

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Accountability Appeal No.D-138 of 2017

Present:

***Mr. Justice Shamsuddin Abbasi,
Mr. Justice Amjad Ali Sahito.***

Appellant: Rahim Bux Soomro through M/s. Mukesh Kumar Khatri and Ghulam Akbar Panhyar, Advocates.

Respondent: The State through Mr. Niaz Hussain Mirani, Special Prosecutor NAB.

Date of hearing: 21.02.2024.

Date of Decision: 20 .03.2024.

J U D G M E N T

AMJAD ALI SAHITO, J. Through this Criminal Accountability Appeal, the appellant has impugned the judgment dated 14.12.2017 passed by learned Judge, Accountability Court, Hyderabad in Reference No.08/2016 filed against the accused by the NAB under section 9 (a) (v) of National Accountability Ordinance, 1999 [hereinafter referred to as "Ordinance"], whereby he was convicted and sentenced under section 10 (a) of the Ordinance read with section 265-H (ii) Cr.P.C to suffer rigorous imprisonment for four years being an old aged retired officer with feeble health, with direction to pay the fine of Rs.4,748,979/-; in default whereof, it can be recovered as arrears of land revenue from appellant as provided under section 33-E of the Ordinance. The properties/assets accumulated by the appellant in the names of benamidars each namely, Amjad Hussain, Aijaz Ahmed, Gul Rahim, Mst. Shahida, Mst. Paras, Mst. Asifa, Mst. Urooj and Mst. Umaira as mentioned in the judgment were forfeited in favour of the appropriate government. The fine amount was allowed to be set off against the forfeited assets/properties within the meaning of section 11 of the Ordinance. It was also directed that the appellant shall forthwith

cease to hold public office, if any; and he shall not be allowed any financial facilities in the form of any loan or advances from any bank or financial institution (owned or controlled by the government) for a period of ten years from the date of conviction. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The appellant was booked in the aforesaid reference with an allegation of accumulation of assets beyond known sources of income. As such, an inquiry was initiated against the appellant, which was subsequently converted into an investigation. As per the investigation, appellant Rahim Bux joined government service as an Assistant Engineer in BPS-17 and retired as an Executive Engineer in BPS-18 on 31.03.2014. During service, the appellant remained posted on various stations in the Works & Services Department, Government of Sindh and obtained total salary of Rs.6,635,413/-. He also inherited only ten acres and nine ghuntas of agricultural land in the year 1992 as his share in deh Degi, Taluka Bulri Shah Karim, Tando Muhammad. His accumulated savings from salary since joining in government service from 1985 to 2014 as well as from produce of inherited agricultural land became Rs.1,533,694/-. It has been stated that the appellant purchased a plot measuring 200 sq. yards situated at Qasimabad Hyderabad in the year 2005 in the sum of Rs.4,000,000/- in addition to his household expenditures amounting to Rs.200,357/-, which exceeded to his income by Rs.2,666,663/-. The saving of the appellant from the year 2006 to 2007 and income of the year 2008 were Rs.818,136/- but the appellant purchased 19-09 acres of agricultural land and 2x plots for an amount of Rs.738,000/- in addition to his household expenditures of Rs.273,143/- in the year 2008 and exceeded his income by Rs.193,008/-. In the year 2009, total income of the appellant from salary and land became Rs.530,270/- but he purchased 91 and 39.5 ghuntas of agricultural and 1x plot measuring 43,000 sq. feet for total amount of Rs.2,107,000/- in addition to his household expenditures of Rs.312,575/-, as such, his expenditure exceeded by his income for Rs.1,889,308/-.

3. During the course of an inquiry, the appellant through an application had opted for Voluntarily Return (V.R) but the same was rejected as the amount offered by the accused was less than the current market value of the properties purchased from ill-gotten money. After investigation, it was established that the appellant accumulated assets disproportionate to his known source of income to the tune of Rs.4,748,979/- from the year 1985 to 2014, which he could not justify. Hence, the appellant was stated to have committed the offence of corruption and corrupt practices within the meaning of Section 9 (a) (v) of the Ordinance, therefore, with such allegations aforementioned reference was filed, which was admitted for trial.

