

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hassan Shah

Criminal Accountability Appeal No.2 of 2017

Amjad Hussain S/o Muhammad Siddique
Versus
The STATE

APPELLANT	:	Amjad Hussain (present) Through Mr. Javaid Ahmed Chhatari a/w Ms. Farah Awan, Advocate.
RESPONDENT / THE STATE	:	National Accountability Bureau Through Syed Khurram Kamal, Special Prosecutor.
	:	Federation of Pakistan Through Ms. Shazia Hanjrah, Deputy Attorney General.
Date of Hearing	:	20.01.2026
Date of Decision	:	20.01.2026

JUDGMENT

Syed Fiaz ul Hasan Shah, J : -- Through this Criminal Accountability Appeal, the Appellant has challenged the Judgment of conviction dated 29.12.2016 (“**impugned Judgment**”) passed by the learned Judge, Accountability Court No.III Sindh, Karachi (“**Trial Court**”) in NAB Reference No.02 of 2016 filed by the National Accountability Bureau Sindh, Karachi (“**NAB**”) wherein

the accused / appellant for having committed an offence punishable u/s. 10 of the NAO convicted the appellant / accused while keeping in view the amount involved in reference and sentenced him to suffer Rigorous Imprisonment (“R.I”) for five (05) years and to pay fine of Rs.4,374,792/ and in case of default thereof, he shall further undergo R.I for two (02) years more. The appellant disqualified for a period of ten (10) years to be reckoned from the date when he is released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any province and forbidden to apply for or be granted or allowed any financial facilities in the form of any loan or advances from any bank or Financial Institution in the public sector, for a period of ten (10) years from the date of conviction while extended benefit of section 382-B, Cr.P.C.

2. The facts of the case as per NAB prosecution are that the appellant was running a manufacturing business in the name and style of “M/s. Akhtar Brothers” and obtained an amount of Rs.11,504,101/- as sales tax refund during the period from September 2004 to December 2004 through two sales tax refund claims on the basis of fake and forged flying sales tax invoices. It was also claimed by the prosecution that the sales tax refund amounting to Rs.4,374,792/- was obtained by the appellant through use of sixty-two (62) fake flying sales tax invoices of M/s. World

Wide Impex, which was not registered with the Sales Tax Department operated by Mian Zar s/o Taoor Khan and this was sanctioned by the Deputy Director, Sales Tax Department, Syed Nusrat Nasir, who was already expired. It is the case of prosecution that the appellant in connivance with the Deputy Director, Sales Tax Department, caused losses to the national exchequer to the tune of Rs.4,374,792/- and upon receiving of credentials information regarding fake sales tax returns the NAB has initiated inquiry, which was converted into the investigation, hence the NAB authorities filed a reference against the accused / appellant.

3. After usual investigation copies were supplied to the appellant under section 265-C, Cr.P.C. vide receipt at Exh.4 and the charge was framed on 14.03.2016 at Exh.5 and the accused pleaded not guilty and claimed to be tried at Exh.6. The prosecution in order to prove the allegation against appellant examined PW-1 Dr. Nasir Khan at Exh.7, PW-2 Mian Zar at Exh.8, PW-3 Syed Zulfiqar Ali Shah at Exh.9, During the course of trial the prosecution filed an application under section 540, Cr.P.C. to summon two witnesses, namely, Ashraf Usman as PW-4 at Exh.10 and Investigating Officer Errol Philip Wingson as PW-5 at Exh.11 and produced the documents from Exh.7/1 to Exh.11/2 respectively. Thereafter, the prosecution has closed its side at Exh.12 and the statement of accused was recorded under section 342, Cr.P.C. at Exh.13, wherein he denied allegation levelled against him by the prosecution. However, the accused / appellant has neither examined himself on

oath, nor produced any witness in his defence, hence the impugned judgment.

