

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Accountability Appeal No. 41 of 2018.
Crl. Accountability Appeal No. 42 of 2018.
Crl. Accountability Appeal No. 43 of 2018.
Crl. Accountability Appeal No. 44 of 2018.
Crl. Accountability Appeal No. 45 of 2018.

Along with

Const. Petition No.D-6571 of 2018.
Const. Petition No.D-6727 of 2018.
Const. Petition No.D-1103 of 2019.
Const. Petition No.D-3489 of 2019.

Present:

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

Appellants/Petitioners: (1) Allah Bachayo Chandio s/o. Naseer Khan Chandio through Mr. Muhammad Ishaque Memon, Advocate
(2) Muhammad Younis Dahiri s/o. Mehmood Khan Dahiri, through Mr. Altamash Arab, Advocate
(3) Amin Nazir Maqbool s/o. Muhammad Khan, through M/s. Mirza Sarfaraz Ahmed and Mitha Ram Dharani, Advocates
(4) Ahmed Zohair Madni s/o. Syed Mehboob Madni through M/s. Farooq H. Naek, Salman Hamid, Usman Waleed Shaikh, Advocates.
(5) Barkat Ali Talpur s/o. Ali Murad Khan Talpur through M/s. Haq Nawaz Talpur and Muhammad Asad Shafique, Advocates.

For State: Through Mr. R. D. Kalhoro, Special Prosecutor NAB.

Dates of hearing: 19.12.2019 and 20.12.19

Date of announcement: 15.01.2020

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellants/Petitioners Allah Bachayo Chandio s/o. Naseer Khan Chandio, Muhammad Younis Dahiri s/o. Mehmood Khan Dahiri, Amin Nazir Maqbool s/o. Muhammad Khan, Ahmed Zohair Madni s/o. Syed Mehboob Madni and Barkat Ali Talpur s/o. Ali Murad Khan Talpur have preferred these appeals against the impugned judgment dated 03.09.2018 passed by the learned Judge Accountability Court No.IV Sindh at Karachi in Reference No.19 of 2017 whereby the appellants/petitioners have been convicted and sentenced as under:-

- (i) Convict accused (1) Muhammad Younus Dahiri s/o. Mehmood Khan Dahiri under Section 265-H(ii) Cr.P.C. to suffer R.I for ten (10) years and pay fine of Rs.40-Million convict accused (2) Amin Nazir Maqbool s/o. Muhammad Khan under Section 265-H(ii) Cr.PC to suffer R.I. for ten(10) years and also pay fine of Rs.40-Million and also convict accused (3) Ahmed Zohair Madni s/o. Syed Mehboob Madni under Section 265-H(ii) Cr.P.C to suffer R.I. for ten (10) years and also pay fine of Rs.200 Million. The fine shall be recoverable as arrears of land revenue in terms of Section 33-E of Ordinance *ibid*. In case of default in payment of fine, they shall suffer further R.I. for two years each. They shall be entitled to the benefit of Section 382-B Cr.P.C;
- (ii) Convict accused (4) Barkat Ali Talpur s/o. Mir Murad Ali Talpur under Section 265-H(ii) Cr.PC to suffer R.I. for seven (07) years and pay fine of Rs.20-Million and convict accused (5) Allah Bachayo Chandio s/o. Nasir Khan Chandio under Section 265-H(ii) Cr.PC to suffer R.I. for five (05) years and pay fine of Rs.20-Million. The fine shall be recoverable as arrears of land revenue in terms of Section 33-E of Ordinance *ibid*. In case of default in payment of fine, they shall suffer further R.I. for two years each. They shall be entitled to the benefit of Section 383-B Cr.PC;
- (iii) The accused (1) Muhammad Younus Dahiri, (2) Barkat Ali Talpur (3) Amin Nazir Maqbool (4) Allah Bachayo Chandio and (5) Ahmed Zohair Madni shall stand disqualified in terms of Section 15 of the Ordinance, 1999 *ibid* for a period of ten years to be reckoned from the date of release after serving out sentence awarded to them and also from seeking or from being elected, chosen, appointed or nominated as a member of representative of any public body or any statutory or local authority or in service of Pakistan or any province and also they shall not be allowed to obtain any financial facility in the form of loan or advance from any financial institutions controlled by Government for the period of ten years.