4. Charge against the appellant was framed, to which he pleaded not guilty and claimed to be tried. In order to establish its case, the prosecution has examined as many as eleven witnesses namely Sikandar, Section Officer Works & Services Department Government of Sindh Karachi; Ali Muhammad Shah Mukhtiarkar Revenue Taluka Bulri Shah Karim District Tando Muhammad Khan; Mumtaz Ali Mukhtiarkar Revenue Taluka Tando Muhammad Khan; Aftab Ali Shah Sub-Registrar, Tando Muhammad Khan; Sarfraz Bahrani, Assistant Excise & Taxation Office Jamshoro; Abdul Sattar; Muhammad Anwar Soomro; Sher Azam; Abdul Jaleel, Mukhtiarkar; Baka Muhammad, Assistant Director NAB Office Karachi and Sarvech Shaikh, Investigating Officer NAB Office Karachi. The prosecution witnesses have produced numerous documents during their evidence. Thereafter, the prosecution closed its side through a statement.

5. The statement of the appellant was recorded under Section 342 Cr. P.C., wherein he denied the prosecution allegations leveled against him. In his statement, he stated that he had purchased the land within his known sources but the prosecution has shown fifty acres land only, whereas he inherited 102 acres of land. He claimed his innocence and submitted his statement under section 265-F (5) Cr.P.C. wherein giving his known sources of income of income of the landed property and prayed for his acquittal. He also produced various

documents. In his defense, the appellant led evidence of DW-1 Muhammad Bachal and DW-2 Moula Bux and then learned counsel closed the evidence side through a statement.

6. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant through impugned judgment as stated above; hence, the appellant impugned his conviction and sentence by way of filing the instant Criminal Accountability Appeal.

7. Learned counsel for the appellant argued that the impugned judgment is based on misreading and non-reading of evidence, which is not maintainable; that the appellant is innocent and he has been falsely implicated in the instant case due the enmity with him by some local persons otherwise, he has not committed any offence; that the father of appellant was landlord, who had established a Middle School in the year 1952 serving to 200 students and specified ten acres for expenses of the School; that the appellant being elder in the family, after death of his father in year 1984, was managing the affairs of land and he along with his brothers collectively extended and improved the living conditions and his brother Moula Bux carried the business of Sugarcane which earned a lot of money for the family and resultantly they purchased the properties; that the NAB authorities have not taken into account the proper inflow and outflow of his income resultantly the appellant has been booked in the instant crime falsely; that if the NAB authorities have properly investigated the matter, the appellant could not have been implicated in the instant case; that there are material contradictions in the evidence of Investigating Officer if it is kept in juxtaposition with the evidence of defense witnesses and the documents provided by the appellant; that during statement of appellant, he has categorically denied the allegations of prosecution and the burden of proof to establish the case always lies to the prosecution and could not be shifted from prosecution to the appellant even if the accused took up any particular plea and failed in it; that if any circumstances creating doubt in the

prosecution case, the benefit of the doubt must be extended in favour of accused not by way of concession but as of right. In support of his contentions, learned counsel has relied upon the cases reported as 1992 SCMR 1134, 1995 SCMR 1345, 2022 SCMR 998, 2021 PCr.LJ 382, 2022 MLD 57, 2021 YLR Note 10, 2022 YLR Note 103 and 2022 YLR Note 147.

8. Conversely, the learned Special Prosecutor NAB while supporting the impugned judgment argued that the prosecution has proved its case against the appellant through oral as well as documentary proof without any shadow of a doubt; that the appellant has failed to shatter the evidence of prosecution witnesses and failed to adduce convincing evidence which show that he has purchased the properties from his known amount. He, therefore, prayed that instant appeal may be dismissed and impugned judgment passed by learned trial Court may be maintained.

9. We have heard the learned counsel for the parties and have gone through the evidence as well as impugned judgment with their able assistance and perused the case-law cited at the bar.

10. The deeper re-analysis of the material brought on record entails that the appellant has assets beyond his known source of income in his name and in the name of his family members, who held a public office from 1985 to 2014 by joining his service in Works & Service Department, Government of Sindh as Assistant Engineer in BPS-17 and retired as Executive Engineer BPS-18 in the year 2014. He obtained a total salary of Rs.6,635,413/. The appellant inherited only ten acres and nine ghuntas of Agricultural land as his share in the year 1992 in Deh Degi. He accumulated savings since his joining in the government service from 1985 to 2014 from salary and produce of inherited agricultural land Rs.1,533,694/. In the year 2005, he purchased a plot measuring 200 square yards in Qasimabad, Hyderabad in the sum of Rs.4,000,000/- in addition to his household expenditures amounting to Rs.2,00,357/- exceeding his income by Rs.2,666,663/-. It further revealed that the

