

local authority or in service of Pakistan or any Province and from seeking any financial facility in the form of loans or advances from any financial institution under the control of Government for a period of ten years, however, extended them the benefit in terms of Section 382-B, Cr.P.C. and acquitted co-accused Sarwar Alam for want of tangible evidence against him.

2. The facts giving rise to these appeals, briefly stated, in the reference are that on 25.08.2000 a scheme was brought by Government of Pakistan in the name of Food Support Program {FSP}, whereby a sum of Rs.2,000/- was to be disbursed to each "Mustahiq" from "Bait-ul-Mal" by the designated post office on bi-annual basis and in this regard a list of Mustahiqeen was prepared and relevant funds were provided by Pakistan Bait-ul-Mal from Zakat Funds. At the relevant point of time appellant Azeem Shahab was performing his duties as compilation clerk of Bait-ul-Mal Section of Al-Haidery General Post Office, appellant Shaikh Ejaz Ahmed was a counter clerk {payment clerk} and accused Sarwar Alam was Assistant Post Master /Incharge Bait-ul-Mal Funds Section of General Post Office, Al-Haidery, Karachi. The accused Sarwar Alam, in utter violation of his duties, instructed appellant Shaikh Ejaz Ahmed to pay him money by misappropriating Bait-ul-Mal funds, who prepared fake vouchers and obtained cash from treasury and made bulk payments against the charter of his duties while appellant Azeem Shahab in his capacity as complication clerk did not maintain proper record of payment vouchers and daily schedule in the relevant ledger, thus they being holders of public office indulged in corruption and corrupt practices and in connivance with each other misappropriated an amount of Rs.48,19,200/- dishonestly and fraudulently. It is also the case of the prosecution that Shoaib Ahmed Siddiqui, the then Senior Post Master, on surprise check, noticed doubtful payments and constituted a Committee, which detected double payments, however, meanwhile the Director General NAB took suo moto notice, which led to an inquiry/investigation and then filing a reference.

3. On indictment, the appellants and co-accused Sarwar Alam did not plead guilty to the charge and claimed trial. At trial, the prosecution examined 12 witnesses in all. On close of prosecution

evidence, the appellants and co-accused were examined under Section 342, Cr.P.C. wherein they denied the prosecution case, professed innocence and stated their false implication, however, they opted not to examine themselves on Oath and did not lead any evidence in their defence. Thus, the trial culminated in conviction and sentences of the appellants as stated in para-1 {supra}, hence necessitated the filing of their respective appeals, which are being disposed of through this single judgment.

4. The gist of evidence adduced by the prosecution in support of its case is as under:-

5. **Muhammad Jalil Siddiqui** {Chief Post Master, City, GPO, Karachi} appeared as PW.1 Ex.8. **Shoaib Ahmed Siddiqui** {Senior Post Master, Al-Hydri. GPO, Karachi} appeared as PW.2 Ex.9, who detected doubtful payments and exhibited certain relevant documents in his evidence. **Muhammad Zaheer** {Divisional Superintendent, Postal Service} appeared as PW.3 Ex.13. **Syed Muhammad Tanveer** {Senior Post Master SITE Head Office Karachi} appeared as PW.4 Ex.14. **Mirza Arif Baig** {Assistant Post Master Al-Hydri GPO Karachi} appeared as PW.5 Ex.16. **Mst. Tahira Parveen** {compilation clerk} as PW.6 Ex.17. **Mirza Tanveer Baig** {Assistant Post Master Saving Bank Al-Hydri GPO, Karachi} appeared as PW.7 Ex.20. **Muhammad Ayub** {Post Master Manghopir Post Office} appeared as PW.8 Ex.21. **Tahir Hussain** {Senior Clerk Pakistan Bait-ul-Mal} appeared as PW.9 Ex.22. **Hamid Hameed Waris** {Incharge Foreign Post Karachi} as PW.10 Ex.24, who produced inquiry report which is Ex.24/1. **Muhammad Mubeen Khan** {audit officer} as PW.11 Ex.25, who produced Volume No.1 of audit report in original, which is Ex.25/1 and Col. {R} **Muhammad Riaz Malik** as PW.12 Ex.26, who conducted investigation vide authorization letter, which is Ex.26/10.

