IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No. S-67 of 2024

Appellant	:	Akbar Ali son of Arz Muhammad Khoso, Through Mr. Rafique Ahmed K. Abro, Advocate.
Respondent	:	The State Through Mr. Nazeer Ahmed Bhangwar, DPG
Date of hearing	:	25-07-2025
Date of Judgment	:	30-07-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – Through this criminal appeal filed under Section 10 of the Pakistan Criminal Law Amendment Act, 1958 read with Section 410 Cr.P.C., the appellant Akbar Ali Khoso has challenged the judgment dated 30.07.2024 passed by the learned Special Judge, Anti-Corruption (Provincial), Larkana in Special Case No. 16 of 2009, whereby the appellant was convicted under Section 409 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced to 10 years R.I. along with fine of Rs.1,873,191/-, and under Section 477-A PPC to 3 years S.I. with fine of Rs.50,000/-, with both sentences to run concurrently and benefit of Section 382-B Cr.P.C. extended.

2. The genesis of the prosecution lies in the appointment of the appellant as a Storekeeper in the office of Executive District Officer (Health), Jacobabad. During the tenure of his service, the appellant was allegedly entrusted with various stocks of government-supplied medicines meant for distribution to Basic Health Units and Public Health Centers. In October 2005, the appellant was transferred and relieved of charge on 24.10.2005 as per relieving order (Exh.9-C). However, it is alleged that he did not formally hand over the stock to his successor Nizamuddin Panhwar and absented himself.

Subsequently, a committee was purportedly formed by the EDO (Health) which entered the medical store on 28.10.2005, broke open the lock, and prepared a report alleging shortage and misappropriation of medicines. Based on the committee's report, a source report was submitted to ACE Jacobabad, which led to registration of FIR No. 01/2007 on 06.01.2007 against the appellant.

3. After the investigation, a final report was submitted and the appellant was sent up for trial. During trial, the prosecution examined several witnesses including officials from the health department and the Anti-Corruption Establishment. The trial culminated in a judgment dated 14.03.2017, convicting the appellant, said judgement was maintained by this court; however, on appeal, the Hon'ble Supreme Court of Pakistan found that the appellant was not afforded proper opportunity of cross-examination and remanded the case for retrial. Following remand, the trial court again convicted the appellant on 30.07.2024 through a judgment that is now impugned before this Court.

4. Learned counsel for the appellant argued that the impugned judgment is a mechanical reproduction of the previous decision and does not reflect independent application of judicial mind after remand. He submitted that no fresh assessment of cross-examination or evidence was undertaken. He contended that the appellant was relieved from duty on 24.10.2005, as per Exh.9-C, and the committee took charge and broke the lock on 28.10.2005; hence, the appellant was no longer responsible. He further contended that entrustment of the missing stock was never proved, and no documentary or oral evidence was led to establish criminal breach of trust. Learned counsel also emphasized the political motivation and animosity by the EDO Health, stating that the appellant was the President of the Paramedical Staff Union and had filed complaints against corruption and illegal appointments in the department. He

further pointed out that no witness from any Basic Health Unit was examined to confirm non-receipt of medicines. He argued that key witnesses such as the Magistrate and mashir PC Abdul Hakeem were withheld, and that no valuation report was contemporaneous with the raid. The learned counsel relied upon case law including 2020 SBLR 630 and 2022 SBLR 998.

5. Conversely, learned DPG for the State supported the judgment of the trial court. He contended that after remand, full opportunity of cross-examination was accorded and the prosecution witnesses successfully stood the test of cross-examination. He submitted that the committee's report, the stock register, and valuation collectively proved that the appellant misappropriated the medicines. He further argued that the appellant never challenged the authenticity of the stock registers during trial and admitted having remained incharge of the store. He stated that the entrustment of stock was sufficiently proved through official documents and Exh.9-C, and the accused never produced any receipt or official dispatch evidence to rebut prosecution's claim. He urged that the conviction was rightly recorded.

6. I have heard the learned counsel for the appellant and the learned DPG for the State, and examined the entire record including depositions and cross-examinations conducted after remand.