4. Learned counsel appearing on behalf of the appellant has mainly argued that neither the appellant has opened the Bank Account No.011245879201 in Silk Bank, Jodia Bazaar Branch, nor he has signed any documents with the bank or before the Sales Tax Department for claiming the refund amount on the basis of flying invoices and the trial Court has erred while comparing the signature of the appellant available on the bank account form and other documents Exh.10/1 to Exh.10/7 respectively. He has further argued that the said fake account opened and operated under the name of the appellant, wherein no transaction has been made, except that the fund credited on the basis of such fake flying invoices. He lastly contended that it is the admitted banking practice whenever a company opens an account, the cheque book do not issue unless some owner or director of the company after opening bank account written a letter of thanks under his signature to affirm that he is the actual person.

5. Learned Special Prosecutor appearing on behalf of the NAB has supported the impugned judgment and stated that the appellant caused losses to the national exchequer and amount was credited by the Sales Tax Department in favour of M/s.Akhtar Brothers and appellant is proprietor concerned direct credit of amount into the account of the appellant maintained in Silk Bank, Joria Bazaar

Branch, Karachi prove the case. Learned Deputy Attorney General appearing on behalf of the Federation of Pakistan has candidly stated that the impugned judgment is not sustainable, as it is lacking of expert evidence.

6. We have heard the learned counsel for the appellant, learned Special Prosecutor for NAB as well as learned Deputy Attorney General and with their assistance minutely perused the record of the case.

7. We observed that the prosecution has not brought any material with regard to the connection of appellant with the bank account maintained at Silk Bank, Joria Bazaar Branch, Karachi, although the documents from Exh.10/1 to Exh.10/7 have been produced by the Operation Manager of Silk Bank PW-4, who was summoned by the Court and has not been joined by the prosecution during the course of investigation, despite the specific plea taken up by the appellant during the course of investigation and reaffirmed while recording his statement under section 342, Cr.P.C. The onus of proof squarely lies upon the prosecution to prove its case that it was the appellant, who signed the account opening form and other relevant documents with the bank so also moved request before the Sales Tax Department to claim refund on the basis of flying invoices. The prosecution has failed to verify the signature of the appellant with the signature appended with the disputed documents of both quarters, one lying

with Silk Bank, Joria Bazaar Branch and other with Sales Tax Department.

8. Another essential incriminating evidence was cheque book of the disputed account where the embezzled amount was credited through cross cheque issued by Sale Tax Department and subsequently withdrawn it was also not recovered by the NAB officials during the course of investigation from the possession of appellant despite the factum that the NAB arrested the Appellant, who remained under remand for considerable time. On the contrary, the appellant has filed Complaint with the Investigating Officer of the case and other High ups that ex-NAB officer M. Ashfaq Khan, Brig. Musadiq Abbasi, Col. Shaukat Alvi, Sayadain Raza Zaidi PRO-II, D.G. Anjum Zia, Ex-member of Sales Tax Shahid Ahmed, Senior Auditor Wastullah Jaffer alias Baba Jaffer, Superintendent Mehmood Abbas, Inspector Wasim, Senior Auditor Zahidul Bari, Faisal and Jugno were involved in the sales tax refund fraud and the appellant has only hold one Bank Account No.5850-1, Allied Bank, New Challi Branch. The NAB prosecution has failed to enquire about the withdrawal amount from the account of appellant and to corroborate the record and signature of appellant available with Allied Bank Limited in order to prove its case. Strangely, the Investigating Officer of the case has failed to examine the appellant's disputed account, as no other transaction was conducted from the said fake bank account, except that the fund credited by the Sales Tax Department against fake and flying invoices and failed to

notice the sole purpose of opening this fake account which must be colluded by bank official.

9. In view of above facts and circumstances of the case, we are of the considered view that the NAB prosecution has failed to establish the guilt of the appellant on the basis of signature appended with disputed account opening form and its connected record from Exh.10/1 to Exh.10/7, that it was actually signed by the appellant. Furthermore, the prosecution has also failed to prove the disputed documents, which was allegedly signed by the appellant before the Sales Tax Department to claim the refund on the basis of fake and flying invoices claimed by M/s. World Wide Impex by examining the **monthly sales tax returns** of both companies, particularly when the fake and flying invoices claimed by the M/s. Akhtar Brothers was with regard to an unregistered entity M/s. World Wide Impex, for which no sales tax refund could be approved. Mere saying that only Deputy Director, Sales Tax Department Syed Nusrat Nasir (now deceased) had approved the sales tax refund, is not sufficient, as the application be it may for bonafide claim or claim made through fake and flying invoices has to undergo through “Daily Dak” presented in R&I Branch and thereafter undergo through various hands of government officials upto the “approval authority”, that too subject to assessment from monthly sales tax returns by business entity.