6. It is jointly contended on behalf of the appellants that they have been falsely implicated in this case by Shoaib Ahmed Siddiqui, Senior Post Master and Incharge of Bait-ul-Mal Al-Haidery, who was the mastermind and responsible for all illegal and unlawful acts and beneficiary of the whole scam and just to save his skin cooked up a

false story against them; that the prosecution has failed to bring home the charge against the appellants through cogent and reliable evidence; that the witnesses produced by prosecution were subordinate to Mr. Siddiqui as such they have falsely deposed against the appellants because of his influence; that the witnesses were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant; that the learned trial Court did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellants; that the investigating officer exonerated the real culprits and implicated the appellants with malafide intention and ulterior motives, hence it is a clear case of pick and choose; that three accused were charged and same evidence was recorded but accused Sarwar Alam was acquitted and the appellants on the same set of evidence were made scapegoat and convicted as mentioned above, which finding was not supported from record; that the order of acquittal has not been challenged in appeal and the same has attained finality; that the witnesses produced by prosecution were interested and under pressure, thus, they have deposed against the appellants favouring the prosecution, hence their testimony was wrongly relied upon by learned trial Court; that the charge against the appellants has not been established through evidence but the learned trial Court while extending the benefit of doubt to co-accused wrongly convicted and sentenced the appellants without any valid reason, thus, the evidence recorded and conclusion drawn merits reversal. Lastly submitted that the appellants are poor persons and due to their confinement in jail their families are badly suffering, besides appellant Azeem Shahab is a disabled person, therefore, a lenient view may be taken. In support of their submissions, the learned counsel have relied upon the cases of *Muhammad Arshad and others v The State and others* {PLD 2011 Supreme Court 350}, *Province of Punjab and another v Muhammad Rafique and others* {PLD 2018 Supreme Court 178}, *Muhammad Shah v The State* {2010 SCMR 1009}, *Imtiaz alias Taj v The State and others* 2018 SCMR 344}, *Haji Nawaz v The State* 2020 SCMR 687, *Mst. Sumaira Malik v Malik Umar Aslam Awan and others* 2018 SCMR 1432}, *Malik Munir Hussain and others v National Accountability Bureau* 2016 P.Cr.L.J. 1896}, *Agha*

Wazir Abbas and others v The State {2003 P.Cr.L.J. 1353}, *Bahader Khan v The State and another* {2012 P.Cr.L.J. 24}, *Muhammad Khalid Khan v The State through Chairman, NAB* {2015 P.Cr.R. 1437}, *Muhammad Yusuf v Malik Khizar Hayat Khan and others* {2010 YLR 2536} and an unreported judgment dated 26.02.2019, passed by Hon'ble Supreme Court in Criminal Appeals No.24-K, 25-K and 26-K of 2018.

7. As against that learned Special Prosecutor NAB has contended that the appellants while misusing their official position have misappropriated an amount of Rs.48,19,200/- dishonestly and fraudulently, which relate to Bait-ul-Mal and was to be disbursed to Mustahiqeen; that the prosecution in support of its case produced oral as well as documentary evidence, which was rightly relied upon by learned trial Court; that the witnesses produced by prosecution were subjected to lengthy and taxing cross-examination but nothing favourable to the appellants could come out from their mouth; that the reasons advanced by learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken. He, therefore, prayed for dismissal of appeals.

8. We have given our anxious consideration to the submissions of learned counsel for the appellants and the learned Special Prosecutor NAB and gone through the entire material available on record with their able assistance.

9. The case of the prosecution against the appellants Azeem Shahab and Shaikh Ejaz Ahmed is that they in their capacity as compilation clerk and counter clerk {payment clerk} of Bait-ul-Mal GPO Al-Hydri have committed embezzlement of Rs.48,19,200/- in connivance with co-accused Sarwar Alam, who was Assistant Post Master and Incharge of Bait-ul-Mal Funds Section at the relevant time and was subsequently acquitted at trial. It is further alleged that PW.2 Shoaib Ahmed Siddiqui, the then Senior Post Master taking notice of doubtful payments from Bait-ul-Mal funds constituted a Committee, which found material about double payments, however, meanwhile NAB took suo moto notice, which led to an investigation

and concluded in finding the appellants and co-accused Sarwar Alam guilty of the offence of corruption and corrupt practices and causing a colossal loss to the national exchequer.

10. The prosecution in order to substantiate its case examined twelve witnesses in all. They were subject to lengthy cross-examination but nothing favourable to the appellants could come out from their mouth. They were consistent on each and every aspect of the matter and did not contradict each other on material aspects of the matter. Nothing has been brought on record on behalf of the appellants that the prosecution witnesses had some grudge against them for their false implication in the commission of offence. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellants have failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. All the witnesses have supported the case of the prosecution and implicated the appellants in the commission of offence. PW.2 Shoaib Ahmed Siddiqui and PW.4 Syed Muhammad Tanveer have deposed in clear words that appellants were found involved in embezzlement of Bait-ul-Mal funds, which were to be disbursed to Mustahiqeen. They further deposed that the appellants deposited the embezzled amount of Rs.6,50,800/- with the treasury vide deposit slips Ex.9/G to Ex.9/G-8, which bear their signatures. It has also come on record that an inquiry into the matter of embezzlement of Bait-ul-Mal funds was entrusted to PW.10 Hamid Hameed Waris, who conducted a discreet inquiry and concluded that appellants were found responsible for misappropriation and embezzlement in Bait-ul-Mal funds. This witness has further deposed that during inquiry he has not found Shoaib Ahmed Siddiqui guilty of any offence and did not nominate him as accused. He produced inquiry report at Ex.24/1. PW.11 Muhammad Mubeen Khan is the witness, who conducted audit with regard to embezzlement in Bait-ul-Mal funds at GPO Al-Hydri and issued his report consisting of three volumes. During audit proceedings, he found embezzlement of huge amount from Bait-ul-Mal funds and detected 15/16 *modus operandi* adopted by the accused while embezzling the funds. P.W.12 Lt. Col. {R} Muhammad Riaz Malik, who is investigating officer, has also fully described and highlighted the *modus operandi* of the

