

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.4 of 2011

Anwar Ahmed Rajwani and another

Versus

The State

APPELLANT : 1. Anwar Ahmed Rajwani S/o Haji Ahmed Rajwani and
2. Salman Karim Rajwani S/o Karm Rajwani
Through Mr. Shaiq Usmani, Advocate.

RESPONDENT / THE STATE : National Accountability Bureau (NAB)
Through Syed Khurram Kamal,
Special Prosecutor a/w I.O. Nadir Abbas

: National Bank of Pakistan
Through Mr. Adil Khan Abbasi, Advocate
a/w Umair Kamal, AVP.

: Federation of Pakistan
Through Mr. Irshad Ali, Assistant Attorney
General.

Dates of Hearing : 26.11.2025 & 12.03.2026

Date of Decision : 12.03.2026

J U D G M E N T

Syed Fiaz ul Hasan Shah, J :-- Through the instant Crl. Accountability Appeal, the Appellants have challenged the Judgment dated 21.04.2011 (“**impugned Judgment**”) passed by the learned Judge, Accountability Court No.I, Sindh at Karachi (“**Trial Court**”) in NAB Reference No.14 of 2010 filed by the National Accountability

Bureau (“NAB”), wherein the appellants being the willful defaulters were convicted and sentenced to suffer Rigorous Imprisonment (“R.I”) for ten (10) years each and to pay fine of Rs.175 million each and in case of default, they would further undergo R.I. for two (02) years each under Section 10 of the National Accountability Ordinance, 1999 (NAO).

Furthermore, they stood disqualified from being elected, chosen, appointed or nominated as a member or representative of any public office or any statutory or local authority or in service of Pakistan or any Province and/or to obtain loan from any bank, financial institution, co-operative society, government department, statutory body or any authority established or controlled by the Government. However, the appellants were extended benefit of section 382(b), Cr.P.C.

2. The facts of the prosecution case were that the Appellants were running garments factory in the name of M/s. ARK Garments Industries Pvt. Ltd which was incorporated as private limited company under Companies Ordinance, 1984 under Certificate of Incorporation issued on 17.01.1984. It was alleged in the NAB Reference that initially there were three Directors of the company namely Anwar Ahmed Rajwani, Abdul Rauf and A.H Kazmi. Subsequently, certain changes were made in the directorship of the company. Ultimately the control and management of the said industry came in the hands of present Appellants as Chief Executive and Director of said M/s. ARK Garments industry Pvt. Ltd. which was involved in the business of manufacturing and export of readymade garments and it had established on a self-owned plot alongwith installation and fittings and fixtures of all

essential equipment and machines for the purposes of manufacturing readymade garments and its export. The said company through Appellants had also obtained allocation of export quota from Export Promotion Bureau (EPB) and in order to expand the business activities a Commercial/current Account No.2797 was also opened in National Bank of Pakistan (NBP) Hasrat Mohani road branch, Karachi. After opening the said bank account on 16.03.1985, the Appellant No.1 Anwar Ahmed Rajwani applied for sanction of the finance facility through the same branch of NBP for a sum of Rs.10 million which was sanctioned by the NBP on 05.05.1985 and further allowed running finance towards packing of goods against Pledge of Stock Rs.2.5 million and against Hypothecation of Stock for Rs.2 million import L/C cum FIM Rs.2.5 million. It was further alleged that in the early 1993 there was a dispute with EPB with regard to excess utilization of the export quota, however, the said dispute had nothing to do with the finance facility availed by the Appellants from NBP and there were liable to repay the same and instead of repaying the already granted financial facility, the Appellant No.1 being the Chief Executive of the Company through his letter dated: 05.05.1994 applied for further finance facility upto 31.12.1994. On the contrary, the Appellants failed to repay against the already granted finance facility and thereby committed default in repayment of the same and kept lingering on the repayment and applied rescheduling of already granted financial facilities as a result finally an amount of Rs.171.005 million was outstanding against the Appellants on 14.01.1997. The Appellants even failed to repay the loan amount despite service of legal notice, therefore, NBP referred the matter to the Governor, State Bank of

Pakistan (SBP) and finally the matter was referred to the NAB under section 31(d) NAO, hence NAB filed a Reference for the commission of offence under the NAO as the Appellants had usurped the financial facilities advanced by the NBP.

