

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Appeal No.28 of 2017

(Mohammad Sohail Malim Vs. The National Accountability Bureau & another)

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Syed Fiaz Ul Hassan Shah

For hearing of main case

Mr. Zohaib Z. Sarki, Advocate for the appellant a/w the appellant.
Syed Khurram Kamal, Special Prosecutor NAB.

Date of hearing: 15.12.2025

Date of Decision: 15.12.2025

J U D G M E N T

Dr.Syed Fiaz ul Hasan Shah; J: The appellant has challenged the Judgment dated 07.12.2017 (“**impugned judgment**”) passed the learned Accountability Court No.1, Sindh Karachi (“**Trial Court**”), in NAB Reference No.09 of 2016 for the commission of offence of corruption and corrupt practices under Section 9 (a) of the National Accountability Ordinance, 1999 (“**NAO**”) and convicted the appellant under Section 10 of the NAO and sentenced to suffer R.I. for three years and to pay fine of Rs.12.7337 million recoverable as arrears of land revenue under Section 33-E of the NAO and in default to pay such amount of fine, appellant would further undergo one year S.I. In addition, he was also disqualified under Section 15 of the NAO for a period of ten years to be reckoned from the serving of sentence to be elected or chosen or appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of Province and disentitled to obtain or sanction financial facilities.

2. The appellant, a partner of **M/s. Kutub Industries**, engaged in the manufacturing of cotton products and contracting of licensed goods, is alleged to have unlawfully obtained **sales tax refunds amounting to Rs. 149,58,327/-** during the period **November 2004 to January 2005**. These refunds were secured on the basis of fabricated and flying invoices purportedly issued in favor M/s. J.K. International, Al-Rehan Enterprises, M/s. Al-Faisal, and M/s. Lucky Impex. During the course of investigation, it was revealed that Tax Consultant Syed Amjad Ali had abetted the appellant in unlawfully withdrawing the sales tax refunds. He subsequently entered into a **plea bargain**, which was accepted by the trial court vide order dated **23.06.2015**, and discharged his liability by paying **Rs. 22.243 million**. Another abettor, **Sales Tax Inspector** Saleem Ahmed Siddiqui, a public official, unfortunately passed away during the investigation proceedings.

3. Subsequently, on **16.06.2016**, the trial court framed charges against the appellant at **Exh.3**. The appellant, however, pleaded **not guilty** and opted to contest the matter, as recorded in his plea at **Exhs.4 and 5**. The prosecution in support of its case examined PW-1 Muhammad Al Tamash Waseem, PW-2 Syed Aley Jaffar, PW-3 Nazima Siddiqui, PW-4 Syed Aqeel Ahmed, PW-5 Syed Sibte Akbar, PW-6 Rehan Waheed, PW-7 Muhammad Khalid, PW-8 Muhammad Jaffar, PW-9 Imran Ahmed Khan, PW-10 Tanveer Ahmed Siddiqui, PW-11 Sarvech Shaikh, PW-12 Muhammad Afzaal, PW-13 Abdul Majeed and PW-14 Ahmed Bin Zahid (I.O.) at Exhs.6 to 21 and the appellant recorded his statement under Section 324 at Exh.24.

4. We have heard the counsel for the appellant as well as Special Prosecutor NAB and carefully perused the record.

5. We find no merit in the contentions advanced by learned counsel for the appellant asserting his innocence and that M/s. Kutub Industries, being a partnership concern, included two household women as partners who were not joined during the investigation and in fact the appellant's brother, an employee of the Sales Tax Collectorate, was the de facto owner of M/s. Kutub Industries, that he signed the invoices for the sales tax refund, and that he too was not joined by the NAB prosecution as the evidence sufficiently connects the appellant with the commission of the offence as the record establishes that the flying invoices were prepared under the appellant's own signature, as reflected in Exhs.6/1 and 6/2. The record produced by PW-1 Muhammad Al Tamash Waseem, Operations Manager of UBL PECHS Branch, Karachi, confirmed that the account of M/s. Kutub Industries was maintained and operated by the Appellant. Therefore, non-joining the household women sleeping partners do not prejudice the case of prosecution as the fake flying invoice were filed by the Appellant and not by the sleeping partners who were household women and close relatives of the Appellant.

6. Furthermore, it was submitted that the appellant had executed a power of attorney in favour of his brother, Salahuddin K. Malim (available at page 1225 of the paper book), through which he was managing the affairs of the company. We find no merit in the contention of learned counsel for the appellant, as notwithstanding the execution of the power of attorney by the partners of M/s. Kutub Industries, the flying invoices were signed by the appellant himself, and the fraudulent refunds were credited into the account of M/s. Kutub Industries. Therefore, we are not inclined to overturn the judgment of the trial court which is well reasoned.

7. However, we have observed that three invoices were signed by the appellant's brother, Salahuddin K. Malim, who was not joined during the course of investigation. Similarly, the other partners of the partnership deed (at page 1235 of the paper book) of M/s. Kutub Industries were also not produced as prosecution witnesses to adduce

evidence against the appellant. It is an admitted position that the amounts of 114 fake and flying invoices issued by four impersonated suppliers were credited into the account of M/s. Kutub Industries. One of the co-accused, Tax Consultant Syed Amjad Ali, has already entered into plea-bargaining approved by the trial court and paid Rs. 22.243 million towards the loss caused to the public exchequer. Likewise, the liability of Inspector Saleem Ahmed Siddiqui of the Sales Tax Department could not be determined due to his death. Nevertheless, the entire liability of fine has been imposed upon the appellant.

8. Considering the above mitigating circumstances, while maintaining the impugned judgment of conviction, we dismiss the instant appeal with modification. The appellant is convicted and sentenced for the period already undergone, and the fine amount is reduced to Rs. 50,00,000/-. The appellant is directed to deposit Rs. 30,00,000/- with the Nazir of this Court on or before 22.12.2025, and the remaining Rs. 20,00,000/- on or before 25.01.2026. The Nazir shall submit a report regarding collection and credit of the fine amount to the State Bank of Pakistan/National Treasury. In case the fine amount is not deposited within the stipulated period, the appellant shall undergo one year's imprisonment, and the fine shall be recovered through land revenue proceedings under Section 33-E of the NAO.

JUDGE

JUDGE

Asif