

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Muhammad Iqbal Kalhoro;
Mr. Justice Shamsuddin Abbasi.

Criminal Accountability Appeal No. 04 of 2018

Appellant Ibrahim Noor son of Noor Muhammad
through Mr. Khawaja Shamsul Islam,
Advocate

Respondent The State
through Mr. K.A. Vaswani, Special
Prosecutor NAB

Dates of hearings 06.11.2018, 14.11.2018, 22.11.2018,
03.12.2018, 05.12.2018 and 19.12.2018

Date of short order 20.12.2018

Date of detailed reasons 02.01.2019

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JUDGMENT

SHAMSUDDIN ABBASI, J:- Impugned in this Criminal Accountability Appeal is the judgment dated 22.02.2018, passed by the learned Judge of Accountability Court No.I {Sindh}, Karachi, in Reference No.20 of 2011, filed by Chairman NAB under Section 18(g) read with Section 24(b) of NAO, 1999 on the charges of corruption and corrupt practices, whereby appellant Ibrahim Noor was convicted and sentenced under Section 9/10 of National Accountability Ordinance {NAO}, 1999 to undergo rigorous imprisonment for five {05} years and to pay a fine of Rs.63.9225 million, in default whereof he was ordered to undergo rigorous imprisonment for six {06} months more. While recording conviction and sentence, the trial Court also ordered disqualification of appellant under Section 15 of NAO, 1999, for a period of ten {10} years to be reckoned from the date of his release after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member of representative of any public body or any statutory or local authority or in service of Pakistan or of any Province and he shall not be allowed to apply for or be granted or allowed any financial facility in the form of any loan or advance or other financial accommodation by any bank or financial institution

owned or controlled by the Government for a period of ten {10} years from the date of his conviction. However, the benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellant.

2. Facts as emerged from the reference are that consequent upon a complaint from General Manager, Passenger Sales, Pakistan International Airline Corporation {PIAC} against involvement of their cargo agent M/s Cargo Aids {Pvt} Limited in corruption and corrupt practices, an inquiry followed by the investigation concluded that a loss to the tune of Rs.127,845 million was caused to PIAC, hence Chairman NAB, Islamabad, filed a Reference No.20 of 2011 on 24.11.2011 under Section 18(g) read with Section 24(b) of NAO, 1999, nominating five accused persons namely, (i) Syed Sohail Hassan, Chief Executive Officer, M/s Cargo Aids {Pvt} Limited, (ii) Mrs. Kiran Asif, Partner of M/s Cargo Aids {Pvt} Limited, (iii) Asif Ali, Partner of M/s Cargo Aids {Pvt} Limited, (iv) Aftab Ahmed, Ex-District Manager, District Sales Office, PIAC and (v) Ibrahim Noor, Manager {Finance}, PIAC {present appellant} for committing offences of corruption and corrupt practices as envisaged under Section 9(a) of NAO, 1999 punishable under Section 10 of NAO, 1999.

Further facts as mentioned in the Investigation Report are that M/s Cargo Aids {Pvt} Limited was working since 1976 as registered agent of Cargo of PIAC through Sohail Hassan {accused No.1} and in the year 2002 new partners, Kiran Asif {accused No.1} and Asif Ali {accused No.3} joined the firm and remained partners of 50% till default of Rs.132 million in the year 2007. A business account was opened in Habib Bank Limited, Cloth Market Branch, Karachi, and the said firm was registered with the Registrar of Firms, Karachi, in the year 2007.

An agent for a Cargo or a Passport Tickets Sales makes an Agency Agreement with International Air Transport Association {IATA}, which acts on behalf of member airlines, who extend credit facilities to the agent and under the agreement the agent has to submit the industry bank guarantees to IATA Singapore to cover possible default. M/s Cargo Aids {Pvt} Limited had to submit due sales report for the period ending on 15.09.2007 alongwith due cheques but the same were not

delivered to District Sales Office, Karachi, till 02.10.2007. However, 4 x cheques were deposited on 03.10.2007, total amounting to Rs.46,716,203/-, drawn on Allied Bank Limited, SMS Branch, Karachi, which were dishonoured, and the agent was served with a notice dated 10.10.2007 for payment of outstanding amount but to no avail and finally the agent was declared as defaulter by PIAC and IATA.

