

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Shamsuddin Abbasi

Criminal Accountability Appeal No.31 of 2019

Appellant Abdul Wahab Abbasi son of Mazharuddin Abbasi
Through Mr. Amer Raza Naqvi, Advocate.

Respondent The State {National Accountability Bureau through
Ms. Farah Khan, Special Prosecutor NAB.

Const. Petition No.D-7754 of 2019

Petitioner Abdul Wahab Abbasi son of Mazharuddin Abbasi
Through Mr. Amer Raza Naqvi, Advocate.

Respondent The State {National Accountability Bureau through
Ms. Farah Khan, Special Prosecutor NAB.

Dates of hearings 18.12.2020, 20.01.2021 and 27.01.2021

Date of judgment **25.02.2021**

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JUDGMENT

SHAMSUDDIN ABBASI, J:- Through listed appeal, Abdul Wahab Abbasi, the appellant has challenged the vires of the judgment dated 30.09.2019, penned down by the learned Accountability Court No.IV {Sindh}, at Karachi, in Reference No.19 of 2014, through which he was convicted under Section 10 of National Accountability Ordinance, 1999 {NAO, 1999} read with Section 265-H{ii}, Cr.P.C. and sentenced to undergo rigorous imprisonment for seven {07} years and to pay a fine of Rs.12,735,280/-, recoverable as arrears of land revenue in terms of Section 33-E of the Ordinance, and in default of payment of fine he was ordered to undergo further two {02} years' rigorous imprisonment, disqualified him for a period of ten {10} years to be reckoned from the date he is released after having served the sentence and 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 from seeking any financial facility in the form of loan or advances from any financial institution controlled by Government for a period of ten {10} years. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended in favour of the appellant.

2. Succinctly, the facts of the case are that National Accountability Bureau {NAB} filed a Reference against the appellant under Section 18{g} read with Section 24{b} of the National Accountability Ordinance, 1999 {Ordinance} before the learned Accountability Court {Sindh}, at Karachi {Accountability Court} for embezzlement of Government money in the head of scholarship funds for female students of Class-VI to VIII in his capacity as District Officer Education {DOE}, Secondary and Higher Secondary {Male} and thereby caused a loss of Rs.12,735,280/- to the national exchequer by way of embezzlement.

3. The case of the prosecution as set forth in the reference is that the Government of Sindh, Finance Department released a sum of Rs.197 million on account of scholarship for eligible female students of middle schools of Sindh Province under Sindh Education Reforms Program {SERP} for the year 2004-2005. Out of total allocation an amount of Rs.94.484 million was released for Karachi and Rs.1,000/- was to be disbursed to every eligible female student of middle classes from the head of the scholarship funds through the respective headmasters /headmistresses /School Management Committee. At that time appellant Abdul Wahab Abbasi was District Officer Education {Male}. He reported 9,435 female students to the then EDO, City District Government Karachi {CDGK} and requested for release of funds. Accordingly, a sum of Rs.9,435,000/- was allocated and received by the appellant through Cheque No.1864903 dated 21.06.2005 from Accounts and Audit Officer, EDO {Education} CDGK. He got opened an individual A/c No.0068-01-010014416 in MCB for the purpose of issuing crossed cheques to the heads of the concerned schools for further distribution of scholarship funds to the female students. Instead of issuing crossed cheques, he withdrew different amount through ATM and cheques and got transferred remaining amount of Rs.7,738,000/- into his A/c No.1351-1, lying with National Bank of Pakistan, Sindh Secretariat Branch, Karachi, through Cheque No.2746507 dated 05.07.2005. Besides, he had been requesting the EDO {Education} for release of scholarship funds during the years 2002-2003, 2003-2004 and received total amount of Rs.16,205,280/- in the head of scholarship funds through different

transactions and disbursed only Rs.3,670,000/- while remaining amount of Rs.12,735,280/- was embezzled, thereby caused loss to the national exchequer, which constitute an offence of corruption and corrupt practices as defined under Section 9{a} of NAO, 1999 and schedule thereto punishable under Section 10 of the Ordinance.

