

NAB ACQUITTAL :

Present Case : Failed to account for wife's income.

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IN THE HIGH COURT OF SINDH AT KARACHI

CRIMINAL ACCTT. ACQUITTAL APPEAL NO.07 OF 2013

Present:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Mohammad Karim Khan Agha

Appellant/State: Mr. R.D. Kalhor, Special Prosecutor NAB.

Respondent: Syed Hamid Umer S/o. Syed Umer,
Through Mr. Zaheer-ul-Hasan Minhas,
Advocate

Date of hearing: 26.03.2019.
Date of Judgment: 28.03.2019.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- Reference No.6/2008 was filed against accused Syed Hamid Umer in Accountability Court No.IV Karachi. The Accountability Court No.IV, Karachi after a full dressed trial, acquitted the respondent/accused vide judgment dated 12th April, 2013 (the impugned judgment). Being aggrieved and dissatisfied with the impugned judgment dated 12th April, 2013 the appellant/State preferred this appeal against acquittal of the respondent.

2. Brief facts of the case are that the accused Syed Hamid Umer joined Customs Department on May 5, 1984 as Appraiser Customs. He was promoted as Principal Appraiser Customs on September, 1999.

3. That a complaint was received against the accused wherein a number of allegations were leveled against him for his involvement in corruption and corrupt practices, misuse of authority and amassing of wealth beyond his ostensible means. Investigation was authorized by the DG NAB Sindh into these allegations

4. That the evidence collected during the course of investigation revealed that the accused during the period from 1985 to 2007 had amassed wealth beyond his known pecuniary sources on his name and in

the name of his spouse including properties, cars and money in various bank accounts. Details of properties acquired are as follows:-

Ser	Properties	Date of purchase	Value at the time of purchase	Value at the time of sale	Name of owners
a.	Commercial Plot No.5-C, Lane-1, Rahat Commercial Area, Phase-VI, DHA, Karachi.	2 November, 1996	Rs.2.5 (M)	N/A	Mrs. Arshi Hamid (wife).
b.	Commercial Plot No.3-E, Jami Street No.3, Jami Commercial Area, Phase-VII, DHA, Karachi, 200 Sq. Yds	4 December, 1996	Rs.0.17 (M)	0.5(M)	Syed Hamid Umer
c.	Residential Plot No.A-180, Phase-VIII, DHA Karachi 1000 Sq. Yds.5-C, Lane-1, Rahat Commercial Area, Phase-VI, DHA, Karachi.	2 November, 1996	Rs.2.5 (M)	2.9 (M)	Mrs. Arshi Hamid (wife).
d.	Daewoo Car	Model 2001	Rs.0.32 (M)	Rs.0.24 (M)	Syed Hamid Umer
e.	Suzuki Alto Car	Model 2004	Rs.0.47 (M)	Rs.0.39 (M)	Mrs. Arshi Hamid (wife).
f.	Chevrolet Car	Model 2005	Rs.0.56 (M)	In possession	Mrs. Arshi Hamid (wife).
g.	House No.D-4/1, Block 13-D-1, Gulshan-e-Iqbal, Karachi.	28 March, 1995	Rs.6 (M)	N/A	Mrs. Khursheed Bano (Mother-in-Law)

5. The collection of such incriminating evidence against the accused led the Chairman of the National Accountability Bureau (NAB) to file a reference bearing No. 06/2008 against the accused for acts of corruption and corrupt practices under the National Accountability Ordinance 1999 (NAO) and as mentioned earlier after a full dressed trial the accused was acquitted of the charge vide the impugned judgment. Being aggrieved and dissatisfied by the impugned judgment the appellant (the NAB) have filed this appeal against acquittal.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 12.04.2013 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant contended that the prosecution had proved its case beyond a reasonable doubt and that the trial court had erred in acquitting the accused who had not been able to justify how he

had been able to accumulate such vast assets keeping in view his income as assessed by the NAB and as such the impugned judgment should be set aside and the respondent should be convicted of the charge and awarded the maximum sentence as prescribed by the law.

8. On the other hand, learned counsel for the respondent contended that the impugned judgment had been rightly passed by the trial court by a proper appreciation of the evidence on record and the relevant law and as such the appeal be dismissed by this court.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence and the impugned judgment with the able assistance of counsel for the parties and have considered the relevant law.

