

THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Appeal No. 35 of 2018

Present: Mr. Justice Naimatullah Phulpoto
Mr. Justice Abdul Mobeen Lakho

Appellant : Mst. Hina Jabeen through M/s. Muhammad Ashraf Kazi and Irshad Ali Jatoi advocates

Respondent : The State/ NAB through Mr. Riaz Alam, Special Prosecutor NAB

Date of Hearing : 22.11.2021

Date of decision : 26.11.2021

JUDGMENT

NAIMATULLAH PHULPOTO, J.- Appellants Mst. Hina Jabeen and Ali Mabid Kayani were tried by the Accountability Court No.IV, Sindh Karachi in Reference No.71 of 2007. After regular trial, vide judgment dated 31.07.2018, accused Athar Hassan Adeeb was acquitted of the charges, however, appellant Mst. Hina Jabeen and Ali Mabid Kayani were convicted under sections 9(a)(iii)(iv)(vi)&(xii) of National Accountability Ordinance, 1999 and sentenced under Section 10(a) of the National Accountability Ordinance 1999. Appellant Mst. Hina Jabeen was sentenced to 10 years R.I and to pay fine of Rs.4.390 Million. Appellant Ali Mabid Kayani was sentenced to 07 years R.I and to pay fine of Rs.10,00,000/-. The fine was ordered to be recovered as arrears of land revenue as defined under section 33-E of the Ordinance. In case of default of payment of fine, appellants were ordered to suffer 02 years R.I each. Both appellants were disqualified for a period of 10 years to be reckoned from the date of their release after serving out sentence from seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province and also she shall not be allowed to obtain any financial facility in the form of any loan or advances from any bank or financial institution in the public sector for a period of 10 years from the date of their conviction. Appellants were also extended benefit of section 382(b) Cr.P.C. Hence, both appellants filed above Accountability Appeal against conviction and sentence recorded against them.

2. Brief facts of the prosecution case as mentioned by trial Court in the impugned judgment dated 31.07.2018 in paras 3 and 4 are reproduced as under:

“3. The brief facts of the case as alleged in the instant Reference are that accused Hina Jabeen being Assistant Manager (Finance) Executive No.8524, S.S.G.C, Head Office, Gulshan-e-Iqbal, Karachi, during the period from 2001 to 2003 while working on the above said post was assigned the job for processing claims pertaining to Group Life Insurance, Personal Accident Insurance and Employee Voluntary Group Insurance. She is collaboration and with active connivance of her husband/co-accused Ali Mabid Kayani, Protocol Officer, SSGCL Karachi and co-accused Athar Hassan Adeeb, Assistant in SSGCL prepared vouchers and forwarded cheques to the I.R/H.R department for onward delivery to respective beneficiaries and misappropriated the total amount of Rs.4.930 Millions of the company. Accused Hina Jabeen along with co-accused Ali Mabid Kayani and Ather Hussain Adeeb opened an account No.14575-4 at MCB Hassan Square Branch under the title of Rashida and another account No.8436-01 at Soneri Bank, Agha Khan University Branch, Karachi under the title of Mrs. Ijaz Fatima for depositing false and fake vouchers/ cheques in the above said bank accounts. Accused Hina Jabeen was also operating the said bank accounts and withdrawn the amount for her personal use and for co-accused persons.

4. Accused Hina Jabeen transferred funds from one account to another account in cash. Following transactions were made through bank clearing:

- (i) An amount of Rs.350,000/- was transferred from MCB Hassan Square Branch to her personal account No.101-1439-5 with UBL Hamid Square Branch, Gulshan-e-Iqbal, Karachi by using the cheque of MCB Hassan Square branch from the account No.14757-4 of Ms. Rashida with was being operated by the accused Hina Jabeen fraudulently.
- (ii) Accused Hina Jabeen sent Rs.600,000/- from the account No.14575-4 MCB Hassan Square Branch, Karachi for delivery in cash to her brother-in-law Mehdi Zaman Kayani for payment in cash. Accused Hina Jabeen also sent an amount of Rs.10,000/- from the account No.8436-01 of Soneri Bank AKUH branch, Karachi to Soneri Bank Account No.4365-01, Peshawar.

