

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Crl Appeal NO. 800 of 2022

Dost Muhammad

Vs

The State

HIGH COURT OF SINDHComposition of Bench S.B.

Mr. Justice Muhammad Karim Khan Agha

Date of hearing: 03-10-2024

Decided on : 10-10-2024

Judgment approved for Reporting

YesCERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

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PRESENTED ON
28-12-2022

Deputy Registrar (Jodil, 7)

IN THE HON'BLE HIGH COURT OF SINDH AT

KARACHI

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Crl. Appeal No. _____ of 2022.

Dost Muhammad,

S/o. ~~Baz Khan~~, Haji Mohammad

Muslim, Adult, Nursing Staff(Police Hospital)

(Jail custody) Karachi,-----Appellant.
at Central Jail

V E R S U S

The State -----Respondent.

U/s 161/34 PPC R/w Section 5 (2) of
Prevention of Corruption Act-II of
1947, F.I.R No. 78/2019 of A.C.E East
Zone, Karachi.

APPEAL UNDER SECTION 410 CR.P.C.

Being aggrieved and dissatisfied from the Judgment dated
22.12.2022 passed by the learned Special Judge Anti-Corruption
(Provincial) Karachi in Special Case No. 77/2019 (The State Vs.
Dost Muhammad), whereby the Appellant has been convicted and
sentenced to suffer R.I for three (03) years and to pay fine of
Rs. 60,000/- or in default to undergo S.I for three months more

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRL. APPEAL NO.800 OF 2022

Appellant: Dost Muhammad son of Haqi Muhammad through Mr. Khan Zaman Khattak, Advocate.

Respondent: The State through Mr. Mumtaz Ali Shah, Assistant Prosecutor General Sindh.

Date of Hearing: 03.10.2024

Date of Announcement: 10.10.2024

JUDGMENT

Muhammad Karim Khan Agha, J. Appellant Dost Muhammad has filed this appeal against his conviction whereby he was convicted and sentenced by the Special Judge Anti-Corruption (Provincial), Karachi vide Judgment dated 22.12.2022 as under:-

Accused Dost Muhammad son of Haqi Muhammad is convicted u/s 245(2) Cr.P.C. and sentenced as per following provisions mentioned in below chart.

1.	Section 161 PPC	Accused Dost Muhammad is sentenced to suffer R.I. for two years and to pay fine of Rs.50,000/-. In case of default in payment of fine amount, he shall further serve S.I for two months more.
2.	Section 5(2) Prevention of Corruption Act, 1947	Accused Dost Muhammad is sentenced to suffer R.I. for one year and to pay fine of Rs.10,000/-. In case of default in payment of fine amount, he shall further serve S.I for one month more.

The sentences shall run concurrently. The benefit of Section 382-B Cr.P.C is given to the accused.

2. The brief facts as narrated in the FIR are that, this case was registered u/s 11(1) R/w 11(2) and (3) of ACE Rules 1993, as a consequence of complaint filed by Almas Rabbani s/o Ghulam Rabbani, against organized corrupt practices and bribe taking by Head Constable

Dost Muhammad, working at Police Hospital Karachi, on behalf of Tayyab Umrani, posted as Medical Superintendent, Police Hospital, Karachi. They were found involved into rent seeking to the proportion of organized extortion from new recruits from Police Department under various recruitment policies & rules. From a number of new aspirants, who would be selected in Police Department they had taken bribe and in lieu of issuing Medical Fitness, required for joining the Police department. Ultimately, as per details it was complained that complainant was considered for appointment as Constable in Karachi Range (KPO) against Shaheed Quota. He approached the Medical Superintendent, Police Hospital, Karachi for issuance of medical certificate required for job. However, he faced dillydallying. Where, he met with Dost Muhammad, who demanded Rs.50,000/- as bribe for issuing Medical Certificate. He requested him that he cannot pay such above amount, but he shouted at him by saying if, he did not pay the above amount, the Medical Officer Mr. Tayyab Umrani, would not issue his Medical Certificate. He personally met Tayyab Umrani Medical Superintendent Police Hospital Karachi for redressal of his grievances but he did not redress his grievances. Finally, Dost Muhammad agreed to get him certificate in lieu of Rs.20,000/- as bribe. Though, he could not pay him bribe, yet he had no other option but to pay him, illegally demanded extortion. He would not pay the bribe, accused would raise objections. In the similar fashion, he has been seeking bribe from other recruits, as well. It's an organized racket engaged in corrupt practice.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed his trial.

