

# HIGH COURT OF SINDH BENCH AT SUKKUR

## Cr. Appeal No. S – 88 of 2023

[Iqbal Hussain Jumani v. The State]

Appellant by : Mr. Faisal Shams, Advocate

Respondent by : M/s Aftab Ahmed Shar and Zulfiqar Ali Jatoi,  
Additional Prosecutors General

Date of Hearing : **24.08.2026, 14.09.2026 & 28.09.2026**

Date of Announcement : **08.10.2026**

## **JUDGMENT**

**ARBAB ALI HAKRO J. –** Through this criminal appeal, the appellant has challenged the judgment dated 24.08.2023, passed by the learned Special Judge, Anti-Corruption (Provincial), Sukkur Division, at Sukkur, in Special Case No. 277 of 2015, arising out of Crime No. 12 of 2015 registered at Police Station ACE, Khairpur, whereby the appellant was convicted under Section 5(2) of the Prevention of Corruption Act-II of 1947 and sentenced to suffer rigorous imprisonment for three years, with a fine of Rs. 200,000/- (misappropriated Government wheat), and, in default, to undergo imprisonment for six months. He was also convicted under Section 409 PPC and sentenced to suffer rigorous imprisonment for three years, with a fine of Rs. 50,000/-, and, in default, to undergo simple imprisonment for three months. Both sentences of imprisonment were ordered to run concurrently, with the benefit of Section 382-B Cr.P.C. The co-accused Rab Nawaz and Shahid Nawaz were acquitted.

2. Briefly stated, the prosecution case is that the appellant, while serving as Food Supervisor and Incharge of Wheat Procurement Centres, Loung Fakir and Wassanabad, during the 2014-2015 crop season, allegedly misappropriated 436 bags of Government wheat valued at Rs.15,04,200/-, thereby causing wrongful loss to the Government and corresponding wrongful gain to himself. Following a report by the District Food Controller, Khairpur, and after obtaining the requisite permission, Crime No.12 of 2015 was registered against the appellant under Section 409 PPC read with Section 5(2) of the Prevention of Corruption Act-II of 1947.

3. After investigation, the challan was submitted before the learned trial court. Charge was framed against the appellant and the co-accused, Rab Nawaz and Shahid Nawaz, to which they pleaded not guilty and claimed trial. The prosecution examined three witnesses, namely PW-1 Kareemullah Soomro, District Food Controller; PW-2 Ghulam Akbar Lashari, Head Clerk; and PW-3 Himath Ali Chandio, Circle Officer, ACE, Khairpur.

4. In his statement under Section 342 Cr.P.C., the appellant denied the allegation and stated that he had deposited the amount claimed by the Food Department through bank challans. He produced two bank challans, along with departmental correspondence and No-Dues Certificates. On his application under Section 540 Cr.P.C., DW-1 Munwar Ali Mirani, District Food Controller, Khairpur, was examined, and he produced the original departmental record, including posting orders, bank challans, No-Dues Certificate and correspondence concerning the recovery of the Government loss. He specifically deposed that the appellant had deposited Rs.7,57,560/- in respect of W.P.C. Loung Fakir and Rs.7,85,880/- in respect of W.P.C. Wassanabad, and that at present no dues remained outstanding against the appellant in respect of the relevant crop season.

5. Learned counsel for the appellant contended that the conviction is based upon misreading and non-reading of evidence; that there is no direct or convincing evidence establishing dishonest conversion of the wheat by the appellant; that the entire alleged financial liability was subsequently recovered by the Food Department; that the departmental authority issued No-Dues Certificates in favour of the appellant; that DW-1, the District Food Controller, verified the relevant original record and confirmed that nothing remained outstanding; that the learned trial Court erroneously treated the subsequent deposit of the amount as an admission of criminal guilt; and that mere shortage or delayed payment, without proof of dishonest conversion and *mens rea*, could not constitute an offence under Section 409 PPC or Section 5(2) of the Prevention of Corruption Act. Learned counsel further submitted that the prosecution failed to establish the manner of the alleged misappropriation and that the delay in lodging the FIR was also not satisfactorily explained. He accordingly prayed for the acquittal of the appellant.

6. Learned Additional Prosecutor General supported the impugned judgment. He submitted that the appellant's posting as Incharge of both centres is admitted; that the deficiency of 436 bags is established through the record of the District Food Controller and was never disputed by the appellant, who instead paid for it; that payment of the price of Government wheat after registration of the FIR and submission of the challan neither wipes out the offence nor shows good faith; and that the departmental recovery was a recoupment of loss under the wheat policy, which has nothing to do with the criminal liability of a public servant who converts stock entrusted to him.

