

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

**Criminal Jail Appeal No.S-39 of 2024**

**Appellant:** Oshaque Ahmed son of Ali Hassan Khokhar, through Mr. Safdar Ali Ghouri, Advocate

**Respondent/State:** Through Mr. Nazir Ahmed Bhangwar, DPG.

**Date of hearing:** 16-04-2025

**Date of Judgment:** 07-05-2025

**JUDGMENT**

**Jan Ali Junejo, J.--** This appeal arises out of the judgment dated 18.05.2024 (here-in-after referred to as the “Impugned Judgment”) passed by the Learned Special Judge Anti-Corruption (Provincial), Larkana (hereinafter referred to as the “Trial Court”), convicting the appellant, Oshaque Ahmed, under Section 409, 477-A PPC read with Section 5(2) of the Prevention of Corruption Act, 1947, and sentencing him to 10 years of rigorous imprisonment, a fine of Rs. 6,77,65,571/-, in default thereof he shall suffer S.I for six months more. In case accused failed to deposit misappropriated amount the same to be recovered as a Government arrears under land revenue act.

2. The prosecution case, as per FIR No. 02/2022 (ACE Shikarpur), alleged that during the appellant’s tenure as Incharge of PRC Shikarpur (2020-21), he misappropriated 1,148.569 metric tons of government wheat (11,216 PP bags) valued at Rs. 6,77,65,571/-. Multiple District Food Controllers (DFCs) reported shortages, and physical verification revealed discrepancies between book balances and actual stock. The appellant was

suspended on 07.12.2021, and subsequent inspections confirmed the total shortage.

3. In order to substantiate its case, the prosecution examined the following witnesses before the trial Court:

**1. PW-1: Gul Nawaz (Food Supervisor) Exh-04.**

- **Examination-in-Chief:**

- Member of the committee constituted by DFC Shikarpur (Exh.4/A) to monitor wheat stock at PRC Shikarpur (12.12.2021–28.02.2022).
- Testified that **199,70 jute bags** and **242,792 PP bags** were issued under the appellant's supervision (Exh.4/B1–B57).
- Confirmed daily stock reports were signed by the appellant.

- **Cross-Examination:**

- Admitted the committee's role was limited to monitoring stock issuance, not auditing.
- Denied personal animosity toward the appellant.

**2. PW-2: Mehboob Ali (Food Supervisor) Exh-05.**

- **Examination-in-Chief:**

- Co-Incharge of PRC Shikarpur alongside the appellant.
- Corroborated PW-1's testimony and verified stock release documents (Exh.4/B1–B57).

- **Cross-Examination:**

- Acknowledged shared responsibility but clarified the appellant held primary control over godown keys.

**3. PW-3: Asif Ali (New Incharge PRC) Exh-06.**

- **Examination-in-Chief:**

- Assumed charge in March/April 2022 after the appellant's suspension.
- Confirmed during ACE inspection (03.10.2022) that **no 2020-21 stock** remained; only 2021-22 stock was present (Exh.6/A).

- **Cross-Examination:**
  - Admitted he had no knowledge of pre-suspension stock management.

**4. PW-4: Muhammad Yaseen (Chowkidar) Exh-07.**

- **Examination-in-Chief:**
  - Stated the appellant held godown keys and employed private staff for access.
- **Cross-Examination:**
  - Confirmed he never reported theft or discrepancies to DFC.

**5. PW-5: CO Abdul Wahab (Circle Officer ACE) Exh-08.**

- **Examination-in-Chief:**
  - Submitted challan after receiving approval (Exh.8/A).
- **Cross-Examination:**
  - Denied procedural delays in investigation.

**6. PW-6: Muhammad Usman (Police Constable) Exh-09**

- **Examination-in-Chief:**
  - Arrested the appellant on 29.09.2022; prepared arrest memo (Exh.9/A).
- **Cross-Examination:**
  - Admitted mashirnama was drafted at the ACE office, not on-site.

