

IN THE SPECIAL COURT (OFFENCES IN BANKS) SINDH AT KARACHI

Special Case No. 29 of 2021

The State.

Versus

Danish Elahi & Others.

Accused.

F.I.R. No. 10/2021.

P.S. FIA (CBC), Karachi.

U/S. 409/420/468/471/109/34 PPC

Mr. Bilal Ahmed, Sub Inspector (FIA – CBC) Investigation Officer in person.

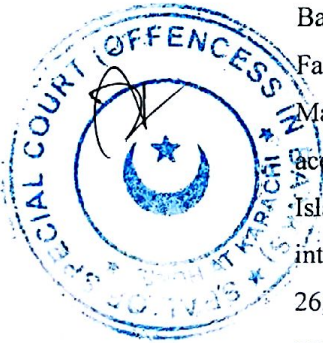
Mr. Zahid Hussain (Section Head Legal Affairs, Bank Islami Pakistan Ltd.) the Complainant in person.

ORDER

11.01.2022.

The Investigation Officer named above has filed Final Charge Sheet No. 02 of 2022 dated 07.01.2022 in above mentioned case and has shown one accused namely Subhan Ahmed in judicial custody, whereas accused namely (1) Syed Mujtaba Hussain Kazmi, (2) Saad Ahmed Madni, (3) Adnan Naseem, (4) Syed Furqan Ali Shah and (5) Muhammad Humair are shown on protective bail; while one lady accused Mrs. Shazia Arif W/o Arif Ehali is shown in Column No. 2 of the Charge Sheet being not sent up for trial.

From the perusal of the case papers i.e. FIR and interim charge sheet dated 16.08.2021; it reveals that there is allegation that the banker accused persons namely (1) Adnan Naseem (Head Corporate South – Bank Islami Pakistan Ltd.), (2) Saad Ahmed Madani (Head Corporate Banking – Bank Islami Pakistan Ltd.), (3) Syed Mujtaba Hussain Kazmi (Head Corporate Banking – Bank Islami Pakistan Ltd.) (4) Subhan Ahmed (Branch Manager, Shahrah-e-Faisal Branch, Bank Islami Pakistan Ltd.) and (5) Furqan Ali Shah (Branch Manager, Shahrah-e-Faisal Branch, Bank Islami Ltd.) in connivance with accused Mrs. Shazia Arif, the Sole Proprietor of M/s. Zafar Agencies (Bank Islami's Customer) and others had fraudulently, illegally and with malafide intention deposited the Pay Order No. 1450501 dated 24.01.2017 of Rs. 26,250,000/- directly into the account of M/s. Zafar Agencies, which pay order was issued by one Ali Altaf Saleem (Director of M/s. Shakarganj Ltd.) in favour of Bank Islami towards cash margin / advisory fee. It is further mentioned in the charge sheet that beside the above mentioned pay order, several other cheques / bank instruments issued by Mr. Ali Altaf Saleem towards settlement of his liabilities were initially deposited into the parking Account No. 1026-9317605-0001 of Bank Islami Pakistan Ltd., but subsequently the above named accused persons through fraudulent and deceitful manners had transferred the amounts of



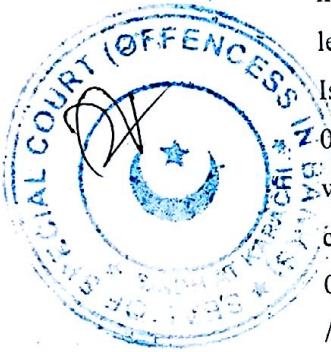
the cheques / said bank instruments into the Account No. 1026-1043501-0001 titled as M/s. Zafar Agencies with Shahrah-e-Faisal Branch, Bank Islami, Karachi. It is alleged against the accused that bank instruments were deposited / parked on the basis of various banker emails / letter of M/s. Zafar Agencies duly signed and issued by Mrs. Shazia Arif from time to time to use the said funds for settlement of financial liabilities of M/s. Zafar Agencies. It is also mentioned in the charge sheet that during the course of investigation, it has come on record that all the financial affairs of M/s. Zafar Agencies were / are dealt by Danish Elahi S/o Mrs. Shazia Arif (CFO of M/s. Elahi Group of Companies). Hence, it has been established that accused persons with criminal and common intention, misused their official capacity / powers, involved in fraudulent activities and falsification in bank's record / documents, which had caused substantial loss to Bank Customer Mr. Ali Altaf Saleem, which ultimately loss to Bank Islami and wrongful gain to accused persons for Rs. 74,576,353/- and, therefore, accused named above have committed offences punishable under Section 409/420/468/471/109/34 PPC.

It is pertinent to mention here that the Investigation Officer has mentioned all the above facts in the charge sheet and has further stated that interim charge sheet dated 16.08.2021 has already been submitted before this Court on the basis of oral and documentary evidence on record, which connects the accused persons with the crime.

However, after all above, in the very next paragraph of the charge sheet in hand, surprisingly the Investigation Officer has mentioned that he received a letter dated 16.12.2021 from Head of Compliance and Head of SAM, Bank Islami, Karachi mentioning therein that a Compromise Agreement dated 08.11.2021 has been arrived between the borrowers and the bank, as a result of which, the liability have been paid by the borrowers in accordance with the compromise agreement and on account of said Compromise Agreement dated 08.11.2021, the complainant Bank i.e. Bank Islami requested to remove / exclude / delete the names of M/s. Zafar Agencies and M/s. Elahi Group of Companies, their proprietors, their employees, officials, guarantors and immediate family members from the instant case. Hence, the Investigation Officer on the basis of aforesaid Compromise Agreement shown the name of borrower / lady accused Mrs. Shazia Arif W/o Arif Elahi, Sole Proprietor of M/s. Zafar Agencies in Column No. 2 of the Charge Sheet being not sent up for trial.