It was further revealed that Syed Sohail Hassan, Mrs. Kiran Asif and Asif Ali {accused No.1, 2 and 3} failed to deposit the amount, collected by them from the shippers on behalf of PIAC, thereby caused a loss to the tune of Rs.127.845 million to PIAC in connivance with Aftab Ahmed {accused No.4} and Ibrahim Noor {present appellant}, who failed to perform their duties and extended monetary gains to accused No.1, 2 and 3. Accused Aftab Ahmed in his capacity as District Manager, District Sales Office, PIAC, Karachi, misused his authority and committed gross violation of Circular {Ref. No.AIM:05/044 dated 28.02.1988}, Admin Order No.15/2002 dated 17.07.2002 {on handing/taking over at station}, Station Disbursement Manual 2001, Financial Circular No.7/86 dated 18.06.1986 regarding dishonoured cheques and credit policy, IATA Cargo Agency Conference Resolution Manual 30, PIAC Station Financial Reporting Manual, Violation of Mango Policy for the year 2007, Credit Policy for Credit Control Committee, Ethics and Business Practices and conflict of Interest Policy Circular No.15/2003 dated 03.06.2003 and in connivance with the appellant, who at the relevant time was Finance Manager, District Sales Office, PIAC, Karachi, misused their authority by allowing credit facilities despite of dishonoured cheques, outstanding amount and short collection payments by accused No.1, 2 and 3.

During investigation, the appellant addressed an application to the Director General NAB, Sindh, seeking to become approver and willing to record his statement under Section 164, Cr.P.C. before a Magistrate and confessed of causing following loss to PIAC:-

S.No.	Sales Report Period	Short/Nil Payment
	16-30/06/2007	Rs.31,880,246

AA	01-15/07/2007	Rs.15,099,654
	16-31/07/2007	Rs.19,114,118
	01-15/08/2007	Rs.19,148,314
	16-31/08/2007	Rs.0.00
	01-15/09/2007	Rs.24,995,085
	16-30/09/2007	Rs.21,761,118
	Total Sales Report	Rs.131,958,535
BB	ADD	
	Outstanding as CCAs	Rs.1,058,218
	Short Collection at PIA KBO	Rs.332,675
	Short Collection at LHR	Rs.87,183
	Total	Rs.1,478,076
CC	Total {AA+ BB}	Rs.133,436,611
DD	Bank Guarantee encashed	(Rs.5,569,159)
	Total liability {outstanding including the amount for which formalities not completed by PIA}	Rs.127.845 M

3. Based on the investigation, it has been established that accused No.1, 2 and 3 failed to perform their liabilities towards PIAC of depositing the amount of the dishonoured cheques while accused No.4 and the present appellant extended them undue benefit by misusing their authority, thereby a loss of Rs.127.845 million was caused to PIAC, hence this reference.

4. Having receipt of the reference, the trial Court completed the pre-requisite legal formalities and framed a charge against accused Syed Sohail Hassan, Aftab Ahmed and Ibrahim Noor {present appellant} at Ex.4, who pleaded not guilty and claimed trial.

5. At trial, the prosecution examined as many as twelve {12} witnesses. PW.1 Rahimyar Khan Daudpota, Manager Fire Protection, PIAC, was examined at Ex.8, who produced attested copies of circulars, copies of service and regulations of employees, policy procedure manual, admin order and seizure memo at Ex.8/1 to Ex.8/8 respectively. PW.2 Ejaz Aziz, Deputy General Manager {Retd}, PIAC, was examined at Ex.9, who produced attested copies of sales reports and four bounced cheques at Ex.9/1 to Ex.9/10. PW.3 Jawaid Ahmed Zaidi, Registrar of Firms, Karachi, was examined at Ex.10, who produced certified copy of letter dated 24.12.2010 at Ex.10/1, application dated 20.10.2007 at Ex.10/2, attested copies of CNIC of Kiran Asif and Sohail Hassan at Ex.10/3 and Ex.10/4 respectively, certified copy of partnership deed at Ex.10/5, certified

