

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 33 of 2020  
 Criminal Appeal No. 62 of 2020  
 Criminal Appeal No. 64 of 2020  
 Criminal Appeal No. 65 of 2020  
 Criminal Appeal No. 66 of 2020  
 Criminal Appeal No. 88 of 2021  
 Criminal Appeal No. 89 of 2021  
 Criminal Appeal No. 167 of 2021  
 Criminal Appeal No. 318 of 2021  
 Criminal Appeal No. 358 of 2021  
 Criminal Appeal No. 494 of 2021

Appellant : Muhammad Pervez Butt  
 through Mr. Raj Ali Wahid Kunwar, Advocate.

Respondent : The State  
 through Mr. Mubashir Ali Mirza, Assistant Attorney  
 General.

Date of hearing : 3<sup>rd</sup> October, 2022

### JUDGMENT

**Omar Sial, J.:** Muhammad Parvez Butt provided immigration consultancy services under the banner of Mark Alexander Isthmus (Pak) Pvt. Ltd. In January 2012, the company placed an advertisement in an Urdu newspaper inviting potential clients who wanted to try their luck in foreign lands. Butt took the fee from these persons but was unable to perform his part of the promise; nor did he return the fee taken from these persons. When attention of the F.I.A. was attracted to Butt's activities, the F.I.A. apparently placed an advertisement in the national press inviting anybody who had a complaint against Butt to come forward. 19 persons came forward. Out of these 19 complainants, it appears that the cases of 11 complainants ended up in a conviction and sentence for Butt. A bird's eye view of these cases and the appeals filed in this court by Butt is as follows:

Appeal No.	F.I.R. No. & date	Sections	Complainant name	Sentence	Date of judgment	Name of Court
33/2020	276/2015 Dt:28.4.2015	22-B	Rizwan	3 years. In lieu of fine, 6 months	23.12.2019	Special Judge, Central-I

62/2020	230/2015 dt: 9-1-2015	22-B	Ahtashamul Haq	3 years. In lieu of fine, 6 months	23.12.2019	Special Judge, Central-I
64/2020	282/2015 dt: 9-1-2015	22-B	Muhammad Asif Soomro	3 years. In lieu of fine, 6 months	23.12.2019	Special Judge, Central-I
65/2020	324/2014 dt: 26-11-2013	22-B	Abdul Rehman	3 years. In lieu of fine, 6 months	23.12.2019	Special Judge, Central-I
66/2020	355/2015 dt: 2-6-2015	22-B	Muhammad Imran	3 years. In lieu of fine, 6 months	23.12.2019	Special Judge, Central-I
88/2021	307/2014 dt: 12-11-2014	22-B	Aamir Gulzar	3 years. In lieu of fine, 3 months	25-1-2021	Special Judge, Central-I
89/2021	325/2014 dt: 19-11-2013	22-B	Muhammad Farooq	3 years. In lieu of fine, 6 months	25-1-2021	Special Judge, Central-I
167/2021	281/2015 dt: 25-10-2015	22-B	Mumtaz Hussain Lashari	5 years. In lieu of fine, 6 months	4-1-2021	Special Judge, Central-I
358/2021	275/2015 dt: 23-4-2015	22-B	Gul Khatab Khan	5 years. In lieu of fine, 6 months	9-6-2021	Special Judge, Central-I
318/2021	160/2015 dt: 1-10-2014	22-B	Abdul Sajid	5 years. In lieu of fine, 6 months	28-5-2021	Special Judge, Central-I
494/2021	30/2018 dt: 6-2-2018	22-B	Adnan Murtaza	5 years. In lieu of fine, 6 months	27-7-2021	Special Judge, Central-I

2. Learned counsel for the appellant up front submitted that he had been instructed to not argue the appeals on merits but requested that it be ordered that the sentences awarded to Butt be ordered to run concurrently. He also prayed that the court take a lenient view and reduce the sentence in the cases where a 5 year imprisonment has been awarded to a term which Butt had already remained in prison for. Learned AAG conceded that in the circumstances of the present case, the sentences awarded to Butt should run concurrently and that he would have no

objection if the sentence awarded to him is reduced on humanitarian grounds.

3. I have heard both, the learned counsel for the appellant as well as the learned AAG. My observations and findings are as follows.

