

# IN THE HIGH COURT OF SINDH,

Criminal Appeal No.441 of 2005

Appellant : Haji Javed Ahmed Jatoi,  
Through Mr. H.Q. Halepota, advocate

Respondent : The State, through Mrs. Akhtar Rehana, APG

Date of hearing : 29.02.2016

Date of Announcement : 16.05.2016

## **JUDGMENT**

**NAZAR AKBAR J:-** The Appellant has impugned the judgment of Special Judge Anti-Corruption Court, Sukkur in Special Case No.42 of 1999 whereby he was convicted to undergo vigorous imprisonment of various terms for the offence committed under Section 161, 220, 409, 318 & 420 PPC read with Section 5(2) of the Act II of 1949 and fine of Rs.50000/- each for an offence under Section 409 PPC and Section 5(2) of the Act-II of 1949. In all the segments of sentences, the maximum punishment was for 03 years and since the sentences were to run concurrently he had to undergo vigorous imprisonment for 03 years and additional 06 months in case of default in payment of fine.

2. The brief facts of prosecution story are that on **25.05.1994** at 1900 hours one Agha Nasir Ahmed SDPO-I, Sukkur registered FIR No.69/1994 at P.S. A-Section Sukkur alleging therein that he has learnt from reliable sources that the appellant (SIP Javed Ahmed Jatoi, SHO, PS A-Section, Sukkur) in collusion with his subordinate staff namely PC Qamaruddin and PC Driver Allauddin alongwith other staff raided the house of one Mohammad Iqbal Memon and arrested him and secured Indian currency amounting to Rs.1,49,60000/- (Rupees One Crore Forty Nine Lac Sixty Thousand Only) and Rs.5,60,000/- in Pakistani currency. The appellant

maltreated the said Mohammad Iqbal Memon and demanded Rs.10-lacs as illegal gratification for his release and even released him after accepting an amount of Rs.3,50,000/-. The appellant was also charged for showing fictitious recovery of only Rs.2-lacs Indian currency dishonestly and misappropriating the remaining amount of Indian currency and Rs.5,60,000/- in Pakistani currency. It was also alleged in the FIR that he prepared an incorrect record and acted contrary to law when he returned the amount of Rs.94,23,000/- to said Mohammad Iqbal Memon while releasing him. The case was investigated by DSP, Zafaruddin Farooqi, who arrested the appellant on **26.5.1994** and after the investigation the appellant and PC Qamaruddin were challenged and accused Allaiddin was shown absconder.

3. The trial Court after recording prosecution evidence, examining the defense taken up by the Appellant and hearing their counsel convicted the appellant by judgment dated 31.7.2000. This criminal appeal was filed on **22.08.2000** against the conviction. However, pending this appeal, the Appellant has completed the term of conviction and even has paid the fine imposed. Therefore, the appeal seems to have become infructuous. However, learned counsel for the Appellant has contended that the Appellant was in government service and carrying stigma therefore a decision of this Court on this appeal would not be a futile activity. He has further contended that he would address the court only on following two law points;

- i) The Special Judge, Anticorruption, Sukkur had no jurisdiction to try the appellant and convict him in the absence of prior sanction from the competent authority to prosecute the Appellant in term of **Section 6(5) & 2(a)** of Pakistan Criminal Law (Amendment) Act, 1958;
- ii) The local police had no powers to register the FIR for an offence under Anticorruption Act.

4. Learned counsel for the Appellant in support of first mentioned law point has relied on the case of Federation of Pakistan v. Zafar Ahmed

