

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 641 of 2022

Appellant : Muhammad Ashraf Qaimkhani,  
Through S. Ghulam Hasnain, Advocate.

Respondent : The State  
Through Mr. Tahir Hussain Mangi, APG.

Date of hearing : 12.05.2025.

Date of judgment : 15.05.2025.

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

**KHALID HUSSAIN SHAHANI, J.-** This Criminal Appeal has been filed under Section 410 of the Code of Criminal Procedure, 1898, by the appellant Muhammad Ashraf Qaimkhani, who has challenged the impugned judgment dated 31.10.2022 passed by the learned Special Judge, Anti-Corruption (Provincial), Karachi, in Special Case No.56/2019, arising out of FIR No.55/2019 registered at Police Station Anti-Corruption Establishment, East Zone, Karachi, offence under Sections 466, 468, 477 PPC read with Section 5(2) of the Prevention of Corruption Act-II, 1947. Through the said judgment, the appellant was convicted and sentenced for offence under Section 477 PPC for Rigorous imprisonment for four years and fine of Rs. 50,000/-, in default whereof to undergo simple imprisonment for four months. Under Section 5(2) of the Prevention of Corruption Act, 1947 he was sentenced for Rigorous imprisonment for one year and fine of Rs. 30,000/-, in default whereof to suffer simple imprisonment for one month.

2. The case of the prosecution is that the appellant, Sub-Inspector Muhammad Ashraf Kaimkhani, was posted at Police Station Landhi, Karachi, and was performing night duty on 22.01.2017. During patrolling, he allegedly arrested one Ehtesham alias Baba son of Basharat at about 2200 hours and recovered a 30-bore TT pistol from his possession. In consequence, he purportedly registered FIR No.29/2017, offence under Section 23(i)(A) of the Sindh Arms Act at 2300 hours the same night. However, it was later alleged that the appellant had unlawfully torn out all four pages of the FIR bearing Serial No.29 from the FIR Book, including the index page, and released the accused persons named therein, whose

particulars remained unspecified at the time. A blank form from the FIR Book was also alleged to have been misused. Subsequently, at 0245 hours, FIR No.30/2017 was registered by ASI Abdul Rehman. On 22.05.2017, an enquiry (No.1100) into the matter was initiated by the SDPO Landhi, District Korangi, and SIP Muhammad Hanif Abbasi recorded statements of PC Shoukat Ali and PC Muhammad Ilyas, who corroborated the allegation that the appellant had tampered with the FIR register and unlawfully released the accused. A misconduct report was also forwarded by then-SHO Arif Razzak Abbasi against the appellant and another officer. On the basis of the enquiry, FIR No.162/2017 was registered on 26.05.2017, offence under Sections 466, 468, and 477 PPC at PS Landhi on behalf of the State through SIP Hanif Abbasi. Initially, the matter was investigated by SIP Muhammad Ibrahim of PS Landhi, but was later referred to the Anti-Corruption Establishment (ACE) by SSP Investigation-III, District Korangi, through letter dated 07.08.2017, for want of jurisdiction. The enquiry was first entrusted to Inspector Safdar Ali Abbasi, and subsequently to Assistant Director Farooq Ahmed Bugti of ACE East Zone Karachi. Upon scrutiny of the relevant record and statements of material witnesses, it was concluded that SIP Ashraf Kaimkhani had indeed torn and removed the pages from the FIR register and released the accused against illegal gratification. A Case Fact Report (CFR) was prepared and submitted to the competent authority, recommending registration of a criminal case. The Anti-Corruption Committee-II (ACC-II), in its meeting held on 24.04.2019, approved the recommendation. Accordingly, FIR No.55/2019 was registered against the appellant for offence under Sections 420, 468, and 477 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947. Following investigation, interim and final charge sheets were submitted showing the accused on interim pre-arrest bail.

3. Copies of prosecution papers were furnished to the accused under Section 241-A Cr.P.C (Ex.01), and a formal charge was framed (Ex.02), to which the appellant pleaded not guilty (Ex.02/A). The prosecution, in support of its case, examined eight witnesses. The first to appear was SIP Muhammad Hanif Abbasi, who had lodged FIR No.162/2017. He produced relevant documents including the FIR itself (Ex:03/A), a memo regarding the sealing of the FIR Book (Ex:03/B), and the inspection memo of the place of incident (Ex:03/C). The second witness was ASIP Ali Asghar

