

## IN THE HIGH COURT OF SINDH, AT KARACHI

### PRESENT:-

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

#### **Criminal Accountability Appeal No.73 of 2018**

Appellant: Muhammad Asif Arshad through Mehmood ul Hassan, Advocate.  
Respondent/State NAB through Mr. R.D Kalhoro, Special Prosecutor, NAB.

#### **Criminal Accountability Appeal No.75 of 2018**

Appellant: Mumtaz Ali Nizamani through Mr. Muhammad Jamil, Advocate.  
Respondent/State NAB through Mr. R.D Kalhoro, Special Prosecutor, NAB.

#### **Criminal Accountability Appeal No.02 of 2019**

Appellant: Muhammad Adil Arshad through Mr. Raj Ali Wahid Kunwar, Advocate.  
Respondent/State NAB through Mr. R.D Kalhoro, Special Prosecutor, NAB.  
Date of hearing: 06.10.2020.  
Date of judgment: 09-10-2020.

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

**ZULFIQAR ALI SANGI, J:-** These Criminal Accountability Appeals have been directed against the judgment dated 14.12.2018 passed by the learned Accountability Court No.11, Sindh at Karachi in Reference No.28/2016, whereby the appellants *Muhammad Asif and Muhammad Adil Ashraf* were convicted and sentenced to suffer R.I. for ten (10) years each and to pay fine of Rs.1,170,73,272/- each and in case of default of fine to undergo simple imprisonment for a period of six months each and the appellant *Mumtaz Ali Nizamani* was convicted and sentenced to suffer R.I. for three (03) years and to pay fine of Rs.51,21,980/- and in case of default of fine to undergo simple

imprisonment for one month. However, the benefit of Section 382(B) Cr.P.C. was extended to all the appellants.

2. The facts relevant for the disposal of these appeals are that M/s. Asif Enterprises having a non-existent manufacturing unit of paper board and other stationary items had got bogus sales tax refund. It is alleged that the appellant Muhammad Asif Arshad got himself registered as an individual with FBR and with Sales Tax Department as Proprietor of M/s. Asif Enterprises and on the basis of seven (07) claims obtained refund amounting to Rs.39,268,525/- in his bank account. It is further alleged that M/s. Asif Enterprises manufacturing unit was declared to be situated in Behar Colony Tannery Road, Karachi but during investigation the said premises was found to be a double story building where hand gloves were made and no sign of any machinery was found. The owner of the place disclosed that the premises was never rented out to M/s. Asif Enterprises and shows the name of owner as Muhammad Asif s/o Muhammad Iqbal who disowned the rent agreement and stated that his NIC had been misused and that he denied the ownership of the above mentioned address. With regard to appellant Muhammad Adil Ashraf, who was found as beneficiary of illegal refund claims as he had received from the bank account of M/s. Asif Enterprises a total sum of Rs.5,626,000/- which he failed to justify during the investigation. During investigation it was found that the appellant Mumtaz Ali Nizamani, Inspector submitted a false physical verification report regarding the premises which according to him was visited where he found installation of working machinery. Finally, it was found that claim files were sanctioned by not observing codal formalities and refund was allowed. The allegations against all the three appellants are that they in collaboration / connivance with each other managed to obtain illegal Sales Tax refund to the tune of Rs.39,268,525/- and caused heavy loss to the national exchequer through corruption and corrupt practices and as such they have committed the offence u/s 9(a) punishable under section 10 of the NAO, 1999.

3. After compliance of provision of Section 265-C Cr.P.C, charge of corruption and corrupt practices as defined under Section 9 of National Accountability Bureau Ordinance 1999 (NAO) punishable

under Section 10 of the NAO was framed on 13.05.2016 against the appellants, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 07 witnesses who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellants/accused recorded their statements under Section 342 Cr.P.C. No appellant gave evidence on oath or called any DW in support of their defence case. Thereafter the trial court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellants through the impugned judgment dated 14.12.2018 as mentioned earlier in this judgment. Hence the appellants have each filed the instant appeals against their conviction.