savings from the year 2006 to 2007 and the income of the year 2008 were Rs.818,136/- but in the year 2008, the accused purchased 19-09 acres of Agricultural land and 2x plots for an amount of Rs.738,000/- in addition to his household expenditures of Rs.273,143/-. Hence his expenditures in the year 2008 exceeded his income by Rs.193,008/-. In the year 2009 the total income of the accused from salary and agricultural land was Rs.530,270/-; however, he purchased 91 acres and 39.5 ghuntas of Agricultural land and 1x plot measuring 43,000 square feet for a total amount of Rs.2,107,000/- in addition to his household expenditures of Rs.312,575/- hence his expenditures in the year 2009 exceeded his income by Rs.1,889,308/-.

11. It is stated that the appellant had purchased the agricultural land in the names of his sons and daughters in dehs Pirwah, Khokhar and Bharampur out of his known sources. It is also came on the record that the appellant had also purchased plots bearing C.S. No.819 measuring 1248 sq. ft. and plot C.S. No.820 measuring 1100 sq. ft. situated in ward B City Tando Muhammad Khan in the name of his wife Mst. Shahida for the consideration of Rs.522,000/- out of his unknown sources and as per revenue V.F-VII-B bearing No.1016 dated 06.12.2005, deh Jamshoro Taluka Qasimabad the appellant has ownership of Bungalow constructed on plot No.33 measuring 200 sq. yards in the name of his wife Mst. Shahida. The total proprieties of the appellants were thirteen.

12. The conclusion of the learned trial Court that the appellant has been fully involved in the commission of offence with which he is involved as far as concerned, it is suffice to say that an analysis must be undertaken where there has to be an assessment of the appellant's role in some or all of the events leading to the criminal charge and comment on the subsisting indications of the appellant's possible guilt; plainly, scrutiny of the judgment underpins to decision whatever investigation made by the Investigating Officer and prosecution adduced its evidence, the learned trial Court has elaborately highlighted the

same in the impugned judgment with details of the properties purchased by the appellant in the name of his entire family as stated above, cost of which is excessive to the income of the appellant as properly calculated through documentary evidence; and, the appellant has failed to pin out the amount incurred by him for purchasing the properties despite fact that the amount earned by him which includes his accumulated salaries during service period and produce of his inherited agricultural land only ten acres situated in deh Degi, Taluka Bulri Shah Karim, Tando Muhammad.

13. We have scanned the evidence of the prosecution witnesses as well as defense witnesses. The prosecution examined eleven (11) witnesses and produced all the relevant documents. PW-2 Ali Muhammad the then Mukhtiarkar produces the revenue record pertaining to the accused/appellant and his family members along with agriculture income. The prosecution has established the case through the evidence of witnesses coupled with documentary evidence and investigation by the Investigating Officer that there are 11.09; 08.00; 24.00; 08.21 ½ acres land in deh Pirwah, 43.18; 13.07; 01.32 acres in deh Khokhar, total 136 acres and 17 ½ ghuntas, purchased in the names of Amjad Hussain, Aijaz Ahmed and Gul Rahim all sons of appellant Rahim Bux Soomro. It has been established that the property was also purchased viz. 43000 sq. feet in deh Bahrampur (non-agricultural land), 1620 sq. feet, 1174 sq. feet, 1830 sq. feet, 2348 sq. feet in Tando Muhammad Khan City and 200 sq. yards in Qasimabad in the name of Amjad Hussain, Aijaz Ahmed, Gul Rahim, Mst. Paras, Mst. Asifa, Mst. Urooj, Mst. Umaira, the sons and daughters of appellant as well as Mst. Shahida the wife of appellant.

14. Appellant Rahim Bux failed to produce any documents to believe that the above-mentioned proprieties were purchased from known sources. While recording his 342 Cr.P.C statement the appellant has taken the plea that he has purchased the property from his known sources. When we confronted to the learned counsel for the appellant that any proof