true copy of form 'A' at Ex.10/6, certificate dated 20.10.2007 at Ex.10/7, seizure memo dated 28.12.2010 at Ex.10/8. PW.4 Kashif Bin Munir, Manager Finance, PIAC, was examined at Ex.11, who produced attested copies of circulars dated 28.12.1988, 23.10.1991 and 18.06.19086 at Ex.11/1, Ex.11/2 and Ex.11/3, attested copy of IATA procedure as per IATA manual at Ex.11/4, attested copy of details of existing anti-fraud control and program existing management at Ex.11/5, attested copy of documents of control circular dated 28.02.1988 at Ex.11/6, attested copy of debit memo report pertaining to August 2003-2007 at Ex.11/7, attested copy of 'R-1' statement for the year 2007 at Ex.11/8, attested copy of credit policy at Ex.11/9, agent ledger and receivable summary for the year 2007 at Ex.11/10. PW.5 Mohammad Naseem Ansari, Sales Promotion Manager {Retd}, PIAC, was examined at Ex.13. PW.6 Muhammad Azam Khan, Cargo Sales Manager at KBO, PIAC, was examined at Ex.14, who produced original personal profile proforma at Ex.14/1, original questionnaire against accused Sohail Hassan at Ex.14/2, photocopy of job assignment at Ex.14/3, photocopy of officers/sales promotion officers at Ex.14/4, photocopy of minute-I dated 03.05.2007 and minute-I dated 13.10.2006 at Ex.14/5, photocopy of email dated 11.05.2007 at Ex.14/6, photocopy of M-1 ref:CSM/KHI/C-AID/M1/07 dated 26.04.2007 at Ex.14/7, photocopy of email dated 01.11.2006 at Ex.14/8, photocopy of present uplift position effective from 05.07.2007 at Ex.14/9, photocopy of documents showing total outstanding against M/s Cargo Aids as on July 2005 to October 2007 at Ex.14/10, photocopy of email dated 18.10.2007 at Ex.14/11, photocopy of email dated 24.10.2007 at Ex.14/12, photocopy of handing/taking over bearing No.KHI/CSM/01/09 dated 18.09.2009 at Ex.14/13, photocopy of joining report at Ex.14/14, photocopy of release letter dated 29.05.2007 at Ex.14/15, photocopy of appreciation letter dated 17.01.2005 at Ex.14/16, photocopy of letter showing outstanding amount against sales report PKR 132331210.00 for 16 June 2007 to 30 Sept 2007 at Ex.14/17, photocopy of handing/taking over dated 08.08,1985 at Ex.14/18, photocopy of statement dated 08.08.1985 at Ex.14/19, photocopy of email dated 24.10.2007 at Ex.14/20, photocopy of service history of M. Azam Khan at Ex.14/21. PW.7 Mukarram Mustafa Khan, Country Manager, Pakistan IATA was

examined at Ex.15, who produced original investigation report at Ex.15/1, original cargo agreement No.2406 at Ex.15/2, attested copy of registration certificate at Ex.15/3, letter dated 27.12.2007 in respect of bank guarantee No.15310/GEN/004/07 dated 01.01.2007 at Ex.15/4, letter dated 27.12.2007 in respect of bank guarantee No.LG/786/12/94 dated 09.04.1994 at Ex.15/5, letter dated 27.12.2007 in respect of bank guarantee No.LG-77/12634 dated 21.01.1977 at Ex.15/6, letter dated 27.12.2007 in respect of bank guarantee No.G289/2004 dated 31.12.2004 at Ex.15/7, original dak dated 27.12.2007 in respect of bank guarantee No.G-289/2004 dated 31.12.2004 at Ex.15/8, original dak dated 15.01.2008 in respect of bank guarantee No.G-389/2004 dated 31.12.2004 at Ex.15/9, original dak dated 07.02.2008 in respect of bank guarantee No.15310/GEN/004/07 dated 01.01.2007 at Ex.15/10, original dak dated 27.12.2007 in respect of bank guarantee in respect of bank guarantee No.15310/GEN/004/07 dated 01.01.2007 at Ex.15/11, original dak dated 27.12.2007 in respect of bank guarantee No.LG-77/12634 dated 21.01.1997 at Ex.15/12, original dak dated 30.01.2008 in respect of bank guarantee No.77/12634 dated 21.01.1997 at Ex.15/13, original dak dated 06.02.2008 in respect of bank guarantee No.LG/786/12/04 dated 09.04.1994 at Ex.15/14, original dak dated 27.12.2007 in respect of bank guarantee No.LG/786/12/94 dated 09.04.1994 at Ex.15/15, original dak dated 31.01.2008 in respect of bank guarantee No.LG/786/12/94 dated 09.04.1994 at Ex.15/16, original letter dated 08.02.2008 regarding full and final settlement towards bank guarantee No.LG-77/12634 dated 21.01.1977 at Ex.15/17. PW.8 Iqbal Bashir Shaikh, Dy. G.M. Cargo Operation {Retd} PIAC, was examined at Ex.16, who produced photocopy of IATA Rules at Ex.16/1, photocopy of Minutes-I dated 24.04.2007 at Ex.16/2, original letter dated 23.12.2010 at Ex.16/3, photocopy of letter dated 19.05.2007 at Ex.16/4, photocopy of letter dated 11.06.2009 at Ex.16/5, photocopy of minutes of credit control committee meeting held on 07.07.2006 at Ex.16/6, photocopy of letter dated 10.05.2007 at Ex.16/7. PW.9 Shiraz Hussain, Regional Manager, HBL was examined at Ex.17, who produced original bank statement at Ex.17/1, attested copies of AOF with CNIC of directors at Ex.17/2, attested copies of cheque return register record at Ex.17/3, original letter of non-availability of cheques at Ex.17/4,

