

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 464 of 2021

Appellant : Aziz Abdul Rahim Kassamali
through Mr. Aamir Mansoob Qureshi,
Advocate along with appellant

Respondent : The State
through Mr. Altaf Ahmed Sahar,
Assistant Attorney General Sindh

Complainant : Tariq Islam
through M/s. Abid S. Zuberi, Sana Q. Valika and
Umair Nabi, Advocates

Date of hearing : 29th January, 2024

Date of Judgment : 13th February, 2024

JUDGMENT

OMAR SIAL, J.: House No. 109/1, situated in the Clifton area of Karachi, was owned by Mr. Tariq Islam. In 2014, Mr. Islam became aware that some persons had approached his neighbour and offered to sell to him (the neighbour) 109/1. Upon making queries, he learned that a man and a woman named Mohammad Iqbal and Nasreen Begum, respectively, were the persons who had offered his neighbour the property to buy. Further queries by Mr. Islam revealed that an attempt had been made to fraudulently include 109/1 as a part of the estate of Nasreen Begum in a succession application filed in this Court. It was also discovered from NADRA records that the national identity cards of Nasreen and Iqbal had fraudulently been processed. F.I.R. No. 359 of 2019 was registered at the F.I.A.'s Anti-Human Trafficking Circle on 28.08.2019 under sections 419, 420, 468, 471 and 109 P.P.C. and section 5(2) of the Prevention against Corruption Act, 1947.

2. All the accused pleaded not guilty and claimed at trial. The following witnesses were examined. PW-1 Tariq Islam was the complainant. PW-2 Mohammad Zahid Hussain. PW-3 Shahrukh Ahmed Ansari. PW-4 Rashid Ali Khan. PW-5 Naeemur Rehman. PW-6 Rizwan Khan Yousufzai. PW-7 Asif Abdul Aziz Khan. PW-8 Syed Zeeshan Ali. PW-9 Mohammad Asif Yousuf Zai. PW-10 Sofia Ashraf. PW-11 Kashif Hassan Shaikh. PW-12 Shabbir Hassan. PW-13 Manzoor Ahmed Abbasi. PW-14 Roshan Ali Khaskheli. PW-15 Tasawar Hussain Bhutto. PW-16 Mohammad Jawaid Rajput. PW-17 Mohammad Wahaj Siddiqui. PW-18 Erum Saeed Qureshi. PW-19 Mohammad Farooq Awan. PW-20 Syed Athar Hussain Naqvi. PW-21 Stephan.

3. In his section 342 Cr.P.C. statement, the appellant professed innocence, denied any wrong and further stated that Mohammad Iqbal had shown him documents which showed that he was the legal heir of Noor Mohammad Chotani and that 109/1 was property to be inherited by the legal heirs of Chotani. He had agreed to sell with Iqbal, and when Iqbal failed to fulfil his side of the promise, he filed a suit no. 2264 of 2017 seeking the performance of the agreement.

4. The learned trial court on 25.08.2021 convicted and sentenced the appellant to 18 months imprisonment and a fine of Rs. 500 (or one month more in prison) for having committed an offence under sections 468 read with section 109 P.P.C.; six months imprisonment and a fine of Rs. 500 (or one month more in prison) having committed an offence under sections 471 read with section 109 P.P.C. and one-year imprisonment and a fine of Rs. 500 (or one month more in prison) having committed an offence under sections 420 read with section 109 P.P.C.

5. I have heard the learned counsels for the appellant, the complainant, and the learned Assistant Attorney General. During the appeal hearing, a compromise was reached between the parties to the effect that the complainant agreed not to pursue the appeal on merits in lieu of the appellant withdrawing Suit No. no. 2264 of 2017 in connection with the

property bearing address: Survey No.2/1, new Survey Plot KMC Sheet No.1/5-CF, 109/1 measuring 2052 square yards situated at Clifton Quarters, Karachi. The learned Assistant Attorney General did not object to the compromise but pointed out that offences under sections 468 and 471 P.P.C. cannot be compounded. The appellant agreed that irrespective of the outcome of the appeal, he would honour the commitment he had made to Mr. Islam, i.e. he would withdraw the Suit mentioned above. I agree with the stance taken by the learned Assistant Attorney General and have therefore looked at the appeal on its merits. My observations and findings are as follows.