5. At the outset, learned counsel for the appellants Muhammad Asif Arshad and Muhammad Adil Arshad in the face of overwhelming evidence against them and under the instructions of their clients/appellants have not pressed the instant appeals on merit but have only requested for some reasonable reduction in their sentences on the ground that the appellants have served out a major portion of their sentence; that the appellants are young age persons and are capable of reformation being first time offenders; that appellants are sole supporters of their families and that they have shown remorse by admitting their guilt and not contesting their appeals on merits.

6. Learned counsel for the appellant Mumtaz Ali Nizamani contended that the appellant is innocent; that appellant while posted as Inspector in the FBR had acted in accordance with the law; that there is no direct evidence against the appellant; that no PW supported the case of the prosecution; that physical verification was signed by the appellant after proper verification; that the investigation officer had not conducted a proper investigation. He further contended that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt and appellant may be acquitted by extending him the benefit of the doubt.

7. Learned special prosecutor NAB objected on the reduction of sentences of the appellants Muhammad Asif Arshad and Muhammad

Adil Arshad (but could not give any reason for his objections) and contended that their sentences should be maintained and the appeal of appellant Mumtaz Ali Nizamani should be dismissed on the grounds that the prosecution has proved its case against him beyond a reasonable doubt by producing oral as well as documentary evidence; that he in collusion with the other appellants caused loss to the Government Exchequer by preparing bogus claims of refund; that if appellant Mumtaz Ali Nizamani had not signed the papers related to physical verification and other documents related to the refund then the claims would not have been refunded and there would have been no loss to the exchequer. Lastly he prayed that all these appeals may be dismissed.

8. We have heard the learned counsel for the parties and have gone through the record with their able assistance.

9. On our reassessment of evidence we have found that prosecution has proved its case beyond reasonable doubt against the appellants by producing trustworthy and confidence inspiring evidence. **PW-1**, Faryal Qurban was examined who produced the account statement and other papers related to the bank transactions in respect of the account of M/s Asif Enterprises before the investigation officer NAB who prepared the seizure memo and the same was signed by the witnesses. **PW-2**, Muhammad Anwar Inspector, RTO-III Inland Revenue was examined who deposed that he produced some documents and three claim files related to M/s Asif Enterprises for the tax period of March, July and September, 2012 before investigation officer NAB who prepared seizure memo which he signed and produced and exhibited the same. He stated during cross-examination that Inspector Mumtaz Ali Nizamani has provided STR Form for conducting physical verification of manufacturing unit. He further admitted that accused Mumtaz Ali Nizamani has mentioned in the report the NTN, Computer Number, C.N.I.C., residential address, electricity meter and list of machinery and deposed that each document contains thumb marks and signatures of proprietor, accused Muhammad Asif Arshad except list of machinery where only signature is available. **All these documents were not denied by the appellant Mumtaz Ali Nizamani.** PW-3, Sarwan was examined who deposed that the NAB team came to his

factory of manufacturing gloves and called him in NAB office with all the documents. He deposed that Investigating Officer NAB inquired from him about accused Muhammad Asif and Muhammad Adil as to whether they were his tenant or not and he replied that he did not know them and further disclosed that he acquired the factory in the year 2014. He further deposed that there was no factory for manufacturing of paper products. **PW-4**, Muhammad Asif was also examined by the prosecution who deposed that Investigating Officer called him in the office where he gave answers of several questions put to him. He deposed that he informed the Investigating Officer that he does not own the plot, denied tenancy agreement with appellants/ accused Muhammad Asif Arshad and Muhammad Adil Arshad. He stated during cross examination that his CNIC was misused and he had not executed tenancy agreement. **PW-5**, Hafiz Muhammad Ishaq, the Manager K-Electric, was also examined by the prosecution deposed that DMG had given him five (05) or six (06) electric bills directing him to locate and confirm the addresses. He deposed that he showed the NAB team the site including electric meter. He further stated in cross-examination that out of six bills, three bills were of Lyari, one bill was for IBC Sher Shah and two bills were of IBC Orangi Town.

