

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Accountability Acquittal Appeal No. 35 of 2021

Date

Order with signature of Judge

**Present: *Mr. Justice Muhammad Junaid Ghaffar*
*Mr. Justice Agha Faisal***

Appellant: National Accountability Bureau
Through Dr. Raja Muhammad Ali,
Special Prosecutor NAB.

Respondents: Sameen Asghar & others.

Date of hearing: 07.11.2022

Date of Judgment: 07.11.2022

J U D G E M E N T

Muhammad Junaid Ghaffar, J.- Through this Criminal Accountability Acquittal Appeal, National Accountability Bureau (NAB) has impugned Judgment dated 29.04.2021 passed by the Accountability Court No. IV Sindh at Karachi in Reference No. 14 of 2012, whereby, the Respondents were acquitted.

2. Learned Special Prosecutor NAB has referred to Reference in question and submits that Respondent No.1, in connivance with the remaining Respondents, had acted beyond his authority inasmuch as he, while being, Acting Chairman of Pakistan Steel Mills Limited extended the time period of Free Credit Scheme, which was originally designed for a period of 60 days; hence caused losses to Pakistan Steel Mills, whereas, according to Special Prosecutor, learned Trial Court has failed to appreciate the evidence brought on record on behalf of NAB. According to him witnesses, who were summoned, have deposed against the present Respondents; hence, while admitting this Acquittal Appeal, summons / notices be ordered against the Respondents.

3. We have heard learned Special Prosecutor NAB and perused the record. In our considered view no case for even issuance of notice is made out. It would be advantageous to reproduce the relevant paras of Reference No.14/2012, which reads as under:-

“3. That the investigation report revealed that on 20 October 2008, a meeting of price fixation and review committee of PSM was held. Following attended the meeting:-

- i. Mr Moeen Aftab Shaikh, Chairman

- ii. Mr Sameen Asghar, Director Commercial
- iii. Mr Muhammad Sharif Awan, Director Finance
- iv. Mr Munawar Maqbool, DGM Marketing

In the said meeting various issues including declining position of sales were discussed and it was inter alia decided that free credit facility for 60 days without markup be extended to all customers on running / new contracts in LC from the banks acceptable to PSM. This facility would be available till 29th Nov 2008. Accordingly, PSM issued selling arrangements policy date 22 October 2008 in which the policy of free credit scheme was mentioned para h (v) as decided by price fixation committee.

4. That on 11 Nov 2008, a meeting of price fixation committee was again held attended by the following:-

- i. Mr Moeen Aftab Shaikh, Chairman
- ii. Mr Sameen Asghar, Director Commercial
- iii. Mr Muhammad Sharif Awan, Director Finance
- iv. Mr Abdul Azeem Soomro, DGM Marketing / Secretary

In the meeting, it was discussed that inspite of extension of free credit scheme for 60 days the position of sales had not been improved. The committee decided to review and rationalize the prices of products and to extend free credit facility from 60 days to 90 days. Accordingly, PSM issued selling arrangements policy dated 12 November 2008 in which, the policy of free credit scheme was mentioned in para h(v) as decided by price fixation committee.

5. That finally, a meeting of price fixation committee was held on 23rd Nov 2008 attended by the following: -

- i. Mr Moeen Aftab Shaikh, Chairman
- ii. Mr Sameen Asghar, Director Commercial
- iii. Mr Muhammad Mansoor, GM Finance
- iv. Mr Abdul Azeem Soomro, DGM Marketing / Secretary

In the said meeting the position of sales was reviewed and prices of PSM products were reduced drastically. In the said meeting as mentioned at para 729 of office note it was decided that 90 days from credit scheme would be abolished w.e.f. 1st December 2008. The minutes of the meeting were prepared by PW Abdul Azeem Soomro, being Secretary of Price Fixation Committee, which were forwarded by the accused Sameen Asghar and finally approved by the then Chairman, Moeen Aftab Shaikh. Accordingly, PSM issued selling arrangements policy dated 1st December 2008 in which there was no extension of free credit scheme.

6. as per statements of PWs, Riaz Hussain Mangi, the then Deputy Manager/ Incharge Marketing and Abdul Azeem Soomro, the then DGM Marketing the accused Sameen Asghar called a meeting in his office attended by both the PWs. At that time, the accused Sameen Asghar was also working as Acting Chairman due to absence of the Chairman. In the said meeting, the accused Sameen Asghar directed PW Riaz Mangi to put up a note dated 2-12-2008 for extension of free credit scheme upto 31st Dec 2008 for the customers who had already opened LCs before 1st December 2008 in the favour of PSM under this scheme but could not avail the facility under the scheme. Accordingly, the note was prepared and put up to the accused Sameen Asghar who approved and thereby extended the scheme.”

4. From perusal of the aforesaid contention of NAB, it appears that to reduce the piling stocks of various materials including billets, a Free Credit Facility of 60 days without markup was extended to all customers of Pakistan Steel Mills against Letter of Credits to be issued in its favour only from authorized banks and acceptable to Pakistan Steel Mills. Initially such facility was available till November 29th, 2008. Thereafter, the Price

Fixation Committee on 11.11.2008 extended the said period from 60 days to 90 days and finally once again on 23.11.2008 the said period was extended up to 01.12.2008. It is the case of NAB that Respondent No.1 while being in office as Acting Chairman extended the Free Credit Scheme up to 31.12.2008 for dealers / customers, who had already opened Letter of Credits before 01.12.2008 and approval of such decision by Respondent No.1 in connivance with remaining Respondents caused loss in the shape of accrued mark up as recorded by the Chartered Accountant appointed for forensic audit of Pakistan Steel. This, in fact, appears to be the entire gist of the case set up by the NAB authorities. Learned Trial Court after recording the evidence, the material placed before it, and the deposition of witnesses as well as their cross examination has been pleased to acquit the respondents and the relevant paragraphs of the impugned judgment of learned Trial Court reads as under: -

