

HCJDA 38  
JUDGMENT SHEET  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**  
**Crl. Appeal No.909/2012**

**Muhammad Arif Zaman and another**  
**versus**  
**The State and another**

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

Date of hearing:	15.10.2024
Appellant by:	Mr. Osama Zaman, Advocate for and with the appellants (appellants have been identified by their learned counsel).
State by:	Rana Muhammad Shafique, Deputy Prosecutor General along with Muhammad Younas, A.S.I.
Complainant by:	Nemo.

**Farooq Haider, J.:-** This appeal has been filed by **Muhammad Arif Zaman and Zulfiqar Ali** (appellants) against the judgment dated: 10.05.2012 passed by learned Special Judge Anti-Corruption, Faisalabad Division, Faisalabad/trial court whereby in case arising out of F.I.R. No.245/2009 dated: 05.06.2009 registered under Sections: 420, 468, 471 PPC {subsequently, offence under Section: 5 (2) of the Prevention of Corruption Act, 1947 was also added during investigation of the case} at Police Station: City Toba Tek Singh, appellants have been convicted and sentenced as under:-

**MUHAMMAD ARIF ZAMAN**

<u>Conviction</u>	<u>Sentence</u>
<b><u>Under Section:</u></b> 420 PPC	<b><i>“Two Year’s Rigorous Imprisonment”</i></b> with fine of Rs.10,000/- and in default thereof to further undergo S.I. for two months.
<b><u>Under Section:</u></b> 468 PPC	<b><i>“Two Year’s Rigorous Imprisonment”</i></b> with fine of Rs.10,000/- and in default thereof to further undergo S.I. for two months.
<b><u>Under Section:</u></b> 471 PPC	<b><i>“Two Year’s Rigorous Imprisonment”</i></b> with fine of Rs.10,000/- and in default thereof to further undergo S.I. for two months.
<b><u>Under Section:</u></b> 5 (2) of PCA, 1947	<b><i>“Two Year’s Rigorous Imprisonment”</i></b> with fine of Rs.10,000/- and in default thereof to further undergo S.I. for two months.

<b><u>Under Section:</u></b> 9 of Criminal Law Amendment Act, 1958	Fine of Rs.3,50,000/- payable to the complainant.
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**ZULFIQAR ALI**

<b><u>Conviction</u></b>	<b><u>Sentence</u></b>
<b><u>Under Section:</u></b> 420 PPC	<b><i>“One Year Rigorous Imprisonment”</i></b> with fine of Rs.10,000/- and in default thereof to further undergo S.I. for two months.
<b><u>Under Section:</u></b> 468 PPC	<b><i>“One Year Rigorous Imprisonment”</i></b> with fine of Rs.10,000/- and in default thereof to further undergo S.I. for two months.
<b><u>Under Section:</u></b> 471 PPC	<b><i>“One Year Rigorous Imprisonment”</i></b> with fine of Rs.10,000/- and in default thereof to further undergo S.I. for two months.
<b><u>Under Section:</u></b> 9 of Criminal Law Amendment Act, 1958	Fine of Rs.3,50,000/- payable to the complainant.

Aforementioned sentences were ordered to run concurrently and benefit of Section: 382-B Cr.P.C. was also extended to the appellants/convicts.

It is pertinent to mention here that Muhammad Akhtar accused became absent after recording of his statement under Section: 342 Cr.P.C. therefore declared as proclaimed offender.

2. Brief facts of the case in hand are that Zafar Yaseen (complainant/ PW-2) moved application (Ex.PT) for registration of case to Zahid Hussain S.I. (PW-5) while mentioning therein that accused persons namely Muhammad Akhtar, Zulficar Ali resident of House No.234, Street No.2, Mohallah Islampura, Toba Tek Singh and accused Arif Zaman Patwari resident of Chak No.320-GB (ب ج), in connivance as well as consultation with each other, with *malafide* intention while deceitfully committing fraud and forgery, prepared a forged, fictitious and fabricated *Fard Jamabandi* pertaining to the land bearing Khewat No.642/634, Khatooni No.750, measuring: 2-K, 0-M (out of total measuring 22-K, 16-M) pertaining to two plots one Kanal each, reference to Mutation No.11223 dated: 12.02.2008 in connection with oral sale of land measuring 10-Marla; copy of Daily Diary No.785 dated: 12.02.2008 and Mutation No.11256 dated: 25.02.2008 situated at Chak No.327/JB, Tehsil & District: Toba Tek Singh regarding