7. I have heard learned counsel for the parties and have gone through the record with their assistance.

8. The appeal turns on three questions: first, whether the entrustment of Government wheat to the appellant and the deficiency of 436 bags are proved; secondly, whether the deficiency amounts to dishonest misappropriation within the meaning of Section 405 PPC and Section 5(1)(c) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "**the Act of 1947**"), or whether, as urged, was no more than a shortage made good under departmental policy; and thirdly, if the conviction is to stand, whether the sentence calls for interference.

9. The posting of the appellant as Incharge of W.P.C. Loung Fakir and, in addition, W.P.C. Wassanabad for the 2014-2015 crop season is proved by the office orders dated 30.03.2015 and 31.03.2015 of the Deputy Director Food, Sukkur, and the District Food Controller, Khairpur (Ex.6/D to Ex.6/G, Ex.15/B and Ex.15/C); by the surety bonds of Rs.10,00,000/- each executed by him in favour of the Government (Ex.6/C); and by the letters of the District Food Controller authorising him to make payment for wheat through the National Bank of Pakistan, Choondiko, and United Bank Limited, Khairpur (Ex.6/H and Ex.6/I). The appellant admitted the posting in answer to the first question put to him under Section 342 Cr.P.C. Where entrustment is admitted, the absence of a formal charge document proving it is of no

consequence.<sup>1</sup> The wheat procured at the two centres was Government property under his control as a public servant, and entrustment within the meaning of Section 405 PPC and Section 5(1)(c) of the Act of 1947 stands proved.

10. As to the deficiency, the prosecution case is that PW-1, the District Food Controller, found, from the statements of the two centres, that the appellant had procured 16,286 bags at Loung Fakir and 18,424 bags at Wassanabad, had dispatched 16,072 and 18,202 bags respectively to the P.R. Centres, and had failed to account for the closing balances of 214 and 222 bags, that is, 436 bags containing 43.600 metric tons. He set this out in his letter dated 27.08.2015 (Ex.6/A), which also records that the appellant had been directed on 24.07.2015 to recoup the shortage and had failed to do so.<sup>2</sup> It is true, as learned counsel pointed out, that the statements from which these figures were drawn were not produced, that the arrival reports (Ex.6/B-1 to Ex.6/B-3) are documents of the receiving centres, that PW-1 does not claim to have physically verified the stock, and that PW-2 admitted in cross-examination that he had not said in his examination-in-chief or in his statement under Section 161 Cr.P.C. that he had checked any record.<sup>3</sup> Had the case rested on the evidence of PW-1 and PW-2 alone, the proof of the quantum of the deficiency would have been open to legitimate criticism.

11. The case does not rest there. The appellant has not, at any stage, disputed the deficiency or its quantum. In the cross-examination of PW-1, the suggestions put to him were that a No-Dues Certificate had been issued, that the appellant had written that nothing was outstanding against him, and that the complaint was mala fide. It was never suggested that the figures were wrong, that the wheat was lying at the centres, or that it had been lost by drilage, transit, or any other natural cause. In his statement under Section 342 Cr.P.C., the appellant, in his own hand, stated that he had deposited Rs.7,85,880/- and Rs.7,57,560/- through bank challans into the Government account.<sup>4</sup> Those challans (Ex.11/A and Ex.11/B) are drawn in his own name as "Food

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<sup>1</sup> *Sarwar v. The State* 1968 SCMR 1126.

<sup>2</sup> PW-1 Kareemullah Soomro, Ex.6; letter No. DFC/KHP/2015/1628 dated 27.08.2015, Ex.6/A; arrival reports Ex.6/B-1 to Ex.6/B-3.

<sup>3</sup> PW-2 Ghulam Akbar Lashari, Ex.7, cross-examination.

<sup>4</sup> Statement under section 342, Cr.P.C., Ex.11, with Ex.11/A to Ex.11/F.

Supervisor/Incharge WPC Loung Fakir crop 2014-15” and “WPC Wassanabad crop 2014-15”, and each describes the remittance as recovery of 214 bags containing 21.400 metric tons and 222 bags containing 22.200 metric tons of wheat of crop 2014-2015 of the respective centre, with penalty. The letter of the District Food Controller dated 01.04.2016, produced by the appellant himself, records that he had “recouped the loss at the rate of issue price of wheat plus Rs.2 per kg penalty as per policy”.<sup>5</sup> The memo of appeal pleads, in ground No.5, that the appellant paid the amount “including the 02% penalty imposed by the department ... due to late payment as per Food Department policy”. These are admissions of the appellant, relevant under Articles 30 and 31 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as “**QSO, 1984**”), and his conduct in paying for precisely 214 and 222 bags is relevant under Article 21. The deficiency of 436 bags of Government wheat, which had been under the exclusive control of the appellant, is therefore proved beyond reasonable doubt, not by the prosecution’s papers alone but by the appellant’s own adoption of the figures. The first question is answered accordingly.