3. The record further revealed that during the course of the investigation the matter was settled by the Appellants by executing Voluntary Return Agreement dated: 29.11.2006. However, the Appellants have committed default in repayment of loan amount even after execution of the voluntary return agreement, therefore, the Chairman NAB filed the Reference and on 23.12.2010, the learned trial court took the cognizance.

4. After usual investigation, copies were supplied to the appellants in terms of section 265-Cr, Cr.P.C. vide Exh.1 and the charge was framed against them vide Exh.2, to which they pleaded not guilty and claimed to be tried vide pleas at Exh.3 and 4 respectively.

5. The prosecution had examined four (04) witnesses to prove the case, these witnesses had also produced documents and record at Exh.5/1 to Exh.8/2 respectively. Thereafter, the prosecution closed its side vide Statement at Exh.9. The statements of the appellants were recorded under section 342, Cr. P.C. at Exh.10 and Exh.11, who produced documents at Exh.10/1 to Exh.10/3 respectively. The appellants did not examine themselves on oath under Section 340(2), Cr.P.C. Consequently, the learned Trial Court after hearing both the parties passed the judgment, which has impugned herein before us.

6. Learned Counsel appearing on behalf of the Appellants argued that the trial Court while passing the impugned judgment has failed to take into consideration the material facts and contended that the Pledged Goods were lying under the custody of Muqadam appointed by the Bank which were either removed or stolen and, therefore, the dispute arose between the appellants (borrowers) and the Financial Institution (National Bank of Pakistan). Learned counsel, therefore, prayed that the impugned judgment may be set aside and the appellants may be acquitted from the charge as due to loss of pledged goods, they had failed to perform their export commitments and thereby deprived to repay the loan amount. The learned Counsel for Appellants further argued that a decree has already been passed to the tune of Rs.113.650 million as full and final settlement with the NBP and imposition of equivalent amount on account of Fine would be double penalty upon the Appellants when they were deprived from their stocks and this would cause to completely shut down their business activities at one hand and would deprive the national exchequer from handsome taxes from the appellants and loss of foreign exchange benefits from the export of the Appellants on the other hand and thereby it must adversely affect the economic prosperity of the country. He lastly argued that the Appellants may be acquitted from the charge as the appellants are ready to pay the Decretal amount by selling properties which are already mortgage with the NBP, and after payment of such decretal amount stigma of willful default would vanish and the cause of action for the NAB comes to a definite end.

7. Conversely, learned Special Prosecutor appearing on behalf of the NAB has supported the impugned judgment and contended that no illegality has been committed by the trial Court while passing the impugned judgment, which is not warranted to any interference by this Court.

8. On notice, learned counsel put appearance on behalf of National Bank of Pakistan and contended that although the Decree was passed in Suit No.B-9 of 2014 on 20.09.2016 against the Appellants to give and repay a sum of Rs.113.650 Million but till to date the Appellants have failed to pay the decretal amount and NBP would still have to undertake a long legal course to recover its amount by filing execution proceedings for the satisfaction of decretal amount through various modes for satisfaction of decree which include auction of properties of the Appellants. He further argued that even after the date of passing of the decree in 2016 and till to date cost of funds have also emerged against the Appellant. He states that cost of fund for the period from 17.02.2014 to 27.10.2017 at Rs.25.086 million must also be considered.

9. We have heard the learned counsel for the appellants and learned Special Prosecutor for NAB as well as learned counsel for NBP and with their assistance minutely perused the record of the case.

10. We have noted that there is no dispute that the appellants had obtained financial facilities and had willfully committed default in repayment of loan amount. Thereafter, the NBP took a lenient view and rescheduled such financial facility to keep business activities of the Appellants, however, the Appellants have failed to repay the loan

amount and thereby committed default in repayment of financial liabilities and finally an amount of Rs.171.005 million was found outstanding against the Appellants. Therefore, the NBP referred the matter to the State Bank of Pakistan and eventually the Governor State Bank of Pakistan in exercise of power conferred under section 31(d) NAO referred the matter to the Chairman NAB for legal action against the defaulted appellants. Even during course of investigation, the matter was settled between the parties, and the Appellants executed Voluntary Return Agreement dated 29.11.2006, but they had again committed default in repayment of loan amount, therefore, reference was filed against the appellants.