10. The Respondent was tried under S.9 (a) (v) NAO for in effect having assets beyond his known sources of income which sub section of the NAO reads as under:

"9. Corruption and Corrupt Practices.---- (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:-

- (i)
- (ii)
- (iii)
- (iv)
- (v) if he or any of his dependents or benamidars owns, possesses, or has any right or title in acquired assets or holds irrevocable power-of-attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income;"

11. The case of the appellant in a nutshell is that the respondent was an official in the customs department (BPS 14 and 16) who on investigation according to the prosecution had purchased properties, cars etc in both his name and the names of his benamidars including in particular his wife Mrs. Arshi Hamid Syed valued far in excess of any amount which he had earned as an officer in the customs department and/or through any other

legal sources of income and thus through corrupt means had acquired assets beyond his known sources of income.

12. In the impugned judgment which had acquitted the accused of the charge it was in effect found by the trial court that the prosecution had not been able to prove its case against the respondent in respect of each property, car etc which he had purchased since in effect the prosecution had not been able to make out a reasonable case against the respondent which would shift the burden of proof under S.14 © NAO onto the respondent since the respondent had either given a reasonable explanation for his purchases or the prosecution had been unable to prove that the respondent had indeed purchased the properties, cars etc from ill gotten money.

13. In his S.342 statement the respondent has justified/explained the assets which he allegedly has as under:-

"I deny the allegations. I have not committed any offence as alleged or otherwise, neither have I purchased the properties mentioned in the charge. The only property purchased by me is Plot No.3-E, Jami Street, Phase-VII, DHA Karachi, measuring 200 sq. yds, which was sold by me to Syed Anwar Ali s/o. Syed Ashfaq Ali immediately after its purchase. He did not pay the sale consideration till date although he had declared the purchase of the same in his tax return form the year 1997-1998 onwards and nonpayment is also reflected in the balance sheet 1999-2000 of Syed Anwar Ali.

I deny the charge and say that Plot No.6-C, Lane-1, Rahat Commercial Area measuring 200 sq. yds, Phase-VI, DHA was purchased by my wife Mst. Arshi Hamid in October, 1996 for an amount of Rs. 500,000/- which amount was gifted to her by her father Mr. Mumtaz Ali Khan son of Imtiaz Ali Khan by way of declaration of gift dated 08.08.1996, copy of declaration of gift as well as sale agreement is annexed herewith. It is submitted that the said plot was claimed to have been sold by my wife to one Syed Anwar Ali son of Syed Ashfaq Ali in the same year, which is duly reflected in his income tax return for the year 1998-99, copy whereof is filed herewith. A Suit No.1207/2001 was filed by my wife against Anwar Ai which is still subjudice in the Hon'ble High Court of Sindh at Karachi.

I deny the charge of purchase of plot No.A-180, Phase-VIII, DHA Karachi for Rs.2.5 million in the year 1996 and say that no evidence has come on record to substantiate or even suggest that the said plot was

purchased by my wife for the amount mentioned in the charge, however, I submit that my wife is a person of means in her own right and had received substantial amount by way of remittance, gift from her father and also received an amount of Rs.4,25,000/- in the year 1990-91 and Rs.2,40,000/- in 2004-05, on account of draws of prize bonds and she purchased this property for Rs.800,000/- and received Rs.5,00,000/- as gift from her father in the year 1996 which was sold within 3 to 4 months and as such does not find mentioned in her wealth statement.

It is submitted that Syed Anwar Ali son of Syed Ashfaq Ali was engaged in electrical work, he wrongly claimed to be a contractor, no reliance can be placed on his false statement, which is contrary to his declaration of assets for the year 1996-97 and 1997-98, copies are annexed for ready reference. It is submitted that a suit for cancellation of instrument and fake agreement executed by Syed Anwar Ali son of Syed Ashfaq Ali was filed by me being Suit No.131/2002, which suit was decreed on 06.05.2009, a High Court Appeal No.248/2009 was filed by Syed Anwar Ali, which appeal was dismissed by the Honorable High Court. Certified copies are filed herewith. It is submitted that Syed Anwar Ali is an unreliable and untrustworthy person. He based his life on lies and unreliability, proof whereof is provided from the fact that he has been convicted to undergo Rigorous Imprisonment for three years on account of dishonoring of various cheques (copies of Judgment/ Order is produced herewith).