4. In essence, it is an admitted position that all the above convictions and sentences came in the course of one transaction. The complainants came to the F.I.A. piecemeal and a separate F.I.R. was registered on behalf of each complainant as and when they came. Similarly, the learned trial judge, who was the same in all the cases, in his wisdom thought it appropriate to not amalgamate all the cases and passed separate judgments in the cases arising out of each F.I.R. The cumulative effect of the foregoing was that currently Butt has been sentenced to 41 years in prison. A person convicted for murder is out of jail in a maximum of 25 years whereas a person convicted of an offence under the Emigration legislation is facing a sentence of 41 years. This is absurd to say the least. If 100 complainants had come forward, his sentence would probably have been 500 years. Surely, this was not the intention of the legislation. A situation like this would lead to what the Supreme Court of Pakistan in the **Mst. Shaista Bibi and another vs The Superintendent, Central Jail, Mach and 2 others (PLD 2015 SC 15)** termed a “detestable hardship”. In the same case the Court observed that “Besides the provisions of section 35, Cr.P.C. the provisions of, section 397, Cr.P.C. altogether provide entirely a different proposition widening the scope of discretion of the Court to direct that sentences of imprisonment or that of life imprisonment awarded at the same trial or at two different trials but successively, shall run concurrently. Once the Legislation has conferred the above discretion in the Court then in hardship cases, Courts are required to seriously take into consideration the same to the benefit of the accused so that to minimize and liquidate the hardship treatment, the accused person is to get and to liquidate the same as far as possible.” Reference may also be made to the case of **Rahib Ali vs The State (2018 SCMR 418)**.

5. The jail roll of the appellant reflects that he has remained in prison for 3 years and 1 month. This does not include the remissions to which he has been entitled. In most of the cases in which he was convicted and sentenced he has already undergone the sentence given to him, whereas, in the case he was given a 5 year conviction, he has almost completed his sentence. I am cognizant of the fact that the appellant has also been sentenced to pay a fine, and if he did not do so, he would have to remain in prison for a period of 6 months in each case except in Criminal Appeal No.88/2020 (3 months). The fine imposed upon him is Rs.500,000 each in Criminal Appeal Nos.33/2020, 62/2020, 64/2020, 65/2020, 66/2020 whereas in Criminal Appeal Nos.88/2021, 89/2021, 167/2021, 318/2021, 358/2021, 494/2021 fine is Rs.112,000, Rs.600,000, Rs.517,100, Rs.1,000,000, Rs.750,000, Rs.855,000 respectively. This would mean that either the appellant pay Rs.6,334,100 or remain in prison for another 5 years and 3 months. The Lahore High Court in **Muhammad Sharif vs The Crown (PLD 1955 Lahore 650)** has observed that “The sentence of a fine of Rs. 2,000 is also excessive in view of the financial position of the appellants, and is likely to inflict serious hardship upon their families. Where fine is beyond the means of an offender to pay it, it ought not to be inflicted merely in order that a substantive period of imprisonment in default should be suffered.” It is pertinent to note that section 63 P.P.C. also shows the intention of the legislature when it provided that in cases where the fine had not been specified, the fine imposed should not be excessive.

6. Learned counsel has argued that the appellant is a 65 years old infirm person who suffers from various ailments. He is now confined to a wheel chair. Indeed, the appellant who comes for the hearings, does not appear to be in the best of health. He has 3 young daughters, who are not in a position to earn for themselves and who have suffered greatly on account of the father’s doings. One of the daughters, due to the trauma the family has faced is now 8 years behind in her education. For his part, the appellant maintains to date that it was an accountant in the company who had siphoned of the money, but that he has no evidence to show the same. In

support of submission, he said that in spite of all efforts by the investigating officer, no money was recovered. Be that as it may, he has shown remorse and repentance and has not wasted this court's time by up front admitting his guilt. His financial distress is also apparent from the fact that the appellant's counsel has appeared in a pro bono capacity.

7. In view of all the above observations and taking guidance from the wisdom of the Supreme Court of Pakistan, it is ordered as follows:

- (i) The fine amount in each case is reduced to Rs. 10,000.
- (ii) In the event the fine amount is not paid, he will have to undergo simple imprisonment for a period of 1 month in each case. This period shall run successively.
- (iii) The sentences awarded to the appellant in each case shall run concurrently (except for the period in lieu of fine).
- (iv) His sentence in those cases where he has been convicted for a period of 5 years is reduced to the one already undergone by him.
- (v) He is on bail. His bail bonds shall stand cancelled and sureties discharged when evidence of payment of fine or having spent the additional period of confinement in lieu of payment is completed.

8. The appeals are therefore dismissed but subject to the above modification in sentence.

JUDGE