

**IN THE HIGH COURT OF SINDH KARACHI**  
**Criminal Appeal No.105 of 2023**

Appellants : i. Ghulam Akbar Shaikh s/o Ali  
Muhammad Shaikh  
ii. Adeel Lashari s/o Arshad Lashari  
Through M/S Muneer Ahmed Malik  
Zohaib Hsan Jagirani, Abdul  
Ghaffar and Ghulam Murtaza,  
Advocates

Respondent : The State  
Through Mr. Muhammad Mohsin Mangi,  
APG

Date of hearing : 16.04.2026  
Date of decision : 20.05.2026

**JUDGMENT**

**MIRAN MUHAMMAD SHAH, J:-** Through this Criminal Appeal, the appellants, namely Ghulam Akbar Shaikh son of Ali Muhammad Shaikh and Adeel Lashari son of Arshad Lashari, have challenged the judgment dated 17.02.2023, passed by the learned Special Judge, Anti-Corruption (Provincial), Karachi, in Special Case No. 02/2021 [*The State v. Ghulam Akbar Shaikh and another*], arising out of Crime No. 18/2020, registered at Police Station ACE East Karachi, under Sections 161 and 34 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947, whereby the learned trial Court convicted and sentenced the appellants under Section 245(2) Cr.P.C. For the offence under Section 161 PPC, they were sentenced to suffer R.I., for three years and to pay a fine of Rs.50,000/- each, and in default thereof, to further suffer S.I., for three months. For the offence under Section 5(2) of the Prevention of Corruption Act, 1947, they were sentenced to suffer R.I., for one year and to pay a fine of Rs.10,000/- each, and in default thereof, to further suffer S.I., for one month. Both sentences were ordered to run concurrently, and the benefit of Section 382-B Cr.P.C. was also extended to them.

2. Briefly the facts of the prosecution case are that complainant Muhammad Kamran was working at a dairy shop situated at Jahangir Road, New Town, Karachi. The Electrical Inspector, Government of Sindh, Karachi Region-I, had granted permission for installation of a generator at the said shop. According to the complainant, one Akbar Shaikh, who introduced himself as a clerk in the office of the Electrical Inspector, used to visit the dairy shop every six months and allegedly received illegal gratification of Rs.35,000/- to Rs.40,000/- on behalf of Ghulam Rasool Hingoro, Assistant Electrical Inspector, while issuing a challan of only Rs.600/-. On the date of registration of the FIR, the complainant alleged that the accused demanded Rs.25,000/- and threatened that, in case of non-payment, a challan of Rs.600,000/- would be issued. Consequently, the present FIR was registered against Ghulam Rasool Hingoro, Akbar Shaikh, and others. Thereafter, a trap party was constituted under the supervision of a Magistrate. A memo regarding handing over of tainted currency notes was prepared, and a raid was conducted at Seven Star Hotel, Guru Mandir, Karachi, where accused Ghulam Akbar Shaikh and Adeel Lashari were allegedly apprehended red-handed. The tainted amount of Rs.25,000/- was recovered from the possession of co-accused Adeel Lashari, who was stated to be the driver.

3. After registration of the FIR and completion of investigation, the Investigating Officer submitted challan before the competent Court. In the challan, Ghulam Rasool Hingoro was shown in column No.2 as (not sent up accused) whereas accused Ghulam Akbar Shaikh and Adeel Lashari were sent up for trial showing on bail. A formal charge was framed against the accused persons, to which they pleaded not guilty and claimed trial.

4. In order to substantiate the charge, the prosecution examined four witnesses, namely PW-1 Muhammad Kamran, PW-2 Syed Haseeb Shah,

Judicial Magistrate-XIV, East Karachi, PW-3 Muhammad Amir private job/employee, and PW-4 Pervez Ahmed, the author of the FIR. These witnesses produced various documents in evidence, thereafter the prosecution side was closed. Statements of the accused under Section 342 Cr.P.C. were recorded, wherein they denied the allegations levelled against them and claimed innocence. However, neither they examined themselves on oath under Section 340(2) Cr.P.C., nor produced any witness in defence.

