

**IN THE HIGH COURT OF SINDH AT KARACHI****Present:****Mr. Justice Mohammad Karim Khan Agha****Criminal Acquittal Appeal No.356 of 2016****Criminal Acquittal Appeal No.367 of 2016****Criminal Acquittal Appeal No.368 of 2016**

|                                      |   |
|--------------------------------------|---|
| Appellant                            | The State, through Mr. Mohammad Ahmed, Assistant Attorney General along with Assistant Director/IO Siraj Punhwar.                         |
| Respondents in Appeal No.356 of 2016 | Abdul Malik, Muhammad Saeed, Syed Sibte Momin Naqvi, Dr. Yousuf Junaid and Munawar Akhtar Islam through Mr. Abdul Aziz Bhojani, Advocate. |
| Respondent in Appeal No.367/2016     | Anjum Iqbal Varsey through M/s. Muhammad Ashraf Qazi and Irshad Jatoy, Advocates.   |
| Respondent in Appeal No.368 of 2016  | Manzoor Ahmed Bhatti through Mr. Abdul Razzak, Advocate.  |
| Date of Hearing                      | 22.04.2019.   |
| Date of Announcement                 | 29.04.2019.   |

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J.-** The Appellant filed appeal against the impugned judgment dated 19.04.2016 passed by learned Special Court (Central-I) Karachi in Special Cases No.16/2010 whereby Respondents namely, Abdul Malik S/o. Abdul Khaliq, Muhammad Saeed son of Ali Gohar Khan, Syed Sibte Momin Naqvi S/o. Syed Sibte Momin Naqvi, Dr. Yousuf Junaid S/o. Khan Essa Ghazanavi and Munawar Akhtar Islam S/o. Din Muhammad in Appeal No.356/2016, were acquitted of the charge ; against impugned judgment dated 27-05-2016, in Appeal No.367/2016 where Anjum Iqbal Varsey son of Maqbool Ehmed Varsey was acquitted of the charge; and against impugned judgment



again dated 27-05-2016 in Appeal No.368/2016 where Manzoor Ahmed Bhatti son of Muhammad Usman was acquitted from the charge and their bail bonds were also cancelled and sureties discharged.

2. The main appeal arises in connection with Appeal No.356/16 and the impugned judgment dated 19.04.2016 which after a detailed analysis of the material on record the trial court acquitted the aforesaid respondents u/s 249-A Cr.PC whereas the respondents in Appeals 367/368 of 2016 vide two separate impugned judgments both dated 27.05.2016 were acquitted based on the rule of consistency as they were found to have played a similar or lesser role than the respondents in Appeal No.356 all of which said impugned judgments arose out of the same FIR in connection with the same transaction. Hence, the key appeal for consideration is No.356/16 as in effect the fate of the other two appeals will be dependant on the finding in respect of this appeal as the respondents in those appeals were acquitted based on the rule of consistency following the impugned judgment in No.356/16.

3. The brief facts of the case according to the FIR are that the Trading Corporation of Pakistan (T.C.P) imported 2,637,375.088 Metric Tons (MT) wheat through seven tenders during the years 2008-09 from different countries and TCP Officials in collusion with Pre-Shipment Inspectors and concerned Surveyors knowingly and dishonestly imported and accepted inferior / sub-standard quality feed grade wheat on exorbitant rates as compared with the prevailing market rates and thus caused wrongful loss of hundreds of millions rupees to the Government Exchequer, hence FIR No.12/2010 was registered against the culprits under Section 409/109/34 PPC r/w. Section 5(2) of PCA 1947, at PS FIA, CCC, Karachi.

4. The learned trial court took cognizance of the matter and framed charge against the Respondents for their having committed offence covered by the aforesaid sections of law to which they pleaded not guilty and claimed for trial.

5. PW Fahim Ahmed was examined by the Prosecution as Ex.5 who has produced the attested copy of report of PCSIR as Ex.5/A.