2. The brief facts as narrated in the Reference are that accused Muhammad Yonus Dahiri being Ex-Mukhtiarkar, Barkat Ali Talpur, Ex-Tapedar, Amin Nazir Maqbool, Ex- Mukhtiarkar, Allah Bachayo Chandio, Ex-DDO (Revenue) Karachi being holders of public office and Ahmed Zohair Madni being private person /builder in collusion and connivance with each other illegally allotted 16 acres of land in the name of fake person namely Allah Bux s/o. Mureed Brohi at Deh Bitti Amri, Scheme-33, Gulzar Hijri, Karachi by using fake allotment letter / order No.2766/73/3413/P.1 dated 31.03.1973 of the Land Utilization Department, Government of Sindh, subsequently illegal entries were kept in the record of rights, viz; VF-VII and VF-II of Deh Bitti Amri, Scheme-33

Gulzar-e-Hijri, Karachi fraudulently on the above said fake allotment order. Later on, the said land was shown to have been sold out to the accused Ahmad Zohair Madni, who launched housing project over the said land under the name and style of Ahsan Dream Land, whereas, the said Allah Bux Brohi s/o. Mureed Brohi, on whose name the fake allotment is shown in the record of rights was a laborer and did not possess any property in his name or *benamidar* of the said property.

3. **Accused Muhammad Younus Dahiri, being Mukhtiarkar, from 03.09.2004 to 12.11.2004** misused his authority in connivance with co-accused Ahmed Zohair Madni for illegal allotment of 16 acres land in the name of fake person namely Allah Bux Brohi on the basis of fake and forged allotment **order dated 31.03.1973**. **Accused Mohammad Younus Dahiri** kept a bogus entry in VF-VII of Deh Bitti Amri at the vacant space of Entry No.31 and allowed the demarcation of the said land after 30 years without verification of the allotment letter from the Land Utilization Department and processed for the layout plan of the land and in collusion and connivance of co-accused transferred to VF-II. **Accused Barkat Ali Talpur, being Tapedar of Deh Bitti Amri, Scheme-33, Karachi** from the year 2004 to 2005, illegally submitted a false report to the Mukhtiarkar that the subject 16 acres land belongs to the Khatedar Allah Bux Brohi and the said land is in his possession. **Accused Amin Nazir Maqbool, being Mukhtiarkar of Scheme 33 during the period from January 2005 to February 2006**, illegally restored the Entry No.31 pertaining to the allotment of 16 acres land to Allah Bux Brohi, on the pretext of the **Judicial Order of the EDO (Revenue) dated 12.10.2005**, who had actually directed to delete the note of the DDO (Revenue) and process the layout plan purely on merit. **Accused Amin Nazir Maqbool** instead of contesting the genuineness of allotment to Allah Bux Brohi as being bogus, simply transferred the fake allotment of 16 acres land to VF-II vide Entry No.48 dated 11.11.2004 to 02.06.2005, was duty bound to process the subject layout plan on merit as directed by the then EDO (Revenue) vide his Judicial Order dated 12.10.2005. However, he in violation of the order of EDO (Revenue), processed the faulty layout plan of the subject 16 acres land evidently based on the fake allotment order and suspicious entry in the record of rights. Deceased accused Abdul Aziz Junejo being Mukhtiarkar Scheme-33, Gulzar-e-Hijri, Karachi East from November 2004 to January 2005 in his capacity of Mukhtiarkar issued NOC in favour