7. At the outset, it is pertinent to note that the impugned judgment dated 30.07.2024 suffers from several legal and factual infirmities. Despite the case having been remanded by the Hon'ble Supreme Court of Pakistan with explicit directions to ensure fair trial and afford effective opportunity for cross-examination, the learned trial court merely reiterated its previous verdict dated 14.03.2017. The impugned judgment fails to exhibit any independent assessment of the defence or re-evaluation of the prosecution's evidence in light of the post-remand proceedings. Such a mechanical reproduction of the

prior judgment is a clear violation of due process and amounts to non-application of judicial mind.

8. The pivotal element in establishing an offence under Section 409 PPC is the entrustment of property. The record, particularly Exh.9-C, clearly establishes that the appellant was relieved from duty on 24.10.2005. It is further undisputed that the committee constituted by the EDO (Health) entered the store premises on 28.10.2005, four days after the appellant ceased to be the custodian. Thus, even if there was shortage discovered in the store, the entrustment and control of the alleged missing stock at the relevant time was not with the appellant. The prosecution has not led any credible evidence to connect the appellant to the custody of that stock as of the date of inspection.

9. Moreover, the constitution of the committee itself has come under serious doubt. There exists no written notification or order from the competent authority approving the constitution of such a committee. While two members of the committee testified, the third, Dr. Noor Ahmed Pathan was never examined. This renders the composition and findings of the committee legally questionable. Furthermore, no independent witness, officer of the BHUs, or recipient of the allegedly missing medicines was examined to confirm any actual deprivation or shortage at the delivery point.

10. An equally serious lapse is the non-examination of key prosecution witnesses, including PC Abdul Hakeem, an important mashir, and Magistrate Qaisar Ali Khan in whose presence the store was allegedly opened and inventory taken. Their non-examination is fatal to the prosecution case. As per Article 76 of the Qanun-e-Shahadat Order, 1984, the recovery memos and inventory lists are inadmissible unless proved by competent witnesses.

11. The trial court also failed to return any findings with respect to the charge under Section 468 PPC despite the appellant

having been charged with the same. The judgment is completely silent on whether the ingredients of Section 468 were proved or otherwise, which constitutes a procedural illegality and affects the validity of the judgment.

12. The defence consistently pleaded political victimization and mala fide on part of the then EDO (Health). The appellant had earlier approached competent forums regarding irregularities in health department and had also been active in the Paramedical Staff Union. The defence also highlighted that during the relevant period, the Hon'ble Supreme Court had taken suo motu cognizance of large-scale corruption in the health sector in Jacobabad. This background lends credibility to the appellant's plea of being falsely implicated, but the learned trial court entirely failed to advert to this defence.

13. It is also pertinent to note that the appellant produced several documents during his statement under Section 342 Cr.P.C., but the trial court discarded the same merely on the ground that they were Photostat copies, without examining whether they were otherwise admissible or verifying their origin through proper procedure. Moreover, the prosecution failed to confront the appellant with the specific allegations of forged entries, alleged false documentation, and valuation during his examination under Section 342 Cr.P.C. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221),

Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).

14. In these circumstances, the prosecution has utterly failed to discharge its burden of proving the charge beyond reasonable doubt. There is no direct evidence that the appellant misappropriated any stock, or that any specific medicines were found in his unauthorized possession. Entrustment, misappropriation, and falsification of records, the core ingredients of the offences charged, have not been established through credible and admissible evidence.

15. In view of the foregoing analysis, I am of the considered view that the prosecution has failed to establish the appellant's guilt beyond reasonable doubt. The trial was vitiated by procedural irregularities, material contradictions, and non-compliance with fundamental principles of criminal justice. Resultantly, the appeal is allowed. The conviction and sentence recorded by the learned Special Judge, Anti-Corruption (Provincial), Larkana vide judgment dated 30.07.2024 in Special Case No. 16 of 2009 are hereby set aside. The appellant Akbar Ali Khoso is acquitted of the charges under Sections 409, 468, and 477-A PPC read with Section 5(2) of the Prevention of Corruption Act, 1947. He shall be released forthwith if not required in any other case.

J U D G E

Asghar Altaf/P.A