photocopy of letter to NIFT at Ex.17/5, photocopy of letter to ROM at Ex.17/6, original letter of NIFT at Ex.17/7, photocopy of three cheques at Ex.17/8, photocopy of two cheques at Ex.17/9, original cheque return reply at Ex.17/10. PW10 Muhammad Riazuddin Akhtar, Accounts Officer {Retd}, PIAC, was examined at Ex.18. PW.11 Muhammad Afzal, Operation Manager, Soneri bank was examined at At.19, who produced attested copy of account opening form at Ex.19/1, attested copy of pay order No.1420772 dated 22.01.2008 at Ex.19/2, attested copy of SS card at Ex.19/3, attested copy of demand promissory note dated 05.01.2007 at Ex.19/4, attested copy of finance agreement dated 05.01.2007 at Ex.19/5, attested copy of personal guarantee dated 05.01.2007 at Ex.19/6, attested copy of MOTD dated 14.10.2004 at Ex.19/7, attested copy of declaration dated 28.05.2004 at Ex.19/8, attested copy of guarantee dated 14.10.2004 at Ex.19/9, attested copy of affidavit dated 31.08.2004 at Ex.19/10, attested copy of indenture of lease dated 30.07.1992 at Ex.19/11, attested copy of mortgaged deed dated 14.10.2004 at Ex.19/12, attested copy of IGPA dated 14.10.2004 at Ex.19/13, attested copy of statement of account of M/s Cargo Aids {Pvt} Limited from 14.05.2004 to 19.06.2009 at Ex.19/14. PW.12 Abdul Haddi, investigating officer, was examined at Ex.20, who produced original investigation authorization letter at Ex.20/1 and original complaint at Ex.20/2. The prosecution closed its side of evidence vide statement at Ex.21.

6. Statements of accused/appellant were recorded under Section 342, Cr.P.C. at Ex.22, Ex.23 and Ex.24. The appellant in his statement {Ex.24} has denied the allegations leveled against him, professed his innocence and stated false implication inasmuch as PIAC did not implicate him in its complaint to NAB and he has not caused any loss to PIAC and that the request of becoming approver was made by him under duress while he was in custody of NAB and his 90 years old mother was sitting outside the office of NAB. The appellant opted not to examine himself on oath and did not lead any evidence in his defence, thus, the trial culminated in conviction and sentence of the appellant as stated above, hence necessitated the filing of instant appeal.

7. It is contended on behalf of the appellant that the impugned judgment is bad in law and facts inasmuch as the learned trial Court did not appreciate the evidence on record in line with the applicable law and surrounding circumstances, based its findings as a result of misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant while on the same set of evidence acquitted co-accused Aftab Ahmed by extending him the benefit of doubt, which is a clear discrimination. It is next submitted that during cross-examination the defence has shattered the evidence of prosecution witnesses but the learned trial Court neither discussed nor evaluated the relevant portion of cross-examination and convicted the appellant only on the examination-in-chief of prosecution witnesses. It is also submitted that the witnesses in their respective depositions have not specifically implicated the appellant with the charges leveled against him even no incriminating evidence in shape of ocular or documentary was brought on record against him inspite of that the learned trial Court recorded conviction against appellant. The learned counsel has further contended that the conviction as recorded is not sustainable in the eyes of law inasmuch as the same is contrary to evidence on record and based on speculative and artificial reasons; that the appellant performed his duties in accordance with law which is evident from the admission of the investigating officer that the present appellant sent fortnightly reports timely to his high-ups; that the appellant had no authority to declare a company in default as defaulter and it was the duty of higher management to take action against a company in default; that no iota of evidence is available on record to justify misuse of authority for any gain for himself or for any other person; that PIAC in its complaint itself did not implicate the appellant with any kind of allegation and also not recommended him for prosecution on the basis of internal inquiry wherein he was not found beneficiary or aider, abettor and conspirator of the main accused; that the complaint is purely based on willful default of Rs.134 million in violation of the terms of the license of the cargo agents but the learned trial Judge did not consider this aspect too; that the investigating officer has exonerated the real culprits and implicated the appellant with malafide intention and ulterior motives, hence it is a clear case of pick and choose; that the appellant neither issued any

airway bill nor he had the authority to issue the same; even he had no authority to take any action against cargo agent towards short payment/non-payment of the due amount as per sales report; that the impugned judgment is capricious, bad in law and against the principle of natural justice, hence the same is liable to be set-aside. He lastly submitted that the prosecution has failed to discharge its liability of proving the guilt of the appellant beyond shadow of reasonable doubt and prayed for setting-aside the impugned judgment and acquittal of the appellant in circumstances.

