

PRESENTED
14-5-2013
Dy. Registrar (Jud.) 1299

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. /2013

Ahsanullah Abul Khairi
S/o Late Shafiqullah Abul Khairi
Muslim, adult, resident of II, Block 1/61,
Block-B, F.B Area, Karachi,
And presently confined in
Central Jail, Karachi. Appellant

VERSUS

The State. Respondent

**CRIMINAL APPEAL U/S 10 OF THE OFFENCES
IN RESPECT OF BANKS (SPECIAL COURTS
ORDINANCE 1984) R/W SECTION 561-A Cr.P.C.**

Respectfully Sheweth,

That the appellant being aggrieved and dissatisfied with the impugned judgment dated.13.02.2013 passed by Learned Special Court (Offences in Banks) Sindh at Karachi, in Case No.21 of 2004 out of FIR No.06/2004, F.I.A, CBC-I, Karachi, U/s 406/420/468/471 PPC, hence the appellant prefer this appeal before this Honorable Court to set-aside the impugned judgment dated.13.02.2013 inter-alia on consideration of the following facts and grounds:-

(Copy of the impugned judgment dated.13.02.2013 is filed herewith, marked as annexure "A").

Brief facts of the case as are mentioned in the FIR, are as under:-

That on 10.05.2003 the accused had opened an account under the title of M/s Khairi Textile and Garments.

HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 158 of 2013.

Present: Naimatullah Phulpoto, J.
Aftab Ahmed Gorar, J.

Appellant: Ihsanullah Abul Khairi.
Respondent: The State through Mr. Muhammad Qasim,
Standing Counsel.
Date of hearing 02.02.2016

ORDER

Naimatullah Phulpoto, J.—Appellant Ahsanullah Abul Khairi was tried by learned Special Court (offences in Banks) Sindh at Karachi in case No. 21 of 2004 for offences under sections 406, 420, 468 and 471 PPC. By judgment dated 13.2.2013 appellant was convicted in the above referred sections and sentenced to 7 years R.I and to pay a fine of Rs. 18,22,954/-. In case of the default in payment of the fine, he was ordered to suffer S.I for two months more. In case amount was recovered, it was ordered to pay the same to the National Bank of Pakistan, KDA Branch, Karachi. Appellant challenged conviction and sentenced recorded against him. We propose to dispose of Criminal Appeal No. 158 of 2013, filed by appellant. It appears that during the pendency of the appeal, appellant was released on 11.10.2014 on expiry of sentence and on the basis of remission. This fact is reflected from the letter dated 23.11.2015 sent by Senior Superintendent Central Prison, Karachi to this Court.

2. None appeared on behalf of the appellant. Counsel for the appellant is also called absent. With the assistance of Mr. Muhammad Qasim, Standing Counsel, we have perused the entire evidence, it appears that Trial Court, vide judgment dated 13.2.2013 convicted and sentenced the appellant for the following reasons:-

“The burden to prove the allegation upon accused lies upon prosecution who has examined complainant Masood Ahmed and he deposed the attitude of accused for opening of an account by accused under the title of M/s Khairi Textile & Garments in branch and FDD/cheques of foreign currency amounting to USD 32000 was presented in his account and

