

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. CRL. A. 458 2009.

Titled Musa Khan Vs The State.

(a) Judgment approved for reporting

☒ Yes / No

(b) Judgment any comment upon the Conduct of the Judicial Officer for Quality of the impugned judgment is Desired to be made.

~~Yes / No~~

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 458 of 2009

Muhammad Musa Khan Afridi
Versus.
The State.

DATE OF DECISION: 12th November, 2012.
APPELLANT BY: Syed Abaid Ullah Shah, Advocate.
~~Raja Farrukh Ahmed, Advocate.~~
STATE BY: Raja Shakeel Ahmed Abbasi,
learned Standing Counsel.

corrected vide order
dt. 22.11.2012

JUDGMENT

MUHAMMAD ANWAR KHAN KASI, J:

This appeal is directed against the judgment dated 22.10.2009, passed by learned Special Judge Central, Rawalpindi, whereby the appellant was found guilty under Section 18 & 22 of Emigration Ordinance, 1979 and sentenced as under;

Under Sec 18: *Sentenced to R.I for 12 years with fine of Rs.2,00,000/-, in default to pay the amount of fine, the appellant will have to undergo S.I for 2 years.*

Under Sec 22: *Sentenced to R.I for 12 years with fine of Rs.2,00,000/-, in default to pay the amount of fine, the appellant will have to undergo S.I for 2 years.*

The sentences were directed to run concurrently with benefit of Section 382-B Cr.PC.

2- The appeal is agitated on the ground that the learned Trial Court failed to appreciate law and facts of the case, while the appellant had never made any commitment with any body nor had received any amount for sending the complainant abroad.

3- It is further submitted that the appellant had issued four blank cheques to the complainant as guarantee only due to business as the complainant had invested Rs.4,50,000/-with him.

4- It is stated that the provisions of Section 18 & 22 of the Emigration Ordinance, 1979 are not attracted in the present case, the FIR was lodged with an unexplained delay of two years, while the date, time and place for giving the money is not mentioned in the FIR, there are material contradictions in the statements of PWs, and the prosecution miserably failed to establish any case against the appellant. In support of his contentions, learned counsel relied upon the case laws cited as 1986 MLD 2719 Lahore, 1984 P.Cr.LJ 283 Lahore, 2009 YLR 2390 Lahore, 1994 PCr.LJ 2451 Lahore, 1985 PCr.LJ 2982 Lahore and PLD 2004 Lahore 767.

5- Learned Standing Counsel opposed the appeal on the ground that discredit of cheques issued by the appellant is sufficient proof to establish the guilt of the appellant/convict.

6- It is next submitted that neither the appellant recorded his statement under Section 340(2) Cr.PC nor produced any defence evidence, which means that he had no defence.

7- Heard and record perused.

8- The prosecution story as mentioned in the FIR Exh.PD:1 is that the appellant had received Rs.13,00,000/-from complainant Ch. Muhammad Ilyas and his nephew Mr. Sajjad Abid in 2005 with the

21

commitment to send them to England against a valid visa for employment but thereafter neither he returned the money nor honoured the commitment.

9- Perusal of impugned judgment reveals that the cheques Exh.PA, Exh.PB and Exh.PC, bank slips Exh.PA:1, Exh.PB:1 and Exh.PC:1 regarding dishonouring of said cheques were properly exhibited during the trial through PW.1 and during the cross-examination the issuance of one cheque was not disputed. Again the PW.2 Mr. Sajjad Abid, nephew of the complainant reiterated the fact regarding issuance of cheques, but statement of PW on this point was not shaken and the only plea of defence was that he had not received any money from the complainant for sending them abroad.

10- The IO of the case PW.4 got exhibited the application Exh.PD and FIR Exh.PD:1 and stated that the appellant was in custody in another case and was called to join the present investigation.

11- The accused during examination under Section 342 Cr.PC denied all the allegations and stated that he had been falsely roped in the case. He had neither made any commitment with anybody nor received any alleged amount, while he had received Rs.4,50,000/-as investment for his business at China and for the return of said amount along with commission he had issued two cheques valuing Rs.8,50,000/-but he could not arrange the amount, which resulted in the discredit of cheques.

12- The PWs 1 & 2 had alleged that the appellant had received their passport and had returned them after



affixation of England visa, which was found to be bogus, but the passports containing alleged forged visas were never produced in the Court, to establish the offence under Section 18 & 22 of Emigration Ordinance, 1979. The IO during the investigation did not take any material in possession to establish the said offences.

13- The appellant admits the receipt of amount Rs.4,50,000/-and issuance of cheques valuing Rs.8,50,000/-, but denies the allegations of any commitment / inducement to send the complainants abroad. In the absence of any passport, visa or related documents, it cannot be concluded that the prosecution established any case for the offences under Emigration Ordinance, 1979. As far as the discredit of cheques is concerned, that is a separate offence for which FIA has got no jurisdiction.

14- In view of the above, the conviction recorded through judgment dated 22.10.2009 by learned Special Judge Central, Rawalpindi, is set-aside and the appeal is allowed. Consequently the appellant is acquitted of the charges under Section 18 & 22 of the Emigration Ordinance, 1979 in connection with FIR Exh.PD/1. The appellant present on bail is discharged of his bail bonds.

12.11.2012.
(MUHAMMAD ANWAR KHAN KASI)
JUDGE

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Approved for reporting.