8. The learned Special Prosecution NAB, on the other hand, has supported the conviction and sentence recorded by the trial Court against the appellant on the ground that the witnesses in their respective evidence have implicated the appellant with the charges leveled against him without major contradictions and discrepancies and sufficient documentary evidence has been brought on record to establish the guilt of the appellant; that the appellant willfully and deliberately acted in violation of various circulars and policies, thereby caused a heavy loss to PIAC and IATA as well; that PIAC is representing Pakistan and carrying national flag and due to illegal and unlawful acts and deeds of the appellant PIAC got bad name internationally. Finally, submitted that the prosecution has successfully brought home the guilt of the appellant and prayed for dismissal of appeal.

9. We have given anxious consideration to the arguments of learned counsel for the appellant and the Special Prosecutor NAB and perused the entire material available before us with their able assistance.

10. There are two sets of accused in the present reference. The first set consists of Syed Sohail Hassan, Chief Executive Officer of M/s Cargo Aids {Pvt} Limited, Mrs. Kiran Asif and Asif Ali, partners of M/s Cargo Aids {Pvt} Limited, who are alleged to have been defaulter in fulfilling their liabilities towards PIAC and the cheques issued by them were dishonoured, hence caused a loss to the tune of Rs.127.845/- million, out of them accused Syed Sohail Hassan was convicted by the trial Court while accused Mrs. Kiran Asif and Asif Ali

were declared as proclaimed offenders. The second set of accused consists of Aftab Ahmed, Ex-District Manager, Sales Office, PIAC and Ibrahim Noor {appellant}, Manager Finance, PIAC, who are alleged to have misused their authority and extended benefit to accused No.1, 2 and 3, out of them accused Aftab Ahmed was acquitted while the present appellant being found guilty of the charges leveled against him was convicted by the impugned judgment dated 2202.2018.

11. Admittedly the reference does not disclose involvement of appellant in misappropriation and embezzlement, even there is no mention as to gaining of monetary benefit by the appellant or accumulation of assets beyond his known source of income, therefore, we have confined ourselves only to the issue of misuse of authority by extending benefit to accused No.1, 2 and 3.

12. In order to unearth the real facts, we deem it appropriate to highlight that after M/s Cargo Aids {Pvt} Limited was declared and notified “defaulter”, PIAC conducted a departmental inquiry in the matter wherein it was transpired that as against its liability towards sales report of M/s Cargo Aids {Pvt} Limited issued four cheques, which were dishonoured, hence M/s Cargo Aids {Pvt} Limited was declared and notified “defaulter” of the total outstanding amount alongwith markup after deduction of surety amount viz Rs.127,867,452/- and the Chief Executive and partners of M/s Cargo Aids {Pvt} Limited were held responsible and found guilty of the charges of willful default as envisaged under Section 5(r) of NAO, 1999 punishable under Section 9(VIII) read with Item No.1(a) of Scheduled thereto.

13. Admittedly, PIAC in its complaint did not implicate the appellant with any sort of allegation, however, during investigation appellant was made accused with the charges of misuse of authority and extending benefit to accused No.1, 2 and 3. Here the question arose as to whether the appellant being Finance Manager of PIAC performed his part of job properly and informed his higher management fortnightly with regard to non-payment of due amount to PIAC by the cargo agents.

14. In support of its case the prosecution examined as many as twelve {12} witnesses, who have been subjected to cross-examination by the defence. The appellant in his statement under Section 342, Cr.P.C. has denied the prosecution case, pleaded his innocence and stated that PIAC in its complaint did not implicate him as accused and that he has not caused any loss to PIAC. The learned trial Court based conviction solely on the testimony of PWs Ejaz Aziz, Kashif Bin Munir, Muhammad Naseem Ansari and Muhammad Azam Khan, who have implicated the appellant with the commission of offence, hence their testimony is essential for arriving at a just and fair decision in the matter.

