

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 77 of 2018

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Applicant : Waseem Haider Memon
Through Abdul Salam Memon, Advocate

Respondent/State: Through Mr. Shahbaz Sahotra,
Special Prosecutor NAB

Date of Hearing : 17.01.2019

Date of Order : 17.01.2019

ORDER

AMJAD ALI SAHITO, J: - The instant Criminal Revision Application is directed against the order dated 31.03.2018 passed by the learned Judge Accountability Court No.II, Karachi in Reference No. 01/2005 the State Vs. Malik Muhammad Akram & others, whereby the learned Judge Accountability Court No. II, Karachi dismissed the application filed under Section 265-K Cr.P.C. vide order dated 31.03.2018.

2. A perusal of record reveals that the allegations in Reference No. 01/2005 against the applicant are that he was serving as Planning Officer, Market Committee, Karachi in the year 2004. He in connivance of other accused persons caused heavy loss to the government exchequer by misuse of authority and gave a loss to the government amount of Rs. 22,23,979/-. The applicant was arrested on 22.12.2014 in pursuance of non-bailable warrants of arrest dated 17.12.2014 issued by the Chairman NAB. During the pendency of Reference (01/2005), an application was filed by the applicant before the Director General NAB Karachi dated 29.12.2004 for the return of the liability amount stood against him through a plea bargain. The

plea bargain application was accepted by the Chairman, NAB and subsequently was approved by the Accountability Court No. II, Sindh at Karachi in terms of Section 25(b) of National Accountability Ordinance, 1999. The applicant made payment according to the terms and condition, as such, he made a part payment on 07.02.2005. Thereafter, the applicant was convicted as under:-

“The accused Waseem Haider s/o Ghulam Haider, stands disqualified for a period of 10 years, for seeking or from being elected, chosen appointed or nominated as a member or representative of any public body or any statutory or local authority or; in service of Pakistan or of any province as Provided U/s 15(a) of NA Ordinance. The accused Waseem Haider s/o Ghulam Haider shall also not be allowed to avail financial institution owned or controlled by the Government, for a period of 10 years as provided U/s 15(b) of NA Ordinance, 1999.”

3. After making part payment, the applicant was released from the jail. In the year 2009, an application was filed under section 265-K Cr.P.C. by the five co-accused before the learned Accountability Court No. II Sindh at Karachi. After hearing learned counsel for the co-accused, the learned Judge, Accountability Court No.II, Sindh at Karachi by order dated 01.04.2009 allowed the application filed under Section 265-K Cr.P.C. and acquitted all the five accused persons in the said reference (01/2005). Taking advantage of such order, the applicant filed an application under Section 265-K Cr.P.C. on 09.02.2018 in the said reference (01/2005) before the Accountability Court No. II Sindh at Karachi on the ground that the accused persons have been acquitted from the charge, hence he is also entitled to the same relief but the said application was dismissed vide order dated 31.03.2018.

4. It is pertinent to mention here that applicant Waseem Haider Memon filed an application in terms of Section 25(b) of the Ordinance with prayers that he is ready to return the liability amount stood against him through plea bargain on 29.12.2004 to the Director General NAB, Karachi the plea bargain application was allowed and he was convicted as stated above, thereafter the co-accused were acquitted on 01.04.2009 under Section 265-K Cr.P.C. After lapse of about 13 years, the applicant filed application under Section 265-K Cr.P.C. for his acquittal when he was already convicted vide order dated 08.02.2005 and such order is still in the field and the same was not impugned before this Court by way of filing an appeal and then he has filed application under Section 265-K Cr.P.C. after 09 years of the acquittal of co-accused. Hence, the application filed by the applicant was badly time-barred.

5. Mr. Abdul Salam Memon, learned counsel for the applicant mainly contended that the impugned order passed by the learned Judge is based on conjecture and surmises and without applying of judicial mind, hence it is not sustainable in the eyes of law; that all the accused, who were acquitted under the orders of the Accountability Court, have same allegations which are against the applicant hence, he is also entitled to his acquittal; that the applicant entered into plea bargain due to serious ailment of Epilepsy and chronic depression which could have been serious repercussion for the applicant; that at the time of filing application for plea bargain, the applicant was a patient of depression, hence under such situation, he has filed the application; that the applicant has not filed application voluntarily but due to above pressure and he is entitled to same relief granted to the other accused persons. He lastly prayed for

set aside the order of the trial Court and prays for the acquittal of the applicant. However, he admits that he has filed an application under Section 265-K Cr.P.C. before the trial Court after a delay of 13 years and he could not explain such delay.

6. On the other hand, Mr. Shahbaz Sahotra, Special Prosecutor NAB has vehemently opposed the arguments of the learned counsel for the applicant and contended that plea bargain was made by the applicant voluntarily without any pressure to the Director General NAB, Karachi and subsequently vide order dated 08.02.2005, the applicant was convicted and thereafter the said order was attained its finality but he has not impugned the same before any competent Court of law by filing an appeal. Hence, he cannot claim right/acquittal of co-accused; that the applicant was convicted vide order dated 08.02.2005 and co-accused have been acquitted on 01.04.2009. He has filed an application after the lapse of about 13 years of his conviction which is badly time-barred.

