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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio.

Criminal Appeal No.82 of 2009.

Appellant

Jawaid Iqbal S/o. Abdullah
through M/s. Muhammad Ashraf
Kazi and Irshad Ahmed Jatui,
Advocates.

Respondent

The State through Mr. G.M.
Bhutto, Assistant Attorney
General.

Date of Judgment

27.03.2023

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Jawaid Iqbal S/o. Abdullah was tried in the Special Court (Offences in Banks) Sindh at Karachi in Case No.96/2002 pursuant to FIR No.18/2002, FIA CBC-II, Karachi U/s. 409/420/468/471/477-A/34 PPC r/w section 5(2) of PCA-II 1947 and vide Judgment dated 17.04.2009 the appellant was convicted and sentenced for the offence punishable under section 409 PPC and sentenced to 03 years R.I and to pay fine of Rs.4,25,000/- and in case of default in payment of fine he was to further undergo R.I. for 06 months. The amount if recovered to be paid to the concerned branch of ABL.

2. The brief facts of the case as per charge are as under:-

"That on 01.10.2001 and 13.10.2001, you accused Jawaid Iqbal, being Manager ABL, Defence Garden Branch, Karachi and as such a Public Servant knowingly, dishonestly, allowed Temporary Running Finance of Rs.4,24,550/- to absconding accused Rana Humayoon Rasheed and Hamid Hamayun, on security pledge of Regular Income Certificates, stolen from National Saving Center, without adopting proper procedure and approval of competent authority thus you accused caused wrongful loss to the tune of Rs.4,25,000/- and wrongful gain to

absconding accused Hamid Hamayun and Rana Hamayun Rasheed thus committed the offences of cheating, forgery, falsification of record and defrauded the bank by providing stolen Regular Certificate as security, punishable under section 409/420/468/471/477-A/34 PPC which are schedule offences and read with Section 5(2) of Prevention of Corruption Act-II, 1947 with the cognizance of this Court.

3. After usual investigation, the challan was submitted against the appellant who pleaded not guilty to the charge and claimed trial.


4. The prosecution in order to prove its case examined 10 Prosecution Witnesses and exhibited various documents and other items. The appellant in his section 342 Cr.P.C. statement denied the allegations against him. However, he did not give evidence on oath and did not call any D.W. in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. At the very outset, learned counsel for the appellant stated that the appellant did not contest the case on merits and accepted his guilt and prayed only for reduction in sentence based on the following mitigating circumstances:-

- a) That the appellant is first time offender and is capable of reformation.
- b) That the appellant had a large family to support.
- c) That the amount involved was relatively minor.
- d) That by accepting his guilt the appellant has shown genuine remorse and;
- e) That he has served a substantial portion of his sentence.

7. Based on these mitigating circumstances mentioned by the appellant, learned Assistant Attorney General had no objection to the reduction in sentence to some reasonable extent.



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8. We have gone through the evidence on record and find that the prosecution through confidence inspiring ^{oral} evidence along with documentary evidence has proved the case against the appellant beyond any reasonable doubt for which he was convicted and as such we maintain his conviction.

9. With regard to sentence based on mitigating factors mentioned by learned counsel for the appellant and the no objection to a reduction in sentence by learned Assistant Attorney General, we hereby reduce the sentence of the appellant to the time already spent in Jail. The appellant is on bail, his bail bond stand discharged and he is free to go.

10. With regard to his fine of Rs.4,25,000/-, we note that vide order dated 17.02.2003 whereby the appellant was granted bail, an amount of Rs.4,29,550/- was deposited with the Nazir of this Court as Surety in respect of this offence. The Nazir of this Court is directed to forward from the surety amount the amount of Rs.4,25,000/- to ABL, Defence Garden Branch, Karachi. The balance amount, if any, with any profit earned on Rs.429,550/- shall be returned by the Nazir of this Court to the appellant. A copy of this order shall be sent to the Nazir of this Court and the Manager, ABL, Defence Garden Branch for information and compliance.

11. The appeal stand disposed of in the above terms.

M. Anj