the agreement to sell dated: 05.03.2007, whereby they agreed to sell land @ Rs.52,500/- per Marla and received Rs.600,000/- as earnest money @ Rs.300,000/- per Kanal whereas remaining amount of sale consideration of Rs.7,50,000/- was received in the office of Arif Zaman Patwari situated at Faiz Colony, Toba Tek Singh in presence of Hafiz Abdul Razzaq, Muhammad Umar and misappropriated the amount with the pretext to sell the lands; upon completion of period of agreement it came into knowledge of the complainant that *Fard Jamabandi* is a forged, fictitious and fabricated document; accused persons are not owner of the land; they in consultation with each other having mala fide intention, cheating and fraud in their hearts, grabbed a sum of Rs.10,50,000/- from the complainant, which was as a trust with them till completion of agreement and the same had been misappropriated with *mala fide* intention; the complainant along with witnesses went to the accused persons, protested and demanded return of his amount, whereupon, they while confessing their guilt sought pardon and promised to return the amount but now they have flatly refused to do so; upon which, the complainant himself paid amount of agreement to sell of Rs.10,50,000/- to Muhammad Shafique; when demanded back said amount from the accused persons, they threatened for involving him in false cases.

On the basis of said application of Zafar Yaseen (complainant/PW-2), case *vide* F.I.R. No.245/2009 (Ex.PT/1) dated: 05.06.2009 under Sections: 420, 468, 471 PPC was registered at Police Station: City Toba Tek Singh.

After investigation, report under section 173 Cr.P.C. was submitted in the Court; Muhammad Arif Zaman, Zulfiqar Ali (appellants) and Muhammad Akhtar (now P.O.) were put for trial; charge under Sections: 420, 468, 471 PPC read with Section: 5 (2) of the Prevention of Corruption Act, 1947 was framed against them to which they pleaded not guilty and claimed trial. Prosecution during trial examined eleven witnesses whereas Mushtaq Hussain, Assistant Commissioner, Toba Tek Singh was examined as Court Witness (CW-1); thereafter statements of both the appellants as well as of Muhammad Akhtar were recorded under Section: 342 Cr.P.C. on 03.08.2011 wherein they refuted case of the prosecution against them; the appellants did not opt to record their statements under Section: 340(2)

Cr.P.C. however Muhammad Akhtar (now P.O.) produced some documents in his defence. Thereafter, an application was moved on behalf of the complainant for producing further evidence which was allowed on 28.09.2011; Muhammad Akhtar accused became absent and was declared as proclaimed offender; Statements of Abid Hussain Patwari as PW-12 and Ali Gardawar as PW-13 were recorded; both the appellants were again examined under Section: 342 Cr.P.C. on 20.03.2012 wherein they refuted the allegations levelled against them; they did not opt to appear under Section: 340 (2) Cr.P.C. however documents Ex.DK and Ex.DL were produced in defence on behalf of Arif Zaman (appellant No.1). Trial court after conclusion of trial has convicted and sentenced the appellants as mentioned above through impugned judgment dated: 10.05.2012.

3. Learned counsel for the appellants has submitted that convictions recorded against and sentences awarded to the appellants through impugned judgment are against the 'law and facts' and result of non-reading/misreading of evidence. Learned counsel for the appellants finally prayed for acquittal of the appellants.

4. Conversely, learned Deputy Prosecutor General has supported the impugned judgment and prayed for dismissal of the appeal.