7. We have heard the learned counsel for the applicant, learned Special Prosecutor NAB and have minutely examined the record with their able assistance. Before commenting upon the objection raised by the learned counsel for the applicant on a plea bargain, it would be appropriate to reproduce the relevant provision of Section 25 of the NAB Ordinance 1999:-

25. Voluntary return and plea bargain --- (a) Notwithstanding anything contained in section 15 or in any other law for the time being in force, where a holder of public office or any other person, prior to the authorization of investigation against him, voluntary comes forward and offers to return the assets or gains acquired or made by him in the course, or as the consequence, if any offence under this Ordinance, the Chairman NAB may accept such offer and after determination of the amount

due from such person and its deposit with the NAB discharge such person from all his liability in respect of the matter or transaction in issue:

Provided that the matter is not *sub judice* in any Court of law.

(b) Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to the NAB the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Ordinance, the Chairman NAB, may, in his discretion, after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as he may consider necessary, and if the accused agrees to return to the NAB the amount determined by the Chairman NAB, shall refer the case for the approval of the Court, or as the case may be, the Appellate Court and for the release of the accused.

(c) The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, company, body corporate, co-operative society, a statutory body, or authority concerned within one month from the date of such deposit.”

8. From the bare reading of the above referred provision of Section, it is clear that NAB would make plea bargain or effect settlement with the accused, if he comes forward voluntarily to return illegal gains acquired or loss caused by him to the State Exchequer through corruption/corrupt practices, whereas, in the present case, on 29.12.2004, the applicant has moved application under Section 25 (b) of the Ordinance for plea bargain, the said application was duly signed by him in which he admitted that he is ready to return the liable amount which stands against him. Thereafter, the learned trial Court passed the order and accepted the offer made by the applicant and the said application was allowed for the payment in a certain condition and after payment, the applicant was released from jail.

9. We do not agree with the arguments advanced by the learned counsel for the applicant that under pressure and depression, the applicant has filed the application for plea bargain as after his release, the applicant did not bother to file an appeal before the competent Court of law or made any application by submitting the facts which he has agitated this application at the time of filing application, the applicant was planning officer and the application is handwritten which was drafted and duly signed by him, hence it suffices to say that the applicant entered into plea bargain voluntarily without any fear and force. In this context, the case of **Dr. Muhammad Anwer Kurd and 02 others Vs. The State, through Regional Accountability Bureau, Quetta (2011 SCMR 1560)**, wherein the Hon'ble Supreme Court of Pakistan has held that:-

“18. In view of the above position, there remains no doubt in our mind to hold that at the time of entering into an acceptance of plea bargain before the Accountability Court, the appellants, who are even otherwise well educated, were well apprised/aware of its legal consequences about their deeming convictions and disqualifications, as imposed by the Accountability Court, which were based on up-to-date amended Ordinance of 1999, vide two earlier amending Ordinance No.IV of 2000 and XXXIV of 2000 respectively promulgated on 03.02.2000 and 5.7.2000. Any confusion as to the exact language of section 25 (ibid) at the time of, entering into plea bargaining is also clarified from its reproduction in the judgment in the case of Khan Asfandar Wali, confirming the same position about its language as reproduced above.”

Furthermore, in view of Section 369 Cr.P.C. no Court including high court when it has signed its judgment/order shall alter or review its own judgment/order except correct a clerical error, hence the learned trial Court has rightly dismissed the application as the applicant has not impugned the order dated 08.02.2005 before any competent Court of law by way of filing the appeal, which is still in field.

10. Apart from the above facts and circumstances, the applicant was convicted on 08.02.2005 and he has filed application under Section 265-K Cr.P.C. before the trial Court on 09.02.2018 with a delay of 13 years that he was in full knowledge about filing of the plea bargain application under Section 25 of the Ordinance but even then he remained silent and did not challenge the said order before the trial Court or even before this Court. Though, such remedy of filing an appeal was available to him under Section 32 of the Ordinance. It appears that by not challenging the order of the trial Court where he has entered into a plea bargain and he has deposited liable amount hence, the delay in filing the appeal about 13 years is not condonable. Whereas Section 32 of the Ordinance only provides 10 days for the filing of an appeal against the order/judgment of the Accountability Court, which the applicant has failed to file within a prescribed period of limitation. Learned counsel for the applicant has failed to explain the delay of filing the application before the trial Court. Learned counsel for the applicant has also failed to point out any material illegality or irregularity committed by the trial Court while passing the impugned order. Consequently, the instant Criminal Revision Application merits no consideration. Accordingly, the same is hereby dismissed.

11. These are detailed reasons of the short order announced by us vide order dated 17.01.2019 whereby the instant Criminal Revision Application was dismissed.

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