

# **IN THE HIGH COURT OF SINDH AT KARACHI**

## **Criminal Appeal No. 307 of 2023**

Appellant Mirza Noman Baig : through Mr. Mumtaz Ali Khan  
(on bail) : Deshmukh, Advocate

The State : through Mr. Siraj Ali Khan Chandio,  
Addl. Prosecutor General, Sindh

Sui Southern Gas Company : through Mr. Malik Sadaqat Khan,  
(SSGC) : Special Prosecutor for SSGC

Date of hearing : 13.08.2024

Date of judgment : 13.08.2024

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### **JUDGMENT**

**MUHAMMAD SALEEM JESSAR. J-** By means of instant Cr. Appeal the appellant has assailed the Judgment dated 07.06.2023 passed by learned Sessions Judge-II, Karachi-Central, in Session Case No. 573 of 2020, being outcome of FIR No. 21 of 2020 under Sections 15, 17 and 24 Gas (Theft, Control & Recovery) Act, 2016 registered at P.S. SSGC Karachi, whereby appellant was convicted for offence under Section 15 of the Act, 2016 and sentenced to undergo imprisonment for five (5) years and to pay fine of Rs.5,00,000/- and in default to suffer simple imprisonment for six months more.

2. Brief facts, relevant for the disposal of instant Cr. Appeal are; that on 28.04.2020, at 1700 hours statement of complainant Rahim Buksh S/o Lakha Dino was recorded under Section 154 Cr. P.C, wherein he stated that he was Deputy Manager in SSGC. On that day, on spy information he alongwith Abdul Saboor Shaikh, Superintendent, technical staff of SSGC and police party

headed by SIP Muhammad Ayoub, left office and went to Plot No. 55, Sector 16-B, Malik Anwar Goth, North Karachi and reached there at 1500 hours, where they noticed that there existed a factory of ring Paapar wherein a direct connection was obtained through the sui gas pipe and gas was being used to run two burners, one of 40 nozzles and other of 18 nozzles. Accordingly, they removed the illegal connection through the help of technical staff, secured 40 nozzles burner alongwith valve and other burner of 18 nozzles with valve and plastic pipe of about 42 to 43 feet into their possession. They also obtained photographs of the place of incident and prepared inspection note. The spy had disclosed the name of owner of the business as Noman Baig S/o Saleem Baig; however, at that time he was not available at the place of incident. On 04.05.2020, accused appeared at Police Station and produced copy of order passed in BBA No.623/2020 dated 02.05.2020 by this Court, whereby interim bail was granted to him. During interrogation accused Mirza Noman Baig disclosed that the owner of said premises was Syed Mahboob Bukhari S/o Syed Hassan Shah Bukhari, from whom he had obtained the premises on rent of Rs.25,000/- p.m. and was doing the business of Paapar, Said Syed Mahboob Bukhari during investigation disclosed that at the time of tenancy agreement with accused Mirza Noman Baig he had informed him that there was no sui gas meter and he had to use LPG Cylinders for said purpose. He further disclosed that on 19.03.2019 a sui gas team had taken the sui gas meter due to breakage for testing purpose and he had received letter of quantum of loss of Rs.6,35,200/- from Sui Gas Department. SIP Muhammad Ayoub prepared memo, recorded statement of complainant under Section 154 Cr. P.C, which has been transcribed in the F.I.R.

3. After registration of F.I.R. investigation was handed over to SI Muhammad Bahadur, who in the company of complainant and PW Abdul Saboor Shaikh visited place of incident where on the pointation of complainant he inspected the place of incident. The place of incident was situated at Plot No. 55, Sector 16-B, Malak Anwar Goth, North Karachi. It was a plot surrounded with the walls and one room was constructed there. He inspected the sui gas connection from where the gas was being theft and thereafter prepared the memo in presence of Rahim Buksh Deputy Manager and Abdul Saboor Shaikh, Superintendent SSGC. At the same place, complainant handed over 13 photographs of place of incident on four pages, which he secured and made part of the record. He then returned to Police

Station and recorded statements of PWs under Section 161 Cr. P.C. On 29.04.2020, he issued letter to Deputy Commissioner for ownership of the place in question. He also tried to search the accused but could not find but on 4.05.2020 the accused appeared before him with an order of interim bail and he also joined him in the investigation and recorded his statement. During statement, the accused disclosed that he had obtained the premises in question on rent from one Syed Mahboob Ali at the rent of 25,000/- p.m. He also handed over a copy of tenancy agreement. No response from the office of Deputy Commissioner received. He; however, received a letter mentioning quantum of loss. He also recorded statement of one private witness Mahboob Ali. After completing investigation, he submitted the challan in the court of law.

4. In order to prove its case, prosecution examined complainant Rahim Bukhsh, Deputy Manager SSGC, as P.W-1 at Ex. 4, who produced Inspection Note as Ex.5, 13 photographs of place of occurrence as Ex. 6, seizure memo as Ex.7, statement under Section 154 Cr. P.C. as Ex. 8, copy of FIR as Ex. 9 and memo of inspection of place of incident as Ex. 10. PW-2 Abdul Saboor Shaikh was examined at Ex.11, while PW-3 SIP Muhammad Ayoub was examined at Ex.12, who produced departure entry No.18 recorded at 1230 hours as Ex. 13, entry of lodging of FIR as Ex.14. SI Muhammad Bahadur was examined as PW-4 at Ex.15, who had conducted investigation of the crime. He produced departure entry as Ex. 16, letter addressed to Deputy Commissioner as Ex.17, letter addressed to SSGC Authority as Ex.18, copy of tenancy agreement as Ex. 19, letter mentioning quantum of loss as Ex. 20. PW-5 Syed Mahboob Ali Bukhari was examined at Ex.21. Thereafter, S.P.P. appearing for the State vide statement Ex. 22 closed prosecution side and produced letter of quantum of loss.