4. The learned Accountability Court, on taking cognizance of the matter, charged the appellant for the offence of corruption and corrupt practices as defined under Section 9{a}{ii}{iii}{iv}{vi} of NAO, 1999 read with Schedule attached thereto punishable under Section 10 the Ordinance, who pleaded not guilty and claimed a trial.

5. The prosecution, in support of its case, examined 12 witnesses. **Allah Ditto Shaikh** {Junior School Teacher} appeared as PW.1 Ex.6. He handed over the record to investigating officer viz compilation report of female students for the year 2004-2005, attendance registers, results sheets, cheque No.5624118 and affirmed his signatures on seizure memos. **Anwar Hussain Memon** {Manager Operation MCB Sindh Secretariat Branch} appeared as PW.2 Ex.7. He produced record relating to A/c No.006801114416, in the name of Abdul Wahab, viz account opening form, CNIC, acknowledgment, personal account client form, application for smart card, new account proof list, letters of thanks, bank statements from 01.01.2005 to 30.06.2008, 11 cheques, 5 deposit slips to investigating officer and affirmed his signature on seizure memo. **Abdul Bari** {Manager NBP Sindh Secretariat Branch} appeared as PW.3 Ex.8. He produced 34 cheques alongwith CNIC of appellants, account opening form, SS card, letter of EDO Education, statement of account from 01.01.2004 to 30.06.2008 to investigating officer and affirmed his signatures on seizure memo. **Sikandar Ali** {EDO Education CDGK} appeared as PW.4 Ex.9. He has given the details of cheques given to appellant under Sindh Education Reforms Program {SERP}. **Mumtaz Ali Bhutto** {Head Master} appeared as PW.5 Ex.10. He produced result sheets of female students for class 6, 7 and 8 alongwith compiled statement to investigating officer and affirmed his signature on seizure memo.

Ghulam Rasool Jokhio {Head Master GBSS Faysal Model Academy Model Colony Karachi} appeared as PW.6 Ex.11. He has verified letter dated 23.05.2011, issued by him as DO Education Male and affirmed his signature on it. **Naeemullah Jatoi** {Junior Investigating Officer NAB} appeared as PW.7 Ex.12. He affirmed his signature on seizure memo whereby eight documents were taken into custody by investigating officer, produced by Accounts Officer {Audit} Director School Education. He has certain receipts of certain cheques, pay orders, letters, enrollment, seizure memos. **Hizbullah** {Junior Clerk GBSS Gaghar Village} appeared as PW.8 Ex.13. He is a witness of seizure memo whereby investigating officer taken into custody compiled report of female students for the year 2004-2005, attendance register, result sheets, produced by Allah Ditto {JST} and affirmed his signature on it. **Dadlo Zuharani** {Dy. Secretary Health Department} appeared as PW.9 Ex.15. He handed over three letters to investigating officer pertaining to release of funds and policy guidelines. **Sohail Kamran** {Manager Operation KDA Civic Centre Branch} appeared as PW.10 Ex.17. He produced record of A/c No.1171-9 to investigating officer viz account opening form, SS card, bank statement, CNIC and affirmed his signature on seizure memo. **Muhammad Amir Butt** {Additional Director Staff NAB} appeared as PW.11 Ex.18. He conducted inquiry and concluded that appellant opened personal account in MCB and deposited several Government cheques in his account and 90% of the deposited amount was withdrawn by him and recommended for conversion of the inquiry into investigation. **Sarwan Ahmed** {Assistant Director/ Investigating officer} appeared as PW.12 Ex.19. He has highlighted *modus operandi* adopted by the appellant, recorded the statements of witnesses, seized the relevant record and filed Reference on the recommendations of the competent authority. Thereafter, the prosecution closed its side vide statement Ex.20.

6. The appellant was examined under Section 342, Cr.P.C. at Ex.21, who denied all allegations imputed upon him by the prosecution, professed his innocence and stated his false implication owing to enmity with Ms. Fakhar Karim Siddiqui {DO} who was the sole beneficiary of the entire scam and she made a report against her.