Tagar, posted at Police Station Shah Faisal Colony, whose statement was recorded at Ex:05. The third witness examined was Arif Razzak Abbasi, a retired police officer and then-SHO who had initiated a misconduct report against the appellant. He produced the attested copy of the said report (Ex:07/A). Next to testify was ASI Muhammad Shoaib Alam of Police Station Khokhrapar. His examination-in-chief is available on record as Ex:08. The fifth witness was PC Shoukat Ali, who at the relevant time was posted at Police Headquarters, East Zone, Karachi. He was one of the police officials who initially reported the alleged misconduct by the appellant. His testimony is recorded at Ex:09. The prosecution then examined ASI Jasim Ali Leghari of Saudabad Operations Wing, Korangi. His evidence is found at Ex:10. The seventh witness was Farooq Ahmed Bugti, Deputy Director, Anti-Corruption Establishment, West Zone Karachi, who had conducted the formal enquiry into the allegations. He produced on record the ACE letter dated 27.02.2018 (Ex:11/A) and his detailed enquiry report with recommendations (Ex:11/B).

Lastly, Khusnood Javed, the Investigation Officer and author of FIR No.55/2019, appeared as the eighth prosecution witness. He produced the letter from the Deputy Director ACE (Ex:13/A), the minutes of the Anti-Corruption Committee-II meeting (Ex:13/B), a copy of FIR No.55/2019 (Ex:13/C), and an order passed on the bail application reflecting that the matter fell within the jurisdiction of the Anti-Corruption Establishment (Ex:13/D). Through these witnesses, the prosecution sought to establish the sequence of events, the alleged misconduct of the accused, and the findings of the official enquiry that led to registration of the subsequent FIR. After closure of prosecution evidence (Ex:14), the appellant's statement was recorded under Section 342 Cr.P.C (Ex:15), wherein he denied the allegations and professed innocence, but did not opt to examine himself on oath or lead any defence evidence. After arguments, the instant impugned judgment was pronounced.

4. Learned counsel for the appellant contended that no direct evidence was produced by the prosecution to establish that the appellant committed any forgery or caused disappearance of any FIR form with dishonest intent. The entire case rests upon presumptions and assumptions, without substantive ocular or documentary evidence connecting the appellant with the alleged offence. It was argued that the appellant was on patrol duty at

the relevant time and arrested an armed accused. FIR No. 29/2017 was duly registered at 2300 hours and entered at serial/form number 28, while FIR No. 30/2017 was later registered on form number 30. The alleged missing form number 29 was never attributed to the appellant's custody. SHO Arif Razzak had, in fact, recommended departmental action for negligence against the appellant and another officer, but no criminal intent or malfeasance was alleged in the said report (Exhibit 7/A). None of the prosecution witnesses deposed that they had seen the appellant tearing any FIR form or misusing any official document. PW-5 Shoukat Ali was declared hostile and admitted that there was a personal dispute between the appellant and SIO Saleem Ansari, thereby pointing towards mala fide on the part of the complainant. Learned counsel emphasized that ASI Abdul Rehman, who registered FIR No. 30/2017, was not examined by the prosecution. His testimony would have been critical to explain the sequence and integrity of FIR Book entries, yet this material witness was withheld without justification. It was submitted that there was no allegation of bribe or illegal gratification, nor was any accused allegedly arrested and released as suggested. Thus, ingredients of Section 5(2) of the Prevention of Corruption Act were not satisfied. Learned counsel argued that even if negligence occurred in handling the FIR Book, the same did not constitute an offence under Sections 466, 468 or 477 PPC, particularly in absence of dishonest intent or mens rea. That the trial court misread the evidence, failed to appreciate material contradictions, and rendered a perverse judgment by convicting the appellant without legal or factual foundation.

5. On the other hand, the learned Assistant Prosecutor General appearing on behalf of the State opposed the appeal and supported the impugned judgment. He submitted that the appellant, being a custodian of official documents, had a higher duty of care, and the disappearance or misuse of FIR form serial No. 29 prima facie involved criminal intent. The missing FIR form, coupled with the subsequent misconduct report and initiation of criminal proceedings, indicated tampering with public record, attracting the mischief of Sections 466, 468, and 477 PPC. The prosecution witnesses, although hostile on some points, had provided sufficient circumstantial evidence to support the inference that the FIR form was misused during the appellant's tenure and responsibility. It was further argued that technicalities such as the non-examination of ASI Abdul

Rehman were not fatal to the prosecution's case, especially when the trial court had exercised its discretion in evaluating the remaining evidence. The trial court had rightly convicted the appellant based on available documentary evidence, official records, and the overall conduct of the appellant, which warranted penal consequences under the law. Therefore, the learned APG prayed for dismissal of the appeal and upholding of the conviction and sentence awarded by the trial court.

6. Upon thorough appraisal of the entire prosecution evidence, it becomes unmistakably evident that the case against the appellant suffers from grave legal and factual infirmities, and falls short of the standard required to sustain a conviction in a criminal trial. The burden to prove the charge beyond reasonable doubt lies exclusively with the prosecution, and in the present case, that burden has not merely been unfulfilled, it has been fundamentally abandoned through contradictory statements, evidentiary gaps, and investigative lapses.