5. Statement of accused under section 342 Cr. P.C. was recorded at Ex.23, wherein he denied prosecution allegations and claimed to be innocent. However, he did not examine himself on oath nor produced any witness in his defence.

6. After formulating points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court

convicted and sentenced the appellant vide impugned judgment, as stated above, against which the appellant has preferred instant appeal.

7. I have heard the arguments advanced by learned counsel for the appellant, Special Prosecutor, SSGC as well as Additional P.G. appearing for the State and have perused the material available on the record.

8. At the very outset, learned counsel for the appellant submitted that total outstanding amount against the appellant was Rs. 500,000/- and out of said amount, appellant had already deposited Rs. 200,000/- on 26.06.2023 whereas, for remaining amount of Rs. 300,000/- appellant has handed over the pay order No. IB 00809877 dated 13.08.2024 to Mr. Malik Sadaqat Khan, Special Prosecutor SSGC in court on 13.08.2024. He, therefore, submitted that the disputed amount is no longer due on his part, therefore, he may be discharged from the liability and may be acquitted of the charges.

9. On the other hand, learned Special Prosecutor SSGC as well as learned Additional Prosecutor General, Sindh conceded to above request of learned counsel for the appellant and submitted that entire outstanding amount against appellant has been paid up by him, therefore, they have no objection if by taking lenient view, the period already undergone by the appellant in detention may be considered and he may be released. Learned Deputy P.G., Sindh as well as Special Prosecutor SSGC have also no objection if period of incarceration which he was to undergo in lieu of fine, may be reduced to the period of his detention he has already undergone.

10. As the learned counsel for the appellant has not attacked the impugned judgment on merits and has only made the above request for reduction of sentence, therefore, I shall not touch the merits of the case.

11. It may be observed that in such cases where the accused persons have refunded the outstanding amount, Superior Courts have taken a lenient view while deciding the appeals preferred by the accused against the conviction.

12. In NAB Ordinance, 1999 too by means of introducing *Plea Bargain* in Section 25 it has been provided that in case accused of any offence under the said Ordinance voluntarily returns the gains etc. **acquired by him through corruption or corrupt practices**, he may be **released** by the Chairman with the

permission of the concerned Court and on the basis of this provision of law, in plethora of cases accused persons have been released who had entered into plea bargain and consequently refunded the outstanding amount due against them.

13. Even in the Gas (Theft, Control and Recovery) Act, 2016 itself by means of incorporating Section 6, the legislature has provided two remedies for recovery of dues / outstanding amount viz. filing of complaint for initiating criminal proceedings and instituting suit for recovery of the outstanding amount.

14. In this connection, reliance may also be placed on the judgment pronounced by this Court in the case of *ALI HASSAN SHAIKH Vs. The State*, reported in 1984 P. Cr. P.C. 2177 [Karachi], wherein it was held as under:

*“There is a case of 1971 and from the statement it appears that, appellant is no more in service. He has refunded the amount of Rs. 20,022.79 in 1972. I am inclined to take lenient view in the circumstances mentioned above.”*

15. Accordingly, Cr. Appeal filed by the accused in the said case was disposed of in the following terms:

*“For the foregoing reasons, I reduce the sentence from 12 months’ R.I. and fine of Rs. 21,000 to imprisonment till rising of Court and order to pay fine of Rs. 5,000 or in default to suffer 3 months’ R.I. With the above modification in sentence, I dismiss this appeal.”*

16. In Cr. Appeals No. 331 of 2021 and 181 of 2022, where the accused was allegedly involved for committing offence under Section 15 of the Gas (Theft, Control and Recovery) Act, 2016 like the present case, and had refunded the outstanding amount due against them, I had passed similar order in the following terms:

*“In the given circumstances I am inclined to take a lenient view in the matter. Accordingly, the sentence awarded to the appellant including the period they were to undergo in lieu of fine, is reduced to the period of their detention in jail they have already undergone. Since learned Special Prosecutor for SSGC as well as Assistant Attorney General for Pakistan do not oppose the request so made by counsel for the appellants, by maintaining conviction, dismiss the appeal on merits with modification to reduce their sentences including the sentences which they were to undergo in lieu of fine into the period they have already undergone. Accordingly, instant appeal is hereby disposed of in the terms stated above”.*

17. In view of above, more particularly when the accused has already refunded the entire amount outstanding against him, putting him behind the bars would not be justified.

18. For the forgoing reasons, and with the consent of the parties, while maintaining the conviction, the sentence awarded to the appellant, including the period he was to undergo in lieu of fine is reduced to the period of his detention in jail he has already undergone. The bail bonds are hereby cancelled and the surety furnished by the appellant is also discharged. The instant appeal is disposed of in the above terms.

**JUDGE**

Karachi  
13.08.2024