The appellant further stated his false implication due to enmity with Zaigum Abbas {UDC NAB} who disclosed his identity as AD ISI and pressurized him to release the salaries of fake and illegal appointees, who had closed relations with official of NAB, but he refused. He prayed for mercy. The appellant has produced 13 witnesses namely, Bashir Ahmed Shaikh, Syed Zaigham Abbas, Muhammad Ishaq, Ghulam Khattani, Iqbal Hussain Channa, Tariq Aziz, Shamim Akhtar, Syed Sagheer Wasli, Gul Muhammad, Syed Taj Muhammad, Dr. Muhammad Ali, Shabbir Ahmed Jokhio in his defence, but opted not to examine himself on Oath under Section 340{2}, Cr.P.C. He, however, filed a written statement under Section 265-F{5}, Cr.P.C.

7. The trial culminated in conviction and sentence of the appellant as stated in para-1 {supra}, hence necessitated the filing of listed appeal and petition, which are being disposed of through this single judgment.

8. The learned counsel for the appellant has called into question the very jurisdiction of NAB and submitted that before filing reference no proper exercise was conducted in the light of guidelines highlighted by the Hon'ble Superior Court and the mandatory commands of law; that the prosecution had failed to discharge its legal obligation of proving the guilt of the appellant as mandatory requirement of Section 14 of the NAO, 1999, and the appellant was not liable to prove his innocence; that he has been falsely implicated in this case owing to enmity with Ms. Fakhar Karim Siddiqui {DO} who was the mastermind of the scam and responsible for all illegal and unlawful acts and beneficiary of the whole scam and just to save her skin cooked up a false and fabricated story in collusion with NAB officials and one Zaigum Abbas, who showed himself from ISI and pressurized the appellant to release the salaries of appointees and on his refusal hatched a conspiracy against the appellant and got him involved in this false case in connivance with NAB officials; that the I.O. has conducted dishonest investigation and let off real culprits and involved the appellant in a case with which he has no nexus, hence it is a case of pick and choose; that the evidence adduced by the prosecution is not trustworthy and confidence inspiring as such the same has wrongly been relied by the learned

trial Court; that none from the headmasters, headmistresses and students had been examined by the prosecution to substantiate its case against the appellant; that the case against the appellant lacked *mens rea* and in absence thereof no criminal liability could be pinned down on him. Per learned counsel, such kind of offence cannot be committed without the active connivance of others, but here in this case only the appellant had been made victim of the circumstances and none else had been nominated as accused including Ms. Fakhar Karim Siddiqui {DO}, which is clear discrimination; that the prosecution had failed to bring home the charge against the appellant through cogent and reliable evidence; that the witnesses produced by prosecution were interested and inimical to the appellant, thus, they deposed against the appellant favouring the prosecution, hence their testimony was wrongly relied upon by learned trial Court; that they were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant; that the prosecution had not been able to bring on record any evidence against the appellant showing assets beyond his source; that the learned trial Court did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant merely on assumptions and presumptions; that the learned trial Court totally ignored the evidence adduced by the appellant in his defence, which was sufficient to prove his innocence. Per learned counsel, all steps taken by the appellant were in accordance with law and he had not done any illegal act, which could saddle penal consequences on him. Finally, the learned counsel submitted that the appellant did not derive any personal financial gain from the acts for which he was charged, tried and convicted, thus the conclusion drawn merits reversal.

9. Strongly opposing the contentions of the learned counsel for the appellant, the Special Prosecutor NAB has contended that the appellant was lawfully proceeded against under the enabling provisions of the Ordinance, which were strictly in accordance with the settled principles of the criminal justice system of providing the appellant with complete opportunity to defend himself; that the

appellant in his capacity as District Officer Education {Male} embezzled an amount of Rs.12,735,280/- released by the Sindh Government under Sindh Education Reforms Program {SERP} and caused a colossal loss to the national exchequer; that the prosecution in support of its case produced oral as well as documentary evidence, which was rightly relied upon by learned trial Court. Per learned counsel, the witnesses were subjected to lengthy and taxing cross-examination but nothing favourable to the appellant could come out from their mouth. Finally, submitted that the findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken. She, therefore, prayed for dismissal of appeal as being devoid of any merit.