reported in **PLD 2005 SC-19** (Shariat Review Jurisdiction) and pointed out that the original judgment of Federal Shariat Court reported in **PLD-1989-FSC 2004** (Zafar Awan v. The Islamic Republic of Pakistan) whereby the provision of previous sanction of the President, Governor of a Province or any other executive authority was declared repugnant to Quran or Sunnah and, therefore, the Hon'ble Shariat Court has desired the President to take steps to suitably amend the provisions regarding prior sanction for prosecution of government servant before the **first day of January 1990** was extended upto **31.03.2005**. Thus, according to him the mandatory requirements of prior sanction for prosecution of government servant in terms of **Section 6(5)** of Pakistan Criminal Law Amendment Act, 1958 (the Act, 1958) was in field at the time of registration of the FIR and filing challan in the Court of Special Judge, Anti-Corruption, Sukkur against the Appellant. The prosecution has not filed sanction of the competent authority to prosecute the Appellant. Leaned counsel for the Appellant has also relied on the provision of Sindh Enquiries and Anti-Corruption Act, 1991 (Sindh Act, 1991) and Rules frame thereunder in 1993 and contended that the registration of an FIR by the local police was violation of the Sindh Act, 1991 and the Rules particularly Rule **11(4) & (5)** of Sindh Enquiries and Anti-Corruption Rule, 1993 which clearly bars the investigation by the local police. He has further contended that even if the Anti-Corruption Establishment has no police station in a particular area when a case is registered against the public servant by local police, even then police had no jurisdiction to investigate the offence and has to handover the relevant record to the Anti-Corruption Establishment. He has relied on the case of Rashid Ahmed v. The State (**PLD 1972 SC 271**) and Syed Murad Ali Shah v. Government of Sindh (**PLD 2002 Kar-464**) and argued that like the Appellant, the petitioner Rashid Ahmed in the reported case was also convicted without prior sanction from the Federal Government and the

Supreme Court has finally set-aside the conviction. The Division Bench of this Court in the case of Murad Ali Shah had been pleased to hold that prior permission was necessary for lodging FIR and quashed even the FIR.

5. Learned counsel for the State has not been able to establish from the prosecution facts that on the date of registration of FIR the provision of **Section 6(5)** of Act, 1958 requiring prior sanction of competent authority was not in force and, therefore, the learned Special Judge, Anticorruption Court, Sukkur had jurisdiction to take cognizance of the alleged offence committed by the Appellant. The counsel for the State, after going through the case law conceded that the reliance placed by the trial Court on the case of Federation of Pakistan vs. Zafar Awan advocate (**PLD 1992 SC 72**) despite the order dated **01.07.1992** on the Review Petition No.01 of filed by the Federation whereby the orders were suspended pending the Review Petition was contrary to the law as on the date of impugned conviction of the Appellant, the provision of **Section 6(5)** of the Act, 1958 were in the field. However, while relying on the case M. Abdul Latif v. G.M. Paracha and others (**1981 SCMR 1101**) and Raja Mir Muhammad v. The State (**SBLR 2004 SC 02**) learned counsel for the respondent has contended that in the cited judgment Hon'ble Supreme Court has held that local police has the power to investigate an offence in view of the provisions of **Section 4(1)** of the Act, 1958. She has referred to the following observation of the Hon'ble Supreme Court from the judgment reported in **SBLR 2004 SC 02:-**

“We found that while rejecting the application of the petitioner the trial Court had taken a view that under sub section (i) of Section 4 of Pakistan Law Criminal Law Amendment Act, 1958 a Special Judge has jurisdiction to take cognizance of any offence committed within his territorial limits and triable under the said Act, upon receiving a complaint of facts which constitute such offence, or upon a report of such facts made by any police officer, and since the trial Court has already taken cognizance of the alleged offence on the challan submitted against the petitioner by the DSP,

which is virtually a report of facts constituting the offence committed by the petitioner, therefore, contravention of Rule 11 of Sindh Enquiries and Anti-Corruption Rules, 1993 in view of provisions of sub-section (1) of Section 4 of the Pakistan Criminal Law Amendment Act, 1958, shall not affect or vitiate the trial. In this view of the matter, the learned High Court has rightly maintained the order of the learned trial Court by dismissing the application of the petitioner. After carefully scanning the reasons given by the learned High Court, which are based on the law laid down by this Court in the case of Abdul Latif v. G.M. Paracha and others (1981 SCMR 1101), we are of the considered opinion that the impugned judgment is well-reasoned and within the parameters of the law and does not call for interference by this Court.”

6. I have considered the contentions raised by both the learned counsel and perused the judgments relied upon by them and has also examined the relevant provisions of law.