6. The Respondents moved applications for their acquittal u/s 249-A Cr.PC

7. Learned Judge, Special Court-I, (Central-1) Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 19.04.2016, acquitted the respondents named above in respect of their S.249-A Cr.PC applications and vide two later separate impugned judgments both dated 27-05-2016 acquitted the remaining aforesaid respondents based on the rule of consistency, hence these appeals have been filed by the State against the impugned judgments where the respondents were acquitted. By this common judgment I intend to decide the above three appeals.

8. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment dated 19.04.2016 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned advocate for appellant contended that the appeal had been filed within time whilst relying on the Limitation Act (IX of 1908) which according to him gave the Federation 06 months in order to file their appeals after the order of acquittals had been received. On merits he contended that the trial court had erred in ignoring the expert reports of PCSIR and PARCO which were the foundation of the prosecution's case that the respondents had connived to import sub standard wheat which caused a massive loss to the exchequer and that the prosecution ought to have been given a chance to lead further evidence and prove its case and thus for all the above reasons the appeals should be allowed.

10. On the other hand learned counsel for the Respondents submitted that the appeals were hopelessly time barred as an appeal had to be filed within 30 days of the receipt of the acquittal order by the appellant and the appeals in this case had been filed after the passage of 6 months and thus on this ground alone the appeals should be dismissed. Even otherwise on merits they submitted that there was no legal infirmity in the impugned judgments which required this courts interference in the same and as such the appeals against their acquittal should be dismissed.



11. I have carefully heard the learned counsel for the parties, scanned the record and considered the impugned judgments.

12. I note that that respondents in Appeal 356/16 were mainly acquitted by the learned trial court vide impugned judgment dated 19-04-2016 for the following reasons at typed page-05 of the impugned judgment which for ready reference reads as under:-

*"I have heard the arguments of both sides and perused the record. It appears that the allegations against the applicants/accused are that in the year 2008-09, they being the officials of TCP have purchased wheat on higher/exorbitant rates from the foreign suppliers/exporters and imported/accepted the inferior/low quality of wheat in contravention of specifications which caused huge loss to the government exchequer.*

*Admittedly the wheat in question was imported by TCP through enlisted pre-qualified foreign suppliers/exporters and the pre-shipment inspection was carried out at the load port in accordance with agreement. Admittedly the pre-shipment inspection was carried out by the authorized pre-shipment inspectors at the loading port who issued pre-shipment inspection certificates.*

*At this stage it would be appropriate to re-produce the pre-shipment certificate issued by M/s. Cotecna Inspection S.A. referred by the learned counsel for the applicants/accused wherein it has been mentioned as under:-*

**a) PRE-SHIPMENT INSPECTION CERTIFICATE**

*"Based on organoleptic examination and above analyses we certify that the goods inspected were without any unpleasant odour, free from any sign of mould, fermentation of deterioration and free from abnoxious and deleterious matter.*

**b) CERTIFICATE OF STANDARD AND QUALITY**

*"Based on organoleptic examination and above analyses the wheat is fit for human consumption, without any unpleasant odour, free from any sign of mould, fermentation of deterioration and free from abnoxious and deleterious matter and poisonous weed seeds".*

**c) CROP YEAR CERTIFICATE** *"We confirm that the goods are latest crop of the origin".*

**d) GMO CERTIFICATE** *"The samples have been drawn during loading and composite samples were handed over to reputable laboratory. The analysis of the sample*



rendered the following results". "The Cargo is GMO Free".

- e) **HEALTH CERTIFICATE** "Samples have been drawn during loading and composite samples were handed over to reputable laboratory. Within the limits of analysis results we report that cargo is fit for human consumption".
- f) **OFFICIAL STOWAGE EXAMINATION CERTIFICATE** "We hereby certified that accessible parts of the vessel holds were duly examined prior to the commencement of loading and found fully clean, dry, free from insects and infestation and suitable to maintain the quality of grain".

The contents of above mentioned pre-shipment inspection certificate would show that samples were drawn during loading of wheat at the load port and composite samples were handed over to reputable laboratories and within the limits of analysis results, they reported that cargo/wheat was fit for human consumption.