10. We have given our anxious consideration to the submissions of learned counsel for the appellant and the learned Special Prosecutor NAB and gone through the entire material available on record with their able assistance.

11. As regards the first contention of the learned counsel for the appellant challenging the very jurisdiction of NAB in filing a reference against the appellant on the ground that no proper exercise was conducted in the light of guidelines highlighted by the Hon'ble Superior Court, suffice to observe that Sub-Section (b) of Section 18 of the Ordinance deals with the initiation of a reference by NAB, which reads as under:-

"Cognizance of Offences:-

{b} A reference under this Ordinance shall be initiated by the National Accountability Bureau on

{i} a reference received from the appropriate Government; or

{ii} receipt of a complaint; or

{iii} its own accord."

12. The above provision clearly provides three different modes to initiate a reference against an accused. Clause (ii) (supra) is so worded to encompass a complaint filed by any person accusing any person of committing corruption to be the basis for NAB to initiate

a reference under the Ordinance. We have gone through the reference which specifically disclosed that an inquiry was initiated on the basis of a complaint from the office of EDO {Education}, Karachi, with regard to embezzlement of millions of rupees from the scholarship funds. Pursuant to such inquiry the investigation was followed and it was found that appellant in his capacity as District Officer Education {DOE}, Secondary and Higher Secondary {Male}, misused his official authority and embezzled an amount of Rs.12,735,280/- from the head of scholarship funds provided by the Government of Sindh under Sindh Education Reforms Program {SERP} for the year 2004-2005, which was to be disbursed to every eligible female student of middle classes through the respective headmasters, headmistresses and School Management Committee, thereby caused loss to the national exchequer. In view of this background of the matter, the offence falls within the purview of a complaint as provided under clause {ii} of Sub-section (b) of Section 18 of the Ordinance. Thus, the stance taken by the learned counsel for the appellant challenging the entire reference on the touchstone of this alleged jurisdictional defect is misconceived.

13. As to the next contention that the prosecution has not been able to discharge its duty of proving the guilt of the appellant and shifting onus on the appellant as mandatory requirement of Section 14 of NAO, 1999 is concerned, suffice to observe that the prosecution has examined as many as twelve {12} witnesses, who were subjected to lengthy cross-examination but nothing favourable to the appellant could come out from their mouth. They were consistent on each and every aspect of the matter and did not contradict each other on material points. Nothing has been brought on record on behalf of the appellant that the prosecution witnesses had some grudge against him for his false implication in the commission of offence. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellant has failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. All the witnesses have supported the case of the prosecution and implicated the appellant in the commission of offence. The ocular account furnished by the prosecution had also been supported by the documentary evidence.

14. A keen look of the record reveals that the appellant in his capacity as District Officer Education {DOE} opened two bank accounts, one in Muslim Commercial Bank {MCB}, Sindh Secretariat Branch and another one in National Bank of Pakistan {NBP}, Sindh Secretariat Branch, for disbursement of funds provided for scholarship to the eligible female students of Class-VI to Class-VIII of 32 schools for the year 2004-2005. The account lying with MCB appears to be a personal account, which was opened without getting permission from competent authority and the appellant had deposited an amount of Rs.14,248,075/- in the said account and got transferred Rs.77,48,000/- from it into his official account lying with NBP for which a permissions was obtained. It is noteworthy that the appellant had also obtained ATM facility against MCB account and this fact has been admitted by him in his written statement under Section 265-F{5}, Cr.P.C. that such facility of ATM was availed by him and he had withdrawn an amount Rs.10,000/- in two transactions through ATM card. The other aspect which supports the case of the prosecution is that the appellant had withdrawn entire amount from MCB account through open cheques leaving an amount of Rs.77,48,000/-, which was transferred by him into his NBP account, but he failed to prove that such amounts were paid by him to the concerned Heads of the Schools for disbursement to the eligible female students towards scholarship. The cheques pertaining to NBP account though were opened cheques but the same were issued in favour of Heads of the concerned Schools for disbursement of scholarship amongst the eligible female students of Class-VI to Class-VIII.