**7. PW-7: DFC Jagdesh Kumar (Key Witness) Exh-11.**

- **Examination-in-Chief:**
  - Conducted several **inspections** (Oct 2021–Mar 2022):
    - Found stock covered with tarpaulin, underweight bags, and shortages (Exh.11/C, 11/P, 11/V).
    - Produced suspension order (Exh.11/I) and appellant's "no shortage certificate" (Exh.11/G).
  - Confirmed final stock depletion by March 2022 (Exh.20/M).
- **Cross-Examination:**
  - Denied fabricating reports.

**8. PW-8: Raja Muzafar Ali (Assistant DFC) Exh-12.**

- **Examination-in-Chief:**
  - Produced physical verification reports (Exh.12/A1–A2) showing shortages.
- **Cross-Examination:**
  - Denied collusion with DFC Jagdesh.

**9. PW-9: Ghulam Shabir (Chowkidar) Exh-13.**

- **Examination-in-Chief:**

- Denied holding godown keys or involvement in stock management.
- **Cross-Examination:**
  - Admitted duty was limited to guarding premises.

**10. PW-10: Ghulam Hyder (Chowkidar) Exh-14.**

- **Examination-in-Chief:**
  - Confirmed the appellant used private staff to manage godowns.
- **Cross-Examination:**
  - Admitted he never reported unauthorized access.

**11. PW-11: DFC Dildar Ali Kalwar (Inspecting Officer) Exh-15.**

- **Examination-in-Chief:**
  - Physically verified stock on 02.01.2022 and found **9,303 PP bags short** (Exh.15/A2).
  - Produced stock reports (Exh.15/A1–A13).
- **Cross-Examination:**
  - Admitted no prior practice of maintaining arrival/departure logs.

**12. PW-12: Shahmore Ali (Head Constable) Exh-16**

- **Examination-in-Chief:**
  - Verified absence of 2020-21 stock during ACE inspection (Exh.6/A).
- **Cross-Examination:**
  - Denied coercion in signing mashirnama.

**13. PW-13: C O Khurshed Ahmed (ACE Officer) Exh-18**

- **Examination-in-Chief:**
  - Arrested the appellant in Karachi (Exh.9/A).
- **Cross-Examination:**
  - Denied arresting the appellant from a hotel.

**14. PW-14: DFC Bashir Ahmed Kazi Exh-19**

- **Examination-in-Chief:**
  - Inspected PRC in August 2021; found **underweight bags (20–25 kg)** and weevil-infested stock (Exh.11/E).
- **Cross-Examination:**
  - Admitted discrepancies in weight but denied exaggerating shortages.

**15. PW-15: CO Munwar Ali (Investigating Officer) Exh-20**

- **Examination-in-Chief:**
  - Produced **daily stock reports** (Exh.20/F) signed by the appellant.

- Submitted FIR (Exh.20/B), remand orders (Exh.20/C), and valuation report (Exh.20/L).

4. During the trial, the appellant, Oshaque Ahmed, was examined under Section 342 of the Criminal Procedure Code (Cr.P.C.) and unequivocally denied all charges of misappropriation. Notwithstanding this denial, he chose not to testify under oath as permitted by Section 340(2) Cr.P.C., nor did he present any witnesses in his defense to support his assertions. Consequently, the trial Court convicted him under Section 245(2) Cr.P.C., imposing a sentence of 10 years' imprisonment and a fine of Rs. 6,77,65,571/-, further stipulating that the recovery of this amount would be enforced as government arrears under the Land Revenue Act in the event of non-payment.

5. The learned counsel for appellant has contended that the entrustment of wheat stock was never proved against him and that no physical verification by any District Food Controller (DFC) was produced to substantiate the prosecution's claims. He further contends that the trial court exceeded its jurisdictional authority by ordering recovery of the fine as land revenue arrears and such recovery order as ultra vires and contrary to the provision which governs post-conviction fine enforcement procedures. He further argues that he was suspended before the clearance of stock, hence he cannot be held responsible for any shortage that occurred thereafter. The appellant's counsel submits that the prosecution's reliance on attested photocopies is misplaced and these cannot be considered reliable evidence. He also asserts that the actual misappropriation was committed by DFC Jagdesh, the new Incharge PRC Asif Ali, committee members, and co-Incharge Mehboob Ali. Lastly, the appellant prays that the benefit of doubt be extended in his favor due to contradictions and infirmities in the prosecution's case, and thus the appeal be allowed and the impugned judgment set aside.