Similar certificates have also been issued by other pre-shipment inspectors which learned counsel for the applicants/accused have referred during their arguments of these applications.

Although learned Prosecutor FIA has argued that the present applicants/accused in connivance with the foreign suppliers/exporters and the concerned pre-shipment inspectors knowingly and dishonestly imported the inferior quality wheat as is evidence from the reports of laboratories and in support of his contention he referred the report of PCSIR Laboratories. The attested copy of the said report has been produced by PW Fahim Ahmed as Ex. 5/A in his evidence wherein it has been mentioned in the report of the said laboratory as "NON-ACCREDITED" which would show that PCSIR Laboratories were not technically sound for such tests, therefore, this report cannot be relied upon.

PW Fahim Ahmed was examined by the prosecution as Ex. 5 who has produced the attested copy of report of PCSIR Laboratories as Ex. 5/A but the original of the same has not been brought on record. Furthermore, PW Fahim Ahmed himself has admitted in his evidence during cross examination that accredited means officially recognized laboratories to conduct the test of food and grain items and non-accredited means not officially recognized laboratories to conduct the test. He further admitted that pre-shipment inspection means the examination of quality of the food and grain before its loading on the ship and post shipment inspection is conducted after arrival of the ship at the destination. He further admitted that pre-shipment inspection is more comprehensive than the post shipment inspection.



*Learned Prosecutor FIA has although relied on the report of PCSIR Laboratories but he has not challenged the genuineness and authenticity of the report submitted by the concerned pre-shipment Inspectors at loading port in respect of the wheat in question.*

*According to the prosecution case wheat in question was of sub-standard/inferior quality and, as such, it was not fit for human consumption but according to the learned counsel for the applicants/accused the entire imported wheat have been consumed and this fact has not been controverted by the learned Prosecutor FIA. Moreover, nothing is mentioned in the charge sheet that wheat in question was taken in possession or it was seized as case property or it was destroyed/disposed of being subs-standard/inferior quality". (bold added)*

13. Keeping aside the question of time bar as the law always prefers matters to be decided on merit after my own consideration and analysis of the material on record and the impugned judgment I do not find any legal infirmity or perversity in the impugned judgment as would necessitate any interference with the same on my part especially as (a) the wheat prior to shipment was inspected by a internationally renowned pre shipment inspection company and found to be of the required quality, fit for human consumption as certified by an internationally reputed laboratory (b) that the PCSIR laboratory report as relied upon by the FIA (which seems to be the main plank on which the prosecution case was built) to show that the wheat was not fit for human consumption was found to be "NON-ACCREDITED" which would show that PCSIR Laboratories were not technically sound for such tests, therefore, **this report cannot be relied upon** (c) that the original of such report despite being available was never tendered in evidence (d) PW Fahim Ahmed himself has admitted in his evidence during cross examination that accredited means officially recognized laboratories to conduct the test of food and grain items **and non-accredited (i.e PCSIR Report) means not officially recognized laboratories to conduct the test** (e) the Pre shipment inspection report at the time of loading has not been challenged (f) usually such pre shipment reports are more reliable than local reports on arrival (g) that the so called sub standard wheat was sold and consumed and there is no evidence that any body suffered any ill effects from consuming it. Thus, the only reliable report in the field remains that of the pre shipment inspection company and as such taking the above factors into



account I agree with the learned judge's finding that all the impugned judgments were cases of acquittal under S.249-A Cr.PC.

14. 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 double as held by the Honorable Supreme Court of Pakistan in the above referred judgment.

15. Thus, keeping in view the above law and my analysis of the impugned judgments as discussed above, I find that the respondents have rightly been acquitted of the charge by the impugned judgments as the findings of the trial court are neither perverse nor speculative but rather well reasoned and I find no reason to interfere with the same and as such all the appeals against acquittal of the respondents are dismissed.

16. The appeals against acquittal of the respondents are disposed of in the above terms.