

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Acquittal Appeal No. 36 of 2021

Criminal Accountability Acquittal Appeal No. 37 of 2021

Date

Order with signature of Judge

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

Appellants in both Appeals:

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

Respondents:

Shahid Hussain
(in Acquittal Appeal No. 36/2021)
Moin Aftab Shaikh & 15 others
(in Acquittal Appeal No. 37/2021)

Date of hearing:

17.10.2022.

Date of Order:

17.10.2022.

ORDER

Muhammad Junaid Ghaffar, J.-

Both these Acquittal Appeals arise out of a common Reference bearing No.15 of 2012 & 15A of 2012 filed before the Accountability Court No. IV at Karachi. In both the Appeals, judgment is though separate but is dated 31.7.2021, whereby, the Respondents have been acquitted and is common as to the reasoning assigned; the only difference being is a separate charge against the Respondents / Accused; however, the allegation as well as the evidence is same; hence, both these Appeals are being decided through this common order.

2. Learned Special Prosecutor NAB has argued that the trial Court had misdirected itself in acquitting the Respondents inasmuch as the forensic audit was conducted by the Chartered Accountants engaged by Pakistan Steel Mills; pursuant to which the Reference was filed by the NAB authorities on the directions of the Hon'ble Supreme Court in a Suo Moto case on the basis of available record prepared by the said Chartered Accountants as well as the Minutes of the Meeting of Pakistan Steel, whereby, it has come on record that Billets and HR Products were sold at a lesser price as against the price prevailing in the international market; hence the Respondents had committed an offence under Section 9 (a) (vi) of the National Accountability Ordinance 1999. He has made his best

efforts and has read out various portions of the evidence as well as impugned judgment, with a prayer that both the Appeals be admitted for regular hearing with issuance of summons against Respondents.

3. We have heard learned Special Prosecutor NAB and have perused the record. After going through the record placed before us and the assistance provided by learned Special Prosecutor NAB, we are not inclined to issue any notice to the Respondents inasmuch as the entire case of NAB was premised in the Reference on some forensic audit report conducted by Chartered Accountant, namely, M/s. Awais Hyder Liaquat Noman, and their witness PW-16 Ahmed Saleem was summoned before the Trial Court and learned Trial Court after considering his deposition has observed as follows:

“57. The prosecution has also relied upon the forensic audit report produce at Ex 46/1 by PW-16 Ahmed Saleem. PW-16 Ahmed Saleem has stated in his deposition that they have identified number of observations and one of these observations was related to sales of billets to certain customers in deviation of policies. In his cross he has stated that they categorized the observation No.7.1.1 mentioned in page 85 of volume-1 of forensic audit report and in mismanagement category at page 3 and 4 of volume-4 of forensic audit report and held responsible the chairman accused Main Aftab Sheikh and accused Sameen Asghar for mismanagement. He has also admitted that they did not hold responsible any dealer and consumer dealer for the mismanagement in their observation at page 3 and 4 of volume-4 of forensic audit report. He has also admitted that observation for pricing and products are mentioned therein that corruption is Nil and found loss due to negligence and mismanagement. He has also admitted that no responsibility was fixed to the traders and dealers for corruption in their observation available at page-3 of volume-IV of Exh.46/1. The Evidence of PW-16 is very important and he conducted audit report alongwith other members. The admission of PW-16 regarding his observation against accused Moin Aftab Shaikh and Sameen Asghar is very important, as according to PW-16 miss-management is not a corruption. Admittedly, miss-management or negligence does not fall within the ambit of corruption or corrupt practices but it falls with the ambit of simple miss-conduct under which accused can only be tried by department proceedings as per Service Rules 1973. Moreover, PW-16 Ahmed Saleem, has categorically stated that they did not hold responsible any trader/consumer dealer for the mismanagement in their observation at page 3 and 4 of volume -4 of forensic audit report. Moreover, PW 2 Riaz Hussain Mangi has admitted in his cross that he did not agree with the finding of forensic audit report in respect of sales. He is also admitted that auditor report is contradictory. A part from this, high power committee was constituted by PSM in order to examine forensic audit report and the said committee declared forensic audit report as highly defective. PW-3 Azeem Soomro has also admitted in his cross that he did not agree with the finding of forensic audit report in respect of sales. He is also admitted that auditor report is contradictory. A part from Ex 46/1) has completely rejected forensic audit report on the round that the report is contrary to the TOR and without any collection of any evidence. The PSM management in its response on final report of forensic accountancy submitted by M/s Awais Hyder Liaquat Nauman & Company., Chartered Accountant produced alongwith Ex.26/6 and page 1 & 2 of its volume-V.”