It is submitted that Commercial Plot No.3-E, Jami Commercial Street, Phase-VI, Karachi measuring 200 Sq. Yds. was purchased by me for an amount of Rs.175,000/- on 04.12.1996, which was sold to Syed Anwar Ali for an amount of Rs.200,000/- as shown in his tax returns, that amount remained due and payable till date and gave rise to the litigation on account of his dishonesty and deceitful nature. It is submitted that my statement is supported by balance sheet of Umair Associates of Syed Anwar Ali wherein I am shown as Sundry Creditor to the extent of Rs.200,000/- in the year 1999-2000 for the said plot. Copy of the same is filed herewith.

I deny the charge of three cars mentioned in the charge and state that I purchased one Daewoo Model 2001 for an amount of Rs.320,000/- and sold the same for Rs.240,000/- Then, I purchased a Suzuki Alto for an amount of Rs.420,000/- and after selling the Suzuki Alto 2005 I purchased Chevrolet car for Rs.500,000/- in 2005, which remained in my use and that of my family till. I only maintained one car at a time which has been admitted by the I.O. in his cross examination, whereas the prosecution has calculated the amount for all three cars.

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I deny the charge of unexplained/unjustified transaction of Rs.3.2. million in my bank account. **The prosecution has not produced any bank officer as a witness, no document to this effect has come on record and there is not a single bank statement even alleging the inflated amount shown in the charge.**

It is submitted that supplementary reference was filed belatedly by the prosecution on 13.12.2011, alleging in addition to the properties already mentioned in the charge, it included a property mentioned at serial No.(g) being House No.D-4/1, Block 13-D/1, Gulshan-e-Iqbal, Karachi as is apparent the name of purchaser of the property is Mrs. Khursheed Mumtaz wife of Mumtaz Ali Khan, my mother-in-law and this fact has been sufficiently proven by the statement of the prosecution witness, who had deposed that the original owner of the said property Mst. Khair-ul-Nisa, sold the property through her attorney to Mst. Khursheed Mumtaz, who gifted the same to her son Naveed Ali Khan, brother-in-law of the accused in the year 2000. **The applicant as such has no concern with the said property as confirmed by the witnesses as well as the documentary evidence.**

I say that the prosecution instituted the case with malafide intention and ulterior motives and thus failed to produce any evidence to substantiate their charges for involving me in a criminal case. **That only property purchased by me in my name is Plot No.3-E, Jami Street, Phase-VII, DHA Karachi, for which purchase I had substantial means by way of my own earning as well as that of the amount remitted and gifted by my family.** I have no other property in my name and I have been implicated in an absolutely false case without any evidence. I say that I have suffered the rigor of trial for more than 10 years and not a single instance of misuse of authority and/or amassing wealth beyond my known source of income has been brought on record by the prosecution agency. **It is worth mentioning that the I.O. in his cross examination has also confirmed that he did not mention any single instant of misuse of authority by me.** Although the malafides of the agency are proved from the fact that despite production of original remittance documents and gift deeds at the inquiry / investigation stage by me as well as by my wife, none is reflected either in the investigation report nor in the reference and no mention has been made of the substantial amount of remittances and other sources so that the same could be set up against the value of my assets. My wife and mother-in-law are not accused in the case. In any case, their source of purchase of properties mentioned is available on record. There is no evidence to establish any misuse of authority produced and in complete absence of any evidence the charge could not be proved. **The source of income of the accused have**

never been determined and his income has never been quantified. The I.O. in his cross examination has also admitted the fact that my wife is income tax payee and that she has substantial income from other sources that is her business. The reference filed and charges framed are absolutely silent about the income or the sources of income of the accused and his wife and no evidence had been led by the prosecution in that regard." (bold added)

14. The respondent also filed an additional statement annexing numerous documents in support of both his and his wife's income which is a part of the record.

15. In the case of **Muhammed Hashim Babar V State** (2010 SCMR 1697) the Hon'ble Supreme Court set out the ingredients of what were required to prove an assets beyond known sources of income case under S.9(a) (v) NAO as under at P.1704:

"It is pertinent to mention here that in order to prove the case is the duty and obligation of the prosecution to prove the ingredients of the offence which are as follows:-

- (i) It must establish that the petitioner was holder of a public office.
- (ii) The nature and extent of the pecuniary resources of property which were found in his possession.
- (iii) It must be proved as to what were his known source of income.
- (iv) It must prove, quite objectively, that such resources or property found in possession of the petitioner were disproportionate to his known sources of income.