7. The pivotal allegation in this case was that the appellant, Muhammad Ashraf Qaimkhani, willfully tore out pages from the FIR register (FIR No.29/2017) of Police Station Landhi. However, despite the seriousness of this allegation, no forensic examination report was ever obtained or presented to substantiate the physical act of tearing. No fingerprint analysis, no forensic matching of torn edges, no expert opinion, or documentation has been brought on record to confirm that the pages were tampered with, let alone that the appellant was the person responsible. In cases involving alleged tampering with official records, forensic corroboration is not only desirable but essential to exclude fabrication and bolster the prosecution's version with objective evidence. Its absence here is conspicuous and deeply prejudicial to the prosecution case. Moreover, no CCTV footage from the police station has been produced to establish either the presence of the accused at the relevant time or to show the alleged act of tampering. In modern times, where police stations are typically equipped with CCTV cameras to ensure transparency and accountability, the prosecution's failure to collect or produce such readily available evidence speaks volumes. There is also no record showing that the investigation officer even attempted to secure such footage, suggesting a deliberate or grossly negligent omission.

8. Even the alleged eyewitnesses, on whom the prosecution placed considerable reliance, failed to support the prosecution narrative. Key witnesses admitted in cross-examination that they neither saw the accused tear any pages, nor were they privy to the specific moment when the act allegedly took place. Particularly telling is the statement of Shoukat Ali, the supposed eyewitness with whom the appellant had an alleged quarrel on the date in question. Not only was this witness declared hostile, but a close reading of his Section 161 Cr.P.C statement reveals that he made no mention whatsoever of any FIR pages being torn in his presence. This is a fatal omission. If the incident had indeed occurred in the dramatic manner the prosecution claims, it is wholly unnatural that the closest witness to the scene would remain silent on this key fact in his initial statement.

9. Additionally, none of the prosecution witnesses, including police officials, produced any Roznamcha entry, duty roster, or any logbook record showing their presence at the police station on the relevant date and time. Their statements, uncorroborated by documentary record, render their testimonies susceptible to serious doubt. The Head Mohrar admitted that he was not posted at the relevant time, that no serial number from the printing press was present on the FIR register, and that no certificate of issuance or proper custody was available. The actual then-Head Mohrar, under whose charge the FIR register allegedly went missing, was never examined during trial, another unexplained and fatal omission.

10. Further, the memo of recovery (Ex.3/A) claims the FIR book was recovered in sealed condition, yet it was produced in Court unsealed, making it impossible to verify whether tampering had occurred before or after alleged sealing. This contradiction cuts at the heart of the prosecution's case and shatters the evidentiary chain of custody. The investigation was conspicuously one-sided, riddled with procedural lapses, and failed to explore other plausible explanations or motives. Even the alleged beneficiary of the torn FIR (SIP Saleem Ansari, since died) never accused the appellant of corruption or involvement in any illicit release of accused persons. There is no evidence of bribery, no proof of a quid pro quo, and no link between the accused and any ulterior motive that would explain the alleged destruction of an FIR.

11. The totality of the prosecution's case is emblematic of a prosecution built more on suspicion than on substance. It is riddled with:

- *Absence of forensic corroboration to prove tampering;*
- *Non-production of CCTV footage to show either the presence of the accused or the act in question;*
- *Lack of contemporaneous documentary evidence (Roznamcha, register entries, or duty rosters);*
- *Hostile and inconsistent testimonies from prosecution witnesses;*
- *Omission by the star witness (Shoukat Ali) in his Section 161 CrPC statement of any mention of the tearing of pages;*
- *Contradictory accounts regarding the discovery, condition, and handling of the FIR register;*
- *Failure to examine crucial witnesses such as the then Head Mohrar;*
- *No evidence of motive, corruption, or gain accrued by the accused.*

12. These cumulative defects create a dense cloud of doubt that cannot be dispelled without resorting to conjecture or inference, neither of which is permissible in a criminal trial. As settled law dictates, suspicion, however grave, cannot take the place of proof, and benefit of every reasonable doubt must go to the accused.

13. In light of the above, it is abundantly clear that the prosecution has failed to establish the charge against the appellant beyond a reasonable doubt. The impugned conviction appears to be the result of a flawed appreciation of contradictory and uncorroborated evidence, rather than a reasoned evaluation of the legal and evidentiary framework. The conviction and sentence awarded by the learned trial court cannot be sustained on such infirm and doubtful footing. Accordingly, the conviction and sentence of the appellant are set aside. He is acquitted of the charge by extending the benefit of doubt.

**J U D G E**