10. The most important witness of the prosecution was **PW-7**, Kamran Ali Janvri, Assistant Director NAB (I.O) who deposed that on source information that some fake companies were involved in obtaining illegal Sales Tax Refunds, inquiry was conducted and among several companies two companies namely M/s. Asif Traders and M/s. Asif Enterprises were prominent. He deposed that he collected the relevant record from FBR and found that Muhammad Asif had obtained Sales Tax Refund and deposited the same in his bank accounts. He deposed that the appellants were arrested who admitted to have formed the companies and obtained Sales Tax Refund. He further deposed that the companies were bogus and bogus agreements were prepared. During cross-examination of this witness he stated on suggestion made on behalf of accused Muhammad Asif Arshad that **“It is incorrect to suggest CNIC of Asif Arshad was misused. It is incorrect to suggest that Asif Arshad is not a beneficiary. It is correct to suggest that from the**

**account of Asif Arshad the amount was transferred to the some other persons accounts".** This witness further stated during cross-examination that **"it is correct to suggest that I did not get verified the forged signature and did not get CCTV footage which shows involvement of the accused vol: says that Asif Arshad according to the FBR documents has been regular tax payer and he has NTN which was registered by himself. It is further stated that during the course of investigation Asif Arshad neither filed complaint nor stated that his CNIC has been misused".** This witness was not dented despite being subject to a lengthy cross-examination.

11. We have carefully examined the statements under section 342 Cr.P.C of the appellants Muhammad Asif Arshad and Muhammad Adil Arshad and found that they took the defence that they have not registered M/s. Asif Enterprises and had not installed any manufacturing unit in House No.154/6 Bihar Colony Tannery Road, Karachi as the unit of Asif Enterprises. He also denied the building was owned by Muhammad Asif and also denied tenancy agreement and stated that his CNIC was misused. He further stated that he never opened any bank account and his CNIC was misused for opening of bank accounts and he has no knowledge regarding any of the transactions made in his name and has no knowledge of any company being registered in his name.

12. It is observed that the defence taken by the appellants Muhammad Asif Arshad and Mumtaz Ali Nizamani is on contradictory pleas as appellant Mumtaz Ali Nizamani took defence that he made physical verification of M/s. Asif Enterprises and prepared list of machines installed at the unit, whereas appellant Muhammad Asif Arshad denied the existence of M/s. Asif Enterprises took specific plea that his CNIC was misused for the refund of claims.

13. As discussed above, we are of the firm view that the prosecution has proved its case beyond a reasonable doubt by producing trustworthy and confidence inspiring evidence against all three appellants and uphold their convictions. The appeals of the appellants Muhammad Asif Arshad and Muhammad Adil Arshad have not been pressed on merits and they only prayed for reduction

of their sentence based on the mitigating circumstances mentioned above. We find such mitigating circumstances to justify a reduction in their sentences. We also consider that the sentences awarded to them were too harsh, therefore, the conviction awarded to them by the trial court is maintained, however, both their sentences are reduced to the time which they have already undergone which includes the additional sentence of imprisonment in default of fine but the fine imposed on them is still outstanding against them which shall be recovered by NAB in accordance with the law. The appellants Muhammad Asif Arshad and Muhammad Adil Arshad are in custody, they are ordered to be released forthwith if not required in any other custody case.

14. With regard to the case of appellant Mumtaz Ali Nizamani, his appeal is dismissed and all the sentences handed down by the trial court in the impugned judgment are maintained. Appellant Mumtaz Ali Nizamani was released on bail, the same is cancelled and he shall be taken into custody and returned to the Central Prison Karachi where he shall serve out his remaining sentence. The benefit of section 382-B Cr.P.C. as awarded to him by the trial court is also maintained.

15. The above appeals are disposed of in the above terms.

**JUDGE**

**JUDGE**