5. **Arguments heard. Record perused.**

6. Case of the prosecution against Zulfiqar Ali (appellant No.1) is that he and Muhammad Akhtar (accused now P.O.) executed *Iqrar Nama* (agreement to sell/Ex.PW) with Zafar Yaseen (complainant/ PW-2) regarding two plots measuring 1-Kanal each while receiving Rs.600,000/- as earnest money; subsequently, Muhammad Akhtar accused in furtherance of said *Iqrar Nama* (agreement to sell/Ex.PW) got entered two mutations bearing No(s).11223 dated: 12.02.2008 (Ex.PG) and 11256 dated: 25.02.2008 (Ex.PJ) in revenue record in favour of one Muhammad Shafique *vide* oral statement *qua* sale on the basis of Mutation No.9981 (*Part* Patwar/Ex.PE and *Part* Sarkar/ Ex.P.E/1) which was entered on the basis of Rapt No.571 (Ex.PF).

So far as *Iqrar Nama* (Agreement to Sell/Ex.PW) is concerned, it is relevant to mention here that original of the same was neither produced nor got exhibited; so much so that it was not got compared with copy of the same, which was exhibited in the Court; even any material has not been brought on the record to show that original has been destroyed or not available in order to justify production of secondary evidence i.e. copy of the same and in this regard, cases of **“Mst. AKHTAR SULTANA Versus. Major Retd. MUZAFFAR KHAN MALIK through his legal heirs and others”** PLD 2021 SC 715 and **“Mst. KHURSHID BEGUM and 6 others versus CHIRAGH MUHAMMAD”** 1995 SCMR 1237 can be advantageously referred; Even any notary public who attested *Iqrar Nama* (Agreement to Sell/Ex.PW) has not been produced as witness by the prosecution; apart from this, Zulfiqar Ali (appellant No.2) merely posed himself as having purchased the land and not expressly mentioned therein that he is full owner of the land and same wording was used by the complainant (PW-2) himself in the agreement (Ex.PX) which he executed with aforementioned Muhammad Shafique and he (complainant) even admitted said facts including the fact that Zulfiqar Ali (appellant No.2) and Muhammad Akhtar (since P.O.) executed *Iqrar Nama* (Ex.PW) with him on the basis of *Iqrar Nama*, which they made with Yar Muhammad etc. regarding purchase of the land and relevant portion of his statement in this regard is scanned below: -

کچھ عادی معوں۔ درر نامہ 3/5 ہاگہ 3/5 ہے، درست ہے کہ قمر آخر اور  
ذوالفقار معوں نے ذوالفقار کی بنیاد پر نہیں، بلکہ یار محمد وغیرہ کی بنیاد پر ہے  
اقرار نامہ بابت قمر آخر کی بنیاد پر حجبی اراضی فروخت کرنے کا اقرار نامہ کیا تھا  
اقرار نامہ میں درج ہے کہ اقرار نامہ کی تعمیر رقم 8/10 تدا داتہ کرنے کی صورت میں  
بہیمانہ فنڈ لکھو رہا تھا۔ میں نے اس اقرار نامہ میں 3/12 بحق محمد شفیق  
ذوالفقار کی بنیاد پر نہیں، بلکہ ذوالفقار وغیرہ سے اقرار نامہ خرید کر بنیاد پر کیا تھا  
یہ درست ہے کہ میرا بیٹا نے گارڈیارس الیسا انہر قوت ہے کہ بغیر ذوالفقار کی  
فروخت کنندہ فریقین دینے میں کسی اقرار نامہ میں نہ ہو کہ بنیاد پر جائیداد آرمینڈ فرم  
کرنے کا حجابہ کر رہی ہیں  
یہ درست ہے کہ میرا بیٹا نے قمر آخر وغیرہ کے ساتھ یار محمد وغیرہ نے 22-1-20  
فروخت کا حجابہ کیا ہو گا۔ انہر خود کیا کہ اخذ وغیرہ مسودہ میں حجابہ کر کے  
تک یہ منٹ ہے میرا اخذ خود یہ منٹ اور خود سافٹ ہے۔

Similarly, relevant portion of the statement of Abid Sagheer, Inspector (PW-10) on the subject is also scanned as under: -

