

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi.

### CR. ACCOUNTABILITY APPEAL NO.03 OF 2002

Appellant                                      Zulfiqar Ali son of Karar Hussain (Now deceased) through his Son Murtaza Zulfiqar Ali.

Respondents/State:                      NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB

### CR. ACCOUNTABILITY ACQUITTAL APPEAL NO.09 OF 2002

Appellant:                                      Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB

For Respondents                              1) Ghulam Hyder Memon 2) Kazi Khalilur Rehman 3) Shah Muhammad Balouch 4) Agha Muneeruddin.....*Nemo*

Dates of hearing:                              24.08.2020

Date of announcement:                      31.08.2020.

## J U D G M E N T

**Mohammad Karim Khan Agha, J.-** Appellant Zulfiqar Ali son of Karar Hussain, (now deceased) has filed Cr. Accountability Appeal No.03 of 2002 in Reference No.43 of 2002 whereby he was convicted on account of entering into a plea bargain vide impugned judgment dated 03.01.2002 passed by the Administrative Judge, Accountability Court Karachi. Whereas National Accountability Bureau has filed Cr. Accountability Acquittal Appeal No.09 of 2002 against the acquittal of respondents namely Ghulam Hyder Memon, Kazi Khalilur Rehman, Shah Muhammad Balouch and Agha Muneeruddin in Reference No.43 of 2002.

2. The brief facts of the case as disclosed in the FIR lodged by Inspector Anticorruption I.D. Mangi on 23.1.1997 at 5:30 PM are that he was conducting a direct inquiry regarding regularization/ allotment of

amenity plots of KDA Karachi. It was found by him that amenity Plot No.ST-10 Block 14 Scheme 36 Gulistan-e-Johar Karachi admeasuring 8000 Sq. Yds was reserved as a Park but the concerned officials of the KDA in collusion with Zulfiqar Ali regularized/allotted the said plot in favour of Zulfiqar Ali by arranging fictitious documents. The said regularization / allotment of the plot caused loss of Millions of rupees to the KDA as the regularization was, made against the allotment Policy and violation of Rules and Regulations. Four officials of KDA nominated in the FIR are (1) Agha Muneeruddin, Assistant Director, Company Cell KDA (2) Naveed Alam office Superintendent Company Cell KDA (3) Shah Nawaz Balouch Accounts Officer Recovery Branch KDA (4) Kazi Khalilur Rehman Executive Engineer Scheme 36, KDA and private person Zulfiqar Ali.

3. The Investigation Officer started the investigation and recorded the statements of 10 witnesses. He had secured the documents from the KDA office and Manager of Habib Bank Ltd Civic Centre Branch, Karachi. After completing the investigation he had submitted the charge sheet by adding the names of Pir Mazhar-ul-Haq the then Minister for Housing and Town Planning and Ghulam Hyder Memon Member Finance KDA Karachi.

4. After compliance of the provision of Section 265 (C) Cr.P.C. the Special Judge Anticorruption framed the charge against all the accused under Section 420, 467, 468, 471, 409, 120-B, 161, 34 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947 on 18.8.1998. All the accused pleaded not guilty to the charge and claimed to be tried. Subsequently the accused Pir Mazhar-ul-Haque absconded therefore he was, declared absconder and an order was passed to proceed with the case in his absence under Section 512 Cr. P.C.

5. This case was then transferred to the accountability court by the Chairman NAB whilst exercising his powers under S.16 (A) NAO.

6. Special Prosecutor, NAB in order to prove its case examined 08 PWs. The Statements of the accused were recorded under Section 342 of Cr.PC in which the accused denied all the allegations and claimed to be tried. Vide Judgment dated 03.01.2002 appellant Zulfiqar Ali was deemed convicted after entering into a plea bargain where as the other respondents were acquitted hence these appeals against conviction and



acquittal have been filed by the appellant and NAB. Since these appeals arise out of the same Reference, we intend to dispose of both these appeals by one common judgment.

7. Turning to the appeal against conviction of Zulfiqar Ali (now deceased)

8. The appellant (now deceased) through his son contended that his father had been convicted in the aforesaid reference on the basis of a plea bargain which should be set aside as the plea bargain was not made voluntarily and thus his deemed conviction should be set aside especially as the other co-accused had been acquitted in the same reference and as such he was also innocent.

9. On the other hand special prosecutor NAB contended that the plea bargain had been made voluntarily by the appellant and since it had been approved by the Chairman NAB and the accountability court in accordance with law the same plea bargain should remain in the field and the appeal dismissed.

10. We have heard the appellant's son (who did not want to be represented by counsel) as well as special prosecutor NAB, gone through the record and considered the relevant law.