4. In order to prove its case the prosecution examined four (04) witnesses, who exhibited numerous documents and other items. Then statement of accused under Section 342 Cr.P.C was recorded whereby he denied the allegations leveled against him and claimed his false implication. He did not examine himself of oath and called one DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted and sentenced the appellant as stated earlier in this Judgment. Hence appellant has filed this appeal against his conviction.

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6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same is not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case by the complainant; that the FIR was lodged after a delay of 21 days; that no one heard the conversation between the appellant and the complainant in the appellant's room when the bribe was allegedly paid; that the mashirnama of arrest and recovery was not prepared on the spot and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of *Abdul Rasool v The State* (1996 P Cr. L J 1350), *Abdul Karim Kmbhar v The State* (2021 YLR Note 10), *Bashir Ahmad v The State* (2011 SCMR 634).

8. Learned Assistant Prosecutor General Sindh, after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, he contended that the appellant was arrested on the spot and caught red handed with the bribe money; that the eye witness who gave evidence was trust worthy and confidence inspiring and his evidence should be believed and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of their contentions he placed reliance on the cases of *Shah Jehan v The State* (PLD 2004 SC 35) and *Rashid Ahmad v The State* (1974 SCMR 249).

9. I have heard the arguments of the learned counsel for the appellant and learned APG and have gone through the entire evidence which has been read out by the learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) Admittedly the FIR was lodged after a delay of 21 days. I however have found that this delay has been explained. This is because when the complainant went to collect his medical certificate a bribe of RS50,000 was demanded from him by the

appellant. Since this amount was not paid by the appellant as it he could not afford such payment over a period of time negotiations took place between the complainant and the appellant which lead to the bribe amount being reduced to RS20,000 however the complainant could still not afford this and hence on the advice of a friend he went to the ACE and lodged his FIR. Thus, I do not find the delay in lodging the FIR based on the particular facts and circumstances of this case to be fatal to the prosecution case as the delay in lodging the FIR has been adequately explained. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

- (b) The appellant is named in the FIR with the specific role of demanding a bribe on behalf of Dr.Tayyab Usmani MS at Police hospital garden in return for giving the applicant a medical certificate as required by the applicant to join the police force.
- (c) After lodgment of the FIR according to the evidence of IO PW 4 Rato Khan of the ACE and the evidence of PW 3 Shafaquat Hussain who was a magistrate a plan was put in place to trap the appellant whilst he received the bribe from the complainant.
- (d) According to the evidence of the complainant. **PW 1 Almas Rabani who is an eye witness** to the bribery on 20.10.2019 he was supposed to receive medical certificate (MC) for the purpose of joining the police however the appellant told him there was an issue regarding his medical certificate and demanded RS 50,000 for him to issue his MC. He told the appellant that he was a poor man and the son of a shaheed and could not pay the amount demanded. The issue was that his domicile was of Punjab Province. After a week he was unable to arrange the bribe of RS50,000 whereupon the appellant gave him a few days more and told him to at least arrange RS20,000 other wise he would not get his MC. On 02.11.19 he told the appellant that he could not arrange the bribe of 20,000 and he was in effect told to arrange the amount or else his MC would not be issued. After discussing the matter with his cousin he approached the ACE on 05.11.19 where he submitted his complaint. His S.154 CR.PC statement was also recorded. The next day an FIR was lodged on his complaint by PW 4 Rato Khan who then brought PW 3 Shafqat Hussain who was a judicial magistrate. The judicial magistrate reviewed his FIR and asked him to call two witnesses. He called PW Atwanulah and Amanullah. The officials of ACE prepared mashirmana of handing over tainted amount of RS 20,000 (4 X 5,000) to him which he took into his possession. Thereafter he, his witnesses, judicial magistrate and trap team went along to police hospital garden Karachi. The trap party took up positions whilst he entered the room of the appellant and told him that he had arranged the RS20,000 with great difficulty and handed over the bribe to him in return for his MC. He then left the room and signaled the trap party who entered the room. PW 3 Ratko Khan carried out the search and recovered from the appellant the tainted notes which matched the numbers on the notes in the earlier

mashirnama. When confronted by PW 3 Shaquat Hussain as to how the appellant had the tainted notes he had no explanation.