15. PW.2 Ejaz Aziz, the then Deputy General Manager, PIAC, has deposed that M/s Cargo Aids {Pvt} Limited submitted sales report from 1st September to 15th September 2007 and 16th September to 30th September 2007 in the sum of Rs.2,49,55,085/- and Rs.2,17,61,118/- respectively. He further deposed that there was discrepancy in the sales report and after adding the amount of Rs.14,17,076/- the total outstanding dues come to Rs.13,34,36,611 and after furnishing surety by IATA the principal amount of Rs.12,78,67,452/- remained outstanding against M/s Cargo Aids {Pvt} Limited till 28.12.2010 and Rs.3,45,64,190/- as interest accrued thereon. He was subjected to cross-examination by the defence wherein he admitted that sales reports are computerized one and can be prepared by anyone through a computer. He further admitted that sales reports bear the rubber stamp of the company which could be affixed on the fake sales reports and that the four sales reports submitted by M/s Air Cargo do not bear the cheque numbers. He stated that airways bills always remained in the custody of Finance Manager who used to issue the same to the cargo agent. He admitted that some part of the sales report are to be checked and confirmed by the Cargo Sales Manager of PIAC and initially the Finance Manager is responsible to confirm the sales report and he is within his power to assign such function to any other sales promotion officer. This witness has stated that he was Finance Manager in KBO in the year 2010 and remained posted there for one year and prior to his posting accused Ibrahim Noor was posted as Finance Manager. He admitted that fortnightly reports of

cargo agents are compiled on R-11 form in the end of the month and sent to Cargo Revenue Division, PIAC Headquarter and that Finance Manager has no power to suspend or issue a show cause notice or cancel the fraud of cargo agent in default of submission of sales report and admitted that he has not produced any statement on R-11 form in Court.

16. PW.4 Kashif Bin Munir, Manager Finance, PIAC {Ex.11} in his cross-examination has admitted that all the transactions pertaining to the year 2003 to 2007 are not in his knowledge and that he was not served with any notice by the NAB for submission of documents produced by him in Court. He admitted that cargo agents used to send fortnightly reports to their station and after compiling with the statements, the same were sent to the Head Office by Cargo Revenue under the supervision of General Manager {Revenue} in the end of the month and that the office of Manager Finance is under the administrative control of General Manager and that each and every transaction of cargo agents comes to his office and he used to scrutinize the whole statement of cargo agents and inform his superiors accordingly.

17. PW.3 Muhammad Naseem Ansari, Sales Promotion Manager, PIAC {Ex.13} has stated that I.O. has not recorded his statement in the year 2006 or 2007 but it was 23.12.2010 when his statement was recorded and denied to have been interrogated as accused by I.O. He admitted that M/s Cargo Aids {Pvt} Limited was the agent of PIA and he used to recommend their airways bill and that the airways bill involved in the present reference were recommended from their office and some of the bills were recommended by him.

18. PW.6 Muhammad Azam Khan, Cargo Sales Manager, Karachi Booking Office {KBO}, PIAC {Ex.14} has deposed that in the matter of default of payment by M/s Cargo Aids {Pvt} Limited, whose cheques were dishonoured, he and Naseem Ansari made hectic efforts for recovery of the amount but failed to do so due to influence of the management. He further deposed that District Manager, under the influence of Kamran Hassan, SVP Commercial, brother of

accused Sohail Hassan, directed him to allow space to M/s Cargo Aids {Pvt} Limited, for uplifting mango shipment and that he noticed an irregularity in the minutes sheet showing low rates of garments to be shipped to Lil {France}, Manchester {England} and Frankfort {Germany}, which were not signed by G.M. of M/s Cargo Aids {Pvt} Limited due to lower rates, however, the same were signed by Kamran Hassan, SVP Sales who was not competent to sign the minutes sheet.

19. Besides the above PWs, the evidence of other PWs namely, Rahimyar Khan Daudpota Ex.8 {Manager Fire Protection, PIAC}, Mukarram Mustafa Khan Ex.15 {Country Manager, Pakistan IATA} and Iqbal Bashir Shaikh Ex.16 {retired from PIA} are also relevant for proper adjudication of the matter.

20. PW.1 Rahimyar Khan Daudpota has deposed that he does not know the other accused except Syed Sohail Hassan against whom the investigation was being conducted and he produced attested copy of Circular No.75 before the I.O. which relates to conflict of ethics and also other relevant documents, which were taken into custody by the I.O. under a memo of seizure. In cross-examination he admitted that no notice was served on him by the NAB for production of documents but the notice was in the name of head of his section and he was informed that such documents have to be produced before the I.O., therefore, he produced the said documents. He further admitted that it was the duty of the outgoing officer to prepare the handing and taking over papers prior to coming of incoming officer. He also admitted that transfer order of the incoming officer could not be issued unless the relieving order of the said officer is issued after handing and taking over the earlier charge.

