

IN THE HIGH COURT OF SINDH KARACHI.

Criminal Accountability Acquittal Appeal No.01 of 2016

Present.

Mr. Justice Mohammad Karim Khan Agha.
Mr. Justice Zulfiqar Ali Sangi.

Appellant: The State (Chairman National Accountability Bureau)
through Mr. R.D. Kalhoro. Special Prosecutor

Respondent: Muhammad Sardar Khan s/o Abdur Rehman Khan
through Nemo

Date of hearing: 07.05.2020
Date of Judgment: 07.05.2020

JUDGMENT

ZULFIQAR ALI SANGI, J. Through instant Criminal Accountability Acquittal Appeal, the appellant /NAB had assailed the order dated: 10.02.2016 passed by the Accountability Court No. IV Sindh Karachi whereby the Learned Accountability court allowed the application under section 265-K Cr.PC filed by the respondent and acquitted him in the reference No.65 Of 2007.

2. The brief facts of the case as per the aforesaid reference are that accused Ejaz Ahmed, Muhammad Afzal and Nasir Hussain Jaffery while acting as outdoor clerk used to collect the pay orders from clearing and forwarding agents and after obtaining share used to pass on the pay orders to co-accused Shaikh Muhammad Asghar who used to deposit the same in his fake bank account and in collusion, connivance and collaboration with accused Nazir Ahmed Toni and Zaheeruddin Babar used to encash the same and caused loss to the public exchequer to the tune of Rs.30.747 million. The accused Nazir Ahmed Toni and Zaheeruddin Babar being holder of public office in collusion, connivance and collaboration with each other along with co-accused namely

(1) Shaikh Muhammad Asghar (2) Muhammad Nadeem (3) Dilber Shah (4) Manzar Alam Jaffery (5) Ejaz Ahmed and (6) Muhammad Sardar Khan (**applicant/accused**) and absconding accused Faheem and Aamir have committed forgery in 617 pay orders and misappropriated an amount of Rs.30.747 million. They have caused loss to the public exchequer in the sum of Rs.30.747 million and thus by corrupt, dishonest, illegal and fraudulent means obtained for themselves pecuniary advantages and corresponding loss to the public exchequer.

3. Initially on the written complaint of Nazir Ahmed Toni, Manager, National Bank of Pakistan, P.N. Dockyard Branch, Karachi, an FIR bearing No.06 of 2000 was lodged at P.S. FIA/CBC, Karachi on 01.03.2000 for having committed the offence of fraud, tampering with instruments, embezzlement and misappropriation of public money under Sections 409/420/468/471/477-A/109/34 PPC read with Section 5 (2) of Act-II of 1947. After registration of FIR, three separate challans were submitted before the learned Special Judge (Offences in Banks) Karachi on 04.04.2002 against accused (1) Shaikh Muhammad Asghar (2) Dilber Shah (3) Muhammad Nadeem (4) Nazir Ahmed Toni (complainant) (5) Muhammad Saleem Akhtar and absconding accused (6) Faheem and (7) Amir for committing the offences of criminal breach of trust, fraud and forgery.

4. After receipt of challans, 3 separate criminal cases i.e. (i) Case No.25/2000, FIR No.06/2000 FIA CBC, Karachi State v. Shaikh Muhammad Asghar and others (ii) Case No.43/2002, FIR No.06/2000 FIA CBC, Karachi, State vs. Shaikh Muhammad Asghar & others and (iii) Case No.44/2002, FIR No.06/2000 FIA CBC, Karachi State vs. Shaikh Muhammad Asghar & others were registered in the Court of learned Special Judge (Offences in Banks) Karachi. An application under Section 16-A (a) of National Accountability Ordinance, 1999 was filed by Chairman NAB on 10.08.2007 in the Court of learned Special Judge (Offences in Banks) Karachi for transfer of these cases. The learned Special Judge (Offences in Banks) Karachi vide order dated 24.09.2007 transferred the said cases to the Administrative Judge, Accountability Courts, Karachi. On 09.10.2007 R & Ps of above criminal cases were received by the Administrative Judge, Accountability Courts Karachi and were assigned new number

being References No.65, 66 and 67 of 2007 and the same were transferred to the learned Accountability Court No.III Karachi on 04.12.2007.

5. Thereafter NAB has conducted investigation in the matter and filed Reference No.16 of 2009 against the accused (1) Nazir Ahmed Toni (2) Zaheeruddin Babar (3) Shaikh Muhammad Asghar (4) Ejaz Ahmed (5) Muhammad Afzal (6) Nisar Hussain Jaffery (7) Muhammad Sardar Khan (**applicant/accused**) and (8) Muhammad Moinuddin. The allegations against the applicant/accused as contained in NAB reference are that he introduced Muhammad Umar Saleh Ilyas for opening account at PN Dockyard branch and account No.3797 was opened on 17-06-1998 in the name of Muhammad Umar Saleh Ilyas though he passed away on 25.12.1997.