regarding earnings from the said land viz Dhall receipt or the appellant had shown income in his income tax return, for which he had replied in negative. We have also seen the statement of the appellant recorded under section 342 Cr.P.C. In question No.6 when it was inquired from the appellant “*Will you examine yourself as your own witness and lead evidence in defence*”. He had replied **No Sir. My statement u/s 265-F Cr. P.C is my defence with detailed statement of income from 1985 to 2014.** However, he failed to examine himself on oath or produce the documents in his evidence for which he was relying. In Question No.5 it was inquired from him “*What do you have to say anything else in defence*”? For which, the appellant has not disclosed the name of his defence witnesses; however, he has filed an application in terms of section 265-F (5) Cr.P.C. along with a written statement and certain documents so also he has produced two defence witnesses namely, DW-1 Muhammad Bachal (Retired Primary School Teacher) and DW-2 Moula Bux (Landlord/elder brother). DW Muhammad Bachal disclosed that the late Muhammad Siddique Soomro was the father of appellant Rahim Bux and he died in the year 1984. He owned 102 acres land. Late Muhammad Siddique Soomro has ten sons and according to him per family settlement, 102 acres of land was given to accused Rahim Bux for cultivation purposes. The appellant through this witness tried to prove that he was earning the known resources from the said agricultural land but he failed to examine his all brothers except D.W Moula Bux. So far D.W Moula Bux has stated that the land was given to the appellant for cultivation purposes; however, no documentary proof has been produced to believe his version. The elder brother of the appellant DW-2 Moula Bux has stated that in the year 2004 a plot of 200 sq: yards was purchased at Qasimabad in the name of the wife of accused Rahim Bux out of business income of sugarcane and landed property, the said plot was purchased for Rs.250,000/- in the year 2005. However, this witness has also not produced any document to believe his version.

15. Section 265-F Cr.P.C. is quite comprehensive as it has been added in the Code of Criminal Procedure

notwithstanding the already existing section 540 Cr.P.C. to ensure the conducting of a fair trial and in order to achieve said purpose, equal opportunity has been provided both to the accused as well as to the prosecution party to summon the witness. Its clause (7) has granted a right even to the accused to apply for the summoning of witnesses and production of documents. However, the balance has to be struck between the parties. Anyhow the appellant had the opportunity to validate his claim by producing documentary evidence but he failed to prove it. The appellant failed to examine himself on oath or to produce the documents attached to the application. It clearly indicates that if he had been in the witness box he could not have properly replied to the questions of the prosecutor NAB. As such he filed a statement under section 265-f (5) Cr.P.C. along with documents, which is not equal to the evidence.

16. We have noted that the appellant during inquiry had opted for Voluntarily Return (V.R) by submitting an application in terms of section 25 (a) of the Ordinance to the Director General, NAB Sindh Karachi through the Investigating Officer but the said application was rejected. However during the pendency of this appeal, the appellant once again tried for plea bargaining to save his properties shown in the impugned judgment in Para No. 33. The appellant filed an application under section 25 (b) of NAO,1999 before this court with a prayer to allow him to enter in a plea bargain with NAB. The appellant has shown his willingness to deposit a fine amount of Rs.47,48,979/00 for which he has deposited a pay order of said amount along with an application to the NAB authorities. During the course of arguments learned special prosecutor for NAB submits that the appellant was not ready to surrender his properties with the NAB as in the second part of the judgment the learned trial court also passed the order for forfeiture of the properties. So far the hearing of an application for plea bargain is concerned, learned Prosecutor NAB submitted that the application of the appellant was forwarded to the Chairman NAB for his consideration and the same was considered but the appellant is not ready to surrender his property which is

mentioned in para No.33 of the impugned judgment.
Consequently, M.A. No.1516/2022 is dismissed.

17. It is worthwhile to mention here that in case, the prosecution succeeds in making out a reasonable case to the satisfaction of the Accountability Court, the prosecution would be deemed to have discharged the *prima facie* burden of proof and then the burden of proof shall shift to the accused to rebut the presumption of guilt. However, in the present case, the appellant has failed to show that the assets purchased by him are his known source of income but on the contrary, it exceeded from it.

18. We are confident to hold that the learned trial Court has properly assessed the evidence adduced by the prosecution. We also observe that while evaluating the evidence, the difference is to be maintained in appeal only when there is a gross misreading of evidence resulting in a miscarriage of justice. Learned counsel for the appellant failed to disclose any misreading and non-reading of evidence.

19. The sequel of the above discussion is that, we are satisfied with the appreciation of the evidence evaluated by the learned trial Court, as such, the impugned judgment does not call for any interference by this Court. Consequently, the instant appeal merits no consideration and is **dismissed** accordingly. Appellant is present on bail. His bail stands cancelled and surety discharged. Appellant is taken into custody and remanded to Central Prison, Hyderabad to serve out his remaining sentence as per impugned judgment.

JUDGE

JUDGE