of Allah Bux s/o. Mureed Brohi for sale of 16 acres land of Survey No.80, Deh Bitti Amri on 12.01.2005. (Accused Abdul Aziz expired in the year 2017 prior to filing the Reference). **Accused Ahmed Zohair Madani being a private builder** was involved in the illegal allotment of 16 acres of land in his favor through the connivance of official appellants, **particularly with co-accused Muhammad Younus Dahiri** on the basis of fake allotment order and subsequently he has shown that he purchased the same from Allah Bux Brohi and launched housing scheme over the subject land under the name and style of Ahsan Dreamland, comprising 260 salable units. Thus, the accused Muhammad Younus Dahiri along with other co-accused persons/government officials named above in collusion and connivance with each other illegally benefited to co-accused Ahmed Zohair Madni, the private builder by allotting 16 acres Government land in the name of fake person Allah Bux and subsequently, the same land was shown to have been sold to the co-accused Ahmed Zohair Madni, who launched a housing project over the land under the name and style of Ahsan Dreamland through fraudulently entry and forged documents thereby they all caused loss to the National Exchequer to the tune of Rs.320 Million (20 Million per acre as per the Government record of rights. Thus all accused have committed the offence of corruption and corrupt practices as defined under Section 9(a)(i)(ii)(iii)(iv)(vi) and (xii) of National Accountability Ordinance, 1999 read with Schedule attached *thereto* punishable under Section 10 of the said Ordinance.

4. In order to prove its case the prosecution examined 09 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The statement of all the accused persons were recorded under Section 342 Cr. PC whereby they have denied any allegation of wrong doing and denied the specific allegations leveled against them by the prosecution and prayed for justice. The accused persons neither examined themselves on oath, nor examined any witness in support of their defence case although the accused Muhammad Younusf Dahiri filed a written statement wherein he has taken his defense plea.

5. Learned Judge, Accountability Court No.IV, Sindh Karachi, after hearing the learned counsel for the parties and assessment of evidence

available on record, vide the impugned judgment dated 03.09.2019, convicted and sentenced the appellants/petitioners as stated above, hence these appeals have been separately filed by each appellant against their conviction as set out in the impugned judgment.

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 are not reproduced here so as to avoid duplication and unnecessary repetition.

7. **Learned counsel for appellant Muhammad Younus Dahiri** Ex-Mukhtiarkar from 03-09-2004 to 11-12-2004 has contended that he was completely innocent of any wrong doing; that he only remained Mukhtiarkar for 4 months in 2004; that there was no evidence that the fake allotment order dated 31-10-1973 was actually fake and even if it was fake there was no evidence that he had anything to do with the fake allotment letter; that there is no evidence on record that the appellant connived with any one let alone appellant Zohair Madani who was a property developer, that there was no evidence that entry 31 was fake or had been manipulated by him, that there was no evidence that he had misused his authority, that no PW has deposed against him, that there was no fake demarcation as no demarcation was ever carried out, that he had relied on the Tapedar's report in respect of the ownership by Allah Bux and had no reason to doubt him as this was the tapedar's area of expertise and that for any of the above reasons he should be acquitted of the charge by extending to him the benefit of the doubt.

8. **Learned counsel for appellant Barkat Ali** Ex Tapedar 2004 to 2005 has contended that the only allegation against him is that he falsified a report and that a review of the evidence shows that no report was falsified in that there was no suspicious transactions marked on the record when he prepared his report; that no PW has deposed that he was in connivance with any one and that his handwriting on the report did not match with his and as such the court should have called a handwriting expert as this aspect of the case is now doubtful and thus for any 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 has placed reliance

on Notice to Police Constable Khizer Hayat (PLD 2019 SC 527) and Nadeem Ramzan V State (2018 SCMR 149)

9. Learned counsel for appellant Amin Nazir Maqbool, Ex- Mukhtiarkar from January 2005 to February 2006 has contended that the appellant is innocent of any wrong doing; that no PW has deposed against him regarding restoration of entry No.31; that when entry No.31 was restored he was not acting on his own initiative but was following judicial order dated 12-10-2005 which he was bound to follow which had been passed by the EDO (Revenue) CDGK who was his superior; that this order was misinterpreted by the learned accountability court, that no loss was caused to the Government of Sindh through any of his actions; that entry No.33 was never cancelled and that only remarks concerning its genuineness were to be removed which he did, that no evidence has come on record to show that the appellant was in connivance with any of the co-accused and thus for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