Accused Hina Jabeen was also maintaining her own accounts at Habib Bank Limited Hassan Square branch Account No.15305-8 and another account at UBL Hamid Square Branch, Gulshan-e-Iqbal, Karachi account No.101-1439-5 in her name. Accused Ali Mabid Kayani was also maintaining his own account at Habib Bank Limited Hassan Square branch (1778) Karachi, account No.15103-7 in his name and account No.238-01 Soneri Bank Limited, Gulshan-e-Iqbal, Branch in the name of Maliha Kayani, Guardian of accused Ali Mabid Kayani. Thus accused Mst. Hina Jabeen, Ali Mabid Khan and Athar Hassan Adeeb being holders of public office indulged in corruption and corrupt practices and committed the offence as defined under Section 9(a) of the National Accountability Ordinance, 1999 scheduled offence punishable under Section 10 of National Accountability Ordinance, 1999 in collusion and connivance with each other and misappropriated the

funds amounting to Rs.4.930 Millions and caused huge loss to the National Exchequer."

3. Trial Court framed charge against appellants at Ex.4, to which they pleaded not guilty and claimed to be tried.
4. In order to prove its' case, the prosecution examined 17 PWs, who exhibited numerous documents. Thereafter, prosecution side was closed.
5. Learned trial court recorded statements of accused under section 342, Cr.P.C. at Ex.52 to 54, wherein the appellants denied the allegations levelled against them and claimed their false implication. Neither appellants examined themselves on oath nor led evidence in their defence.
6. Learned Accountability Court after hearing learned counsel for the parties and assessment of evidence by impugned judgment dated 31.07.2018 convicted and sentenced the appellants as stated above.
7. Appellants being aggrieved and dissatisfied with the impugned judgment of conviction have filed this appeal.
8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.
9. Learned advocate for the appellant at the very outset did not press appeal on merits but prayed for reduction of the sentence while submitting that there are mitigating circumstances in this case i.e. (a) appellant Mst. Hina Jabeen has served a substantial portion of her sentence, (b) that she is an elderly woman, (c) that she suffers from several ailments, (d) that she showed remorse for her actions by deciding not to contest the appeal, (e) that she had used her time productively in jail which could contribute towards her reformation, (f) that she has already been dismissed from service and (g) that her family life has suffered due to her prolonged incarceration, (h) that on same set of evidence, co-accused Athar Hassan Adeeb has already been acquitted and State/NAB has not filed acquittal appeal and (i) that sentence of appellant Ali Mabid Kayani husband of the appellant Mst. Hina Jabeen has already been undergone by this Court vide order dated 15.04.2021. In support of submissions reliance has been placed upon the judgment passed by this Court in the case of Abdul Jabbar and

another vs. The State/NAB (Criminal Accountability Appeals No.12 and 13 of 2018).

10. Mr. Riaz Alam Special Prosecutors NAB based on the mitigating circumstances put forward by the appellant however did not agree to a reduction in sentence however, when confronted by the court that why based on the particular facts and circumstances of the case the appellant was not entitled to any reduction in her sentence of imprisonment, he had no answer except to submit that the prosecution had proved the case against appellant beyond a reasonable doubt and that she stood convicted and her sentence was in accordance with law.

11. Having gone through the evidence on record and the impugned judgment we are of the view that the prosecution has proved its' case against appellant beyond a reasonable doubt in respect of the offence for which she was charged based on both oral and documentary evidence. Findings of trial court in the impugned judgment in para 42 clearly show that appellant Mst. Hina Jabeen has committed alleged offence. Para 42 of the impugned judgment is reproduced as under:

"42. On evaluation of whole evidence, as discussed above, it has been emerged out that the accused Mst. Hina Jabeen being Assistant Manager (Finance) SSGC with malafide intention, ulterior motives and in collusion, connivance and collaboration with her husband/co-accused Ali Mabid Kayani misappropriated and embezzled the funds pertaining to Group Life Insurance, Personal Accident Insurance and Employee Voluntary Group Insurance of deceased employees of SSGC to the tune of Rs.4.390 million and caused colossal loss to the Government exchequer. As such prosecution has succeeded in bringing the guilt of accused Mst. Hina Jabeen and Ali Mabid Kayani at home beyond reasonable doubts on material particulars as such, they are liable to be convicted for commission of the offences of corruption and corrupt practices as defined under Section 9(a)(iii)(iv)(vi)&(xii) of National Accountability Ordinance, 1999 and sentenced them under Section 10(a) of Ordinance ibid. The prosecution evidence is consistent, corroborative, direct, cogent and confidence inspiring. Hence I convict and sentence accused (1) Mst. Hina Jabeen W/o Ali Mabid Kayani under Section 265-H(ii) Cr.P.C to suffer R.I for Ten (10) years and also pay fine of Rs.4.390 million and sentence accused (2) Ali Mabid Kayani s/o Mehboob-ur-Rehman under Section 265-H(ii) Cr.P.C to suffer R.I for Seven (07) years and also pay fine of Rs.10,00,000/- (Ten Lacs). The fine shall be recoverable as arrears of land revenue in terms of Section 33-E of Ordinance ibid. In case of default in payment of fine, they shall suffer further R.I for Two (02) years each. The accused persons shall be entitled to the benefit of Section 382-B Cr.P.C."