7. The record shows that admittedly neither before lodging the FIR nor with the challan any previous sanction of the Provincial Government was obtained by the local police. It was also not the case of prosecution that the Establishment of Anti-Corruption has no police station in Sukkur to entertain a complaint or even spy information against the Appellant, therefore, the very registration of FIR was without jurisdiction. The learned Special Judge on receiving the challan / complaint in terms of **Section 4(1)** of the Act, 1958 was equipped through the First Provision to **Section 6(5)** of the Act, 1958 to acquire such sanction by himself if he found that the prosecution has not acquired the requisite mandatory sanction to prosecute the Appellant. The proviso is reproduced below:-

“Provided that in cases where the complaint or report referred to in sub-section (1) of section 4 is not **accompanied** by such sanction, the Special Judge shall, immediately on receipt of the complaint or report, address, by letter, the appropriate Government in the matter, and if the required sanction is neither received nor refused within sixty days of the receipt of the letter by the appropriate Government, such sanction shall be deemed to have been duly accorded;

Unfortunately the learned Special Judge did not follow above method of acquiring the sanction of competent authority probably on account of the case reported in **PLD 1992 SC 72** without knowing that the said judgment was suspended by the same bench in Review Petition.

8. Learned counsel for the Appellant in support of his second contention i.e. registration of FIR by local police has relied upon the judgment of Division Bench of this Court reported in **PLD 2002 Karachi 464**. The relevant observation of the High Court was supported by two rulings of Supreme Court and relevant portion from page-469 is reproduced below:-

“It is thus clear that in terms of section 3 of the aforementioned Act only the Anti-Corruption Establishment of the Government of Sindh is responsible and has jurisdiction to inquire into any allegation of corruption against a civil servant and thereafter initiate proceedings for the purposes of prosecution of the said civil servant. As much is also evident from the preamble to the Act, which provides for the constitutions of a special agency for investigation of offences relating to corruption by or enquiry into misconduct of a public servant etc. Under rule 8 of the rules a preliminary enquiry is to be initiated by an officer of the establishment against an accused public servant only upon prior approval of the Competent Authority. Similarly, under rule 11 of the rules framed under the Act, the Establishment has been given sole jurisdiction to register cases under the provisions of the Anti-Corruption Act and under sub-rule (4) a criminal case has to be registered by the Establishment at the Anti-Corruption Police Station. When no such notified Police Station is available initially as per sub-rule (5) the case may be registered at the local Police Station but then the District Police has no jurisdiction whatsoever to continue the investigation and the relevant record is to be made over the Anti-Corruption Establishment. In view of the above said provisions it is crystal clear that the F.I.Rs. in question lodged by the Police Authorities against the petitioners suffer from a basic legal defect viz. they are totally without jurisdiction as Anti-Corruption Police Stations are available at Karachi. Secondly, it also does not appear that prior permission was accorded by the Competent Authority for such prosecution in terms of rule 11(2). Finally, there is nothing on the record to determine whether or not any exercise in terms of section 3 of the Act was carried out. Consequently, as per well-settled principles laid down by the Honourable Supreme court it has been the practice and procedure when it is demonstrated to the High Court that when a complaint, investigation, report or other step either in lodging of an F.I.R or prosecution of a criminal case is patently against the provisions of any law or otherwise no case can possibly be made out then this court has been clothed with the

jurisdiction to quash the same as no useful purpose would be served to keep the matter lingering on. This in fact amounts to an abuse of the process of a court of law. For this, proposition reference can be made to *Miraj Khan v. Gull Ahmed and others* (**2000 SCMR 122**), *Mian Munir Ahmed v. The State* (**1985 SCMR 257**), *Shahnaz Begum v. Hon'ble Judges of the High Court* (supra), *Adamjee Insurance Company Limited v. Assistant Director Economic Enquiry Wing* (supra), *Anwar Ahmed Khan v. The state* (supra) and *Muhammad Latif v. Sharifan Begum* (supra).

9. The facts of the case relied upon by the prosecution were that an application under Section 249-A Cr.P.C. was dismissed by Special Judge, Anticorruption Court and the said dismissal was upheld by the High Court of Sindh and the Hon'ble Supreme Court was pleased to hold that the contraventions of **Rule 11** of Sindh Enquiries and Anticorruption Rules, 1993 shall not affect and vitiate the trial in view of the provisions of **Section 4(1)** of the Act, 1958. However, in both the judgments relied upon by the prosecution, the basic propositions of Law in terms of **Sub-Section 5 of Section 6** of the Act, 1958 that **notwithstanding anything contained in the Code of Criminal Procedure, 1998 or any other law, previous sanction of the appropriate government shall be required for prosecution of public servant for an offence under the said Act** has not been disapproved or even discussed. The mandatory propositions of law about the jurisdiction of Special Court to try the offence irrespective of the fact that information has been laid before the Special Judge, Anti-Corruption in terms of **Section 4(1)** of the Act, 1958 was triable only with the previous sanction of the relevant government. In this context Hon'ble Supreme Court in a case of *Rashid Ahmed* supra at page 275 has held as under:-

