

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Criminal Accountability Appeal No. 05 of 2018

Appellant : Altaf Ahmed S/O Gul Hassan Shaikh,
Through Mr. Nisar Ahmed Tarar, Advocate

Respondent : The State
Through R.D Kalhor, Special Prosecutor
NAB.

Date of Hearing: 24-03-2020.

Date of Judgment : 06-04-2020.

J U D G M E N T

ZULFIQAR ALI SANGI---J., Appellant filed instant Criminal Accountability Appeal on being aggrieved and dissatisfied with the judgment dated 28.02.2018 passed by learned Judge, Accountability Court-III, Sindh Karachi in Reference No.50/2015 whereby the appellant was convicted under section 10 of the National Accountability Ordinance, 1999 r/w Sr. No.4 & 5 of the schedule of the offences appended with the Ordinance and sentenced him to suffer R.I. for seven (07) years and to pay fine of Rs.10,896,063.00/- and in case of default in payment of the fine amount the appellant shall also suffer R.I for one year more. The appellant shall forthwith cease to hold public office, if any, held by him and he stands disqualified for ten (10) years to be reckoned from the date he is released after serving his sentence 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 so also he shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances from any bank or Financial

Institution in the public sector for ten (10) years from the date of conviction. However, the benefit of section 382(B) Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case according to Reference No: 50 of 2015 filed by the NAB authorities against the appellant are that NAB received a complaint against the officials of the TMA Sehwan Sharif and others regarding misappropriation of TMA funds thereafter an inquiry was authorized and during the inquiry, seven persons namely Rehmatullah Memon, Zahoor Ahmed Shahani, Muhammad Idress Memon, Asghar Ali Bhand, Muhammad Salleh Rahpoto, Ihsan Ali Jamali and Muhammad Mehboob accepted their guilt and entered into Voluntary Return under the Ordinance (VR) and repaid their share of the misappropriated amount. Thereafter the inquiry was converted by the NAB into an investigation and it was found that appellant Altaf Ahmed Shaikh was working as Electrician in TMA Sehwan Sharif since September 2012 as a regular employee and prior to that he with the connivance of the officials of the TMA fraudulently worked with TMA as a contractor and received payments of Rs.1,942,789/- from the account of TMA based on bogus quotation vouchers. In addition, he also received an amount of Rs.16,338,871/- for which no vouchers/documents/bills had been recovered. The said amount of Rs.18,281,660/- was illegally deposited in his personal account maintained at NBP and Sindh Bank Branches Sehwan Sharif. It was further alleged in the reference that the appellant himself posed as a proprietor of the shop under the name and style of "New Al-Shahbaz Electronics" (ghost shop), which did not exist and the appellant in active connivance with other TMA officials fraudulently prepared fake bills in his name against procurement of material

from the said ghost shop and illegally paid an amount of Rs.7,225,554/- from the accounts of TMA Sehwan Sharif to the appellant amounting to Rs.4,024,037/-in the name of said ghost shop for which no voucher/bills came on record. It was also alleged in the reference that the absconding accused also with the active connivance of officials of the TMA Sehwan Sharif caused loss to the exchequer. Thus, the accused had acted illegally and caused loss to the Government Exchequer, therefore the reference was filed against him and others for corruption and corrupt practices under the National Accountability Ordinance. 1999.

3. After compliance of provision of Section 265-C Cr.P.C, the charge of corruption and corrupt practices as defined under Section 9(a) (iii) (xi) (xii) of National Accountability Ordinance 1999 punishable under Section 10 of the Ordinance was framed on 17.02.2016 against accused/appellant to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 11 witnesses who exhibited various documents in support of the prosecution case and thereafter the prosecution closed its side. The appellant/accused recorded his statement under Section 342 Cr.P.C in which he denied the allegations against him. He did not give evidence on oath or call any witness in support of his defence case. Thereafter the trial court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellant through the impugned judgment dated 28.02.2018, against which the appellant has filed the instant appeal.

