

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Appeal No.192 of 2011

Date Order with signature(s) of Judge(s)

For further orders

09.08.2018

None present for the appellant
Mr. Javed Ahmed, K.K. Assistant Attorney General

This appeal is directed against the judgment dated 19.04.2011, passed by learned Judge, Special Court (Offences in Banks) Sindh at Karachi in Case No.40 of 1999.

2. Brief facts leading to the filing of appeal are that appellant Syed Ali Abbas presented Cheque No.04333288 of Rs.72,000/- in UBL, Stock Exchange Branch, Karachi. Manager of the branch found the cheque suspicious, he contacted the Accountholder, who denied issuance of the alleged cheque. Thereafter, it is stated that accused was detained by the Manager, UBL and reported the matter to the police. Thereafter, FIR No.48/1999, was registered against the accused at P.S. Kharadar, Karachi, under sections 420, 468, 471, 511, PPC.
3. After usual investigation, challan was submitted against the accused.
4. Trial court framed charge against the accused under sections 420, 468, 471, 511, PPC. Accused pleaded not guilty and claimed to be tried.
5. At trial, prosecution examined 6 PWs, who produced original cheque and other documents, thereafter, prosecution side was closed.
6. Statement of accused was recoded under section 342, Cr.PC at Ex.11. Accused claimed false implication and denied the prosecution allegations.
7. Trial court after hearing the learned counsel for the parties and assessment of the evidence available on record vide judgment dated

19.04.2011 convicted and sentenced the accused for 14 years and to pay fine of Rs.72,000/-. In case of default in payment of fine, he was ordered to suffer SI for one year more. Benefit of section 382-B, Cr.PC was extended to the accused.

8. Appellant preferred Criminal Appeal No.192 of 2011. It was admitted for regular hearing. During pendency of appeal, appellant applied for suspension of sentence. This Court vide order dated 28.04.2011 suspended the sentence of the appellant. After release, the appellant never appeared before this Court. In the first instance, vide order dated 04.07.2017, BW was issued against the accused in the sum of Rs.50,000/- and notice to surety in terms of Section 514 C.PC. BW returned unexecuted and notice to the surety also returned unserved. Same process was repeated against the accused. However, vide order dated 29.09.2017 NBW was issued against the accused. Notice was also repeated to the surety. Concerned police returned the NBW unexecuted with the endorsement that appellant Syed Ali Abbas son of Syed Qamar Abbas, resident of A-232, Block-1, Gulshan-e-Iqbal, Karachi was not residing at the given address. Show cause notice issued to surety in terms of section 514, Cr.PC was also returned unserved. SHO P.S. Kharadar recorded statement of the persons of the neighbouring area.

9. Appeal is taken up today. Mr. Javed Ahmed K.K., learned Assistant Attorney General submits that appellant has absconded away after suspension of his sentence and he has lost his right of audience and prayed for dismissal of appeal on this ground.

10. We have perused the endorsement of the process server by which NBW returned unexecuted. There is sufficient material on the record to show that the appellant after suspension of the sentence is deliberately concealing himself and he has become fugitive from the law. The law is settled by now that a fugitive from law loses his right of audience before the Court. We are guided by the principle laid down by the Honourable Supreme Court in the case of *IKRAMULLAH AND OTHERS V/S. THE STATE (2015 SCMR 1002)* in which it has been observed as under:-

9. A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail

during the night between 14/15.04.2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a Court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.

11. As we have already held that sentence of the appellant was suspended by this Court vide order dated 28.04.2011, the appellant since then never appeared before this Court and NBWs have been returned unexecuted with the endorsement that he was not present at the given address. Rightly learned Assistant Attorney General has argued that appellant has become fugitive from the law and losses all his normal rights. This appeal is, therefore, dismissed on account of above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.

12. Before parting with this order, it is observed that proceedings against the surety shall be continued. Let show-cause notice be repeated against the surety in terms of Section 514, Cr.PC. Proceedings against the surety shall be continued separately.

13. Adjourned to a date in office for proceedings against surety.

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Gulsher/PS