5. Learned counsel for the appellants contended that the impugned judgment is contrary to the settled principles of criminal justice and is based on misreading and non-reading of evidence. He argued that the prosecution case suffers from material contradictions, procedural irregularities, and a defective investigation, while the raiding party also failed to comply with the prescribed legal procedure during the raid and recovery proceedings. According to the learned counsel, these serious infirmities create reasonable doubt in the prosecution case, entitling the appellants to acquittal on the basis of benefit of doubt.

6. Conversely, learned APG strongly opposed the appeal and supported the impugned judgment on the ground that the offence committed by the appellants was against society. He submitted that there were no material inconsistencies or contradictions in the evidence of the prosecution witnesses and that the prosecution had successfully established its case against the appellants. According to him, the learned trial Court rightly convicted the appellants in accordance with law.

7. I have heard the learned counsel for the appellants as well as the learned APG and have carefully examined the available record.

8. A careful perusal of the record reveals that there are material contradictions and discrepancies in the evidence of the prosecution witnesses, even the charge appears to be defective and can be declared as

groundless. The complainant, during his deposition, admitted that he had never submitted any complaint against Ghulam Rasool or Ghulam Akbar Shaikh by stating that “*It is correct to suggest that I never moved complaint against Ghulam Rasool Hingoro and Ghulam Akbar Shaikh at department head office*”. He further admitted that the tainted amount was recovered from the pocket of co-accused Adeel Lashari. This clearly establishes that no recovery was effected from the appellant, Ghulam Akbar Shaikh, nor was any amount proved to have been received by him. The evidence of all prosecution witnesses also supports this position. It is an admitted position that the alleged tainted amount was recovered from Adeel Lashari, who was merely a taxi driver and not a public servant. Therefore, the provisions of anti-corruption law were not applicable to him. It is also noteworthy that Ghulam Rasool Hingoro, who was serving as Electrical Inspector at the relevant time, was never sent up for trial despite the allegations levelled against him. Furthermore, during cross-examination, the complainant admitted that “*I do not know accused Ghulam Akbar Shaikh is the employee in Region-I or in Region-II.*” which reflects that he was not even certain about the appellant’s official status or posting at the relevant time. The co-accused Adeel Lashari, from whose pocket the alleged recovery was made, was admittedly a private taxi driver and not a government official. In such circumstances, the application of anti-corruption laws against him appears to be legally questionable. Moreover, no site plan of the place of incident was prepared, and the tainted money was not recovered from the exclusive possession of the appellant Ghulam Akbar Shaikh. These lapses amount to serious procedural irregularities in the conduct of the raid, arrest, and recovery proceedings. In the case reported as 2019 YLR 2055, the procedure required to be followed during raid and recovery proceedings in anti-corruption matters has been comprehensively discussed, the relevant portion whereof is reproduced as under:-

- “i. Conversation between complainant and accused is relevant to be heard by the raiding party.
- ii. Bribe money has to be seen while passing to the accused.
- iii. Independent witnesses available at the time of recovery and arrest have to be associated as witnesses.
- iv. If complainant being biased against the accused, his evidence needs independent corroboration.
- v. It is not necessary in raid (trap cases) to look for a direct evidence of criminal conversation between the accused and complainant provided that Magistrate who supervise the raid was satisfied that he had not been cheated neither by the complainant/ decoy witness nor the accused.
- vi. The purpose of giving bribe money/ illegal gratification has to be proved independently against which the accused was receiving the bribe.
- vii. Recovery has to be proved through direct evidence and confirmed by the raiding Magistrate.
- viii. Overhearing of the conversation of complainant and accused by the Magistrate is immaterial, neither the same is conditioned precedent to prove a raid case nor the same is the requirement of the law.
- ix. Requirements of Section 103, Cr.P.C. in recovery proceedings are mandatory other than by police witnesses if independent witnesses were available.
- x. Raiding Magistrate has to record the statement of the accused at the time of recovery in order to understand the issue as to whether the recovered/ tainted notes or articles are required for any official purpose or job.
- xi. Mere recovery of currency notes in such cases by itself would not be taken as proof of demand/payment of bribe unless all precautionary measures were taken by the raiding party to exclude the possibility of any defence version and to exclude all possibilities of false implications.
- xii. Currency notes which were passed on to complainant, their serial numbers were noted, but without putting any initial or mark thereon; such notes could not be strictly termed to be tainted currency notes.
- xiii. Law required that immediately after the raid, statement of complainant and accused was to be recorded by the raiding Magistrate.
- xiv. Raiding Magistrate has to see that complainant or decoy witness has delivered the bribe money to the accused.