Heard the Investigation Officer of the case, the complainant and the learned Public Prosecutor (FIA).

The Investigation Officer S.I. Bilal Ahmed of FIA appeared along with complainant and submitted that he has filed the Final Charge Sheet Report under Section 173 Cr.P.C. wherein accused Subhan Ahmed is shown in judicial



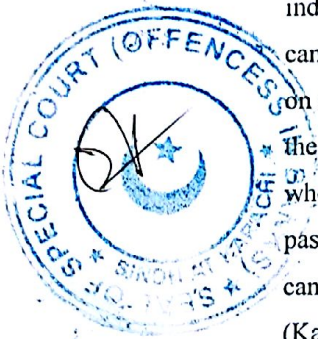
custody, whereas accused (1) Syed Mujtaba Hussain Kazmi, (2) Saad Ahmed Madni, (3) Adnan Naseem, (4) Syed Furqan Ali Shah and (5) Muhammad Humair are shown on protective bail, while the name of lady accused Mrs. Shazia Arif W/o Arif Elahi is shown in Column No. 2 with blue ink being not sent up for trial on the Compromise Agreement executed between the complainant Bank and the borrower / lady accused named above. The complainant Mr. Zahid Hussain submitted that the bank has entered into an agreement dated 08.11.2021 with M/s. Zafar Agencies and M/s. Elahi Group of Companies, therefore, on the request of complainant Bank, the I/O has filed the final charge sheet excluding the name of lady accused, whereas banker accused persons have been sent up to face trial in this case for the commission of offence.

Learned Public Prosecutor requested that Final Charge Sheet may be accepted and trial may be commenced against the accused persons who have been charged and sent up to face trial in this case.

I have given due consideration to the submissions made by the Investigation Officer and the Complainant in person. Also perused the material available on record.

It is well settled principle of law that the "Courts are not bound by arbitrary opinions of the Investigation Officers. They have to apply their independent judicial mind to the facts and circumstances of a case". The Court can take cognizance of offence on a negative report and may not take cognizance on a positive report and hence may dispose of F.I.R irrespective of the fact that the alleged offence is triable by Sessions Court or Magistrate. It is the Magistrate who has to conduct an inquiry on report submitted under Section 173 Cr.P.C and pass final order on such final report placed before him. Reference in this regard can be made to PLD 2003 Karachi 433, PLD 2007 Karachi 489, PLD 2009 (Karachi) 120, PLD 2006 Karachi 302, 2011 YLR 1230, 2014 P.Cr.L.J 1738 and Rule 24.7/25.7 of Police Rules 1934.

After going through the Charge Sheet in hand, it clearly shows that the Investigation Officer has failed to perform his duty with dignity and boldness. It appears that the Investigation Officer is performing on the whims and wishes of the complainant side. Though I/O has mentioned all the relevant facts of the case and has specifically mentioned the role of each and every accused in his final charge sheet and has also fixed criminal liability on each and every accused accordingly; but in the end, he has just given up and quit from the game. On query as to why the lady accused is being let of, whereas the banker accused persons have been sent up to face trial; the Investigation Officer miserably failed to justify his act. He admitted that prima facie case is made out against the lady accused who is the actual beneficiary of the misappropriated / embezzled funds



but on the basis of an agreement executed between main lady accused and the bank as stated above; he has not charged the lady accused to face trial in this case. The complainant also admitted that in this case, the actual beneficiary is M/s. Zafar Agencies, who fraudulently and with criminal intention, with the help of bank officers misappropriated the funds and caused loss to the bank.

In view of the above stated position, it is clear that accusations against accused are well founded and prima facie a case for commencing trial is made out against the accused persons especially the lady accused Mrs. Shazia Arif who is Sole Proprietor of M/s. Zafar Agencies. As per own version of complainant and the Investigation Officer of the case, there is sufficient incriminating material against accused person who have committed the alleged offence. In such position, the Court cannot act like the above named Investigation Officer and oversight from the actual facts of the case. It is not the true scheme of law to let of an accused who is the actual beneficiary, whereas the other accused persons who facilitated the culprit in the commission of offence should be sent up to face trial. It is the duty of the Court to act judicially and to dispense with the justice in accordance with law.

Moreover, since this Court has already taken cognizance in this matter on filing of Interim Charge Sheet dated 16.08.2021 whereby one accused Subhan Ahmed was shown in judicial custody and other five accused (1) Syed Mujtaba Hussain Kazmi, (2) Saad Ahmed Madni, (3) Adnan Naseem, (4) Syed Furqan Ali Shah and (5) Muhammad Humair were shown on protective bail; whereas lady accused Mrs. Shazia Arif W/o Arif Ehali was shown as absconder, therefore, the final charge sheet in hand dated 07.01.2022 is discarded. Hence, the trial would be commenced against the above named accused accordingly.

Further, one Danish Elahi who has obtained bail before arrest in this matter has not been listed by the I/O in the list of accused persons who are on bail though the Investigation Officer has mentioned in the charge sheet that the said Danish Elahi is the Son of lady accused Mst. Shazia Arif and he deals with the financial affairs of M/s. Zafar Agencies. Such intentional omission on the part of I/O raises serious question on his capability and dignity.

Be that as it may, the Investigation Officer is at liberty to file supplementary challan on availability of further evidence and material, if any.

Announced in open Court.

Given under my hand and seal of this Court on this 11th day of January, 2022.

sd/- 11/01/2022
(ABDUL KARIM ANSARI)
PRESIDING OFFICER