5. Learned counsel for the appellant contended that the appellant is innocent; that the appellant has committed no offence; that all the prosecution witnesses have given contradictory evidence

on each and every point; that the trial court mainly relied upon the documents exhibited by the bankers which did not connect the appellant to the offence; that the name of the appellant was used while committing the fraud and the appellant was impersonated; that the appellant has no concerned with the bank accounts used in the commission of the offence; that the signature of the appellant on the banking documents and other papers are bogus and the same were not verified by the investigation officer. Lastly, he submitted that no witness deposed against the appellant and thus for any of the above reasons the appellant should be acquitted of the charge based on the benefit of the doubt being extended to him. He relied upon the case of **Agha Wazir Abbas and others V. The State (2003 P.Cr.L.J 1353)**.

6. Learned prosecutor NAB on the other hand contended that the prosecution has proved its case against the appellant beyond any reasonable doubt; that no suggestion was put to the witnesses regarding fake signatures nor any document nor the appellant moved an application in this regard before the trial court; that no major contradiction has been pointed out by learned counsel for appellant which suggests that case is a false one; that no enmity or ill-will has been suggested against the prosecution witnesses during their cross-examination; Lastly, he prayed that the appeal of the appellant may be dismissed. He place reliance upon the cases of **Malik Din V. Chairman National Accountability Bureau and another (2019 SCMR 372)** and **Khadim Hussain Kutrio and another V. The State and others (2019 P.Cr.L.J 1001)**

7. We have heard the learned counsel for the parties and have gone through the record with their able assistance and considered the relevant law.

8. On our reassessment of evidence, we have found that prosecution has proved its case against the appellant beyond a reasonable doubt by producing trustworthy and confidence-inspiring evidence, fake vouchers/bills, fake contractors some of accused accepted their guilt and entered into VR and based upon the documents related to the personal account of appellant used in the scam and the contradictory defence pleas taken by the appellant during the cross-examination of witnesses so also during his statement under section 342 Cr.P.C.

9. The prosecution witness Altaf Hussain PW-1, who was the Accountant in the office of TMA Sehwan Sharif who deposed that before calling him one Ahsan Jamali the then Assistant Commissioner was called by investigation officer who during the inquiry was arrayed as an accused and then opted the option of VR and then he was called and produced original 76 bills dated: 19-04-2011, 25-08-2011, 05-09-2011, 22-05-2012 and 08-06-2012, which containing payments of street lights material and builty from Hyderabad through cheque No.052902, bills of payments of different works through cheque No.054071, payments of street lights material stationery through cheque No.054079, bills of different electric items viz breakers of 3 phase energy, sever, wire, supreme cable, cutout, PVC cable, street light material through cheque No.0108544, bills of payments of street material Sehwan Sharif through cheque No.0108547, bills of payments of light material, wire, severs, holders, bulbs of different watts, PVC wire, DP(AC), breakers, GI tee fitting, bathroom fittings and bathroom materials including PVC pipe, etc through cheque No.0108854. He also produced the seizure memo of the said bills. This witness also produced original 88 bills, which contains payments for purchase of

material for water supply scheme Dhahbaz Colony, purchase of electric material, four core wire for scheme Bandar Muhallah Sehwan, material for drainage scheme Khosa Muhallah Sehwan, street light material and purchase of electric material through cheque No.1376771 dated: 05-12-2012, bills of payments of 04 cover cable of street lights through cheque No.1376870 dated: 09-01-2013, bills of payments of streets light material through cheque No.1377307 dated: 27-03-2013, bills of payments made for the street lights through cheque No. 177787 dated: 15-05-2013, bills of payments made for street light material through cheque No.0110171 dated: 02-09-2013, bills of payments made for street material through cheque No.1378943 dated: 02-09-2013, bills of payments made for street light material through cheque No.1379088 dated: 29-11-2013, bills of payments made for street light material through cheque No.0110136 dated: 06-08-2013, bills of payments made for street light material through cheque No. 1381621 dated: 15-09-2014, bills of payments made for street light material, payment for Jhangara Scheme through cheque No. 1382051 dated: 01-10-2014, bills of payments made for street light material through cheque No. 1382898 dated; 19-10-2015 and bills of payments made for water supply material and street light material in respect of 08th & 12th Rabi-ul-Awal through No. 1382870 dated: 19-01-2015. During the cross-examination, he admitted that the appellant was working with TMA Sehwan Sharif since 2013 and another Altaf Hussain was also an employee of TMA since 2001. During the entire cross-examination, the payments were not denied by the appellant that the same were not issued or the same were not received by the appellant this witness exhibited the vouchers/bills quotations and the payments slips in the name