3. From perusal of the aforesaid finding of the learned Trial Court and the evidence of the said witness it has come on record that insofar as the pricing of the products is concerned, there is no element of corruption and at best it was a case of negligence and mismanagement on the part of Respondents No.1 & 2, who were the officials of the Pakistan Steel. Insofar as the remaining respondents i.e. Dealers of Pakistan Steel are concerned, it was admitted that in the entire forensic report, no responsibility was fixed against the traders and dealers for any alleged corruption. The witness has further admitted that insofar as mismanagement is concerned, that does not automatically result in corruption and is a case of misconduct, which could have been taken care of by way of departmental proceedings. The witness has further admitted that the dealers and traders were not held responsible for any such negligence and mismanagement. P.W.2 Riaz Hussain Mangi has admitted in his cross-examination that a high powered committee was constituted by PSM to examine forensic audit report and the said Committee came to the conclusion that forensic report was highly defective. Similarly, P.W-3 Azeem Soormo has also admitted in his cross-examination that he could not agree with the forensic audit report, whereas, he has further deposed that the audit report is contradictory. We have time and again confronted learned Special Prosecutor NAB as to the evidence of P.Ws-2 & 3 and in response he has argued that both these witnesses were not summoned by the prosecution in respect of forensic audit; hence the said piece of evidence may be discarded. However, we are not inclined to accept this contention inasmuch firstly, these were prosecutions witnesses; hence, prosecution ought to have objected to such part of the evidence; and secondly, even otherwise, deposition / evidence of a witness is to be believed and looked into as a whole, otherwise the entire evidence of such witness is to be discarded. The rule now is that a witness who lied about any material fact must be disbelieved as to all facts as held in the case of *Khizar Hayat*¹, wherein the Hon'ble Supreme Court has deliberated as to the implication of a Latin phrase "*Falsus in uno, falsus in omnibus*".

4. The learned Trial Court has observed in Para-62 of the judgment as under: -

"62. Besides above evidence, evidence of PW-18 Ghulam Hussain is also important in this reference as he has allegedly calculated difference of prices on the direction of I.O. PW-18 Ghulam Muhammad was posted as Deputy Manager Cost Accountant Department of PSM and he has

¹ PLD 2019 SC 527

deposed in his chief that he appeared before I.O Kashif Raza who shown him material lifting position of PSM product on his computer alongwith International Market price of HR material and PSM product prices and asked him to evaluate the prices and ascertain the excepted losses and gain to the customers. On his computer, he calculated the loss and gain of customer and shown to same to the I.O and I.O had taken the print of said documents from his computer, which have been produced at Ex.48/1 to Ex.48/3 in which profit and loss of three companies have been shown. Learned defence counsels have contended that loss calculated by PW-18 is not admissible without production of documentary evidence as well as source of International prices. In this regard, they have pointed out the cross of PW-18. In cross, PW-18 Ghulam Muhammad has admitted that he prepared evaluation report by going through the forensic audit report at pages 87 and 89 of volume-I placed at Ex.41/1, on computer of the I.O. He has also admitted that he has not procured the goods declaration from the Custom Department of steel products, and their taxes and cost of import for preparation of the evaluation report. He has also admitted that he prepared report without calculation of the landed cost of steel products in Pakistan market: He has also admitted that the market price of steel products included, the freight charges, taxes, duties and the transportation charges from port to market. He has also admitted that he has not included freight charges, taxes, duties and transport charges. From the above admissions of PW-18 Ghulam Muhammad, it has come on record that he prepared the report without calculation of land cost of steel product, freight charges, taxes, duties and local prices of PSM product, Moreover, he has also admitted that he has not compared the local market price and International market price while preparing evaluation report. Since PW-18 has prepared evaluation report without considering the above inputs including landed price, freight charges, taxes duties and local prices, therefore, such evaluation reports produced at Ex:48/1 to Ex 18/3 are not worthy of reliance.”

5. Perusal of the aforesaid finding of the learned Trial Court further reflects that the evidence of P.W-18 Ghulam Muhammad has also been looked into and from the above, it clearly reflects that insofar as the working regarding prising mechanism and the international prices are concerned, same was also hearsay and was not authentic. There are several questions in respect of which the said witness has not been able to give proper explanation rather has made admission, which goes in favour of the accused / Respondents.

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 presumption². 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

² Zaheer Sadiq v Muhammad Ijaz (2017 SCMR 2007)

aside merely on the possibility of a contra view³. A judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous⁴. 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 drawn⁵.

7. Therefore, in our considered view the Appellant keeping in mind the narrow scope of an Acquittal Appeal has not been able to make out a case and we do not find any reason to interfere with the impugned judgment of the Trial Court; as such the same is upheld and maintained. As a consequence, thereof, both these Criminal Accountability Acquittal Appeals were dismissed in *limine* by means of a short order in the earlier part of the and these are the reasons thereof. Office shall place copy of this order in the connected file.

J U D G E

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³ Muhammad Shafi alias Kuddoo v The State (2019 SCMR 1045)

⁴ Syed Sadam Hussain v Faisal Shah (2019 YLR 1292)

⁵ The State v Abdul Khaliq (PLD 2011 SC 554)