12. Section 405 PPC requires, in addition to entrustment, that the accused dishonestly misappropriated or converted the property to his own use, or dishonestly used or disposed of it in violation of any direction of law or contract; Section 5(1)(c) of the Act of 1947 uses the same terms and adds the case of a public servant who allows any other person to do so. The ingredients are entrustment, dishonest misappropriation or conversion, or dishonest disposal, and each must be proved.<sup>6</sup> Learned counsel is right that a shortage, without more, is not an offence; it is the dishonest conversion of the entrusted property that the law punishes, and the prosecution must prove it. But dishonest conversion is a state of mind and it is proved, as it almost always is, by inference from facts established on the record. The question is whether the facts established here permit that inference and whether any other inference is reasonably open.

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<sup>5</sup>Bank challans Nos. 293 and 294 dated 30.03.2016, Ex.11/C and Ex.11/D, re-produced by DW-1 as Ex.15/D and Ex.15/E; letter of the District Food Controller dated 01.04.2016, Ex.11/B and Ex.15/G.

<sup>6</sup>*Abdul Rashid Nasir v. The State* 2009 SCMR 517.

13. The appellant was the sole custodian of the stock at both centres. The deficiency arose at both centres. It was not a trifling quantity to be explained by handling loss: 43.600 metric tons of wheat. The appellant was called upon by his department on 24.07.2015 to recoup it and did not. He gave no explanation to the department, offered none in cross-examination of the prosecution witnesses, offered none in his statement under Section 342 Cr.P.C, and called no defence witness to speak to it; DW-1 was examined only to prove the record of recovery and the No-Dues Certificate and had no personal knowledge of the events of 2015.<sup>7</sup> The cause of a deficiency in stock in one's own exclusive custody is a fact especially within one's knowledge, and under Article 122 of QSO 1984 the burden of proving it lay on the appellant once the deficiency was established. He discharged no part of that burden. Instead, he paid for the wheat on 30.03.2016, five months after the challan and some nine months after the procurement season had closed, and only then did he obtain the department's certificates.

14. In **Karim Jan**<sup>8</sup>, the Supreme Court, dealing with a conviction under Section 409 PPC read with Section 5(2) of the Act of 1947, held that where a deficiency or shortage of stock under the charge of the accused is proved according to law, misappropriation of the store entrusted to him is likewise proved, and treated the accused's evasive conduct as pointing to a guilty conscience. In **Munawar Hussain**<sup>9</sup>, the Court held that where the accused had complete dominion over Government money and the Government was deprived of its use, the accused could not be absolved of criminal liability under Section 409 PPC; the deprivation of the Government of the use of its property is itself the wrongful loss. Applying these principles, the unexplained deficiency of 436 bags in the exclusive custody of the appellant, his failure to recoup when called upon, his silence as to the cause, and his payment only after prosecution admit of one reasonable inference, which is that he converted the wheat or its proceeds to his own use and kept the Government out of it until he was made to pay. Payment after detection is not inconsistent

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<sup>7</sup>DW-1 Munwar Ali Mirani, Ex.15.

<sup>8</sup>*Karim Jan v. The State* 1983 SCMR 288.

<sup>9</sup>*Munawar Hussain v. The State* 2003 SCMR 1658.

with dishonest conversion; it is its ordinary sequel. The second question is answered against the appellant.

15. Much of the argument for the appellant was built on the deposit of Rs.15,43,440/- and the certificates of the District Food Controller confirming that nothing remained outstanding. These documents establish that the appellant's civil liability to the department has been discharged, subject to the penalty prescribed by the wheat policy for late payment. They do not establish that no offence was committed. The offence of criminal breach of trust was complete when the wheat was converted and the demand to recoup went unanswered; what the appellant did in March 2016 could not undo it. The Supreme Court has held that the refund of a misappropriated amount does not vitiate the misappropriation<sup>10</sup>, and in **Zulfiqar Ali**<sup>11</sup> upheld the conviction of an employee of the Utility Stores Corporation under Section 409 PPC and Section 5(2) of the Act of 1947, although he had deposited the embezzled amount in the State exchequer, observing that he had failed to discharge his duty honestly and had committed an act of breach of trust. A No-Dues Certificate issued by the department upon receipt of its money is a receipt; it is not an adjudication on criminal liability and does not bind this Court. Nor does the evidence of DW-1 carry the matter further. He proved the record of payment, which is not in dispute, and his answer in cross-examination, accepting the suggestion that the appellant had misappropriated the wheat, was the opinion of a witness without personal knowledge.