21. PW.7 Mukarram Mustafa Khan has deposed that on 27.12.2010 he appeared before the I.O. Abdul Hadi in response to his letter and produced various documents in respect of M/s Cargo Aids. He admitted in his cross-examination that agreement was executed between Cargo Aids {agency} and IATA on 01.02.1997, conditions whereof were binding on the parties. He further admitted that default occurred when the cheques were dishonoured and the airline wrote a

letter of default to cargo agent but had not directly asked for permission to take action against cargo agent and he is not aware as to whether the amount of four cheques was the only defaulted amount and that the details of the defaulted amount is available in the letter of airline. He also admitted that IATA was responsible upto the guaranteed amount.

22. PW.8 Iqbal Bashir Shaikh has deposed that as per IATA rules the payment was to be received within 15 days and the cheques presented by the cargo agents were dishonoured as such it was a case of default. In his cross-examination he has stated that as per cargo policy the agent is to be given priority who exports maximum dry cargo. He admitted that cheques were dishonoured in the year 2007 and no action was taken by the PIAC but it favoured the cargo agents and its officials Ibrahim Noor {Finance Manager}, Mamoon Rasheed {District Manager}. He admitted that IATA rules were binding upon agent as well as PIAC. He is unaware of the execution of agreement between Cargo Aids and PIAC through IATA and admitted that Ex.16/1 to Ex.16/7 were neither addressed nor signed by him and such documents were part of the investigation given by PIAC to I.O. He is unaware of initiation of an internal inquiry by PIAC and subsequent thereof filing of a complaint against Cargo Aids. He admitted that function of accounts office and Cargo aids is separate as cargo works under the head of cargo marketing whereas accounts office works under the Finance Director. He further admitted that in his statement under Section 161, Cr.P.C. he has not stated the name and role of accused Ibrahim Noor.

23. PW.5 Muhammad Naseem Ansari, Sales Promotion Manager, PIAC, Karachi, in his deposition has deposed that on the report of Office of the Finance Manager, they approached Sohail Hassan, Chief Executive of M/s Cargo Aids {Pvt} Limited for receiving the amount relating to sales report, who issued four post-dated cheques, equivalent to the amount of both sales report, but on presentation before the drawee bank these cheques were bounced and based on such irregularity they wrote a letter to M/s Cargo Aids {Pvt} Limited and thereafter IATA, Singapore declared M/s Cargo Aids {Pvt} Limited as defaulter. He further deposed that in those days

Kamran Hassan was the Director Marketing, who was elder brother of Sohail Hassan. During cross-examination, he bluntly admitted that airway bills were recommended by his office and some of the bills involved in the present reference were recommended by him to the office of Finance Manager. The investigating officer too in his deposition has clearly stated that after the cheques were dishonoured, the matter was reported to IATA on the pointation of appellant. During cross-examination he has admitted that appellant has timely submitted reports on Form R-11 to General Manager Revenue and Finance Director Revenue. He further admitted that appellant had no authority to issue notice for cancellation of contract and/or suspension of contract and/or notice of default. He also admitted that appellant was not the beneficiary of the amount involved in the present case. It is important to note that during investigation appellant as well as accused Aftab Ahmed were held equally responsible for causing loss to PIAC by not exercising their authority timely and extending benefit to principal accused.

24. Admittedly, Finance Manager had to compile fortnightly reports consecutively on Form R-11 in the end of each month and none of the PWs have involved the appellant towards non-submission of reports on Form R-11 rather PW.5 Muhammad Naseem Ansari has clearly stated that on the report of appellant they went to accused Sohail Hassan and got four cheques which were later on dishonoured. It is now made clear that this is not a case of gaining monetary benefits by appellant as well as co-accused Aftab Ahmed nor it is alleged that any money trail had been discovered against them. The learned trial Court, after full dressed trial, acquitted co-accused Aftab Ahmed on the ground that he was on administrative side of the booking office while the appellant was dealing financial matters, therefore, by extending the benefit of doubt acquitted co-accused Aftab Ahmed and recorded conviction against the appellant. It is admitted position that NAB has not filed any appeal against order of acquittal of co-accused Aftab Ahmed, who was in similar position as that of the present appellant as per reference and circulars, and such an order has attained finality. We have no reason to believe that the appellant failed to exercise his official duty timely particular when he has timely submitted reports on Form-11 to his