of appellant so also applications moved by the appellant for release of the payments with his signature but during cross-examination of this witness appellant did not challenge the same as being bogus and not belonging to the appellant and someone else used his name.

10. PW-2 Azizullah Memon (Junior Clerk in TMA) deposed that the investigation officer inquired from him about the appellant as to whether he was contactor to which he replied that the appellant was an electrician. He further deposed that the investigation officer inquired from Zahoor and Idress Memon about the development works which were conducted only on papers and funds were utilized. He deposed that higher officers of TMA were also investigated who informed the investigating officer that the quotation and bills so also the vouchers contain forged signatures. He deposed that NAB also asked Muhammad Idress and Zahoor Ahmed Shahani to visit the site to see the work as per the quotation, on which both informed that there is no work at the site. NAB officer directed them to call contractors including the appellant. They called the contractors but they have not received the calls. He was cross-examined wherein he stated that he does not know another person in the name of Altaf working in TMA Office and stated that Altaf is working in the office of TMA as an electrician. No suggestion about the bogus signatures of the appellant was put nor was it suggested that the name of the appellant was used by any of the officials of TMA while committing the misappropriation.

11. PW-3 Faqeer Muhammad Sub-Engineer Public Health Engineering was examined who deposed that NAB officials came in the office of TMA Sehwan Sharif and collected the record. He

further deposed that they asked for the visit of the sites but TO Muhammad Idris Memon and TMO Zahoor Ahmed Shahani failed to point out the work on the site on which NAB officials directed to call the contractors but none of the contractors came to point out sites where work was done by them. He further deposed that Roshan was Chokidar and contractor and Altaf Hussain was electrician and contractor and they were government employees. During the cross-examination, he stated that accused Altaf as a contractor did not submit any bill and invoice to the account section for payments and no work from Engineering was ever awarded to appellant Altaf Hussain.

12. PW-4 Nazeer Ahmed, PW-5 Muhammad Ibraheem and PW-6 Ghulam Shabir who were the contractors and their names and latter heads were used in the scam had deposed that they had not participated in any quotations and they categorically denied their signatures on the papers. They were not cross-examined by the defence counsel.

13. PW-7 Musadiq Ali was examined who belongs to the NBP Sehwan Sharif and deposed that he handed over the documents of several persons to the NAB and produced the documents in the court related to the appellant which are, Account opening form of A/C No. 7785-9 (proprietor Altaf Ahmed Shaikh) along with supporting documents. He was cross-examined by the defence counsel and he stated that he was posted in the year 2013 and admitted that the said account was opened before his posting. He further stated that as per the documents account was opened by the accused Altaf Ahmed S/O Gul Hassan Shaikh and thoroughly negated the suggestion that the said account was not opened by and operated by the appellant. We have carefully examined the

documents produced by this witness and found that copy of CNIC and the photograph of the appellant appended with the account opening documents for which he has not made a single suggestion as to wherefrom bank authorities obtained the same nor he made any complaint about the missing of his CNIC and the photographs. Even the signatures on the account opening form were not denied during the cross-examination of this witness. This witness also exhibited several cheques deposited in the account of the appellant which even were not denied during the cross-examination of this witness.