15. The plea taken by the appellant that City District Government Karachi {CDGK} had announced a policy and framed a guideline for disbursement of scholarship funds through cash or cheque withdrawing condition of crossed cheque or opening of account in a bank, owned by the Government, and requiring the DOEs for issuance of cheques amongst concerned Heads of the Schools is concerned, suffice it to say that the learned trial Court has rightly discarded the evidence adduced by the appellant in his defence and the documents on which he had relied upon in this regard, available at pages 1019 and 1021, 1043, 1045 and 1049 of paper book, as

inadmissible in view of Articles 73 and 74 of Qanun-e-Shahadat Order, 1984 and the case law reported as 2000 MLD 901, wherein it has been held that in absence of proof of loss of original record, photocopies are not admissible. The plea taken by the appellant that original record had been taken away by Ms. Fakhar Karim Siddiqui was neither supported by any documentary evidence nor the appellant appeared and deposed so on Oath under Section 340{2}, Cr.P.C. In view of this background of the matter, this plea seems to be after thought just to save his skin from the clutches of law and unsafe to rely upon. The other plea taken by the appellant that he had disbursed total amount of scholarship funds amongst Heads of the Schools and relied on audit report, available at page 1001 to 1013 of paper book, is concerned, suffice to observe that the register {Ex.21/3} did not contain either the name and signature of the officer or the official stamp of DOE {S/HS-M}. It also did not contain a certificate as to the number of pages and total number of entries with regard to disbursement of scholarship funds to the Heads of the concerned Schools as such the authenticity and genuineness of the documents relied upon by him seems to be doubtful and the learned trial Court had rightly discarded the same. The appellant had also failed to examine auditor Abdul Khaliq, who was given up on the ground of his illness, but no such record with regard to his ailment had been produced by him. The appellant had examined 13 witnesses in his defence but did not appear and depose on Oath under Section 340{2}, Cr.P.C. which will give rise to a presumption that the plea taken by him in his defence was not a gospel truth, therefore, he avoided to appear and depose on Oath under Section 340{2}, Cr.P.C.

16. PW.9 Dadlo Zuharani, who is Deputy Secretary, Health Department, Government of Sindh, has given the details with regard to release of funds amounting to Rs.17,00,00,000/- and Rs.19,00,00,000/- in the head of scholarship funds under Sindh Education Reforms Program {SERP} under letters of Finance Department, Government of Sindh addressed to Accountant General {Sindh}, which were to be disbursed to each eligible female student of middle classes through the respective headmasters, headmistresses and School Management Committee under the

guidelines of CDGK. PW.1 Allah Ditto Shaikh {Junior School Teacher} has given the details with regard to record of female scholarship viz compilation report, attendance register and result sheets for classes VI, VII and VIII and handed over the same to the investigating officer. He had been supported by PW.8 Hizbullah {Junior Clerk}, who has deposed in the same line as that of PW.1. He affirmed his signature on seizure memo and identified documents Ex.06/1 to Ex.06/5 as same. PW.5 Mumtaz Ali Bhutto {Head Master} has also recorded the same evidence as deposed by PW.1 and PW.8. PW.7 Naeemullah Jatoi is the junior investigation officer NAB in whose presence the investigating officer seized relevant documents produced by Aijaz Ali Soomro, Accounts Officer {Audit}, Director Schools Education, Karachi. He affirmed his signature on seizure memo. PW.6 Ghulam Rasool Jokhio is the Head Master and at the relevant point of time was holding additional charge of DOE {Male}, CDGK. He has verified his signature on the letter dated 23.05.2011 {Ex.11/01} addressed to EDO {Education}, CDGK in the matter of inquiry against the appellant. PW.12 Muhammad Amir Butt is Additional Director NAB, Karachi. He was authorized to conduct an inquiry into the matter. On the orders of Director General, PSP, IGP he conducted inquiry and concluded that appellant opened personal account in MCB and deposited several Government cheques in his account and 90% of the deposited amount was withdrawn by him and recommended for conversion of the inquiry into investigation. He produced authorization letter and inquiry report at Ex.18/1 and Ex.18/2 respectively. PW.2 Anwar Hussain Memon is Manager Operation, MCB Sindh Secretariat Branch. He has given the details of A/c No.006801114416 in the name of the appellant and handed over the relevant record with respect to the said account to investigating officer, who seized the same under a seizure memo. He produced account opening form, CNIC, acknowledgment, personal account client form, application for smart card, new account proof list, letter of thanks, 11 cheques, 5 deposit slips at Ex.7/1 to 7/10 respectively. PW.3 Abdul Bari {Manager NBP Sindh Secretariat Branch}. He has given the details of A/c No.1351-1 in the name of District Officer Education, which was opened on the recommendation of Executive District Officer {EDO} Education and