16. The plea of double jeopardy, founded on Article 13 of the Constitution and Section 403 Cr.P.C, is misconceived. Both provisions protect a person against being prosecuted or punished for the same offence more than once by a court of competent jurisdiction. The recovery of the price of wheat with a penalty under the wheat policy was neither a prosecution nor a punishment for an offence; it was the department's recoupment of a loss, which lies in a different field altogether. The Supreme Court has consistently held that departmental and criminal proceedings arising out of the same transaction are in distinct jurisdictions with different standards of proof and may run

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<sup>10</sup> *Allah Ditta v. Deputy Postmaster General (Admn.)* 2023 SCMR 770.

<sup>11</sup> *Zulfiqar Ali v. The State* 2025 SCMR 100.

together. It has specifically held, in a case of shortfall of wheat from a Government godown, that recovery of the cost of the wheat together with a departmental penalty did not attract the principle of double jeopardy.<sup>12</sup>

17. The delay complained of is explained on the face of the record. The procurement season closed in June 2015. The District Food Controller directed the appellant on 24.07.2015 to recoup the shortage, and on his failure, reported the matter to the Anti-Corruption Establishment on 27.08.2015. The Anti-Corruption Committee-II accorded approval on 31.08.2015, and the FIR was registered on 01.10.2015 after the permission which the procedure of the Establishment requires.<sup>13</sup> Each step is dated and accounted for. This is not the unexplained delay of years which tainted the prosecutions in the cases cited by learned counsel, and in a case in which the accused himself admits the deficiency and has paid for it, delay in registration of the FIR can have no bearing on the possibility of false implication.

18. The decisions relied upon by learned counsel were read as a whole. **Syed Altaf Hussain Shah**<sup>14</sup> is the closest to the present case, but there the Food Inspector had deposited the amount before registration of the FIR, which the learned Judge treated as evidence of bona fides, and the prosecution evidence was found to be contradictory on material particulars; here, the deposit followed both the FIR and the challan, and the quantum is admitted. In Imtiaz Ali, Zakir Ali and Abdul Karim Kumbhar<sup>15</sup>, the acquittals rested on the natural decay of stock stored for years, on an unexplained delay of years in lodging the FIR, on the exclusion from the array of accused of senior officers named in the raid report, and on recoveries completed before the FIR was registered. In Zahid Hussain, no order posting the accused as Incharge of the centre was brought on record; Syed Mustafa Shah and Muhammad Sarwar Chaudhry state the undisputed principle that mere shortage is not enough to establish dishonest

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<sup>12</sup>*Dr. Sohail Hassan Khan v. Director General (Research), Livestock and Dairy Development Department, Punjab* 2020 SCMR 1708; *Muhammad Shafique v. Deputy Director Food* 2005 SCMR 1098.

<sup>13</sup>Ex.6/A; approval of ACC-II dated 31.08.2015, Ex.9/A; FIR No. 12 of 2015 dated 01.10.2015, Ex.9/B; permission for challan dated 29.10.2015, Ex.9/C.

<sup>14</sup>*Syed Altaf Hussain Shah v. The State* 2018 YLR 482.

<sup>15</sup>*Imtiaz Ali v. The State* 2019 YLR 2807; *Zakir Ali v. The State* 2022 YLR Note 147; *Abdul Karim Kumbhar v. The State* 2021 YLR Note 10.

misappropriation; and **Sajjad Ahmad** concerned private persons and the compounding provision of the Forest Act, 1927.<sup>16</sup> **Muhammad Samiullah**<sup>17</sup> turned on an alleged confessional application whose signature was disputed and never verified, and **Abdul Hameed**<sup>18</sup> on a record which disclosed no conversion by the petitioners at all. None of these cases had an accused who, by challans drawn in his own name, had adopted the precise quantity of the deficiency as a recovery of wheat with penalty. They do not assist the appellant.

