

JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

Cr.Appeal.No.S- 11 of 2016

Date of hearing: 24.01.2020.

Date of judgment: 24.01.2020.

Mr. Zulfiqar Ali Abbasi, Advocate for appellant alongwith appellant (on bail).

Ms. Rameshan Oad, A.P.G. for the State.

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

**ABDUL MAALIK GADDI, J** – Through this criminal appeal, the appellant has assailed the legality and propriety of the judgment dated 22.01.2016 passed by learned Special Judge, Anti-Corruption (Provincial), Hyderabad in Special Case No.141 of 1999 (Re: The State v. Muhammad Rafique Khaskheli) arisen out of Crime No.01/1998 of P.S ACE Hyderabad District registered U/s 409, 420, 467, 468, 471 PPC r/w Section 5(2) of Prevention of Corruption Act-II, 1947, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment which reads as under:-

***“Consequent to the above facts and discussion, I have come to the conclusion that the prosecution has fully established its case against the accused beyond any doubt, therefore, the accused Muhammad Rafique Khaskheli is hereby convicted for the offence punishable u/s 409 PPC read with Section 5(2) of Prevention of Corruption Act-II, 1947 and sentenced to undergo RI for two years and to pay fine of Rs.1,00,000/- and in default of the payment of fine, to suffer S.I for four months more. Accused Muhammad Rafique Khaskheli who is present in court on bail, is taken into custody with direction to remand him to Central Prison, Hyderabad to serve out his above sentence therefore, his bail bond stands cancelled and surety is discharged.”***

2. Facts of the case as stated in the FIR are that after getting approval from competent authority, the then Circle Officer Sardar Khanzada of ACE Hyderabad District registered above FIR on behalf of the State on 12.01.1998 at 1200 hours on receipt of reference No.SM/934 dated 31.07.1997 through Additional Deputy Commissioner-I, Hyderabad vide No.1B/1965 dated 26.09.1997. It is stated in the FIR that accused Muhammad Rafique Khaskheli while posted as Tapedar, Tapa Saeedpur, Taluka Tando Muhammad Khan, during the year 1996-97 had recovered land revenue of current year of Kharif and Rabi 1996-97 by issuing different receipts to the Khatedars without carbon paper mentioned, its duplicate copy with his own wish and misappropriated the Government amount. It is further stated in the FIR that during the year 1996-97 accused Muhammad Rafique Khaskheli, Tapedar recovered land revenue from various Khatedars total amount of Rs.1,53,435/- out of which he only deposited Rs.9330/- and balance amount of Rs.1,44,105/- misappropriated by him by causing wrongful loss to the Government. After completing all the legal formalities, challan of the case was submitted before trial court on 26.08.1999 for trial of the case.

3. Charge was framed at Ex.2, which was denied by appellant at Ex.3 through his plea on record.

4. At trial, the prosecution in order to prove its case has examined PW-1 Raja Khan Jamali at Ex.4, who produced original of receipt of Rs.2,000/- issued by accused as Ex.4/A, PW-2 Muhammad Ibrahim Daudpoto, Tapedar at Ex.5, who produced detail report of receipts as Ex.5/A, copies of receipt in 31-leaves as Ex.5/A, PW-3 Imdad Hussain Kutrio, the then Mukhtiarkar, Taluka Tando Muhammad Khan at Ex.7, who produced photocopy of his report dated 31.07.1997 as Ex.7/A, PW-4 Jamil Razaque Soomro, Junior Clerk of Local Government at Ex.8, PW-5 Wali Muhammad Panhwar, the then

Sub-Treasurer at Ex.9, who produced original challan of Rs.1750/- as Ex.9/A, original challan of Rs.3825/- as Ex.9/B, original challan of Rs.300/- as Ex.9/C, original challan of Rs.2855/- as Ex.9/D and original challan of Rs.600/- as Ex.9/E. During evidence, the prosecution given up PW Mubarak being very old person while PW Sardar Khanzada, the then Circle Officer could not examine on account of his non-traceability. Thereafter, the learned ADPP for the State closed the side of prosecution evidence vide statement at Ex.11.

5. Statement of accused was recorded U/S 342 Cr.P.C at Ex.12 in which he denied the prosecution allegation and claimed his innocence. However, he examined himself on Oath at Ex.13. However, learned ADPP produced the FIR No.01/1998 of P.S ACE, Hyderabad District alongwith his statement as Ex.14 but the same has not been produced in evidence by its author who kept himself away from evidence.