6. Out of the 21 witnesses examined at trial, only three mentioned the name of the appellant at trial. **PW-7 Asif Abdul Aziz Khan**, Manager Operations of Meezan Bank Ltd., testified that the appellant was maintaining a bank account with their branch and that upon his instructions, two pay orders in the sum of Rs. 3 million and one pay order for Rs. 500,000 were issued in favour of Nasreen Ghulam Mustafa Magsi. **PW-16 Mohammad Jawaid Rajput** testified that a man named Feroz owed him money but would not return it. Upon repeated demands by Jawaid, Feroz took him home, introduced him to Nasreen Begum and the appellant, and told Jawaid that Nasreen Begum had sold a plot of land in Clifton to the appellant. It is evident from the cross-examination of this witness that his credibility was doubtful. He admitted to several material improvements and additions in his testimony at trial compared to what he had recorded in his section 161 Cr.P.C. statement. One such improvement was introducing the appellant's name as a person Feroz had introduced to him. He acknowledged not mentioning meeting the appellant in his section 161 statement. **PW-19 Mohammad Farooq Awan**, who at the relevant time was a serving Senior Superintendent of Police, testified that on 30.04.2016, the appellant told him that he had purchased a property from Iqbal and his daughter and that an agreement in that regard had been executed between the parties. He further said that the sale transaction had stalled because Iqbal did not have a national identity card. The appellant asked him if he

could verify Iqbal's photograph. Iqbal, in person, and the connected documents were presented before Awan. Awan, a senior officer of the police, had access to the NADRA database, and after verifying the requisite details from the database and satisfying himself with the authenticity of the details, he proceeded to verify the necessary forms. Awan testified that when he checked the NADRA record, it showed that Mohammad Iqbal's father's name was Abdul Wahab, and his wife's name was Naseem Begum Chotani, while his daughter was named Nasreen. Awan acknowledged that he was responsible for verifying all details contained in the form and that the form presented to him for verification had the correct information filled out in it. **PW-21 Stephan** admitted at trial that he had recorded section 161 Cr.P.C. statements of 34 witnesses, but not even one incriminated the appellant. He also admitted that during his investigation, he could not find any wrongdoing on the part of the appellant in connection with the form, which was verified.

7. The evidence recorded at trial does not make the appellant guilty of a criminal offence. The record shows that the possibility of buying 109/1 at a lower price than the market lured the appellant into the transaction. In his exuberance to consummate the deal, he seems to have not considered the possibility that he, too, was being deceived by the alleged property owners. In all fairness, it appears that the appellant himself fell prey to the acts of unscrupulous characters and court documents in possession of Mohammad Iqbal and Nasreen, which prima facie (though fraudulently obtained), showed their interest in the property. The appellant's bonafide also indicated that all initial payments made to Iqbal and Nasreen, were through official banking channels. No evidence that the appellant had taken part in the forgery of documents or using a forged document as genuine was gathered by the investigation officer, nor was any produced at trial. On the contrary, the investigation officer categorically stated that he had found no incriminating evidence against the appellant. No evidence was produced at trial to show that the appellant was vicariously liable for the forgery committed by Iqbal and Nasreen, nor that he was in any manner in cohorts

with NADRA officials. What the appellant took to his friend, PW-19 Mohammad Farooq Awan, for verification was the form that Iqbal had filled out. It was Awan who had verified the form after assuring himself that the details were correct. Ironically, Awan, who honestly conceded at trial that he was responsible for verifying the form, was not even made an accused in the case, whereas the appellant, whose role was restricted to accompanying Iqbal, was convicted and sentenced.

8. After re-evaluating the evidence, I am of the opinion that the prosecution failed to prove its case beyond reasonable doubt. The appeal is therefore allowed, and the appellant is acquitted of the charge. He is present on bail. His bail bonds are cancelled, and his surety is discharged.

JUDGE