12. After close scrutiny of the evidence, we are in agreement with the findings of trial court that Mst. Hina Jaben has rightly been found guilty to the charge, thus the only issue before us is of sentencing.

13. We note that sentencing is at the discretion of the court and is not a mechanical exercise. In exercising its discretion the court should consider numerous factors such as the minimum and maximum sentence which can be imposed on conviction, the role of the accused, the gravity of the offence, in a NAB case the amount of loss caused to the State, whether the accused shows any kind of remorse, whether the accused is capable of reformation, the age of the appellant, the health of the appellant, his/her conduct in jail and how long he/she has already spent in jail etc. Reliance is placed upon the case reported as 2018 SCMR 318 (Muhammad Juman vs. State). The relevant portion is produced as under:

"Inflicting conviction and imposing sentence is not a mechanical exercise but it is onerous responsibility to inflict, fair, reasonable and adequate sentence, commensurate with gravity and or severity of crime, looking at the motive, attending and or mitigating circumstances that provoked or instigated commission of crime and it involves conscious application of mind. No mathematical formula, standard or yard stick could be prescribed or set out to inflict conviction and sentence, such factors vary from case to case and while undertaking such exercise Court must keep in light provisions contained in Chapters-III and IV of the P.P.C. Unfortunately, no sentencing guideline is laid down in Pakistan, though Courts have set out certain parameters in many cases as to what is mitigating and or aggravating circumstances that may warrant alteration and or varying in conviction and or sentence within the parameters provided under the charging or penal provision".

14. We agree with the learned advocate for the appellant that there are mitigating circumstances in this case to justify a reduction in her sentence **mainly for the reasons that appellant is an old woman with poor health condition, she has already undergone substantial part of sentence recorded by trial court, co-accused Athar Hassan Adeeb has also been acquitted by trial court and the State/ NAB has not filed appeal against his acquittal.** According to jail roll dated 23.11.2021, appellant has served sentence including remission 04 years, 04 months and 26 days. Unexpired portion of her sentence is 07 years, 07 months and 04 days with fine. We consider her 10 years sentence of imprisonment to be too harsh and disproportionate to the offence for which appellant was convicted keeping in view the sentencing range under the NAO and the loss caused to the State. With regard to fine, no P.W has deposed specifically that appellant caused loss of Rs.4.390 million. Moreover, we have perused the statement of appellant/accused recorded by trial Court under Section 342 Cr.P.C at Ex.52. Question No.13 put to the appellant/accused was that she in collusion and connivance with co-accused persons being employee of SSGC

misappropriated total amount of Rs.4.390 Million of the company. This clearly shows that financial loss has been caused by all the accused and no question regarding individual loss caused by the appellant/accused has been put to her for explanation. It is unfortunate that actual loss caused by appellant has not been determined in accordance with law.

15. Therefore, whilst taking into consideration the arguments/mitigating factors justifying a reduction in sentence of the appellant, we therefore, by exercising our judicial discretion under section 423, Cr.P.C maintain the conviction of the appellant Mst. Hina Jabeen, but modify the sentence of the appellant from 10 years R.I to 05 years R.I. and fine of Rs.4.390 million is reduced to Rs.25,00,000/- (Rupees Twenty Five Lacs Only). It is made clear that appellant is liable to pay above fine which shall be recovered in the manner laid down in the NAO 1999. The sentence of imprisonment in default of payment of fine and disqualifications as recorded by trial court shall remain intact with slight modification in case of default in payment of fine, appellant shall suffer S.I for 06 months instead of 02 years R.I. Appellant shall also be entitled to benefit of section 382(b) Cr.P.C.

16. We are further fortified by our decision in reducing the appellant's sentences of imprisonment based on the particular facts and circumstances of this case while relying upon the case reported as 2020 SCMR 1177 (Tariq Saeed v. State), which was also a NAB appeal against conviction where despite the appellant not showing any remorse and arguing his case on merits it was held as under:

".....However, while relying on case titled "Muhammad Ashraf alias Chaudhry v. The State" (1994 SCMR 667) and while taking into consideration that the petitioner is an old man with poor health condition, whereas he has already undergone substantial part of sentence recorded by both the courts, we deem it appropriate to meet the ends of justice reduce the sentence already inflicted upon the petitioner from seven years to five years while maintaining the sentence of fine of Rs.1,63,00,000/- and confiscation of farm-house belonging to petitioner in favor of the State. In the above said terms, this petition is converted into appeal and partly allowed."

17. For the above stated reasons, the appeal is disposed of in the above terms.

JUDGE

JUDGE