

**IN THE HIGH COURT OF SINDH AT KARACHI.**

**Present:**

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

**Criminal Accountability Appeal No. 11 of 2001**

Appellant : Mian Waqar Akhtar Paganwala  
Through M/s. Noor Muhammad Dayo, Asif Ali, Hanif Samma, and Tassaduq Nadeem, Advocates  
Respondent : The State  
Through Mr. R.D Kalhoro, Special Prosecutor NAB.  
Date of Hearing : 28-09-2020.  
Date of Judgment : 09-10-2020.

**J U D G M E N T**

**ZULFIQAR ALI SANGI, J.-** Appellant filed instant Criminal Accountability Appeal on being aggrieved and dissatisfied with the judgment dated 13.03.2001 passed by the learned Accountability Court No.1V, Sindh at Karachi in Reference No.13/2000; whereby the appellant *Mian Waqar Akhtar Paganwala* was convicted under section 9(a) (viii) of the National Accountability Ordinance, 1999 (NAO) and sentenced to suffer R.I. for seven (07) years and to pay fine of Rs.50.00 Million, in case of default of fine, he shall further undergo S.I. for one and half years. However, the benefit of Section 382(B) Cr.P.C. was extended to the appellant.

2. Brief facts of the case as per prosecution are that M/s. Mass Diaries Limited applied to the Agricultural Development Bank of Pakistan (*henceforth 'bank'*) in May 1981 through its Managing Director Mr. Moizuddin Ahmed Siddiqui, for a financial facility of Rs.29.00 million for the establishment of a milk processing plant at Kotri, Sindh. At that time the set-up of management of M/s.

Mass Diaries Ltd. was as (1) Mr. Moizuddin Ahmed Siddiqui S/o Ghulam Mohiuddin, Managing Director (2) S. Younis Khan S/o Haji Mohammad Subhan Khan (3) Nizamul Haq S/o Haji Noor Mohammad Qadri (4) S.N. Qadri S/o Haji Noor Mohammad Qadri (5) Mehfoozur Rehman S/o Imtiaz Ahmed (6) Mrs. Ishrat Siddiqui S/o M.A. Siddiqui (7) Hashmat Ali S/o Mohammad Ali Siddiqui. It is averred that a limit of Rs. 29.00 million was sanctioned by the bank for the import of machinery costing Rs.26.00 million and for purchase of local machinery Rs.3.00 million. The project was secured by equitable mortgage valued to Rs.41.93 million and all existing and future assets. After sanction of loan, M/s. Mass Diaries Ltd. furnished and executed the documents to secure the loan (1) Memorandum of Deposit of Title Deeds (2) Agreement to create the mortgage on existing assets (3) Agreement to create the mortgage on future assets (4) Guarantee from each Director of the company namely Mr. Moiz Ahmed Siddiqui, Mrs. Ishrat Siddiqui, Mr. S. Younis Khan, Mr. Hashmat Ali, Mr. Mehfoozur Rehman, Mr. Imtiaz Ahmed & Mr. Azizur Rehman (5) Deed of Hypothecation (6) Delivery letter of Demand Promissory Note (7) Demand Promissory Note (8) Irrevocable General Power of Attorney. It is alleged that the said amount was disbursed to M/s. Mass Diaries Ltd. from 25.10.1982 to 23.01.1984. Besides Bankers Equity Ltd. also approved financing for the project for Rs.20.987 million. M/s. Mass Diaries Ltd. installed the project and started production but failed to repay the loan. It is alleged that on 17.03.1986 Moiz Ahmed Siddiqui approached Chairman, ADBP for transfer of ownership of the project to Mian Waqar Akhtar Paganwala and others by virtue of a sale agreement dated 12.03.1986 executed between (1) Moiz A. Siddiqui, Managing Director and Mian Waqar Akhtar s/o. Mian