high-ups and that he had no authority to declare a company in default as defaulter. His responsibility was to inform his high-up timely which the appellant had done and such a position has been admitted by PW.5 Muhammad Naseem Ansari and investigating officer Abdul Hadi in their respective evidence. Admittedly, M/s Cargo Aids {Pvt} Limited was doing business with PIAC since 1976 and record did not show that the said company was declared defaulter in the past and if all of a sudden said company become defaulter, the appellant cannot be hold responsible. The PIAC in its inquiry only claim for recovery of the defaulted amount and did not implicate and/or held responsible any of its officials towards misuse of authority or discharge of official duty particularly when PIAC had a long hierarchy of dealing financial matters from Sales Promotion Officer to G.M. Finance, hence only Finance Manager was responsible for default from the whole hierarchy is not justified. Law does not appreciate pick and chose policy and always condemn it. In the case in hand, appellant had timely furnished reports on Form R-11 in the end of every month.

25. The appellant is neither nominated in the complaint made by PIAC to NAB nor attributed any sort of allegation with regard to misuse of authority or extending benefit to co-accused. The witnesses too in their respective evidence have not uttered a single word and did not implicate the appellant with the commission of offence. Even the reference too does not disclose involvement of the appellant in misappropriation and embezzlement or gaining of monetary benefit or accumulation of assets beyond his known source of income, hence the charges with regard to misuse of authority and extending benefit by the appellant to co-accused are without any strong proof and cannot be relied upon. In criminal cases the general rule is that the accused must always be presumed to be innocent and the onus of proving the offence is on the prosecution. All that may be necessary for the accused is to offer some explanation of the prosecution evidence against him and if this appears to be reasonable even though not beyond doubt and to be consistent with the innocence of accused, he should be given the benefit of it. The proof of the case against accused must depend for its support not upon the absence or want of any explanation on the part of the accused but

upon the positive and affirmative evidence of the guilt that is led by the prosecution to substantiate accusation. There is no cavil with the proposition and judicial consensus seems to be that "if on the facts proved no hypothesis consistent with the innocence of the accused can be suggested, the conviction must be upheld. If however, such facts can be reconciled with any reasonable hypothesis compatible with the innocence of the accused the case will have to be treated as one of no evidence and the conviction and the sentence will in that case have to be quashed. Reliance is placed on the cases of *Muhammad Luqman v. State* {PLD 1970 SC 10}, *Shamoon v. State* {1995 SCMR 1377}, *Wali Muhammad v. The State* {1969 SCMR 612}, *Khushi Muhammad v. Muhammad Hanif* {1980 SCMR 616}, *Ali Sher v. State* PLD 1980 SC 317}, *Hakim Ali v. State* {1971 SCMR 432} and *Rab Nawaz v. State* {PLD 1994 SC 858}. In the case of *M. Anwar Saifullah Khan v. State* (PLD 2002 Lahore 458), the Court while advertent to the initial burden on prosecution to prove the charge of misuse of authority or power held as under:--

"Misuse of authority means the use of authority or power in a manner contrary to law or reflects an unreasonable departure from known precedents or custom. Every misuse of authority is not culpable. To establish the charge of misuse of authority, the prosecution has to establish the two essential ingredients of the alleged crime i.e. "mens rea" and "actus reus". If either of these is missing no offence is made out. Mens rea or guilty mind, in context of misuse of authority, would require that the accused had the knowledge that he had no authority to act in the manner he acted or that it was against law or practice in vogue but despite that he issued the instruction or passed the order. In the instant case the documentary evidence led by the prosecution and its own witnesses admit that the appellant was told that he had the authority to relax the rules and the competent authority P.W.3 could make the appointments thereafter. The guilty intent or mens rea is missing. Even the actus reus is doubtful because he had not made the appointments. He merely approved the proposal and sent the matter to the competent authority. At worst he could be accused of mistake of civil law. i.e. ignorance of rules. But a mistake of civil law negates mens rea."

26. For the foregoing facts and circumstances, we are of the considered view that the prosecution had failed to prove the guilt of the appellant beyond shadow of reasonable doubt, therefore, by our short order dated 19.12.2018, we had allowed

this Criminal Accountability Appeal, set-aside the conviction and sentence recorded by the learned trial Court by impugned judgment dated 22.02.2018 and acquitted the appellant of the charge by extending him the benefit of doubt and these are the reasons thereof.

JUDGE

JUDGE

Naeem