appellant was authorized to operate said account. He deposed that an amount of Rs.1,02,35,226/- was withdrawn through different cheques. He produced 34 cheques and CNIC of appellant. He also produced account opening form, SS card, letter of EDO Education and statement of account at Ex.8/2. PW.10 Sohail Khan is Manager Operation, KDA Civic Centre Branch, Karachi. He has given the details of A/c No.1171-9 and handed over account opening form, SS card, bank statement and CNIC to investigating officer, who took them into custody under a seizure memo. PW.12 Sarwan Ahmed is the investigating officer, who seized relevant record from banks and education department, recorded statements of witnesses and submitted reference in Court on the recommendation of competent authority. In view of this background of the matter, we are of the considered view that the prosecution has successfully discharged its burden of proving the guilt of the appellant, hence it was his duty to disprove the prosecution case and prove his innocence.

17. The learned counsel for the appellant has also claimed that the action of NAB against the appellant was discriminatory as it had only singled out the appellant as accused in the reference. This contention on the face of it seems to be legally incorrect. It is a well settled principle of criminal jurisprudence that challenging prosecution on the ground of discrimination cannot be a complete valid defence to absolve an accused from criminal liability arising from his actions or inactions. Any person charged for an offence is answerable for his own acts or omissions and has to defend himself in a trial for the offence with which he has been charged. In the case in hand, the appellant has failed to prove his innocence through cogent and reliable evidence.

18. As to the plea that he has been falsely implicated in this case on account of enmity with Ms. Fakhar Karim Siddiqui and Zaigum Abbas and the witnesses being inimical to the appellant have deposed against him favouring the prosecution is not borne out from the record. The witnesses being independent and private persons have specifically involved the appellant in the commission of the offence. The appellant has failed to establish any animosity or ill-will

against the witnesses, who have deposed against him and mere saying that he has falsely been implicated in this case is not sufficient to prove his innocence particularly in view of the fact that the prosecution witnesses were consistent and their evidence could not be shattered in cross-examination. If both the version, one put forward by the appellant and the other put forward by the prosecution, are considered in a juxtaposition, then the version of the prosecution seems more plausible and convincing and near to truth while the version of the appellant seems to be doubtful. It is noteworthy that during trial appellant has neither denied submission of cheques nor his signatures on it. No request was made to the learned trial Court to challenge the genuineness of such cheques and verification of his signatures through forensic expert and the said cheques are part of the record of this case. In the circumstances, the learned trial Court has rightly appreciated the evidence brought on record by the prosecution and recorded conviction acting upon the material available with the learned trial Court by holding that the prosecution has succeeded to establish its case against the appellant. We are also conscious of the fact that law requires that if accused had a defence plea the same should be put to the witnesses in cross-examination and then put forward the same while recording statement under Section 342, Cr.P.C. which is lacking in the instant case. In the circumstances, since the specific defence plea had not been taken by the appellant in his Section 342, Cr.P.C. the learned trial Court had rightly discarded the same to be not of confidence inspiring.