“In my view, the latest view of this Court in the case of *Mansab Ali v. Amir and others* is a complete answer to these questions. It has been held by this Court in the above-mentioned case that if a mandatory condition for the exercise of a jurisdiction before a Court, tribunal or authority is not fulfilled and suffer from want of jurisdiction. Any order passed in continuation of these proceedings in appeal or revision equally suffer from illegality and are without jurisdiction.”

10. The crux of the above discussion is that irrespective of the fact that whether local police has registered the case and investigated the offence committed by the Appellant and laid the report before the learned Special Judge Anticorruption Sukkur, it was done without proper sanction as required under **Section 6(5)** read with **Section 2(a)** of the Act, 1958, therefore the Special Judge had wrongly assumed the jurisdiction and the Anti-Corruption Establishment was totally kept away from the trial. The competent authority which was supposed to sanction the prosecution of the Civil Servant was never informed about the offence committed by SHO, A-Section, PS Sukkur a “civil servant” as defined under **Section 21** of **Pakistan Penal Code. 1860** read with **Section 2(b)** of the Act, 1958. The prosecution was, therefore, without any lawful authority as well as illegal and improper. However, while I am following the dictum laid down in the two cases relied upon by the counsel for the Appellant, I must observe that the Hon’ble Supreme Court in case of Rahsid Ahmed supra and the Division Bench of this Court in the case of Syed Murad Ali Shah have not fully exonerated the petitioners before them. The aggrieved party in both the cases got the benefit of irregularity in the investigation and the trial and the orders were set aside on account of jurisdictional error in the proceedings but the matter of the fact was that the offence remained in the field and prosecution was allowed to pursue the cases by obtaining “proper sanction” and applying “proper methodology”. Therefore I quote the operative part of the two judgments as follows:

In **PLD 1972 SC 271**, the Supreme Court ordered that:

“After careful consideration of the whole matter, I am of the view that proper sanction was necessary under section 6(5) of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958) and as the case was tried by the trial Court without such sanction, the whole trial is without jurisdiction and of no effect. I would, therefore, accept the appeal and **direct that the case against the appellant be tried after proper sanction has been obtained.**”



In **PLD 2002 Karachi 464**, the High Court held that:-

This order, however, would not in any manner at all prevent the State from resorting to the **proper methodology** for the purpose of undertaking disciplinary / criminal prosecution against the petitioners.

In my humble, their lordship in the above cited judgments have laid emphasis on **Article 4** of the Constitution of Islamic Republic of Pakistan, 1973. However, peculiar facts of the appeal in hand are that the Appellant has already served the term of punishment awarded to him by the Special Judge, Anti-Corruption Court, Sukkur in Crime No.69/1994 registered by local police Sukkur and, therefore, the miscarriage of justice seems to have been totally accomplished. Therefore, in the given facts of the case the prosecution cannot be directed to prosecute the Appellant again after obtaining proper sanction from the competent authority or apply any formal method afresh to bring the irregularities in the earlier trial within the parameters of relevant law. It would violate the fundamental rights guaranteed to the Appellant under the **Article 13** of the Constitution of Islamic Republic of Pakistan, 1973 whereby the Appellant is protected against prosecution or punishment for the same offence once again. However, it was a clear case of violation of **Article 4** of the Constitution of Islamic Republic of Pakistan, 1973 since the Appellant was not dealt with in accordance with law i.e. Pakistan Criminal Law Amendment Act, 1958 and the Sind Enquiries and Anti-Corruption Act, 1991 and Rules, 1993.

11. In view of the above facts and law this appeal is allowed. The term of conviction already served by the Appellant cannot be reversed, however, the payment of fine amounting to Rs.1,00,000/- paid by the Appellant is practically reversible, therefore State is directed to refund the same to the Appellant within 30 days.

**JUDGE**