

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr. A No. 25-A/2022.

Date of hearing 14.03.2023.

***Petitioner/s** (Muhammad Asif) by Ms. Sherish Habib Dilazak, Advocate.*

***Respondent/s** (The State) by Syed Shahid Mehboob, Assistant Attorney General and (Sayad Hussnain Kazmi) by Mr. Nadeem Khan, Advocate.*

FAZAL SUBHAN, J. This judgment is aimed to decide the instant criminal appeal and connection Cr. R No. 16-A/2022, filed against common judgment passed in Special Court case No. 61/Lmg/2021 dated: 25.01.2021.

2. Through instant criminal appeal filed under section 410 Cr. P.C read with section 24-A of the Emigration Ordinance, 1979 (Ordinance), the appellant has prayed for setting aside the judgment and order passed by learned Special Court Anti-corruption, Central and Emigration, Khyber Pakhtunkhwa, Camp Court,

Abbottabad dated: 25.01.2021, whereby, appellant was convicted under section 17 of Emigration Ordinance, 1979 (Act) to imprisonment for one year RI, under section 18 for five years RI with fine of Rs. 5,00,000/- and under section 22, appellant was further convicted and sentenced to imprisonment for five years RI with fine of Rs. 5,00,000/-. Appellant was extended benefit of section 282-B Cr.P.C, whereas, through criminal revision petition No. 16-A/2022, the complainant has prayed for enhancement of sentence awarded by the Special Court to the appellant.

3. Facts of the case in brief are that the complainant Syed Hasnain Kazmi on 24.06.2019 lodged a complaint before Deputy Director, Federal Investigation Agency/ ACC, Circle/ Sub-Circle, Abbottabad, to the effect, that one Muhammad Asif son of Ghulam Khan r/o II. No. 88-R block-B Mohallah Railway Society, Gulistan Johar, Karachi was introduced to him by his brother-in-law

Momin Ali Shah, that Muhammad Asif has Qatari employment visas. Muhammad Asif visited Islamabad and assured overseas employment as G.M petroleum whereafter, he received Rs. 65,00,000/- from him and Rs. 25,00,000/- from his close friends and relatives and the money was transferred to Account No. 993301064239 of Muhammad Asif and in the account of his wife Iffat Ghias, bearing number 99330102998125, but neither he provided him with the promised job nor has returned his amount, hence, he filed complaint to the FIA authorities, Abbottabad.

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4. After receipt of the said complaint, the FIA authorities initiated inquiry and after finding the accused connected with the offences, the present case No. 06/2020 under sections 18(b) and 22 (b) of Ordinance was registered.

5. Investigation was carried out in the case. Appellant was arrested, while his wife did not surrender and remained absconder. After completion of

investigation, IO submitted complete challan under section 24 (6) of Ordinance. Initially, section 17 (b) of Ordinance was not mentioned in the case, which was later-on inserted. Formalities of section 265-C Cr.P.C were complied with on 22.01.2021, whereafter, formal charge was framed against the appellant on 02.02.2021 to which the appellant did not plead guilty and in order to prove its case, prosecution examined its witnesses with the following narrations: -

6. PW-1 is the statement of Lutf Ali who deposed that the accused/appellant received Rs. 300,000/-, then Rs. 310,000/- and Rs. 100,000/- on different occasions after being interviewed at Afaq Hotel, Haripur, and instead of providing him work visa, appellant provided him open visa.

7. PW-2 is the statement of Waleed Rizwan. According to him, the appellant received an amount of Rs. 6,50,000/- from him on the pretext of providing him work

visa. He stated to have paid Rs. 730,000/- to the accused/appellant on behalf of complainant. PW-3 is Syed Nasim who stated to have been interviewed at Afaq Hotel, Haripur for provision of Qatari visa, where-after, he paid Rs. 400,000/- to Muhammad Asif. The appellant instead of work visa provided him an open visa, where-after, he went to Doha but having no job, he returned to Pakistan on 13.01.2019.

8. PW-4 is statement of Syed Hasnain Shah, who stated that his cousin Syed Nasim Shah handed over to the appellant an amount of Rs. 400,000/- in Afaq Hotel, Haripur. PW-5 is Mohsin Ali, who stated in his statement that in his presence the appellant, his wife and son assured them for return of Rs. 90,00,000/- to the complainant.

9. Muhammad Khalid Mayo, SI, PS is the investigating officer of the case. He obtained warrant under section 204 Cr.P.C against appellant and his wife. He formally

arrested the appellant vide arrest card Ex PW-6/8, obtained two days transit remand from Judicial Magistrate-II, Karachi, applied for police custody vide application Ex PW-6/9, which was granted by learned Senior Civil Judge, Abbottabad. He again applied for further police custody, recorded statements of PWs including wife of complainant. He also collected bank record/statements Ex PW-6/14, Ex PW-6/16 and Ex PW-6/18, obtained two CDs through seizure memo Ex PW-6/19 and then after completion of investigation, submitted the complete challan Ex PW-6/20 against the accused.