after receipt of credit advice from American Express Bank Ltd the amount was credited in the account of accused where from amount was collected through different cheques. The complainant disclosed that they received a letter from American Express Bank Ltd on 16.3.2003 which purported that alleged cheques of accused was forged/counterfeit, therefore accused was called in the branch where he was informed regarding fakeness of cheques and he was directed to pay the withdrawal amount for which accused made an undertaking on paper in presence of his father but he failed to made payment of Rs.1841000/- to the bank and remained untraceable. The complainant has produced original cheques of 32000 USD favoring M/s Khairi Textile & Garments as Exh.4/E-1, letter of collection to American Express Bank Ltd Karachi as Exh.4/E-2, voucher of NBP amounting to 32000 USD Exh.4/E-3, debit voucher of NBP KDA for payment of Rs.1822954/- to accused as Exh.4/E-4, advance payment voucher of M/s Khairi Textile & Garments signed by accused as Exh.4/E-5, letter of American Express Bank Ltd Karachi informing the forged and counterfeit alleged cheque of USD 32000/-. The testimony of complainant is corroborated and made good with the above mentioned supra documents. Pw Ansar Akhtar, Operation Manager, Pw Aftab Ahmed, Pw Ali Muhammad Soomro, and Pw Muhammad Azam Khan have corroborated and strengthen the testimony of complainant and they have added about maintaining an account by accused titled M/s Khairi Textile and Garments in branch where fake cheque was produced by accused and subsequently amount was withdrawn. Pw Muneeb Ahmed Manager UBL Chandni Chok branch deposed that accused had also opened account in their branch in the year 2003 in the name of M/s Khairi Textile and Garments and other personal accounts were unfolded. Pw has produced AOF, and documents of the accounts. He deposed that accused deposited two cheques of 75500 USD and 7000 USD in their account but during the collection both cheques were surfaced as counterfeited and fake. Pw Arif Riaz and Abdul Ghani of UBL Old Subzi Mandi branch have corroborated the testimony of Pw Muneeb Ahmed and narrated about the opening of two accounts in the branch by accused and deposited fake cheques of foreign currency amount by accused but those were declared fake during the collection. The evidence of PWs Muneeb Ahmed, Arif Riaz and Abdul Ghani of UBL demonstrate that accused was habitual and in habit to produce the fake foreign currency cheques which were deposited in his account but sometimes he did not turn out and succeeded to receive the cash of invalid cheques. The prosecution has accumulated significant and trustworthy evidence in the case which could not be discarded for the reason that accused has not played a fraud with the bank/branch. In the statement u/s 342 Cr.P.C of accused he admitted the fact regarding opening of an account in NBP KDA civic centre branch and depositing cheques Exh.4/E-1 in

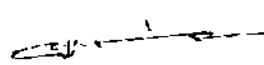
the account of M/s Khairi Textile and Garments. The accused has narrated that after clearance of the cheques amount was withdrawn through different cheques therefore he has no malafide or committed any cheating or fraud with the bank. The admission on part of accused reflects that after opening of account by accused the foreign currency cheque amounting to 32000 USD was encashed which were withdrawn through different cheques but after clearing of alleged cheques by American Express Bank Ltd Karachi vide letter Exh.4/E-7, accused was called and informed about the forged/counterfeit cheques and accused admitted his guilt and handed down his understanding on 5.12.2003 Exh.4/E-13 and he given a cheques of Rs.1841600/- and said that if this cheques would not be honoured then his father Mr. SU Khairi will pay the amount and the undertaking Exh.4-E-13 was signed by accused and his father in presence of Manager NBP and said document was not challenged by the culprit which also link him with the crime. While assessing the evidence and documents which indicated that prosecution has furnished the significant and substantial evidence against accused for criminal breach of trust, cheating, forgery, using and presenting fake documents as genuine in the bank. Accordingly my findings on point No.1 to 3 are answered as in affirmative.

Keeping in view the above findings and reasons, I am of the view that prosecution has built the charge against accused of criminal breach of trust, cheating, forgery, used and presented fake cheques as genuine in NBP KDA civic centre branch Karachi, by producing consistence and material evidence which is supported with documents. Accordingly accused Ahsanullah Abul Khairi is hereby sentenced and convicted u/s 245 (2) Cr.P.C for the period of seven year (7 years) R.I with fine of Rs18,22,954/- and in default of payment of fine he should undergo S.I. for twenty one months, and if amount is realized by the convict, it should be paid to NBP KDA branch Civic centre Karachi.

Accused present on bail is taken in to Central Jail Karachi to undergo the conviction and sentences.

The period convict remained in jail during the course of trial shall be adjusted towards the substantive sentences as benefit of section 382-B Cr.P.C which is extended to him.

3. Trial Court has assigned sound reasons while convicting the accused/appellant and discussed prosecution evidence according to settle principle of law. We avoid repetition and hold that findings recorded by the Trial Court require no interference by this Court. As such impugned



judgment dated 13.2.2013 passed by Trial Court is maintained. Appeal is without merit and the same is dismissed.

~~22.2.2016~~
22.2.2016
JUDGE

JUDGE
22/2/16

Fahera/DA