19. As to the last contention that the appellant had not drawn any personal gain or caused any financial loss to the National exchequer is concerned, we have minutely assessed the entire record, which reflects that appellant had withdrawn certain amount through cheques from the scholarship funds. He himself admitted such withdrawal in his Section 342, Cr.P.C. statement. The A/c No.0068-01-010014416, lying with Muslim Commercial Bank MCB, Bolten Market Branch, Karachi, was opened in the name of the appellant and none was shown as next of kin in the column "Authority to contract" except Deputy District Officer Education {DDOE} {Admn}. The purpose of this account was only

for issuance of crossed cheques by the appellant to the heads of the concerned schools for disbursement of scholarship funds to the eligible female students, but he obtained ATM facility without permission of the competent authority through his application dated 10.06.2004 {Ex.07/5} and withdrew certain amounts and encashed certain cheques. He also got transferred an amount of Rs.7,738,000/- through Cheque No.2746507 dated 05.07.2005 into his A/c No.1351-1, lying with National Bank of Pakistan, Sindh Secretariat Branch, Karachi. These cheques are part of the record of this case and the appellant has failed to furnish a plausible explanation with regard to said cheques. The record is suggestive of the fact that the cheques issued by the appellant were not crossed cheques and to some extent they were issued in the names of heads of the schools, but the entire record is silent as to the delivery of said to the heads of the schools for disbursement of the scholarship funds to the eligible female students of middle class. A keen look of the record reveals that the an amount of Rs.16,405,280/- was received by the appellant from the office of EDO {Education} in the head of scholarship funds for eligible female students of middle classes under Sindh Education Reforms Program {SERP}, but he disbursed an amount of Rs.3,670,000/- only and misappropriated/ embezzled remaining amount of Rs.12,735,280/-. Even otherwise the offence of corruption or corrupt practices as provided in clause (vi) of subsection (a) of section 9 of the Ordinance includes even an attempt to misuse authority so as to gain any benefit to any other person and it need not necessarily result in any personal gain to the accused. The said provision reads as under:-

"9. Corruption and Corrupt Practices:--"(a)(vi)
[If he] misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempt to render to do so, for willfully fails to exercise his authority to prevent grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority]".

20. The learned trial Court after scrutinizing the material available on record convicted the appellant on the ground that he being the

holder of public office misused his official authority and fraudulently caused huge loss to the National exchequer. It is noteworthy that the Courts in the past have extended lenient treatment to the accused involved in like cases but now when corruption is cutting the very root of the economy of the country at a large scale in a very organized manner and it has become free for all then it has become the primary and foremost obligation of the Court to arrest this evil monster which would ultimately be a threat not to latter alone but to the very survival of the State. Due to massive corruption the poor among poorer are not getting the basic facilities to live a peaceful and Hon'ble life as envisaged by the provisions of the Constitution. Majority of the children could not go to school as their parents cannot afford the education expenses, same is the problem in the health care sector for the poor and other departments. This homeland was not gifted to us but millions of lives were sacrificed in achieving independence for a better and Hon'ble life style and to become a welfare state where every citizen whether belongs to majority or minority would be entitled to equal rights as laid down in Part 1 of Chapter 1 of the Constitution of Pakistan, 1973. However the nation is still dreaming this dream which is yet to be given practical shape. If massive corruption is allowed to go unchecked, we would, remain unable to drop from our hands the begging bowls. In view of the globalization of the world, the independence of a country/State is mainly dependent on sound economy therefore, in the larger interest of the State and the nation, the Courts have to apply strict standards and to show a zero tolerance for corruption and people involved in such type of crimes whose guilt is well established should get the maximum and no mercy to be shown to them. As to the case law cited by the learned counsel for the appellant, in support of his submissions, in our humble view, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the appellant.

21. From the combined study of material available on record, we are of the humble view that the prosecution has successfully proved its case against the appellant beyond shadow of any doubt. Learned counsel for the appellant has failed to point out any

material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence and documents brought on record, hence calls for no interference by this Court. In view thereof, the conviction and sentence awarded to the appellant through impugned judgment dated 30.09.2019 warrants no interference. Consequently, the appeal, listed above, is dismissed as being devoid of any merit.

22. In sequel to above, the Const. Petition No.D-1130 of 2020, seeking post arrest bail, is dismissed as having become infructuous.

JUDGE

JUDGE

NAK/PA