10. PW-7 is Muhammad Ismail and according to him to have been interviewed by the appellant at Afaq Hotel, Haripur, where he paid an amount of Rs. 550,000/- for work visa of Qatar to Muhammad Asif, however, when he reached at Qatar, he found that the visa provided to him was open visa rather than work visa.

11. PW-8 is the statement of complainant Syed Husnain Kazmi, who reiterated the same facts as reported through his complaint.

12. PW-9 is Tahir Khan, who was entrusted with the inquiry proceedings after transfer of Shafqat Jamal Inspector and after finding the inquiry complete in all respect, he registered FIR Ex PA. PW-10 is the statement of Shafqat Jamal AD, FIA. He contended that the inquiry No. 167/19 was marked to him, where-after, he issued notices to the accused, recorded statement of one Mohsin Ali on behalf of complainant. He also recorded statements of PWs namely Sajid Iqbal, Syed Nasim and Muhammad Ismail. After his transfer, he handed over the file to the Moharir PS ACC, Abbottabad.

13. After completion of prosecution evidence, statement of accused/appellant was recorded under section 342 Cr.P.C and after hearing arguments, the learned trial

Court recorded convictions and sentences to the appellant as referred to above.

14. Arguments heard and record perused.

15. Before dilating upon merits of the case, it seems beneficial to consider whether any offence under section 17/18 read with section 22 of the Act is being made out against the appellant. For that purpose sections 17, 18 and 22 are reproduced herein below: -

Section 17. Unlawful emigration, etc.-

(1) Whoever, except in conformity with the provisions of this Ordinance and rules, emigrates or departs or attempts to emigrate or depart shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

(2) Whoever, except in conformity with the provisions of this Ordinance or the rules:-

(a) makes, or attempts to make, any agreement with any person purporting to bind that person, or, any other person to emigrate or depart; or Emigration Ordinance 1979 10 (b) causes or assists, or attempts to cause or assist, any person to emigrate or depart or to attempt to emigrate or depart or to leave any place for the purpose of emigrating or departing; or (c) causes any person engaged, assisted or recruited by him

after grant of the licence referred to in section 12, to depart without appearing before the Protector of Emigrants as required by section 15, shall be punishable:- (i) for a first offence, with imprisonment for a term which may be extended to five years, or with fine, or with both; and (ii) for a second or subsequent offence with imprisonment for a term which may extend to seven years, or with fine, or with both.

(3) When, in the course of any proceeding in connection with emigration in which an Overseas Employment Promoter is concerned, a breach of the provisions of this Ordinance or of the rules is committed, such person shall be liable to the punishment provided by sub-section (2), unless he was not responsible for and could not have prevented the commission of the breach.

(4) Whoever, in contravention of the provisions of section 9, recruits a citizen of Pakistan or holds an interview or examination or issues an advertisement for such recruitment, and the editor, printer and publisher of a newspaper in which such advertisement is published, shall be liable to the punishment provided by sub-section (2).

Section 18. Fraudulently inducing to emigrate, etc.- Whoever: -

(a) forges any document required for, or relating to, the emigration of any person, or has in his possession or under his control any instrument or article which may be used for the purpose of such forgery, or

(b) by means of intoxication, coercion, fraud or willful misrepresentation, causes or induces, or attempts to cause or induce, any person to emigrate, or enter into any agreement to emigrate, or leave any place with a view to emigrating, shall be punishable with imprisonment for a term, which may extend to fourteen years, or with fine, or with both.

Section 22. Receiving money, etc., for providing foreign employment: -

Whoever, for providing or securing, or on the pretext of providing or securing, to or for any person employment in any country beyond the limits of Pakistan.

(a) being an Overseas Employment Promoter, charges any fee in addition to the prescribed amount, or

(b) not being such a Promoter, demands or receives, or attempts to receive, for himself or for any other person, any money or other valuable thing, shall be punishable with imprisonment for term, which may extend to fourteen years, or with fine, or with both.

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16. From the above provision, it is abundantly clear that any person who emigrate or depart or attempt to emigrate or depart or causes or assist or attempts to cause or assist any person to emigrate or depart, in contravention of this Act, is to be punished under section 17 (2) (b)(c) of the Ordinance. Similarly, section 18 of Ordinance above provides punishment,

which may extend to 14 years, for offence of fraudulent inducement to emigrate. Section 22 of the Act relates to the offence for providing or securing or on the pretext of providing or securing to or for any person employment abroad, being overseas promotor or non-promotor, who receive or attempt to receive etc shall be punished to imprisonment which may extend to fourteen years or with fine or with both.