6. It is inter alia contended by learned counsel for the appellant that appellant is innocent and has been involved in this case falsely and the prosecution has not been able to prove its case beyond any reasonable doubt; that PW-1 Raja Khan has deposed that he cannot say that accused present in court is same or not and he also deposed that he was not examined by anti-corruption police; that amount is contradictory and PWs are not sure that how much amount has been misappropriated by the present accused; PW-3 Imdad Hussain Kutrio, Assistant Commissioner received report from the PW/successor Tapedar Muhammad Ibrahim on the basis of which he made report to the higher authority; that PW-4 Jamil Razaque, the Junior Clerk of Local Government has not supported the case of prosecution while PW-5 Wali Muhammad Panhwar, Sub-Accountant deposed that in Government treasury challan of Rs.9330/- was deposited; that the FIR was lodged by Sardar Khanzada who is also Investigating Officer of the case but he has not been examined before the trial court as he was not available at his

address; lastly he contended that the accused is innocent and prayed for his acquittal.

7. On the other hand learned A.P.G. appearing for the State has recorded her no objection on the ground that after departmental enquiry, appellant has been reinstated in service and has also been promoted by the department and further that complainant / I.O. of this case has also not been examined and the evidence recorded on behalf of the prosecution is contradictory.

8. I have heard the learned counsel for appellant, learned A.P.G for the State and perused the material available on record.

9. Admittedly, at the time of incident, appellant was posted as Tapedar at Tando Muhammad Khan and now according to him he is posted at Matiari. The incident allegedly took place in between 1996-97 whereas FIR of the incident was lodged on 12.01.1998 by complainant / Inspector Sardar Khanzada, Circle Officer, ACE Hyderabad District on behalf of the State. It is noted that said complainant has not been examined by the prosecution in this case for the reasons best known them. It is also noted that in this matter complainant Sardar Khanzada who has written the FIR at the same time has also investigated the matter. No doubt there exists no bar for the complainant to become I.O. of the case but when an officer who himself is the complainant in the case cannot be expected to collect and preserve evidence, which goes against his case. Such investigating officer cannot properly perform the duties of an independent and fair investigating officer. In this respect I am also fortified with case law reported as Qaloo v. The State (1996 P.Cr.L.J 496), wherein it has been observed that no specific bar exists under the law against complainant Officer becoming the Investigating Officer, but being the complainant it cannot be expected that as an Investigating Officer he will collect any material which goes against the prosecution or gives any benefit to the accused. Evidence of such Officer, therefore, is a weak piece of evidence

and for sustaining a conviction it would require independent corroboration and will be scrutinized with great care and caution.

10. The allegation against appellant is that he misappropriated an amount of Rs.1,53,435/-. It appears from the record that on account of such allegation against the appellant, a departmental enquiry was conducted by the District Officer, Revenue, Hyderabad who during enquiry dismissed the appellant from service on 15.06.2002 then the departmental appeal was preferred by appellant before the Executive District Officer, Revenue, Hyderabad, against the decision of District Officer (Revenue), Hyderabad, who allowed the appeal of appellant and also ordered for his reinstatement in service vide order dated 13.01.2003, therefore, he is still working in Revenue Department and the said order of EDO (Revenue), Hyderabad has not been challenged by authority concerned before any competent / higher forum and according to learned counsel for appellant, the present appellant is still working as Tapedar Matiari and he has also been promoted by the department.

11. It is alleged that some of Khatedars made complaint against the present appellant with regard to getting money from them. It has also come on record that said Khatedars who allegedly gave amount to the appellant but none of them has been examined by the trial court to corroborate the evidence of official witnesses. It is noted that the Mukhtiarkar namely Imdad Hussain received the complaints against appellant as submitted by some of the Khatedars that appellant has misappropriated their amount but none of the Khatedars has been produced in evidence to corroborate this fact. It is also noted that nothing on record that the tainted amount has been recovered from the appellant. Furthermore, there is also delay in lodging the FIR which has not been explained by the prosecution.

12. As observed above, present appellant has been exonerated in departmental enquiry and the present FIR has also been lodged by

complainant on the same allegation and it reveals that this case appears to be of two versions. In the one version during enquiry he has been exonerated whereas in the FIR case he has been convicted which creates serious doubt in the case of prosecution. It has also come on record that one PW namely Jamil Razaque was declared hostile and PW Mubarak Shah was given up whereas as stated above complainant / I.O. Sardar Khanzada did not appear for his evidence. Even no FIR was produced in evidence by any official of the Anti-Corruption authority but the same was submitted by learned ADPP through statement at a later stage.

13. In the circumstances, I am of the view that the prosecution case is not free from doubts and it is well settled principle of law that even a single circumstance creating a reasonable doubt, the benefit of which, always goes in favour of accused, however, in the instant case there are material discrepancies and lacunas in the prosecution evidence. In this regard, reliance can be placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

**"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".**

14. In the light of what has been discussed above and case law, I am of the considered view that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt, therefore, instant appeal is allowed, impugned judgment dated 22.01.2016 is set aside and the appellant is acquitted of the charge. The appellant is present on bail, his bail bond stands cancelled and surety discharged.

15. Office is directed to immediately send the copy of this order to the trial court alongwith R&Ps for information and compliance, if any.

JUDGE

Tufail