10. Learned counsel for appellant Allah Bachayo Chandio, Ex-DDO (Revenue) Karachi from 14-09-2004 to 02-06-2005 has contended that he was innocent and had not done any wrong doing; that he was following judicial order dated 12-10-2005 which he was bound to follow; that he had no knowledge that the lay out plan which he processed was faulty; and that the entry 31 remained in tact until 27-10-2015 after he had left office; that no PW deposed against him or produced any document against him; that no demarcation of the land was ever carried out; that certain key pieces of evidence which the court used to convict him were not put to him at the time of recording his S.342 statement e.g. letter dated 21-10-2005 and as such was liable to be ignored and thus for any 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 has placed reliance on **Abdul Ghaffar V The State** (2011 MLD 239), **Hassan Askari V The State** (2011 P Cr. L J 778), **Sheral alias Sher Muhammad V The State** (1999 SCMR 697), **Muhammad Anwar V The State** (2019 P Cr.L J Note 80) and **The State and others V. M Idress Ghauri and others** (2008 SCMR 1118).

11. Learned counsel for appellant Zohair Madani being a private builder who was the alleged beneficiary of the scam has contended the appellant is completely innocent; that there is no evidence on record to show that he was in connivance with any government official concerning the illegal allotment of any Government land, that the evidence against the appellant is all based on surmises and conjectures, that there is no evidence that the appellant had any dealings with appellant Muhammad Younus Dahiri who as per the prosecution case he connived with in order to benefit him and that even otherwise the fraudulent entry was made in 1973 when neither the appellant or appellant Muhammad Younus Dahiri were holding any such office to enable them to fake such an entry, that there is no evidence of aiding and abetting or conspiracy which in effect the appellant has been charged with, that the appellant purchased the land by entering into an agreement for sale with Allah Bux dated 06-09-2004 which was completely legal and that payments were made by cross cheques and at the time of the agreement in 2004 the entry was clear as the Note dated 10-05-2005 came after the agreement; that the prosecution has not conclusively proved that the seller was not the owner of the land as no death certificate or PW as to proof of death gave evidence; that the appellant is a bona fide purchaser of the land and had no idea that any foul play (if it did take place) had taken place by any of the Government officials before he made the purchase of the 16 acres of land; that by decree dated 01-02-2006 the court by way of a compromise decree declared that the land in question belonged to the appellant, that the land in question is not Government land but private land, that the appellant was declared owner of the land by ex parte order in Suit No.2138/2015 dated 22.09.2017; that there is no mens rea on the part of the appellant and thus for any 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 has placed reliance on **Abdul Khaliq V The State** (2006 SCMR 1886), **Sajjan Solangi V The State** (2019 SCMR 872), **Akhtar Hussain V The State** (2019 P Cr. L J 1563), **Ashiq Hussain V The State** (1987 MLD 947), **Muhammad Rafiq V The State** (2004 YLR 1580), **The State V M. Idress Ghauri & others** (2008 SCMR 1118) and **National Accountability Bureau V Khalid Ahmad Khan Kharral** (2013 MLD 849).

12. Special Prosecutor NAB fully supported the impugned judgment and contended that the appeals of all the appellants should be dismissed /

as the prosecution had proved its case against them beyond a reasonable doubt through both oral and documentary evidence. He contended that the evidence had to be read in a holistic manner and when this was done it was proved that all the official appellants connived/colluded to give a huge benefit to the appellant builder (beneficiary) by transferring illegally 16 acres of Government land to him. That appellant Muhammad Younus Dahiri has deliberately connived with the other co-accused to make a fake entry in 1973, which remained despite notices of caution of suspicious transaction being marked upon it. That although this entry was later canceled it was illegally restored by the accused to ensure that they could give effect to their plan to illegally transfer the government land from a penny less person whose name they had put the land in without his knowledge to the appellant builder in order to benefit him. In support of his contentions he placed reliance on **Farhat Azeem V Waheed Rasul and others** (PLD 2000 SC 18), **Ch. Muhammad Riasit V Muhammad Asghar and another** (PLD 2010 SC [AJ&K] 29), **Malik Din V Chairman, NAB and another** (2019 SCMR 372), **Ali Ahmed Baloch and others V The State through NAB** (2013 P Cr. L J 1809), **Firdous Khan V The State** (2015 P Cr.L J 697) and **Khadim Hussain Kutrio V The State and others** (2019 P Cr. L J 1001).

13. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants and the impugned judgment with their able assistance and considered the documents on record and the relevant law including that cited at the bar.

14. At the outset we would like to make it clear that the usurping of Government land in Karachi is a very serious offense which regrettably has been on the rise and is disturbing the whole infra structure of the city in terms of water, electricity, gas, over crowding, parking etc. We, however, as appellant court judges must put aside our personal feelings on the issue and dispassionately decide the appeal based solely on the evidence on record whilst keeping in view the golden principles of criminal jurisprudence that it is for the prosecution to prove its case beyond a reasonable doubt against each accused for the offense for which he is charged and that even the slightest doubt in the prosecution case must go to the accused. This is more so keeping in view the social stigma

attached to convictions for corruption.

15. Whilst considering the evidence against each accused in a holistic manner whilst being mindful of the role for which they have been charged we will start with the appellant Barkat Ali Ex Tapedar from 2004 to 2005 who is the lowest Government official convicted in this case. The main allegation against him is that he deliberately falsified a report in order to facilitate the other appellants in their plan to illegally allot 16 acres of Government land to the beneficiary builder appellant.

16. Before addressing this aspect of the case we have found that the foundation of the illegality seems to flow from an allegedly fake letter from Mr. Hussain Naqbal Shah Secretary to the Government of Sindh Land Utilization Department to the Deputy Commissioner Karachi dated 31-03-1973 whereby in effect 16 acres of land were allotted to Mr. Allah Bux s/o Mured Brohi under the signature of a section officer. PW 8 Abdul Wajid Sheikh confirmed this letter as fake. We note however that neither Mr. Hussain Naqbal Shah nor the section officer who signed the letter have been examined to prove this point. Even if we accept that this letter was fake no evidence has come on record that any of the appellants had anything to do with this fake letter. **More importantly**, it also appears that the prosecution has not been able to pin point the precise date on which the fake letter was added to the record. This is a **crucial aspect** of the case as all the official appellants held their positions in connection scheme 33 for varying periods between 03-09-2004 until 02-06-2006 (approx 18 months) with the main accused/appellant Mukhtiarkar Younis Dahiri only holding office for 4 months during this period which means that it is entirely possible that the fake letter was added before any of the official appellants assumed office which would mean that there was no evidence to even link them to the alleged fake letter during their tenure or have any reason to believe that it was fake if someone else had placed the fake letter in the record before they assumed office. The fake letter could have been added by anybody in connivance with other government officials before the appellants took office. It also appears that the land was allotted to Allah Bux who according to the prosecution was a penniless person who never made such application and his name was used with out his knowledge. It appears that no death certificate has been produced for Allah Bux, that the persons who pointed out his grave were not called as

PW's and even his alleged son PW 4 Ashraf was declared hostile and was crossed examined by the prosecution as he was not supporting their case. It appears that the father's CNIC was not linked to his son's which raises some doubts as to whether PW 4 Ashraf was in fact his son.

17. Turning back to the tapedar's report. We note that according to PW 2 Kamran Shamshad who in 2005 was DDO in Scheme 33 Karachi marked as "suspicious/bogus" on the concerned entry on 10-08-2005 however it seems that the tapedar's report was made in 2004 which was **before** the suspicious/bogus entry was made and as such his report simply portrayed the status of the record at the time when he examined it when there was no adverse markings against the entry and as such we cannot see how he was in connivance with any one (for which no evidence has been adduced) as he did not conceal any thing but simply gave an accurate reflection of the report as it stood at that time and as such passed on an accurate report to appellant Muhammad Younus Dahiri Ex-Mukhtiarkar who had no reason to believe otherwise.