The aforesaid ingredients are proved then the offence as defined under section 9(a) (v) is complete, unless the petitioner is able to account for such resources or property. It is also settled proposition of law that mere possession of any pecuniary resources or property is by itself not an offence, but failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitute offence meaning thereby that if an petitioner cannot explain, presumption under section 18(c) of the Ordinance that petitioner is guilty of corruption and

corrupt practices is required to be drawn." (bold added)

16. In the later case of **Ghani Rehman V NAB** (PLD 2011 SC 1144) not only did the Hon'ble Supreme Court endorse the finding in **Hashim Babar's case** (Supra) but it also emphasized the need to carry out a thorough and meticulous exercise of investigating what were the actual sources of income of the petitioner and weighing this carefully against the assets which he had acquired in the following terms at P.1147.

"We have heard the learned counsel for the parties at some length and have gone through the record of this case with their assistance. It has been argued by the learned counsel for the appellant that during the investigation of this case the sources of income of the appellant had never been determined and his income had never been quantified, the Reference filed and the Charge framed against the appellant were absolutely silent about the income or the sources of income of the appellant and even during the trial no evidence whatsoever had been led by the prosecution in that regard. In these circumstances, according to him, it was not possible for the learned trial court to compare the value of the assets and pecuniary resources of the appellant, his dependents or the so-called *benamidars* with the appellant's income and to hold that the value of the assets in issue was disproportionate to the appellant's income. It has also been pointed out by him in this regard that Qazi Abdul Hameed, Inspector FIA (P.W.18), the investigation officer of this case, had stated before the learned trial court in so many words that the appellant had informed him about many different sources of his income but he, the investigation officer, had not brought that information on the record of investigation and that information supplied by the appellant." (bold added)

17. In this case we are of the view that the respondent has, from the evidence on record, been able to satisfactorily explain from where and how he acquired assets. The prosecution in our view has also severely damaged its case by not taking into account the financial position of the wife of the respondent Mrs. Arshi Hamid Syed who according to the IO was a lady of some independent means who might well have been in a position to purchase the property in her name out of her own source of funds and thus it cannot be conclusively found that the properties in her name were not bought by her out of her own independent financial

resources. Even otherwise once the IO became aware that she was a lady of substance/wealth it became incumbent on him to investigate and trace out her sources of income to see whether she could have purchased the property in her name which he failed to do. Furthermore, despite being an alleged benamidar of the respondent she has not been made an accused. As was observed in the impugned judgment at page-125 as reproduced as under:-

"The evidence led by the prosecution has no where disclosed that the assets movable and immovable, subject-matter of this reference, were purchased by the accused through illegal means by corruption and corrupt practices or he was maintaining standard of living beyond his known sources of income. PW-11 Nasir Junejo, Investigating Officer in his evidence has categorically deposed that during investigation from the record collected it was found that Plot No.A-180, Phase-VIII, DHA, Karachi was existed in the name of accused's wife in the asset declaration form. He has admitted that accused's wife was running a proprietary concern in the name of "Sea International" and that she is income tax payer and she has substantial income from other sources that is her business. He has further admitted that he has not mentioned any single instance of misuse of authority by the accused. PW-12 Salahuddin Abro, I.O. in his evidence has deposed that he had not investigated the matter on the point whether any foreign remittance received in the accounts of accused or his wife and that accused's wife had some other business or work. He has admitted that he had not investigated the case on the point of misuse power by the accused or his official position. (bold added).....

In the case in hand, the prosecution has failed to bring on record that what where known sources of income of accused person during his posting as Appraiser and Principal Appraiser and that resource or property of accused were disproportionate to his known sources of income. On the contrary, the accused has brought on record sufficient material to establish that he and his spouse has received amount through relatives living abroad and that his spouse Mrs. Arshi Hamid Umar was running a private entrepreneur under the name and style of "Sea International". Such documents have also been placed on record by the accused." (bold added)

18. We have also observed that there was only one PW being PW Syed Anwar Ali who has implicated the respondent in this case and we do not

find his evidence to be particularly confidence inspiring when considered against the entirety of the evidence on record.

19. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment.

20. Thus, keeping in view the above law and our analysis of the impugned judgment we find that the respondent has rightly been acquitted of the charge by the impugned judgment as the findings of the trial court are neither perverse nor speculative but rather well reasoned and we find no reason to interfere with the same and as such the appeal against acquittal of the respondent is dismissed.

21. The appeal against acquittal is disposed of in the above terms.