“39. The PW-3 has clearly stated that the preparation of note was routine matter and he has not mentioned any reservation on his part for preparing the note. Similarly the management response to the auditor is shown at page-121 of audit report produced at Ex. 19/2, in which it is mentioned as under:

"It is reiterated that the Free Credit Scheme was not extended but the L/C/s opened prior to December 2008 in favor of Pakistan Steel were allowed to be entertained. The original scheme was earlier announced in October 2008 for 60 days free credit with no time limit but on 11th November the scheme was restricted till December 2008. As the huge stocks were still piled up, the L/Cs opened till November were allowed to be entertained. Hence the extension was within the framework of price fixation committee decision of 21st November 2008 (effective from 26th November 2008). Moreover, the approval was within competence of the Director Commercial/Acting Chairman. All these actions were taken for promotion of sales."

42. A part from this, PW-11 I.O of FIA has admitted in his cross that those who opened the LC within stipulated period have legal right to lift the goods. Similarly, PW-12 I.O of NAB has also admitted in his cross that under the terms of LC PSM was under obligation to supply the quantity under mentioned in the LC. The admission of both I.Os have also created serious dent in the prosecution case if PSM was under obligation to supply quantity under mentioned LC than to such approval was required for extension of date to lift the PSM product. In this matter a note was submitted by PW-2 for approval before acting chairman accused Sameen Asghar which he had approved by exercising his administrative powers being acting chairman of PSM. From the above material available record, I have found that no illegality was committed by accused Sameen Asghar being Acting Chairman while approving the note submitted by PW-2 for extension of date to lift the PSM product who had already opened their LC.

46. Now the question arises whether the consumer dealers had opened LCs before the expiry of free credit scheme announced by PSM. From the perusal of LCs produced by PW-6, PW-7 and PW8, it reveals that all LCs were opened before the expiry of date of free credit scheme i.e. 30.11.2008. In this regard PW-6 Syed Irfan Haider Jafari has produced LC's of M/s Export International at Ex.15/1 and Ex.15/2, which were opened on 29.11.2008 with Habib Metropolitan Bank. PW-7 Sharif Ali Siddiqui has produced LC of M/s Pakistan Steel Mill Corporation at Ex. 16/1, which was opened with Askan bank on 28.11.2008. PW-

8 Parvez Iqbal Khan has produced LC of M/s Amreli Steel at Ex 17/1, which was opened with Faisal Bank on 29.8.2008. It means all the LCs were opened before the expiry date of free credit scheme, which was 30.11.2008. Since LCs were opened before expiry of FSC by all five consumer/trader dealers namely accused Abbas Akbar Ali, Ch. Muhammad Shafiq, Tariq Irshad, Mehmood and Syed Asghar Jamil Rizvi, therefore, they are legally entitled to lift the PSM product for which they paid amount through LCs to the PSM as per contract and FSC.”

5. From perusal of the above, it appears that the entire case of NAB is premised on the fact that Respondent No.1 while in the office as Acting Chairman, extended the period of Free Credit Facility. However, it appears that this, on the face of it, is incorrect. The Credit Facility was initially for 60 days; which thereafter, was extended for 90 days by the permanent Chairman and Price Fixation Committee. Whereas, in a meeting conducted by Respondent No.1 while in the office as Acting Chairman, it was only permitted that the dealers be allowed to lift the goods in question, who had already opened the Letters of Credit before the cut off dates as stipulated in the meeting conducted by the permanent Chairman of Pakistan Steel. i.e. 01.12.2008. In fact, there was no extension given by Respondent No.1. It was only to the extent of permitting deliveries of orders for which the letters of credits had been opened in favour of Pakistan Steel. It is a matter of record that the said permanent Chairman, nor other members of the Price Fixation Committee were never arrayed as accused in the Reference in hand. Per settled law, once a Letter of Credit has been established, vested rights accrue. In the present case, private Respondents, who were dealers and contractors of Pakistan Steel, had their right established upon opening of Letter of Credit in favour of Pakistan Steel. Once the Letter of Credit was established, it was only procedural in nature that any further period was required to lift the cargo. It is not in dispute that such cargo was in large numbers and in tens and thousands of Tons, for which the Letter of Credits were already opened before the cut off dates, and therefore, there was no occasion for NAB to make out a case against the present Respondents. The Trial Court has correctly appreciated the evidence and material placed before it and no case for indulgence is made out, whereas, the judgment of the trial Court is proper and in accordance with law as well as the facts as available on record.

6. Lastly, it is well settled by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent

reasons are required to dislodge such presumption¹. It is further settled that acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, resting upon fringes of impossibility and resulting into miscarriage of justice. It cannot be set aside merely on the possibility of a contra view². A judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous³. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn⁴.

7. In view of hereinabove facts and circumstances of the case, in our considered view no case for indulgence was made out; hence by means of a short order in the earlier part of the day, this Criminal Accountability Acquittal Appeal was dismissed in limine, and these are the reasons thereof.

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¹ Zaheer Sadiq v Muhammad Ijaz (2017 SCMR 2007)

² Muhammad Shafi alias Kuddoo v The State (2019 SCMR 1045)

³ Syed Sadam Hussain v Faisal Shah (2019 YLR 1292)

⁴ The State v Abdul Khaliq (PLD 2011 SC 554)