11. We have seen the application for plea bargain made by the appellant which was approved by the Chairman NAB and its approval by the court. Pursuant to this plea bargain the appellant admitted his guilt and paid the monies which he was required to and thereby fully accepted his plea bargain which led to his deemed conviction. In our view the plea bargain has been made in accordance with law and according to his son after taking legal advice and the fact that the appellant paid the amount which he agreed to in his plea bargain also points to its legality. There is no evidence to suggest that the plea bargain was not made voluntarily. It is also irrelevant that the other co-accused were acquitted on merits as the appellants plea bargain was accepted before the impugned judgment was handed down. Additionally any one of the acquitted co-accused could also have opted for a plea bargain rather than stand trial but instead decided not to do so and thereby accepted the risk that they may be convicted after the trial and sentenced to imprisonment. The fact that the co-other accused



who did not enter into plea bargain who were later acquitted is therefore irrelevant. The appellant made a conscious decision to enter into a plea bargain with the NAB and not run the risk of being convicted and sentenced to imprisonment at trial. It appears that the appellant only challenged the legality of his plea bargain once the other co-accused had been acquitted and thus this appeal appears to be a belated attempt by him to get out of the plea bargain which he freely entered into once he found that the other co-accused had been acquitted. Had the other co-accused been convicted and imprisoned we doubt whether the appellant would have challenged his plea bargain.

12. As such we find that since there is no illegality in the plea bargain which the appellant's father entered into the appeal has no merit and is hereby dismissed. If any monies arising out of the plea bargain are not already with the NAB and held by some other entity or party, for example the trial court or the Nazir of this court the same shall immediately be sent to the Chairman NAB.

**Turning to the appeal against acquittal of the Respondents Ghulam Hyder Memon, Kazi Khalilur Rehman, Shah Muhammad Balouch and Agha Muneeruddin.**

13. It is well settled by now that the parameters for an appeal against acquittal to succeed are much narrower than in the case of an appeal against conviction. It is settled law that judgment of acquittal should **not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous** as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

*"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated*



with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

*Bashir Ahmed v. Fida Hussain and 3 others* (2010 SCMR 495), *Noor Mali Khan v. Mir Shah Jehan and another* (2005 PCr.LJ 352), *Imtiaz Asad v. Zain-ul-Abidin and another* (2005 PCr.LJ 393), *Rashid Ahmed v. Muhammad Nawaz and others* (2006 SCMR 1152), *Barkat Ali v. Shaukat Ali and others* (2004 SCMR 249), *Mulazim Hussain v. The State and another* (2010 PCr.LJ 926), *Muhammad Tasweer v. Hafiz Zulkarnain and 02 others* (PLD 2009 SC 53), *Farhat Azeem v. Asmat Ullah and 6 others* (2008 SCMR 1285), *Rehmat Shah and 2 others v. Amir Gul and 3 others* (1995 SCMR 139), *The State v. Muhammad Sharif and 3 others* (1995 SCMR 635), *Ayaz Ahmed and another v. Dr. Nazir Ahmed and another* (2003 PCr. LJ 1935), *Muhammad Aslam v. Muhammad Zafar and 2 others* (PLD 1992 SC 1), *Allah Bakhsh and another v. Ghulam Rasool and 4 others* (1999 SCMR 223), *Najaf Saleem v. Lady Dr. Tasneem and others* (2004 YLR 407), *Agha Wazir Abbas and others v. The State and others* (2005 SCMR 1175), *Mukhtar Ahmed v. The State* (1994 SCMR 2311), *Rahimullah Jan v. Kashif and another* (PLD 2008 SC 298), *Khan v. Sajjad and 2 others* (2004 SCMR 215), *Shafique Ahmad v. Muhammad Ramzan and another* (1995 SCMR 855), *The State v. Abdul Ghaffar* (1996 SCMR 678) and *Mst. Saira Bibi v. Muhammad Asif and others* (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that 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 drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals."* (bold added)

14. Whilst acquitting the respondents the accountability court found as under at typed page 8 of the impugned judgment;

*"From the above comments, it is clear that the steps taken in this case from the very beginning unto last are in accordance with Rules, Regulations and Law applicable at the relevant time, as such the accused have committed no illegality. Even otherwise under illustration (e) of Article 129 of the Qanun-e-Shahadat Order, the court can presume that all official acts are regularly performed unless contrary is proved. As such in the present case, all the actions of the official functionaries are, deemed to be in accordance with Rules and Law unless the same are contrary proved. However, no evidence whatsoever has been, led by the prosecution to show violations of any Rules or Article 52(A) of KDA Orders 1957. On the contrary P.W Murad Ali Junejo has stated that the Minister for Housing and Town Planning was the competent authority to pass orders of regularization of plots and the plot in question was regularized by the then Minister on the recommendations of the Director General KDA and Member Land KDA. He has admitted that the transfer of the plot in question and the challan paid were in accordance with law."*

15. When confronted by the court to point out any illegalities in the impugned judgment despite his best efforts special prosecutor NAB was unable to do so. We have considered the record including the evidence recorded at trial especially that of PW Murad Ali Junejo and have not been

able to find any glaring illegality in the impugned judgment which would warrant its interference. Thus, keeping in view the extremely narrow scope of appeals against acquittal as mentioned above and the fact that the respondents are entitled to the double presumption of innocence since we have found no glaring illegality in the impugned judgment we find that the respondents are entitled to the benefit of the doubt and that the impugned judgment has rightly acquitted the respondents and as such the appeal against the respondents (**Ghulam Hyder Memon, Kazi Khalilur Rehman, Shah Muhammad Balouch and Agha Muneeruddin**) acquittal is dismissed.

16. The above appeal against conviction and appeal against acquittal are disposed of in the above terms.

MAK/PS