17. In the present case, prosecution has produced overwhelming evidence of the persons who are direct effectees of the false pretext of providing emigration and job at Doha Qatar. Complainant Syed Kazim Ali Shah recorded his detailed statement and he was offered the job of G.M petroleum Qatar, and in lieu thereof, the appellant and his wife had received total amount of Rs. 65,00,000/- from him. Similarly, other private witnesses were also deceived and deprived of their money on the pretext of work visas but they were provided open visas. Syed Lutf Ali Shah

r/o Haripur, is among those persons, to whom the appellant promised to provide work visa and for that consideration, the appellant received from him Rs. 300,000/-, Rs. 310,000/- and Rs.1,00,000/- at different occasions. Waleed Rizwan son of Mushtaq Ahmed was also promised by the appellant for providing him work visa for the post of Public Administrator in Qatar and received handsome amount. Syed Nasim son of Mazoor Hussain resident of Village Kamil Pur, Rehana, Tehsil & District, Haripur was also deprived by the appellant from an amount of Rs. 4,00,000/- on the same pretext. All these affectees including complainant are residents of District Haripur, while the appellant is resident of Karachi, who came from Karachi to District Haripur at Affaq Hotel and conducted interviews of said persons. Thus, the complainant and other private witnesses/affectees have specifically nominated the appellant for the offences charged for.

18. Apart from the above oral evidence of effectees, to prove the version of complainant party, PW-6 Muhammad Khalid Mayo SI/PS, FIA, investigating officer, has brought on record sufficient material in shape documentary evidence, particularly Ex PW-6/14, Ex PW-6/16 and Ex PW-6/18. It is proved on record that the appellant operate account No. 627873-99330102064239, his wife Iffat Ghias operates account No. 99330102998125, and from time to time amounts were sent to these accounts from the accounts of Sumra Zafar, wife of complainant holding account No. 000214280582. Ex PW-6/16 consists of number of deposit slips of Meezan Bank, which clearly depicts that wife of complainant Sumra Zafar as well as other effectees have deposited millions of rupees in the accounts of appellant and his wife. Likewise, the Ex PW-6/18 also reveals the payments of different amounts through Western Union in favor of appellant by the wife of complainant.

Similarly, complainant Syed Hasnain Kazmi also send Rs. 2,00,000/- and Rs. 1,00,000/- in the account of appellant through direct deposits from the Meezan Bank G.T Road, Haripur vide Ex PW-6/16 and duly received in the account of appellant. These are undeniable documentary proof, which were obtained through proper channel and brought on record during investigation by the investigating officer, which could not be shattered by the appellant.

19. Complaint was filed before Federal Investigation Agency on 1st June, 2019, but despite issuance of summons, the appellant did not joined inquiry, and even after registration of case, the appellant remained absconder for unexplained long time. Similarly, his wife is still absconding, who has been declared proclaimed offender by the competent Court of law.

20. Not only the appellant is charged in the present case but another criminal

case has also been registered against him at Karachi vide FIR No. 307 dated: 30.04.2020 under section 489-F PPC at Police Station, Share Faisal, wherein, the complainant narrated that appellant had received Rs. 6,60,000/- from him in order to send his son to Qatar on work visa but failed to do so and on demand for return of said amount, the appellant issued two cheques of Bank Al-Meezan, Gulshin-e-Jauhar, Karachi, which were dishonored on their presentation.

20. More-so, the complainant party belongs to Haripur, while the appellant and absconding accused are residents of Karachi, therefore, no question of ill-will on the part of complainant party or false implication of appellant and his wife arises in the case. It is argued by learned counsel for appellant that the prosecution has not produced Mst. Sumra Zafar, whose account was used for transfer of amounts, and presumption under Article 129 (g) of Qanoon-e-Shahadat Order, 1984, would

arise in favour of appellant, however, except the fact that money was transferred through her account, she did nothing in the case. More-so, her husband has appeared and has fully endorsed the sending of amounts from her account. It is worth mentioning that record Ex PW-6/18 was brought on record without objection, hence, transactions made from account of Mst. Sumra Zafar have gone unrebutted, hence, the objection of her non-examination at this stage, when no objection was raised at the time of exhibition of such documents is not fatal to the present case, especially, when complainant has appeared and asserted transactions by him directly into the account of appellant through deposit slips.

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21. Thorough and careful examination of the evidence on record shows that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt through reliable and convincing oral as well as documentary

evidence and therefore, the convictions and sentences recorded by learned trial court/Special Judge Court Emigration, KP, Peshawar/Camp Court, Abbottabad are based on proper appreciation of the evidence on record, which cannot be reversed or altered, which are hereby maintained. At the same time, the quantum of sentence is in line with the charge and need no to be enhanced.

22. For what has been discussed above, this appeal alongwith Cr. R No. 16-A/2022 are hereby dismissed, accordingly.

Announced.

14.03.2023.

Tahir PS

Date of writing judgment 16.03.2023.



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