6. All the references were amalgamated/consolidated by the Learned Accountability Court under the order of this court dated: 02-11-2010 Reference No: 65 of 2007 and later on vide order dated 09-03-2013 passed by this court the case was transferred to Accountability Court No.IV Sindh Karachi, who on application of respondent passed the impugned order.

7. Learned Special Prosecutor for NAB has contended that the impugned order dated 10th February 2016 passed by the Judge Learned Accountability Court No.IV Sindh at Karachi is against the law, thus not sustainable and liable to be set aside; that the impugned order suffers from material irregularity, illegality and violation of substantive provision of law; that the impugned order is illegal, perverse speculative and erroneous on facts and law; that the learned Judge trial court has failed to consider the prosecution case and did not apprise, appreciate, cogent, and trustworthy evidence in its true perspective and delivered a vague order and arrived on wrong conclusion; that the learned trial court has not properly analyzed and evaluated the evidence and documents produced on record; that there was direct evidence against the accused regarding commission of offence of corruption and corrupt practices as defined under NAO, 1999 and schedule thereto; that sufficient evidence in the shape of oral and documentary were brought on record by the prosecution which has fully implicated the accused in the commission of crime; that the learned trial court has passed the

impugned order in haste and in a slip shot manner thus the order is perfunctory and not sustainable in law; that the approach of learned trial Court in the facts and circumstances was neither in accordance with the mandate of law nor with the established principles of appreciation of evidence; that the impugned order is based on conjectures and surmises and liable to be set aside. He relied upon the cases of **Muhammad Latif and others V. Mian Ahmed Ali and others** (2002 SCMR 1264) and **The State through Advocate General Sindh High Court of Karachi V. Raja Abdul Rehman** (2005 SCMR 1544).

8. We have heard the arguments of the learned Special Prosecutor NAB and perused the material available on record with his able assistance and the relevant law so also cited at the bar.

9. **Admittedly** the respondent at the first instance was made witness of the prosecution (**and not an accused**) by the FIA and the same cases were transferred to the Accountability Court on an application under section 16-A of NAO. 1997 and were numbered as 65, 66 and 67 of 2007 and he was examined again as a prosecution witness No- 02, PW-03 and PW-04 (**and not an accused**) by the Accountability Court respectively. It is also **admitted** by the special prosecutor NAB that in the account N.3797 there is no transaction in respect of the alleged scam and only the account No. 3799-9 was used for misappropriation for which we found no connection of the respondent with the said account No. 3799-9. **Even the investigation report submitted by the IO conceded that there is no tangible evidence against the respondent in connection with the commission of the crime.**

10. The most important witness of the prosecution against the respondent was Hakeemuddin who was examined and deposed that on 17-06-1998 Muhammad Sardar Khan (Respondent) brought account opening form of Muhammad Umar Ilyas for verification of his signature and same was verified by him, he further deposed that account opening form was not bearing the signature of Muhammad Umar Ilyas while this witness during the cross examination stated that the manager gave him the form with direction to verify the signature of accused Muhammad Sardar Khan (Respondent)

as introducer. Except this evidence there is no evidence against the respondent and on careful examination of this evidence we are of the view that this evidence is not sufficient to connect the respondent with the scam particularly when there was no transaction in the said account and that there is no possibility of the respondents conviction in this reference.

11. No doubt the principle of double presumption of innocence is not attached with the acquittals under section 249-A or 265-K Cr.P.C and such proposition could not be emphatically urged in favour of the accused/respondent as the order of acquittal of the accused under section 249-A and 265-K Cr.P.C would not have the same sanctity as an order of acquittal on merits after full-fledged trial but at the same time there must be cogent, reliable evidence against the responsible. It is settled by now that in absence of any tangible evidence against the accused that implicated him in the offences charged, allowing proceedings to continue would amount to abuse of process of law and would serve no useful purpose in allowing proceedings to continue. After our examination of the prosecution evidence the trial court has rightly found that there is no possibility of the respondent being convicted and thus has rightly allowed his appeal under S.265 K Cr.PC.

12. Based on the above discussion, we have found that the acquittal of the respondent under section 265-K Cr.P.C does not suffer from any illegality to call for interference by this court with the impugned order. Based on the law concerning an appeal against acquittal and the fact that the learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favor of the respondent we see no legal justification to disturb the same as such the appeal against the acquittal of the respondent under S.265 K Cr.PC is dismissed in limini and the impugned order is upheld.

JUDGE

JUDGE