appellants, which was not shattered or even touched by the defence at trial. No cross-questions have been put on behalf of appellants to negate such version. The record is also suggestive of the fact that at the relevant point of time appellant Azeem Shahab was working as ledger clerk while appellant Shaikh Ejaz Ahmed was performing the duties as payment clerk and when shortfall amount came on surface of record, they deposited an amount of Rs.6,50,800/- with the treasury vide deposit slips under their signatures. This fact too established involvement of the appellants in the commission of offence.

11. As to the plea taken by the appellants that Shoaib Ahmed Siddiqui is the beneficiary of the whole scam, who is solely responsible for all illegal and unlawful acts and to save his skin has hatched a conspiracy against them to involve in this false case and the witnesses being subordinate to him have deposed against them favouring the prosecution did not come forward to help the appellants as the witnesses, who are independent and private persons, have specifically involved the appellants in the commission of offence. Even otherwise, the appellants have neither produced any witness nor any other material to substantiate their defence. Besides, they have not appeared on oath under Section 340{2}, Cr.P.C. The appellants have also failed to speak a single word as to why the witnesses have deposed against them and mere saying that they have falsely been implicated in this case is not sufficient to prove their innocence particularly in view of the fact that the prosecution witnesses were consistent and their evidence could not be shattered in cross-examination. In the circumstances, the learned trial Court has rightly appreciated the evidence on record and recorded conviction against the appellants acting upon the material available with it by holding that the prosecution has succeeded to establish its case against the appellants. We are also conscious of the fact that law requires that if accused had a defence plea the same should have been put to the witnesses in cross-examination and then put forward the same while recording statement under Section 342, Cr.P.C. which is lacking in the instant case. In the circumstances, since the specific defence plea had not been taken by the appellants in their

statements under Section 342, Cr.P.C. the learned trial Court has rightly discarded the same to be not of confidence-inspiring.

12. As to the acquittal of co-accused Sarwar Alam is concerned, we have observed that the learned trial Court acquitted him on the ground that there were only statements of appellants before investigating officer involving him and except this the prosecution was unable to bring on record any other evidence against him. Even no document has been produced by the prosecution, duly signed by him to show his involvement in the commission of offence whereas there is overwhelming evidence establishing involvement of the appellants in the commission of offence. The learned trial Court after scrutinizing the entire material available on record acquitted co-accused of the charge while extending him the benefit of doubt and convicted and sentenced the appellants on the ground that they being the holder of public office were solely responsible for the embezzlement that took place in GPO Al-Hydri Section, where they were posted as such acquittal of co-accused Sarwar Alam is not helpful to the appellants. As to the case law cited by the learned counsel for the appellants, in support of their submissions, is concerned, the facts and circumstances of the said cases, in view of above discussed position, are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the appellants.

13. From the combined study of material available on record, we are of the humble view that the prosecution has successfully proved its case against the appellants beyond shadow of any doubt. Learned counsel for the appellants has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence and documents brought on record, hence calls for no interference by this Court. In view thereof, the appeals, which impugn conviction and sentences, have no merit and are dismissed accordingly. However, keeping in view the submissions made by the learned counsel for the appellants that their family members are extremely poor persons and they are virtually starving due to confinement of the appellants in jail and

appellant Azeem Shahab is a disabled person, hence deserve to be dealt with leniency. The Jail Roll reflects that appellant Azeem Shahab has passed three {03} years eleven {11} months and six {06} days including remissions and appellant Shaikh Ejaz Ahmed has spent five {05} years eight {08} months and 01{one} day as on 25.01.2021 in prison, out of total sentence of seven {07} years as awarded to them, hence keeping in view their period of detention in prison and the undisputed fact that the appellants are first offenders and have no previous criminal record/history on their credit as well as they are not previously convicted and more particularly their further detention in jail shall certainly compel their families to step-out for survival may ruin their lives, therefore, in our humble view it would serve both purposes of deterrence and reformation, if their sentences are altered and reduced to one already undergone. Accordingly, the sentences of seven {07} years, awarded to the appellants, are modified and reduced to one already undergone, which does not include other sentences as well as sentence awarded in lieu of fine.

14. The appeals, listed above, stand disposed of in the foregoing terms.

JUDGE

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