

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Shamsuddin Abbasi

Criminal Accountability Appeal No.05 of 2019

1. For hearing of main case.
2. For hearing of M.A. No.7402 of 2020
a/w office objection (Application u/s 426 Cr.P.C.)
a/w Paper Book (04).

Appellant Nazir Ahmed Tony son of Abdul Majeed through
Mr. Rehman Ghous, Advocate.

Respondent The State through Mr. R.D. Kalhoro, Special
Prosecutor NAB.

Date of hearing **10.08.2021**

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JUDGMENT

SHAMSUDDIN ABBASI, J:- Through listed appeal, Nazir Ahmed Tony, appellant has challenged the vires of the judgment dated 16.01.2019, penned down by the learned Accountability Court No.IV {Sindh}, at Karachi, in Reference No.65 of 2007 {Consolidated Reference No.16, 65, 66 & 67 of 2007}, through which he was convicted under Section 10(a) of National Accountability Ordinance, 1999 (NAO, 1999) for commission of offences of forgery, criminal breach of trust, corruption and corrupt practices as defined in Section 9(a)(iii)(iv)(ix)(xii) of NAO, 1999, and sentenced him to undergo rigorous imprisonment for five (05) years and to pay a fine of Rs.10 million, recoverable as arrears of land revenue in terms of Section 33-E of the Ordinance, and to suffer a further period of one year rigorous imprisonment in lieu of fine, disqualified him for a period of ten {10} years to be reckoned from the date he is released after having served the sentence 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 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 from the date of his conviction.

2. At the very outset, the learned counsel for the appellant submits that he would not press this appeal on merits if the

conviction of five years awarded to the appellant is reduced to the period he has already undergone contending that the appellant has already served four years and nine months in prison and he is ready and willing to pay fine amount of Rs.10 million for his release. He further added that the appellant is a first offender having no previous criminal record and he is not a dangerous, desperate and hardened criminal as well he is not a previous convict and served sufficient punishment and due to his confinement in jail his family members are passing a miserable life, and that the appellant undertakes that he will prove himself as a law abiding citizen and will not indulge in any unlawful act.

3. On the other hand, learned Special Prosecutor NAB while supporting the impugned judgment, has argued that prosecution has successfully proved its case against the appellant beyond shadow of a reasonable doubt, therefore, the appeal merits no consideration and liable to be dismissed on merits. He further added that the appellant is involved in the offences of forgery, criminal breach of trust, corruption and corrupt practices as defined in Section 9(a)(iii)(iv)(ix)(xii) of NAO, 1999, which stand proved through a full dressed trial, therefore, he is also not entitled to the reduction of sentence.

4. We have given our anxious consideration to the submissions of both sides and perused the entire material available before us with their assistance including jail roll.

5. Per learned counsel the appellant is a sole bread earner of his family and he has already served four years and nine months in prison and his family is passing a miserable life due to his confinement in jail. Needless to say that normally, it is very difficult for a family to survive without support of earning member of the family. The position, being so, would be nothing but causing misery to the family of the appellant on account of his act. The peculiar facts and circumstances, so pleaded by the counsel for the appellant, having gone unchallenged by prosecution may well be taken into consideration for departing from the normal practice. As per jail roll dated 10.08.2021 the conduct of the appellant during confinement is "satisfactory". He is also ready and willing to pay the fine amount of

Rs.10 million and undertakes that he will prove himself a law abiding citizen and will not indulge in any unlawful act. He is the first offender and has no previous criminal history in his credit. Besides, the appellant claims himself to be only male member of the family and has also served more than four years of imprisonment, therefore, it is appropriate that appellant may be given an opportunity to improve himself as a law abiding citizen.

6. Keeping in view the above facts and circumstances of the case, we are of the considered view that prosecution has discharged its burden of proving the guilt of the appellant beyond shadow of reasonable doubt, thus the appeal is liable to be dismissed on merits. However, taking into account the plea of reduction of sentence, we find it a fit case for departure from the normal practice of determining quantum of sentence. The jail roll dated 10.08.2021 reflects that the appellant has served sentence of four years three months and three days including remissions, therefore, keeping in view his period of detention in prison, and the undisputed fact that the appellant is a first offender and has no previous criminal record/history on his credit as well as he is not a previous convict and more particularly his further detention in jail shall certainly compel his family to step-out for survival least bread which if result in bringing a slightest spot towards such helpless family shall ruin their lives, therefore, in our humble view it would serve both purposes of deterrence and reformation, if the sentence of five years reduced to one already undergone. Accordingly, the sentence of five years awarded to the appellant is modified and reduced to one already undergone. The appellant shall be released forthwith from prison if not required to be detained in connection with any other case, but subject to payment of fine amount of Rs.10 million as agreed and undertaken by him. The other sentences awarded in terms of Section 15 of NAO, 1999 shall remain intact.

7. This Criminal Accountability Appeal No.05 of 2019 stands disposed of in the foregoing terms.

JUDGE

JUDGE