اقرار نامہ درج ذیل کے درمیان 5 دہاکہ 5 حصہ اختیار اور ذوالفقار علی صاحب دین داری  
 ملکیت کی بنیاد پر تحریر نہ ہوا تھا بلکہ یہ دہاکہ وغیرہ سے اقرار نامہ ذیل کی بنیاد  
 پر تحریر کیا گیا تھا۔ اقرار نامہ خدائیں محمد اور عبد الباقی شوریان نے  
 دیں۔ دینی طرح اقرار نامہ 12 دہاکہ 5 حصہ خدائیں محمد علی صاحب  
 دین داری ملکیت کی بنیاد پر تحریر نہ ہوا تھا بلکہ اقرار نامہ ذیل کی بنیاد پر  
 تحریر ہوا تھا۔ یہ درست ہے کہ اقرار نامہ 5 دہاکہ 5 حصہ  
 اختر۔ ذوالفقار صاحب اور خدائیں محمد علی صاحب کی حقیقت بحیثیت ملکیت  
 رافضی ایک جی بی ہے۔  
 12-6-11

So, it has been admitted by the complainant (PW-2) that *Iqrar Nama* (Agreement to sell/Ex.PW) was executed with him by Zulfiqar Ali (appellant No.2) as well as Muhammad Akhtar (accused now P.O.) not in the capacity of full owner of the land rather as purchaser of the land and on the basis of agreement to sell, executed between Zulfiqar Ali, Muhammad Akhtar and Yar Muhammad, etc.; it was duty of the prosecution to prove that Zulfiqar Ali (appellant No.2) was not owner of any land there but prosecution did not produce any evidence in this regard. It is not the case of the prosecution that Zulfiqar Ali (appellant No.2) while claiming himself as full owner of the land made statement to Revenue Patwari regarding sale of the land to the complainant or any other person on the asking of the complainant or any mutation of the land was entered in the revenue record on the statement of Zulfiqar Ali (appellant No.2) as owner; so much so, in the both impugned mutations No(s) 11223 (Ex.PG) and 11256 (Ex.PJ), Zulfiqar Ali is not even signatory in any capacity. Furthermore, as per *Iqrar Nama* (Agreement to sell/Ex.PW), if Zulfiqar Ali (appellant No.2) fails to transfer land to the complainant, then remedy is before Civil Court for specific performance of the same or paying the double amount of the received earnest money; in this regard, relevant portion of *Iqrar Nama* (Agreement to sell/Ex.PW) is reproduced below: -

"اگر ہم معاہدہ ہذا کی خلاف ورزی کریں گے تو وصول شدہ رقم کے دگنا مشتری مذکور کو ادا کرنے کے پابند رہیں گے"

Therefore, prosecution has been failed to prove the charge against Zulfiqar Ali (appellant No.2) and there is no need to discuss defence version *qua* him, hence, instant appeal to the extent of appellant No.2 is **allowed**; resultantly, convictions recorded and sentences awarded to appellant No.2 through impugned judgment are hereby set-aside; he is acquitted of the charge; he is on bail after suspension of execution of his sentence by this Court *vide* order dated: 20.06.2012 passed in Crl. Misc. No.01/2012, his surety stands discharged from the liability of bail bonds.

7. Before discussing the case of Muhammad Arif Zaman (appellant No.1), it is relevant to mention here that while deciding the criminal case, approach of the Court must be inquisitorial instead of adversarial; furthermore, in the case of forgery, cheating and particularly by the accused who being official is also holder of the relevant record, it is not easy to find out the direct evidence because such officials when become cheater, they make planning, manage the atmosphere/material, try their level best to conceal the relevant incriminating material and usually said forgery comes to the knowledge of the affectee at belated stage and it is more difficult to find out evidence at said stage due to passage of time; therefore, in such offences, relevant material in the form of documents/transactions can be given due weight while appreciating the evidence in the light of maxim “*Res ipsa loquitur*” i.e. “the thing speaks itself” instead of emphasizing the oral/direct evidence.