- xv. Site plan has to be prepared regarding the raid wherein each and every witness, Magistrate, accused, complainant/ decoy witness has to be identified.
- xvi. Numbers of currency notes have to be mentioned in Mashirnama/recovery memo.
- xvii. Tainted money has to be shown to the recovery witnesses on spot after getting it recovered from the accused at the time of raid.
- xviii. Magistrate as well as police officials had to witness the transaction of delivery of illegal gratification which was accepted by the accused in trap proceedings.
- xix. Court was required to consider explanation offered by accused on the touchstone of preponderance of probability and not on the touchstone of proof beyond reasonable doubt, however before an accused was called upon to explain as to how the amount in question was found in his possession, foundational facts must be established by the prosecution in Trial.
- xx. Recovered tainted currency notes could have been at the most corroboratory in nature subject to condition that complainant has supported the prosecution case.
- xxi. Investigation Officer, if admitted the presence of private witnesses at the time of raid and arrest as well as recovery of the alleged tainted money, he has to comply with provisions of Section 103, Cr.P.C.
- xxii. Tainted money has to be marked and sealed after its alleged recovery by the raiding Magistrate
- xxiii. The accused person must have a capacity to fulfill the demand of complainant or in position to deliver the nature of work assigned to him and evidence should have been given to that effect that accused has completed the job against which he is receiving the illegal gratification.”

9. The aforesaid principles provide important guidelines for dealing with anti-corruption cases, which appears to be lacking in the present case. Reliance is also placed upon a judgment of this Court reported as 2021 P.Cr.L.J. Note 33, wherein similar principles were discussed and applied, relevant portion is reproduced hereunder:-

“If public servant (accused) was caught by members of a raiding party while taking a bribe/illegal gratification, there must be hearing of words uttered by accused and complainant so as to eliminate chances of involvement of innocent persons, but, in the present case, there was no such hearing--  
-Nothing placed on record as to whether the accused was a habitual or chronic in his illegal activities or involved before

the present case---Tainted money was never passed on to the accused by the complainant within the sight of raiding party nor the Raiding Magistrate heard the conversation between the complainant and the accused before alleged bribe money was handed over to the accused---Alleged tainted money was found lying in the drawer of the table in the office of accused and not recovered from his exclusive possession for which the defence plea was that the complainant had put the said amount in drawer of the table in his absence---What had transpired between the parties before the alleged transaction was not clear---Circumstances established that the prosecution had failed to prove its case against the accused beyond any shadow of doubt, in circumstances---Appeal against conviction was allowed, in circumstances.”

10. In light of the case law discussed above, the procedural discrepancies, defective investigation, and failure of the raiding party to strictly comply with the prescribed procedure are salient features that go in favour of the appellants, entitling them to the benefit of doubt. Consequently, Criminal Appeal No.105 of 2023 is allowed, and the impugned judgment dated 17.02.2023, passed by the learned Special Judge, Anti-Corruption (Provincial), Karachi, in Special Case No. 02/2021 [*The State vs. Ghulam Akbar Shaikh and another*], is hereby set aside and the appellants are acquitted of the charge.

**JUDGE**

