sarwar went to verify the papers from the MDA, he discovered that they were forged. Alimuddin had once again vanished. His entire testimony portrayed Alimuddin as the primary culprit. All his dealings regarding the plots were with Alimuddin. The appellant was said to have appeared at a hotel when Ghulam Sarwar gave him Rs. 500,000 on Alimuddin's instructions. There is, of course, no documentation to record any of the money allegedly given by Ghulam Sarwar to either Alimuddin or the appellant.

3. Mohammad Piral (PW-2) alleged that he had accompanied Ghulam Sarwar to the hotel where the money exchange occurred. In his testimony, he said Ghulam Sarwar told him he had to give Rs. 500,000 to Alimuddin. When the two of them went to the hotel to meet Alimuddin, Ghulam Sarwar gave the money to the appellant on Alimuddin's instructions.

4. Adnan Ali Khan (PW-3) was an Assistant Director at the MDA when the trial was ongoing. He testified that he had seen the original

files of Plot Nos. 249, 346 and 471 found that the three plots were allotted after balloting in 1979, 1981 and 1983. MDA had issued allotment and possession orders for Abdullah Shah, Mumtaz Ali, and Khadim Hussain, respectively. This witness, which the prosecution had brought, categorically said at trial, "It is a fact accused has no concern with the files of the subject matter; it is a fact that the aid allotments on balloting were made much before his posting at MDA as Assistant Director."

5. Inspector Abdul Jabbar Kaimkhani (PW-4) was the case's investigating officer. He testified that Ghulam Sarwar had not given him any evidence that he had contacted officials of the MDA to redress his grievance. He also confirmed that the plots had been balloted and allotted before the appellant's posting at the MDA.

6. The above was all the evidence produced at the trial. The learned Special Judge, Anti-Corruption (Provincial) Karachi, at the end of the trial, however, convicted and sentenced the appellant as follows:

- (a) Two years imprisonment and a Rs. 25,000 fine for an offence under section 161 P.P.C.
- (b) Three years imprisonment and a Rs. 25,000 fine for an offence under section 468 P.P.C.
- (c) Three years imprisonment and a Rs. 25,000 fine for an offence under section 471 P.P.C.
- (d) Three years imprisonment and a Rs. 25,000 fine for an offence under section 5(2) of the Prevention of Corruption Act, 1947.

7. In essence, the learned trial court concluded that the appellant had taken illegal gratification and that he had also forged documents and passed them on as genuine. I am at a loss to understand how the learned trial court reached such a conclusion based on the evidence produced at trial.

8. There must be some element of truth in what Ghulam. Sarwar says, however, the disadvantage he faced was that he was ignorant and went along giving sums of money to Alimuddin in the hopes that he would make a financial killing without documenting his transactions, but unfortunately, he fell prey to the unlawful parallel system of business. Be that as it may, a court of law has to judge each person equally, and the appellant, too, is entitled to the protection of his fundamental rights. The rule of law demands that cases be decided in light of the evidence produced at trial. The evidence before me is insufficient to uphold the conviction and sentence given to the appellant. Before filing a challan, the public prosecutors should ensure they go through it and advise whether the evidence collected will uphold the test of legal scrutiny. This seems immensely lacking in most criminal cases where the prosecution is okaying to go to trial.

9. The charge against the appellant was that he took money indirectly from the complainant to give him original papers of three plots. Due to his volume of work, the learned Assistant Prosecutor struggled to show me the document which was supposed to be forged. But ultimately, he pointed out a transfer order, which is available at page 53 of the paper book. The document in question is a transfer/mutation order dated 28.11.2017 in respect of a residential Plot No.R-471, Block 16-B, measuring 120 square yards which was issued in favour of Ghulam Sarwar Solangi with Sikandar Ali's stamp in the capacity of Assistant Director (Land), Directorate of Land Management, MDA Shah Latif Town. MDA never verified whether the document was forged throughout the whole saga. The authenticity of Sikander Ali's stamp on it was never investigated. How Sikander Ali accessed the transfer order forms was never looked into. Did he use the forms while he was posted in an unauthorised manner? This was not established or looked into during the investigation. No trap proceedings took place. The money given to Sikander Ali was not marked. No

investigation was done to show what Sikander Ali did with the money. Why was Ghulam Sarwar giving money to Alimuddin even after it was obvious that Alimuddin had duped him? These were only some of the unanswered questions, let alone un-proved. Even if Sikander Ali did it, the evidence at trial was insufficient to prove it. It will be a waste of time for this court, which is enormously burdened as it is, to write lengthy judgments in cases such as the present one. The High Court is immensely burdened with cases; such cases are a waste of time and resources. Based on the evidence it had, the prosecutor who approved it for filing and the learned court that concluded the evidence was good should have a moment of introspection. The rule of law, due process and fair trial, combined with fearlessly guarding the fundamental rights of all persons, must not be compromised. If every person who says he gave money to someone to do some work is permitted to reach the High Court, the already frail system will collapse.

10. The appeal is allowed. Sikander Ali is acquitted of the charge. He is presently on bail. His bail bonds stand cancelled and surety discharged.

JUDGE