8. So far case of Muhammad Arif Zaman (appellant No.1) is concerned, he was acting as revenue *Patwari* of the relevant area Chak No.328 “{Jeem Bay (ج ب)}”; he while acting as *Patwari* recorded Rapt No.571 dated: 18.06.2006 (Ex.PF) in *Roznamcha Waqiati*, entered mutation No.9981 (Ex.PE, Ex.PE/1) on 18.02.2006 regarding land in favour of Muhammad Akhtar (accused since P.O.); he also entered mutation No.11223 (Ex.PG=Ex.PN) dated: 12.02.2008 and mutation No.11256 (Ex.PJ=Ex.PR) on the statement of Muhammad Akhtar (accused since P.O.) in favour of one Muhammad Shafique s/o Sher Muhammad; in this regard, statement of Ghulam Murtaza, *Patwari*





any revenue officer and for the said reason same was of no value; in this regard, case of “**KARAM SHAH versus Mst. GHULAM FATIMA and 3 others**” (1988 CLC 1812) can be safely referred and relevant portion of the same from its paragraph No.2 is hereby reproduced as under: -

*“An attested mutation may carry a rebuttable presumption of truth but an **unattested mutation** entered simply by a Patwari has no significance, importance or value in the eyes of law”*

*(emphasis added)*

Therefore, Muhammad Arif Zaman (appellant No.1) was having full knowledge of incomplete/dubious feature/aspect of the rapt (Ex.PF) being its author but he used the same and on the basis of said incomplete/dubious rapt (Ex.PF), knowingly entered mutation No.9981 (Ex.PE, Ex.PE/1) on 18.02.2006 in favour of Muhammad Akhtar, which remained unsanctioned/unattested and was of no value but even then, he knowingly entered mutation bearing No(s).11223 (Ex.PG=Ex.PN) and 11256 (Ex.PJ=Ex.PR) on the statement of Muhammad Akhtar (accused, now proclaimed offender) on the basis of said unsanctioned/unattested mutation No.9981. Both mutation No(s).11223 and 11256 (mentioned above) are subject matter of this case. Therefore, prosecution has established that Muhammad Arif Zaman (appellant No.1) knowingly committed forgery for the purpose of cheating, as well as cheating, used forged document as genuine and also being public servant committed “criminal misconduct”.

Now coming to the defence version of appellant No.1; relevant portions of his answer to question No.10 during his statement recorded under Section: 342 Cr.P.C. are hereby reproduced: -

*“I am not part to the agreement Ex-PW dated: 05.03.2007 between the complainant and Muhammad Akhtar and Zulfiqar accused. There is no evidence on record regarding any payment; neither on 05.03.07 nor on its implementation dated i.e. 01.08.2007 relating to my intervention.*

*As regards mutation No.11223 and 11256 or their reports No.785 and 841, the complainant is not concerned with any of these documents. The alleged vendee Muhammad Shafique never joined the enquiry investigation or trial proceedings of this case. PW4 Ghulam Murtaza Patwari has clearly admitted that Muhammad Akhtar accused was already owner of 2 Kanals 13 Marlas since 30.09.06 vide mutation No.10338, Ex-DA.”*

*“The mutations No. 11223 and 11256 were further based upon mutation No. 9981 dated 18.02.06 got entered by Tayyub Maqbool in favour of Muhammad Akhtar, lying intact at that time. A cancellation note, however, appears to have been forged thereon by the prosecution through any hidden hand, hence not blessed with the endorsement of any revenue officer”.*

When aforementioned defence version of appellant No.1 has been examined while keeping the same in juxta position with prosecution version, then his version is of no avail whereas prosecution version is cogent, convincing and based upon confidence inspiring evidence to his extent.

9. Nutshell of the above discussion is that prosecution has proved its case i.e. charge against Muhammad Arif Zaman (appellant No.1) beyond shadow of doubt; he has been rightly convicted and sentenced by the trial court; hence, aforementioned convictions recorded and sentences awarded to appellant No.1 through impugned judgment under Sections: 420, 468, 471 PPC Section: 5 (2) of the Prevention of Corruption Act, 1947 and Section: 9 of the Criminal Law Amendment Act, 1958, are maintained in toto. Therefore, instant appeal to the extent of Muhammad Arif Zaman (appellant No.1) is hereby **dismissed**. Order dated: 20.06.2012 passed by this Court with respect to suspension of execution of sentence of appellant No.1 is hereby recalled. Station House Officer of police station concerned will proceed further in accordance with law. Office is directed to transmit copy of this judgment to the trial court for compliance in accordance with law.

**(FAROOQ HAIDER)**  
**JUDGE**

**APPROVED FOR REPORTING**

**(FAROOQ HAIDER)**  
**JUDGE**