This eye witnesses evidence was not materially improved on from his S.154 Cr.PC statement. He is not related to the appellant or any other witness and had no ill will or enmity towards the appellant which would give him a reason to implicate him in a false case. He knew the appellant and handed the bribe to him so the identity of the appellant is not in doubt. The eye witness gave his evidence in a straightforward manner and was not dented during a lengthy cross examination. As such I find the evidence of this eye witness to be trust worthy, reliable and confidence inspiring and believe the same. In this regard reliance is placed on the Supreme Court case of **Shah Jehan** (Supra)

It is well settled by now that I can convict the accused on the evidence of a sole eye witness provided that I find his evidence to be trust worthy reliable and confidence inspiring. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shazad V State** (2023 SCMR 117). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witnesses to be of good quality, trust worthy, reliable and confidence inspiring and as such I believe the same and rely on it.

- (e) The evidence of this eye witness is corroborated/supported in all material respects by PW 2 Atwanullah, PW 3 Shafat Hussain the judicial magistrate and PW 4 Rato Khan save in respect of their presence in the room when the tainted money was handed over by the eye witness /complainant to the appellant and their not hearing the conversation between the eye witness/complainant and the appellant which in any event has been rendered irrelevant by the Supreme Court in **Shah Jehan's case** (Supra) keeping in view the particular facts and circumstances in this case. Indeed, the evidence of PW 2 Atwanullah supports the complainant's FIR that organized corruption was taking place at police hospital garden in which the appellant was very much involved and that the complainant was not the only victim

Having believed the evidence of the eye witness which is discussed above I turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) as under;

"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"

- (f) The tainted notes recovered from the appellant matched the currency numbers of the notes given to the complainant as per mashirnama before the trap and these recovered notes

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141

from the appellant bore the same currency numbers after their recovery from the appellant as per mashirnama prepared after the arrest of the appellant. The mashirnama of recovery was made at the PS as during the search a commotion and scuffle broke out between the entrapment team and the other police officers present at the hospital and hence the appellant had to be quickly moved to the PS.

- (g) That there was no ill will or enmity between the police and the appellant and as such the police had no reason to falsely implicate the appellant in this case for example by foisting the tainted money on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). Thus, I believe the evidence of the IO who was not dented during a lengthy cross examination and whose evidence ties in with the prosecution case.
- (h) That the tainted notes as mentioned above were recovered from the appellant.
- (i) The motive for demand of the bribe was that the complainant's domicile was from the Punjab so the appellant could hold up the complainants MC on this ground.
- (j) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669) and **Maskeen Ullah and another versus The State and another** (2023 SCMR 1568). The evidence of the PW's provides a believable corroborated unbroken chain of events from the complainant trying to obtain his MC to the appellant demanding a bribe for the release of the MC to the bribe money being given to the appellant and recovered from the appellant during a trap laid by the ACE along with a judicial magistrate
- (k) The fact that no one was prepared to act as an independent mashir has almost become a judicially recognized fact as these days no member of the public (unless they are related to the deceased or the complainant) wishes to associate themselves with such like cases and run the risk of being called to give evidence.
- (l) The fact that the MS Dr. Tayyub Umrani who was supposed to have also been involved in this corruption was let off is of help to the appellant because no recovery was made from him and there was no other evidence against him whereas the case of the appellant is on a completely different footing for the reasons mentioned above.
- (m) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can caste

doubt on or dent the prosecution case. The defence case as set out by the appellant is that he was falsely implicated in this case. However the appellant did not give evidence on oath and the witness he called to support his case was more of a character witness. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

11. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and maintain his conviction in and sentence in respect of the offence under S.5 (2) PCA 1947. Although the appellants conviction under S.161 PPC is maintained however I find his sentence under S.161 PPC to be too harsh keeping in view the fact that the bribe only amounted to RS20,000 which is relatively minor and as such his sentence under S.161 PPC is reduced from RI for 2 years to RI for one year with fine of RS 50,000 and in default of payment he shall under go SI for 2 months more. For both offences he shall be given the benefit of S.382 (B) Cr.PC and his sentences shall run concurrently.

12. The appeal is dismissed except as modified in terms of sentence in respect of the appellant's conviction under S.161 PPC.

13. The bail earlier granted to the appellant stands recalled and he shall be arrested and returned to Central Prison Karachi to serve out the remainder of his sentence. A copy of this judgment shall be sent to Director ACE East Karachi for compliance.