19. Two features of the impugned judgment require correction. In paragraph 32, the learned trial court observed that the appellant had been convicted in four other special cases of the same nature and, on that footing, distinguished the authorities cited for the defence.<sup>19</sup> Those convictions were recorded on the same day, are under appeal before this Court, and relate to different crimes in different years. Under Article 68 of QSO, 1984, the bad character of an accused, of which a previous conviction is evidence, is irrelevant in a criminal proceeding unless he has himself led evidence of good character, which the appellant did not. The observation ought not to have been made and has played no part in the conclusions recorded above. Secondly, a single charge was framed for the offences under Section 409/34 PPC and Section 5(2) of the Act of 1947, a practice the Supreme Court has disapproved.<sup>20</sup> Since the charge named both provisions with full particulars of the entrustment, the quantity, and the period, and the appellant defended on the merits without any suggestion of prejudice, the irregularity is curable under Sections 225 and 537 Cr.P.C and does not affect the result. This Court has, in any event, re-appraised the evidence for itself, and the conviction rests on that re-appraisal.

20. Section 409 PPC provides for imprisonment which may extend to ten years, and Section 5(2) of the Act of 1947 provides for imprisonment which may extend to seven years, a fine, or both. The learned trial court awarded three years under each head, to run concurrently, with fines of Rs.2,00,000/-

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<sup>16</sup>*Zahid Hussain v. The State* 2000 MLD 1522; *Syed Mustafa Shah v. The State* 1968 PCr.LJ 358; *Sajjad Ahmad v. The State* 2005 YLR 994; *Prof. Dr. Muhammad Sarwar Chaudhry v. The State* 2001 YLR 2478.

<sup>17</sup>*Muhammad Samiullah v. The State* 2022 SCMR 998.

<sup>18</sup>*Abdul Hameed v. The State* 2024 SCMR 1365.

<sup>19</sup>Impugned judgment, paragraph 32.

<sup>20</sup>*Dr. Waqar Hameed v. The State* 2020 SCMR 321.

and Rs.50,000/-. An appellate court interferes with a sentence when it is harsh, perverse, or founded on a wrong principle. None of these descriptions fits a sentence of three years, out of a possible ten, imposed on a public servant entrusted with Government foodgrains who converted 43.600 metric tons of t and paid only after he had been challaned. The circumstances urged in mitigation, namely the recoupment of the loss with penalty, the certificates of the department, the age of the appellant, and the length of the trial, do not alter that assessment. The Supreme Court has held that a public servant who refunds a misappropriated amount cannot claim lenient treatment on that ground alone<sup>21</sup>, and that where the guilt of a person who has misappropriated public money is well established, the courts are to apply strict standards and show no tolerance.<sup>22</sup> In **Zulfiqar Ali**<sup>23</sup>, the reduction of the sentence to the period undergone was expressly a matter of the Court's mercy and not of right, extended to a convict who had abandoned his contest, had served a considerable part of his sentence, and pleaded the illness of his wife. The appellant here has contested the charge at every stage, has served one month and twenty-four days of his sentence, and has been on bail since 18.10.2023.<sup>24</sup> His recoupment was the discharge of a civil liability, with the penalty the department charges for late payment, rather than restitution offered in acknowledgment of wrong. The sentence is neither excessive nor based on any wrong principle, and I see no ground to reduce it.

21. For the reasons recorded above, the prosecution has proved beyond reasonable doubt that the appellant, a public servant entrusted with Government wheat at W.P.C. Loung Fakir and W.P.C. Wassanabad during the 2014-2015 crop season, dishonestly misappropriated 436 bags of that wheat and thereby committed offences punishable under Section 409 PPC and Section 5(2) of the Act of 1947. The appeal is **dismissed**. The conviction of the appellant and the sentences awarded to him by the learned trial Court, including the fines and the sentences in default of payment, are maintained, with the benefit of Section 382-B Cr.P.C, already extended to him.

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<sup>21</sup> *Allah Ditta* (n.11 above).

<sup>22</sup> *Sohrab Khan Marri Khuda Bakhsh v. The State* 2017 SCMR 669.

<sup>23</sup> *Zulfiqar Ali* (n.1 above).

<sup>24</sup> Jail roll dated 28.09.2026 of the Central Prison and Correctional Facility, Sukkur.

22. The appellant was on bail during the pendency of this appeal. The appeal having been reserved for judgment, he was repeatedly called today, the date fixed for announcement, but did not appear. His bail bond is therefore cancelled. Let non-bailable warrants for his arrest be issued through the concerned SSP, who shall arrest him and produce him before the learned trial Court, which shall commit him to the Central Prison, Sukkur, to serve the remaining portion of his sentence. As the bail bond was furnished before this Court, notice shall issue to the surety to show cause why the bond be not forfeited under Section 514 Cr.P.C. The office shall fix the matter before the Court for that purpose after service of notice.

23. The appeal stands **disposed of** in the above terms. The office shall send a copy of this judgment to the learned trial Court, along with the record and proceedings, and to the SSP concerned, for information and compliance.

**J U D G E**

Abdul Basit