Mohammad Akhtar (2) Mrs. Ishrat Siddiqui, Director and Mian Waqar Akhtar (3) Azizur Rehman s/o. Imtiaz Ahmed, Director and Mian Waqar Akhtar (4) Imtiaz Ahmed, Director and Mian Waqar Akhtar, (5) Mr. Hashmat Ali and Waqar Akhtar, (6) Mehfoozur Rehman s/o. Imtiaz Ahmed and Mian Waqar Akhtar. It is further alleged that the ADBP accepted the request of Moizuddin Ahmed Siddiqui and allowed the transfer of the above company to the new management Mian Waqar Akhtar Paganwala and others and issued a No Objection Certificate. The new management of M/s. Mass Diaries Ltd. after the transfer was (1) Mian Nisar A. Paganwala s/o. Mian Mohammad Akhtar (2) Mrs. Kaniz Akhtar w/o. Mian Mohammad Akhtar (3) Waqar A. Paganwala s/o. Mian Mohammad Akhtar (4) Mian Absar Akhtar s/o. Mian Mohammad Akhtar (5) Mrs. Asmat Waqar w/o. Mian Waqar Akhtar (6) Mr. S.N. Qadri s/o. Noor Mohammad Qadri (7) Mr. Nizamul Haq s/o. Late Mohammad Haq Khan (8) Mr. Mehfooz-ur-Rehman s/o. Imtiaz Ahmed. It is alleged that at the time of transfer of the project to the above new management, an amount of Rs. 37.100 million was outstanding against the said company which the new management had accepted and had taken over the project with acceptance of all liabilities/terms and conditions from previous management. It is alleged that the new management successfully operated the project from 1986 to 1987 but failed to repay the loan. From 1986 to 1987 the bank served demand notices to the management of M/s. Mass Diaries but they instead of payment approached ADBP for additional finance for BMR and working capital loan to run the project. The request was rejected by the bank and proposed that if an additional fund is arranged by the party from other sources the bank would reconsider the restructuring of the loan. It is alleged

that the management of M/s. Mass Diaries Ltd. failed to repay the loan and illegally removed some costly equipments from the plant which were hypothecated with ADBP, resultantly a criminal case had been registered against them on 25.07.1998 under FIR No. 35/98 at FIA, CBC, Karachi under sections 406/109 PPC. A final charge sheet of which has been submitted before the Special Court (Offences in banks) Sindh Karachi against Mian Waqar Akhtar, Mian Nisar Akhtar, and Mian Absar Akhtar. When M/s. Mass Diaries Ltd. failed to repay the loan, the bank filed a recovery suit for Rs.176,798, 825.00 bearing Suit No.418/99 before this Court against Mian Akhtar and others, and the same was decreed for Rs.34.619 million on 30.09.1999. According to the prosecution, the project is closed and is under the custody of accused Mian Waqar Akhtar and others and an amount of Rs.200.970 million is outstanding which they failed to repay despite demand notices and therefore have committed the offence of corruption and corrupt practices as envisaged u/s. 9(a) of the NAO, 1999 punishable u/s. 10 of the said Ordinance.

3. After compliance of provision of Section 265-C Cr.P.C, the charge was framed against appellant Mian Waqar Akhtar Pangwala, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 04 witnesses who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under Section 342 Cr.P.C. Thereafter the trial Court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellant through the impugned judgment dated 13.03.2001, against which the appellant has filed the instant appeal.

