

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Appeal No. 39 of 2018.
Constitution Petition No: D - 7380 of 2018.

Present:

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

Appellant : Karamuddin Panhyar S/o Koral Khan
Panhyar,
Through Mr. Umair Bachani, Advocate

Respondent : The State
Through Mr. R.D Kalhoro,
Special Prosecutors NAB.

Date of Hearing : 20-08-2020.

Date of Judgment : 01-09-2020.

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 30.08.2018 passed by learned Accountability Court No.1, Sindh at Karachi in Reference No.02/2017; whereby the appellant was convicted under section 9(a) (vi) of the National Accountability Ordinance, 1999 and sentenced him to suffer R.I. for seven (07) years and to pay fine of Rs.500,000/- (five lac). The appellant shall forthwith cease to hold public office, if any, held by him and he stands disqualified for a period of ten (10) years to be reckoned from the date of 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 a period of

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

2. Brief facts relevant for the purpose of disposal of appeal are that following the assassination of Mohtarma Benazir Bhutto on 27.12.2007 the revenue land record of several districts of Sindh including Mirpur Sarko, District Thatta was burnt/destroyed. The Board of Revenue Sindh issued Notification in the year 2008 under section 40 of the Sindh Land Revenue Act, 1967 whereby the Revenue Officers of the respective Talukas/Districts were appointed as Authorized Officers for the reconstruction of Record of Rights. The appellant Karamuddin Panhyar being Assistant Commissioner Mirpur Sakro was appointed Enquiry Officer for the reconstruction of Record of Rights of Taluka Mirpur Sakro at Gharo, District Thatta. It is alleged that during the process of reconstruction of Record of Rights of Dehs of Taluka Mirpur Sakro namely Deh Gharo, un-surveyed Kohistan-I, and Deh Gharo un-surveyed Kohistan-II, the present appellant being Authorized Officer in connivance with absconding accused the then Supervising Tapedar Nisar Ahmed Wegan misused his authority and with malafide intention made illegal fifteen (15) entries in Record of Rights for an area of 2002 acres land in favour of different persons thus they committed the offence of corruption and corrupt practices as envisaged u/s. 9(a) of the NAO, 1999 punishable u/s. 10 of the said Ordinance.

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) of N.A. Ordinance 1999 punishable under Section 10 of the Ordinance was framed on 17.01.2017 against appellant

Karamuddin Panhywar at Exh.03, to which he pleaded not guilty and claimed trial.

4. In order to prove its cases, the prosecution examined as many as 07 witnesses who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under Section 342 Cr.P.C. 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 30.08.2018, against which the appellant has filed the instant appeal.

5. At the outset, learned counsel for the appellant in the face of overwhelming evidence against him and under the instructions of his client/appellant has not pressed the instant appeal on merit but has requested for a reduction in sentence on the ground that the appellant is the only male member of a large family of which he is the main breadwinner; that he is aged about 60 years having a large family to support; that appellant himself canceled the entries; that no loss to the Government was caused; that he has already served a substantial part of his sentence.

6. Learned prosecutors NAB on the other hand fully supported the impugned judgment and contended that the appellant by keeping the entries in the record of rights had committed the offence of misuse of his authority; that appellant has been convicted in another reference of similar nature and was habitual of misusing his authority; that trial court had already taken a lenient view and convicted only for seven years; that the appellant admitted his guilt, therefore, he not entitled for any reduction and his appeal be dismissed.

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. The record reflects that all the prosecution witnesses supported the case of the prosecution, alleged illegal entries have been admitted by the appellant which he canceled later once he came under suspicious and in view of these facts we are satisfied that the prosecution has proved its case against the appellant beyond a reasonable doubt. It is observed that very genesis of white-collar crime has engulfed the educated-cum-privileged class while intruding its contours into the society which has almost become epidemic leaving miserable repercussions individually as well as collectively. It is detrimental to the very fabric of the society.

9. We have found that due to the alleged entries no loss to the Government exchequer was caused as the appellant himself canceled the entries. No one came into possession of the land on the basis of such entries nor claims any right on it and the possession remained with the Government.

10. Since the appellant is the sole breadwinner of a large family, old age of above 60 years and no loss has occurred to the Government therefore in our view is capable of reformation under such circumstances, we hereby dismiss the instant appeal of the appellant on merits but since we find the sentence rather harsh keeping in view the submissions of the appellant, we hereby reduce/alter the sentences of the appellant and convict him under section 9(a) (vi) of the National Accountability Ordinance, 1999 and sentence him to suffer R.I. for five (05) years and to pay fine of Rs.500,000/- (five lac). The appellant shall forthwith cease to hold

public office, if any, held by him and he stands disqualified for a period of ten (10) years to be reckoned from the date of 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 a period of ten (10) years from the date of conviction. However, the benefit of section 382(B) Cr.P.C. is extended to the appellant as the same was already extended to him by the trial court.

11. We have decided the main appeal of the appellant therefore the Constitution Petition No: 7380 of 2018 filed by the appellant for suspension of his sentence during the pendency of the appeal has become infructuous and is also dismissed.

12. The instant appeal and the Constitution Petition are disposed of in the above terms.

JUDGE

JUDGE