

IN THE HIGH COURT OF SINDH AT KARACHI.

Cr. Acctt. Appeals No.22, 23, 24, 25, 32 & 34 of 2012

Sabeena Farooq and others

V/s

The State

Before:

MR. JUSTICE AQEEL AHMED ABBASI J.

MR. JUSTICE FAROOQ ALI CHANNA J.

Date of Hearing: 25.10.2012

Appellants: Through Mr. Shoukat H. Zubedi Advocate
Mr. Ch. Abdul Rasheed, Advocate.
Mr. Syed Mehmood Alam Rizvi, Advocate
Ms. Shazia Hanjrah, Advocate.
Mr. Malik Dashti, Advocate.
Mr. Muhammad Ashraf Kazi, Advocate

Respondent : Through Mr. Noor Mohammad Dayo, Spl. Prosecutor,
NAB.

ORDER

FAROOQ ALI CHANNA, J.:- By this common order we intend to dispose of applications under Section 426 Cr. P.C. filed separately in the abovementioned Cr. Acctt. Appeals arising from the same judgment dated 9th October, 2012 passed in Reference No. 28/2002 and 28-B/2002 whereby the appellants were found guilty of offence U/S 9 (a) of the National Accountability Ordinance, 1999, and the appellants Syed Mohammad Ajmal Mahmoodi, his wife Ghousia Ajmal, Mirza Ashfaque Ahmed and Roshan Ara were awarded sentence for 7 years R.I and fine of Rs. 10,00,000/- (Rupees Ten lac) each, in default thereof to suffer further one year R.I, whereas the appellants Sabeena Farooq, Dr. Abdul Rahman Rajput, Farida Begum and Mansoor Ahmed were awarded sentence for 5 years R.I and fine of Rs.5,00,000/- (Rupees five lac) each in default thereof to further undergo sentence for 6 months R.I. The appellants were extended benefit of Section 382 (b) Cr. P.C. The trial Court also ordered forfeiture of property declared in the “Statement of Affairs” against the above said appellants, within the meaning of Section 15 of National Accountability Ordinance, 1999.

2. Learned counsel appearing for all the appellants have contended that none of the appellants was the direct beneficiary of earnings made by M/s T.J Ibrahim & Company and

M/s Alliance Motors by means of corruption and corrupt practices. The allegations against the appellant Sabeena Farooq was that she had purchased a bungalow which had been purchased by the previous owner from the funds of M/s T.J Ibrahim & Company and M/s Alliance Motors, appellant Dr. Abdul Rahman Rajput was unauthorized occupant and title holder of property Flat No. 602, Amber Palace, appellant Syed MohammadAjmal Mahmoodi, his wife appellant Mst. Ghousia Ajmal, appellant Mirza Ashfaq Ahmed, his wife Mst. Farida Begum and Mansoor Ahmed alongwith others were the beneficiaries of 10 plots in “Khanka Sharif” in Korangi, Karachi and 3 flats in Yasrab Plaza, Karachi. It was further contended that though appellant Mrs. Roshan Ara has been shown Director of M/s Alliance Steel Mills (Pvt) Limited but there is no charge against her that she was the beneficiary of funds of M/s T.J Ibrahim & Company and M/s Alliance Motors. It has been further contended by the learned counsel that none of the appellants has any direct involvement or interest in the business of M/s T.J Ibrahim & Company and M/s Alliance Motors. The appellant Farida Begum, Ghousia Ajmal, Sabeena Farooq and Roshan Ara being female and the other male accused being of advance age, their case may be considered sympathetically besides the merits particularly when the appellants had already suffered agony of trial for more than 10 years and during trial they remained in jail for considerable time without any fault on their part.

3. While pointing out the errors in the impugned judgment and the illegality committed by the learned trial Court, it has been argued by the learned counsel that the impugned judgment has been passed in violation of express provisions of Section 366 and 367 Cr. P.C as the offence has been specified nor the relevant section under which the appellants have been convicted has been

mentioned by the trial Court. It has been further contended that even otherwise, the sentences being short are liable to be suspended on admission of appeal for regular hearing. As regards objection relating to maintainability of an application under Section 426 Cr. P.C for suspension of sentence awarded under National Accountability Ordinance, 1999 the learned counsel have placed reliance on the following reported cases: 2003 SCMR 22 (Khan Muhammad v/s The State), 2002 MLD 603 (Asher Jan V/s The State), 2006 SCMR 1225 (Kukaramul Haq V/s NAB), PLD 2003 Kar 398 (Muhammad Usman Farooqui V/s The State), 2003 P.Cr.L.J xc 154 (Hakim Ali Zardar V/s The State), PLD 2002 Kar 497 (Mian Munir Ahmed V/s The State), 2002 YLR 3996 (Dr. Abdul Quddus V/s The State), 2007 YLR 37 (Mst. Shaista Shamim V/s The State), 2012 SCMR 997 (Mazhar Ahmed V/s The State).

4. Learned State counsel appearing on behalf of NAB has not opposed the maintainability of the listed applications filed under Section 426 Cr. P.C in the above Cr. Acctt. Appeals, however, he has opposed the applications on merits and has contended that in the cases relied upon by the learned counsel for appellants, the sentences were suspended either on the ground that the appellants had already undergone major portion of the sentence or on the ground of their ailment whereas in the instant case no such ground has been taken, hence the applications are liable to be dismissed.

5. We have heard all the learned counsel for the appellants, learned D.P.G NAB, and have also perused the impugned judgment as well as the cases law relied upon by the learned counsel for appellants. In the above referred judgments the division benches of this Court as well as the Hon'ble Supreme Court have held that provisions of section 426 Cr.P.C can be invoked in

Accountability cases, however, keeping in view the facts and circumstances of each case. Although the reasons for suspending the sentences in the cited judgments were different from the grounds taken in the instant matters, but the principle has been laid down that the sentences awarded in NAB references can be suspended, therefore, the provision of Section 426 Cr. P.C are attracted in the Cr. Acctt. Appeals.

6. The tentative perusal of impugned judgment reveals that the charges against above named appellants were that they have purchased properties or they were benamidar of properties allegedly purchased from the funds of M/s T.J Ibrahim & Company and M/s Alliance Motors, as such there is no charge against them for being the direct beneficiaries of companies in liquidation. It is also evident from the impugned judgment that at the time of pronouncement of judgment, admittedly, two of the accused persons namely Mohammad Tahir and Mst. Rakhshanda Jabeen were absent and the sentences were awarded to them in absentia which apparently is in violation of section 366 Cr. P.C. The trial Judge while recording the judgment has found the appellants guilty of offence under Section 9 (a) of NAO 1999, which section has further been bifurcated in (xii) Sub sections but while awarding the sentence has not mentioned specifically that which accused was found guilty of which sub section of section 9 (a) of NAO. The fate of the said legal defect will be considered at the time of final hearing of the appeals. Keeping in view the above defects pointed out by the appellants and the advanced age of the appellants who also include four ladies and the agony of prolonged trial, we are of the view that prima facie the appellants have made out a case of suspending the sentence awarded to the appellants during the pendency of appeals. We therefore, suspend the operation of the sentence

awarded to the appellants and direct their release on bail subject to furnishing surety in the sum of Rs. One million each and P.R bond in the like amount to the satisfaction of the Nazir of this Court.

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Dated: __.10.2012.