5. Learned counsel for the appellant contended that the appellant is innocent and had committed no offence; that no notice under section 31-D of the NAO was issued which is the mandatory requirement; that the appellant had not received any amount from the bank but the loan was obtained by the previous owners of the M/s. Mass Diaries Limited; that the appellant not entered into any agreement with the bank; that the loan was not utilized by the appellant; that it was a case of simple default and not fall within the ambit of willful default; that loan was defaulted due to the reason that the unit could not run properly, therefore, the loan was not paid; that prosecution has failed to prove its case against the appellant by producing trustworthy and reliable evidence. Consequently, based on the above submissions, learned counsel for the appellant prayed for acquittal of the appellant. The learned counsel for the appellant relied upon the cases of *Syed Mushahid Shah and others vs. Federal Investment Agency and others* (2017 SCMR 1218), *Naseem Abdul Sattar and 6 others vs. Federation of Pakistan and 4 others* (PLD 2013 Sindh 357), *Bank of Punjab through Authorized Attorney v.s Messrs AMZ Ventures Limited and another* (2013 CLD 2033), *Ghulam Qadir and another vs. The State* (2012 YLR 1885), *Bank of Punjab through Executive Vice President vs. Messrs Acro Spinning and Weaving Mills Ltd. through Chief Executive and 16 others* (2012 CLD 1819), *Mian Munir Ahmed vs. The State* (2004 P Cr. L J 2012), *The State through Chairman NAB and others vs. Muhammad Asif Saigol and others* (PLD 2016 Supreme Court 620), *Khan Asfandiyar Wali and others vs. Federation of Pakistan through Cabinet Division, Islamabad and others* (PLD 2001 Supreme Court 607), *Asim Textile Mills Ltd. and others vs. National Accountability Bureau and others* (PLD 2004

Karachi 638), *Ghulam Hussain Baloch and another vs. Chairman National Accountability Bureau, Islamabad and 2 others* (PLD 2007 Karachi 469), *Ch. Nisar Ali Khan vs. Federation of Pakistan and others* (PLD 2013 Supreme Court 568), *Pak Shaheen Containers Services (Pvt.) Ltd. vs. Trustees of Port of Karachi and others* (PLD 2001 Karachi 30) and *Messrs Kaloodi International (Pvt.) Ltd. and another vs. Federation of Pakistan and others* (PLD 2001 Karachi 311).

6. Learned Special Prosecutor, NAB, contended that the prosecution has proved its case against the appellant beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence; that the loan is admitted by the appellant and was obtained by the previous owner for which appellant took all the liabilities including the loan and signed his personal guarantee with the bank; that it is also admitted by the appellant that he did not repay the loan to the bank; that the reason given by the appellant for not re-payment of loan is not satisfactory and no evidence in support of his defence was produced; that the notice under section 31-D was not a requirement of law at that time and section 31-D was inserted in the year 2002, whereas complaint was filed before the NAB on 14.12.1999 and a reference was filed on 15.02.2002; that the trial court passed a well-reasoned judgment; that suit filed by the bank was also decreed in favour of bank; that learned trial court took lenient view in respect of sentencing the appellant. Lastly, he prayed that appeal of the appellant may be dismissed.

7. We have heard the learned counsel for the parties and have gone through the record with their able assistance so also considered the relevant law including that cited at the bar.

8. On our re-assessment of evidence, we are satisfied that the prosecution has proved the case against the appellant beyond a reasonable doubt by producing reliable, trustworthy, and confidence-inspiring evidence for the following reasons:-

- a) The loan of Rs.29.00 million was obtained by the previous owners of the M/s. Mass Diaries Limited from ADBP and was utilized for establishing the firm.
- b) The documents in respect of the said loan namely (1) Memorandum of deposit of title deeds (2) Agreement to create the mortgage on existing assets (3) Agreement to create the mortgage on future assets (4) Guarantee from each Director of the company namely Mr. Moiz Ahmed Siddiqui, Mrs. Ishrat Siddiqui, Mr. S. Younis Khan, Mr. Hashmat Ali, Mr. Mehfoozur Rehman, Mr. Imtiaz Ahmed & Mr. Azizur Rehman (5) Deed of Hypothecation (6) Delivery letter of Demand Promissory Note (7) Demand Promissory Note (8) Irrevocable General Power of Attorney were signed by the previous owners of the M/s. Mass Diaries Limited.
- c) The previous owner Mr. Moizuddin Ahmed Siddiqui approached the bank for NOC in respect of the transfer of company in the name of new management Mian Waqar Akhtar Paganwala and others and the same was issued by the bank and the company was transferred in the name of appellant and others, they took possession and ran the company.
- d) The new management of M/s. Mass Diaries Limited consisted of (1) Mian Nisar A. Paganwala s/o. Mian Mohammad Akhtar (2) Mrs. Kaniz Akhtar w/o. Mian Mohammad Akhtar (3) Waqar A. Paganwala s/o. Mian Mohammad Akhtar (4) Mian Absar Akhtar s/o. Mian