18. The appellants Younus Dahiri and Amin Nazir Maqbool both of whom were Mukhtiarkars have also been accused of acting in collusion and connivance along with the appellant tapedar in order to favour the appellant beneficiary developer. Following PW 2 Kamran Shamshad's marking of the entry as bogus and suspicious he also raised the matter with EDO Revenue for taking action. The record reveals that by order dated 12-10-2005 Syed Hashim Raza Zaidi EDO (Revenue) (CDGK) ordered the deletion of the note "suspicious/bogus" transaction as marked by PW 2 Kamran Shamshad. When the court asked the IO whether he had taken Mr.Zaidi's S.161 statement, made him an accused or a PW he answered in the negative. Thus, the inference can be drawn from the IO's conduct that he considered that there was nothing wrong with such order to delete the adverse markings. No evidence has come on record to show that any of the appellants connived/colluded with Mr.Zaidi in order to delete this notation which might have linked them to their plan to unduly favor any body by manipulating the record. In effect Mr. Zaidi's order gave a clean chit over the 16 acres of land for another 10 years before Ghualm Mustafa Phul member (Land Utilization) BOR Sindh cancelled the entry so it is difficult to see how any connivance could have taken place between the appellant Government officials during this period

in order to favour the appellant developer as according to the record it was clean with no adverse entries, notations or red flags to advise otherwise.

19. With regard to the appellant developer who according to NAB's reference connived with appellant Muhammad Younus Dahiri there is no evidence on record to link the appellant developer to appellant Muhammad Younus Dahiri whatsoever or even with any of the other appellant Government officials. Furthermore, it would appear that the appellant developer entered into an agreement for sale of the 16 acres of land with Allah Bux on 06-09-2004 which was **before** any suspicious/bogus transaction note had been made on the entry which in any event was deleted in 10-12-2005 by Mr.Zaidi which would indicate that he would not have been aware of any foul play which may have been taking place by any of the government officials (even if there was any). No evidence has been produced to show that he was any thing other than a bona fide purchaser for value. In our view it would not seem fair for this allotment to be cancelled 10 years later by Ghulam Mustafa Phul Member (Land Utilization) BOR Sindh who one cannot rule out did so after NAB opened its inquiry in order to save the skin of his colleague Mr.Zaidi which order is now the subject of civil litigation before this court where the land has been held to belong to the builder. It also appears from the record the land in question all along was private land and not government land.

20. We have also observed that there is no evidence that any of the government appellants obtained any illegal gratification and for the most part they were proceeding **before** Kamran Shamshad's note or **after** it was deleted and thus there does not appear to be any mens rea on their part as they did not know that they may be committing criminal acts. This situation only became apparent over 10 years later after Ghulam Mustafa Phull's order when the sale to the appellant builder had long since been completed and which is now subject to litigation.

21. In our view on a close analysis and reassessment of the evidence on record their appears that there is no direct evidence, circumstantial evidence or other evidence which can lead to the conclusion that any of the appellants misused their authority, colluded or connived with each other especially once the adverse notation had been deleted from the entry,

by a more senior officer. Furthermore, there is no evidence on record to show that the adverse note was deleted at their behest. It seems to have been done solely by Mr.Zaidi and not at the behest of the appellants. Had any of the appellants requested the deletion of the adverse notation on the entry then this may have raised eye brows and suspicions that they were up to some illegally or irregularity but this was not the case.

22. Thus, when we consider this alleged scam in a holistic manner and also by examining the individual roles of each appellant as per charge we have found as per our above discussion that the prosecution has not been able to prove its case against any of the appellants beyond a reasonable doubt and as such all the appellants by being extended the benefit of the doubt stand acquitted of the charge and shall be released unless wanted in any other custody case.

23. The Appeals and Constitutional Petitions stands disposed of in the above terms