10. The NAB prosecution failed to notice that the claim of sales tax refund by M/s. Akhtar Brothers be it may genuine or fake must be

assessed by Sales Tax Officer and in the absence of Assessment Order, an inherent defect also found in the case of prosecution.

11. The law is settled that under Article 84 of Qanun-e-Shahadat Order, 1984 (“**QSO**”) the Court is empowered to compare disputed handwriting or signatures with admitted writing or signature, though such exercise must be undertaken with utmost care and caution. While expert opinion may be desirable, its absence does not vitiate the proceedings as held in the cases of (1) *Ghulam Rasool v. Sardar-ul-Hassan* [1997 SCMR 976]; (2) *Messrs Waqas Enterprises v. Allied Bank* [1999 SCMR 85]; (3) *Rehmat Ali Ismailia v. Khalid Mehmood* [2004 SCMR 361]; and (4) *Khudadad v. Syed Ghazanfar Ali Shah* [2022 SCMR 933]. Judicial comparison, though permissible, carries inherent risks of error, particularly where feigned or fabricated samples may defeat accuracy. Accordingly, this provision functions only as a supplementary aid, enabling the Court to form a preliminary view on authenticity, but it cannot replace core evidentiary steps such as oral testimony or forensic analysis. Such comparison does not constitute conclusive proof and merely an auxiliary mode of assessment that is subordinate to the primary evidentiary requirements prescribed under Article 79 (attesting witnesses) and Article 59 (expert opinions) QSO. Therefore, it lacks binding force unless corroborated by independent and reliable evidence. Sole reliance upon such comparison has consistently been regarded as “dangerous and unsafe,” especially in cases involving allegations of forgery. The

prosecution also failed to address the plea consistently recorded by the appellant before the investigation officer and reiterated under section 342 Cr.P.C., wherein he categorically denied opening the bank account with Silk Bank, Jodia Bazar Branch, Karachi, or applying for sales tax refund before the erstwhile Sales Tax Department (FBR). The case before the trial court was not one arising under Article 84 QSO and was not dealing with the competence of an expert to compare signatures separated by a decade old record, yet the trial Court undertook its own comparison and concluded that the signatures tallied. The Court must refrain from assuming the role of an expert, for its opinion in this regard cannot be treated as conclusive.

12. When oral testimony does not establish that the appellant executed the disputed document, and the investigation officer has failed to furnish confidence-inspiring evidence that the documents (Exh.10/1 to 7) produced by PW-4, a Bank Officer, were in fact signed by the appellant, it becomes wholly unnecessary for the Court to embark upon an exercise of signature comparison. The factual position further demonstrates that the disputed documents were not seized by the investigation officer but were instead produced by PW-4, who was not cited as a prosecution witness and was only summoned under section 540 Cr.P.C. as a Court Witness. This circumstance clearly indicates that neither the NAB investigation officer nor the prosecutorial authority was confident enough to join PW-4 as prosecution witness to prove the case beyond reasonable doubt against the appellant.

13. As a matter of prudence, the Court should be slow to base its findings exclusively upon such comparison and must not rely solely on its own observation in adjudicating the authenticity of a document. Rather, the Court is required to evaluate the totality of evidence before rendering a definitive conclusion. Findings recorded solely on the basis of judicial comparison are inherently susceptible to error, particularly when undertaken by one not conversant with the technical subject and such exercise was inconclusive. Had the trial court abstained from relying solely upon its own comparison of signatures, the impugned judgment, in our view, would have been concluded adversely and would have remained consistent with the settled principles of law. Therefore, impugned Judgment is not sustainable and is hereby set aside. While allowing the present appeal, we acquit the Appellant from the charge and these are the reasons of our short order dated 20.01.2026.

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