6. Conversely, the learned Additional Prosecutor General (APG) argues that the prosecution has conclusively proved entrustment of wheat stock to the appellant through daily arrival reports and committee monitoring. He contends that the appellant was suspended only after being given explanation calls and was directed to remain at PRC until the clearance of stock, which was completed on 28.10.2021. The learned APG submits that the shortage of 13,414 PP bags as per the last daily report signed by the appellant is supported by documentary evidence. Furthermore, he contends that recovery of the fine as government arrears under the Land Revenue Act is lawful and within the jurisdiction of the trial Court. Lastly, the learned APG prays that the Court dismiss the appeal in the interest of justice, as the prosecution has established the appellant's guilt beyond reasonable doubt.

7. Following a rigorous examination of submissions from both the Appellant's counsel and the State's Additional Public Prosecutor (APG), the evidence has been evaluated with meticulous scrutiny. The record confirms that the prosecution proved the embezzlement of funds. This satisfies the criteria of entrustment under Section 409 of the Pakistan Penal Code (PPC) for a public servant exercising dominion over property. As the PRC Incharge, the Appellant held exclusive control, fulfilling the statutory requirement. Multiple Deputy Food Controllers (DFCs) testified as prosecution witnesses, submitting inspection reports that confirmed shortages. These documents, though photocopies, qualify as public records under law, and their authenticity remained uncontested during trial. The Appellant's allegation of fabrication lacks merit, as no evidence implicated the DFCs or committee members in misconduct. The prosecution witnesses, particularly government officials discharging statutory duties, carry a presumption of regularity under Article

129(e) of the Qanun-e-Shahadat Order 1984. Minor inconsistencies, such as dates of inspections, do not undermine their credibility. The prosecution discharged its burden conclusively, while the Appellant's failure to adduce defense evidence or explain shortages shifted the burden to him. The documentary proof of misappropriation leaves no doubt as to guilt. The Appellant, Oshaque Ahmed, failed to provide any reasonable explanation for the significant discrepancies between the recorded wheat stock and the actual stock found during inspections. As the Incharge of PRC Shikarpur, he was directly responsible for maintaining accurate records and ensuring the proper storage and handling of the wheat. His silence on this critical issue strongly suggests culpability. The Appellant's actions constituted a grave breach of fiduciary duty, undermining public trust in governmental institutions. The severity of this breach justifies the sentence imposed. The sheer quantity of misappropriated wheat (1,148.569 metric tons) makes it highly improbable that the shortage could have occurred due to simple negligence or oversight. The trial Court's order to recover the misappropriated sum of Rs. 6,77,65,571/- as land revenue arrears (treated as a fine under Section 5-C of the Prevention of Corruption Act, 1947) is legally tenable. This approach aligns with the Act's objective of confiscating illicitly obtained assets and finds reinforcement in settled judicial precedents. In similar circumstances, the Case of ***Mushtaque Hussain v. The State (2023 P.Cr.L.J. Note 58)*** serves as a pertinent precedent. In that case, the accused, while holding the positions of Food Supervisor and Centre Incharge, was found guilty of misappropriating 2,970 bags of wheat. This Court upheld the accused's conviction and sentence, observing that: *"It is observed that by the act of appellant a financial loss has been occurred to the exchequer/society and the financial loss to society from the persons like appellant is probably greater than the financial loss from burglaries, robberies and*

*larcenies committed by the persons of the lower socio-economic class. It is high time to deter those from committing acts of corruption and to save the economic structure of our country which is already facing a serious financial situation”.*

8. For the foregoing reasons, the judgment of the trial Court demonstrates a thorough evaluation of the evidence and a correct application of the pertinent legal principles. Consequently, the appeal is hereby dismissed for lack of substantive merit, and the judgment rendered by the trial Court on May 18, 2024, is affirmed in its entirety.

**JUDGE**