Mohammad Akhtar (5) Mrs. Asmat Waqar w/o. Mian Waqar Akhtar (6) Mr. S.N. Qadri s/o. Noor Mohammad Qadri (7) Mr. Nizamul Haq s/o. Late Mohammad Haq Khan (8) Mr. Mehfooz-ur-Rehman s/o. Imtiaz Ahmed and the present appellant was one of them.

- e) On default in payment of the said loan, the bank filed a suit for recovery bearing Suit No: 418 of 1999 against the appellant and others, and the same was decreed on 30-09-1999 by this court in favour of the bank and against the M/s. Mass Diaries Limited.
- f) The appellant himself had signed the personal guarantee in respect of the said loan, the contents of said personal guarantee are reproduced as under:-

**“PERSONAL GUARANTEE**

*The Manager,  
Agricultural Development  
Bank of Pakistan,  
Hyderabad.*

*At the request of M/s. Mass Diaries Limited and in consideration of your having granted the above said party a loan of Rs.29.00 million vide sanction letter No.Hyd 851 dated 13-09-1982 which the said party utilized for manufacture of UHT Milk.*

*I, Mian Waqar Akhtar S/o. Mian Muhammad Akhtar R/o. 238, Staff Lines, Fatima Jinnah Road, Karachi have purchased all the shares of Messrs 1) Moiz A. Siddiqui, 2) Hashmat Ali, 3) Imtiaz Ahmed, 4) Mahfoozur Rehman, 5) Ishrat Siddiqui, 6) Azizur Rehman (previous Directors of above party) from them vide separate sale agreements dated 12-03-1986.*

*Now I Mian Waqar Akhtar Director Mas Diaries Limited S/o. Mian Muhammad Akhtar R/o. 238, Staff Lines, Fatima Jinnah Road, Karachi, hereby guarantee payment on demand by you of all the above mentioned sum of Rs.29.00 million (Rupees Twenty Nine Million) alongwith all other sums due on account of interest, costs, charges and expenses due to the A.D.B.P. In accordance with the terms and conditions of the sanction letter or any existing and further terms and conditions, rules or administrative instructions and orders of the Chairman of the Bank issued from time to time.*

*I also agree:*

- 1. That the said loan is subject to any variation in terms and conditions mentioned in the sanction letter which may be made from time to time pursuant to the provisions of*

*Central Ordinance IV of 1961 the rules and regulations thereunder and the administrative orders or instructions of the Chairman of the Bank.*

*2. That this guarantee shall be irrevocable and shall be a continuing guarantee binding upon me till full payment alongwith interest has been made to you of all sums hereby guaranteed.*

*3. That the entries in your books of accounts and a certificate of your duly authorized officer shall be conclusive evidence of indebtedness upon which payment will be made by me to you under this guarantee.*

*4. NOTWITHSTANDING that as between me and the said I stand for the company yet as between me and you I shall be treated as principal debtor for the sum of Rs.29.00 million (Rupees Twenty Nine million) guaranteed above and I shall be released from the liability arising out of the said loan of Rs.29.00 million (Rupees Twenty Nine million) with interest etc., being given to the said M/s. Mass Diaries Limited, until the entire amount of principal alongwith interest etc., is repaid to you.*