14. Another witness Muhammad Talha related to the Sindh bank was examined as PW-8 who deposed that he was called by the investigation officer NAB in connection with the investigation of TMA Sehwan Sharif and produced the record in respect of appellant bank account and exhibited the copy of account opening forms of A/C No.01090115711000 (Title New Al-Shahbaz Electronics proprietor Altaf Ahmed Shaikh) and another account No.0109011512000 (Title Altaf Ahmed Shaikh) Sindh Bank Sehwan Sharif branch along with supportive documents. He also produced the copies of the 18 cheques for A/C No. 01090115110 of New Al-Shahbaz Electronics and copies of 10 cheques for account No. 01090115712000 title Altaf Ahmed Shaikh. During cross-examination, the appellant did not deny the signatures on the account opening forms of both the accounts and the supportive documents were not challenged.

15. PW-9 Rizwan Ali was examined who deposed that the appellant was working as an electrician in the TMA Sehwan Sharif and he was not cross-examined. PW-10 Hazoor Bux Lakho was examined and he deposed that he was directed by Ahsan Ali Jamali

to serve the notice upon the Al-Shahbaz Electronics and other shops and on a search he found no such shop in Sehwan Sharif. He further deposed that the Investigation Officer also directed the Administrator for verification of bills, vouchers, and quotations of those shops who was also unable to find such shops.

16. The investigation Officer Aslam Parvaiz Abro was examined as PW-11. He deposed that he authorized inquiry against Ali Asghar Bhand and others officials of the TMA Sehwan Sharif on 15-09-2014 and during inquiry he collected the material so also visited the relevant sites and deposed that during the inquiry 07 persons accepted their guilt and opted for VR and deposited the misappropriated amount. The inquiry was converted into the investigation and during the investigation he collected the relevant record against the accused persons so also recorded the statements of the witnesses and recommended that reference be filed against four accused persons. Two were the contractors and two were employees of the TMA Sehwan Sharif and also fake contractors who received illegal payments from TMA without performing any work at the site. During cross examination the appellant took the plea that he never worked as contractor nor opened any bank account and he was impersonated by some one else.

17. We have carefully examined the statement under section 342 Cr.P.C of the appellant while giving answers to most of the questions he took the plea that all the vouchers/bills and other documents were prepared by the officials of the TMA Sehwan Sharif who used his name and made his fake signatures on it. He never opened or operated the bank accounts used in the scam and his CNIC and photograph was used which he submitted for the Job. We find no merit in the plea taken by the appellant for the reason that

after the reference has been filed he never approached any authority against the officials of the TMA that they used his name while committing the offence. We also do not accept the plea of the appellant that his CNIC and photograph which were used for opening the bank accounts were submitted by him for the Job as the bank account was opened in the year 2010 and he admitted while answering question No. 06 in his Statement under section 342 Cr.P.C that he became regular/ permanent employee of the TMA in the month of September 2013, **which reveals that when he applied for the post he had already opened his bank account with his own CNIC and photo's and as such there was no opportunity of any TMA official or any other person to impersonate the opening of the bank account for the purpose of the scam in 2012-2013 since those bank accounts had already been opened by the appellant as far back as 2010.** We also noticed that even during the trial he did not move any application for verification of the signatures available on the fake vouchers and documents related to the bank account which also suggests that he knew that his correct and genuine signatures were available on those papers. Thus we disbelieve the plea taken by the appellant.

18. We have examined the impugned judgment of the trial court where each and every point raised on behalf of appellant was discussed in depth and fully answered by reference to the evidence on record and, therefore, we do not find it appropriate to reproduce here the same which is based on well-reasoned, elaborate findings and is in accordance with law, record and supported by the evidence on record and does not require any interference on our part.

19. Thus based on the discussion made hereinabove we find that the prosecution has proved its case beyond a reasonable doubt against the appellant by producing reliable, trustworthy and confidence inspiring oral evidence as well as documentary evidence and we therefore uphold the impugned Judgment and dismiss the appeal.

20. The appeal is disposed of in the above terms.

JUDGE

JUDGE