11. We find no merits in the argument of learned counsel for appellants that due to hypothecation of pledged stock which was under the custody of Muccadam appointed by the NBP, the appellants could not timely exported garments and, therefore, they had caused loss and had failed to repay the loan amount and in these peculiar circumstances, the NBP is equally responsible for the loss sustained by the appellants. The pledged stock was already released in favor of the Appellants and despite its full utilization, the Appellant had committed default as rightly pointed out by the learned Counsel for the NBP vis-à-vis the Appellants had executed a Voluntary Return bond free of coercion and undue influence as well as a Decree had been passed in 2016 for the same amount and which Decree had also attained finality. When confronted the said position and record to the learned counsel for appellants that NBP has already handed over the pledge stock to the appellants which had been utilized by the Appellants as well as default

committed in self-executed Voluntary Return bond dated 19.11.2006 and the Decree passed in Suit No.B-9 of 2014 dated 20.09.2016, the learned counsel for the appellants does not press the instant Appeal and requested that the sentence of the appellants may be reduced for the period which they have already undergone and the fine amount may be modified to decretal amount of Rs.113.650 Million instead of Rs.175 million and considered as satisfaction of fine and decretal amount.

12. Under Section 32 of the NAO, the High Court, in a criminal appeal against an Accountability Court's judgment imposing a fine under Section 11 read with Section 31(d) for willful loan default, possesses wide appellate powers akin to those under the Code of Criminal Procedure, 1898, to enhance, reduce, or modify the fine quantum while maintaining its penal character tied to the "gain derived" from the offence. Where a civil decree for the identical criminal liability coexists; for instance in the present case a public money in shape of loan amount of NBP, and consent emerges from the borrower and the affected bank—eschewing protracted execution under the Financial Institutions (Recovery of Finances) Ordinance, 2001—the Court may interpret such accord or issue writ considering or evidencing towards settlement of pecuniary loss, and may justify fine calibration to the sum of decree for expeditious recovery qua arrears of land revenue per Section 33E NAO or more to say the recovery of public losses, without transmogrifying the criminal sanction into civil restitution as recognized by Latin legal maxim *Nemo debet bis vexari pro una et eadem causa* (no one should be vexed twice for the same cause). This interpretation harmonizes Section 25's plea bargain ethos with appellate

equity and the adjustment evinces no coercion and it aligns with evidentiary proportionality otherwise this would cause grave injustice with the Appellants to cost an arm and a leg by vexing twice for civil and criminal liabilities i.e. the willful default under FIO and commission of offence under the NAO.

13. In view of above, we dismiss the present appeal while maintained impugned Judgment with modification that the sentence of imprisonment of the Appellants is reduced for the period which Appellants have already been undergone. While the trial Court's imposition of fine amount excessive to the principal loan under Section 11 read with Section 31(d) NAO merits modification given the prosecution's failure to establish *mens rea*—corrupt intent for wrongful gain or State loss being essential requisite for criminal liability and focused on effective recovery, which is aligned with scheme of NAO Preamble and Section 25. Therefore, the fine amount is modified to the tune of **Rs.138.736 million** considerably decretal amount as well cost of fund. The Nazir shall collect the original documents of mortgage properties from NBP and shall receive the total sale consideration of properties and thereafter allow the Appellants to execute Sale deed in favor of prospective buyer(s). On completion of sale transaction, the Nazir is directed to transmit the fine amount Rs.138.736 Million in favor of National Bank of Pakistan while remaining balance amount will be released in favor of the Appellants on or before 20th September 2026.

14. In case of default in payment of fine amount on or before 20.09.2026, the Appellants would have to undergo Two (02) years

Simple imprisonment and office shall issue non-bailable warrants through Investigating Officer of the case against the appellants for serving out the sentences for default in payment of fine amount.

15. The Criminal Accountability Appeal is dismissed with above modifications.

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