*Yours faithfully*

*Dated 09-05-1990.*

*Sd/-  
(MIAN VAQAR AKHTAR)  
238, Staff Lines,  
Fatima Jinnah Road,  
Karachi."*

g) The appellant has not paid the loan to the bank and the amount if any was recovered it was the result of the recovery suit decreed in favour of the bank and the appellant did not make any efforts for repayment and made default in payment.

h) The new management (Appellant) after taking over the project ran it successfully but failed to repay the loan on failure bank served demand notices to the management of M/S Mass Diaries but they instead of payment approached ADBP for additional finance for BMR and working capital loan to run the project and the same request was declined by the bank.

9. We carefully examined the evidence of PW-1 namely Naseem Jawaid Siddiqui, Manager of ADBP, main branch Karachi, who deposed about each and every step in between the parties in respect of the loan and exhibited all the relevant documents executed between the bank and the Directors of the M/s. Mass

Diaries Limited which includes the personal guarantee signed by the appellant. This witness was cross-examined at length but we could not find anything favourable to the appellant. PW-2 Pervez Akhtar deposed that in the year 1982 the loan was paid to M/S Mass Diaries Ltd. from the ADBP Hyderabad branch. The account was transferred to ADBP main branch, Karachi on 13-12-1991, and Extract was received to the main branch which was checked by him. According to this witness total loan paid by the Hyderabad branch to M/S Mass Diaries Ltd. was Rs.29.00 million and the interest was charged Rs.171.673 million with other charges Rs.0.306 million. According to this witness till December 1999 total dues were Rs.200.979 million. PW-3 Masood Jamal deposed that he was directed from the head office of ADBP for physical inspection of the plant of M/S Mass Dairies Ltd. Mechanical Engineer Mohsin Raza prepared a list of shortfall of imported machinery and he and Naseem Javed Siddiqui prepared a list of shortfall of local machinery and report was sent to head office. He further deposed that he was again directed to visit the plant along with the officials of the FIA and he along with FIA officials and Nisar Akhtar Paganwala (on behalf of M/S Mass Dairies Ltd) visited the site on 2-12-1998 and found no change in the shortfall of local machinery but some equipments of imported machinery were found missing. The last witness of the prosecution was PW-4 Mirza Masood Alam the investigation officer he deposed that on 18-01-2000 he received a complaint from headquarter FIA Islamabad through Dy. Director FIA for conducting an inquiry and to prepare the reference. He called the complainant Naseem Javed, manager, ADBP and recorded his statement, he collected the record and recorded the statements of other witnesses and prepared the

reference and sent it to the Chairman, National Accountability Bureau, Islamabad. The above witnesses were cross-examined but we could not find any substance favourable to the appellant.

10. The contention raised by the counsel for the appellant that the reference was filed in violation of the section 31-D which was mandatory requirement has no force as the complaint was filed by the bank on 14-12-1999 and the reference was filed on 15-02-2000 whereas section 31-D was inserted in the NAB ordinance by ordinance No. XXIV of 2000 dated: 05-07-2000, having no retrospective effect. It was also made clear in the aforesaid section that cases pending before any Accountability court before coming into force of the Notational Accountability Bureau (Second Amendment) Ordinance, 2000, shall continue to be prosecuted and conducted without reference from the Governor, State Bank of Pakistan.

11. We have examined the impugned judgment of the trial court where each and every point raised on behalf of the appellant was discussed by the trial court in-depth and fully answered and, therefore, we do not find it appropriate to reproduce here the same which is based on well-reasoned, elaborate findings and passed in accordance with the law.

12. Thus based on the discussion made hereinabove we are of the considered view that the prosecution has proved its case beyond a reasonable doubt against the appellant by producing reliable, trustworthy, and confidence-inspiring oral evidence as well as documentary evidence in support of the same. We,

therefore, uphold all the sentences, fines, and penalties for each offence in the judgment whilst dismissing the appeal.

**JUDGE**

**JUDGE**