IN THE HIGH COURT OF SINDH, KARACHI

Criminal Accountability Acquittal Appeal No. 02 of 2021

Date	Order with signature of Judge

1. For order on office objection.
2. For order on M.A. No. 13466/21.
3. For hearing of main case.

16.08.2022.

Mr. R.D. Kalhoro, Special Prosecutor NAB.

Muhammad Junaid Ghaffar, J.- Through this Criminal Accountability Acquittal Appeal, National Accountability Bureau (NAB) has impugned Judgment dated 28.12.2020 passed by the Accountability Court No. II at Karachi in Reference No. 25 of 2016, whereby, the respondents were acquitted. The case of NAB is that the respondents being in connivance with each other were involved in huge illegal refunds of sales tax causing loss of millions of rupees; hence, such act falls within the ambit of section 9(a) of the NAB Ordinance, 1999, punishable under section 10 ibid, whereas, sufficient evidence was brought on record entailing punishment to the respondents.

2. We have heard the learned Special prosecutor NAB and have perused the record. He has made a resolute effort to convince us with his submissions; however, we are not even inclined to issue notice to the Respondents in this matter

3. After going through the impugned judgment, we are of the considered view that no case for any interference is made out inasmuch as the learned Trial Court has fully appreciated the evidence on record and has come to a correct conclusion tha prosecution has failed to prove its case beyond shadow of doubt; hence, no punishment could be awarded on the basis of such evidence.

4. Insofar as the material witnesses are concerned including P.W-02 Bakht Munir Khan, who had produced the documents on which the prosecution's entire case rests, has stated / admitted in his deposition as follows:-

> "He deposed that he had only produced the record before the I/O and has not recorded his statement u/s 161 Cr.P.C. The PW admitted that neither is he the author nor signatory nor custodian nor witnesses of the documents which he had produced before the I/O or before Court and further that he has any knowledge about this case and have not dealt with it. He deposed that he has not produced the files of income tax returns for the year 2011-2012."

5. On perusal of the above evidence it appears that the witness who produced a plethora of documents on the basis of which the entire case was made out has admitted that no statement of his was recorded under section 161 Cr.P.C.; that he is neither the author of the documents; nor a signatory or a custodian and nor a witness of such documents. He has further admitted he has no knowledge of the case nor he had dealt with it while performing his duties. Per settled law such documents, notwithstanding being exhibited in evidence, cannot be relied upon in isolation. It is also trite law that mere production of documents does not suffice as they can only be considered when at least some corroborative and supporting evidence is available. Here the witness himself is not in a position to prove any of these documents, then how could these be relied upon has not been explained in any manner on behalf of the Appellant.

6. Similarly, P.W-03, Seema Shakeel in her cross-examination, has clearly admitted the innocence of at least four accused persons and the learned trial court has recorded the following observations regarding her statement which reads as follows:-

> "In Cross-examination, she admitted that in the inquiry she had not found any corruption against accused Rai Talat Maqbool Ahmed, Syed Tahir Raza Zaidi, Muhammad Anadil and Salahuddin Siddiqui. She admitted that under Rule 73-2(c) of Income Tax Rule 2002, there is no bar for selecting tax payer companies for audit proceedings. She also admitted that there was no administrative directives and circulars, which prohibited accused Rai Talat Maqbool Ahmed and Salahuddin Siddiqui from initiating any audit proceedings against tax payer companies on the basis of their Income Tax returns. She admitted that prompt proceedings of refund applications of tax payer companies were not prohibited by any circular of FBR. She admitted that there was no history of any fraud committed by accused Muhammad Shakeel prior to her conducting fact finding inquiry. She admitted that fact finding report was against four accused persons excluding accused Muhammad Shakeel as they were auditors."

She has further deposed that all refunds are processed in terms of SOP issued by FBR, whereas, they are always subject to pre and post audit exercise, as and when deemed necessary. When her deposition along with cross examination is looked into, it appears that it is of no help to the case of prosecution; rather demolishes their case against the above named four accused persons.

7. Similarly all the other witnesses produced by the Prosecution have also failed to implicate the Respondents with any cogent or reliable

evidence. Therefore, the learned trial court appears to be fully justified in passing the impugned judgment.

8. Lastly, it is also a matter of record that after refund orders, some adjudication proceedings were also initiated by the department; however, finally such orders of refunds were impugned before the Appellate Tribunal vide Appeal No.239/KB/2019; where, the department remained unsuccessful and it was held by the Tribunal in its order dated 19.11.2018 that refunds have been made correctly. In that situation the case of the Appellant is further destroyed, as it is settled law that in criminal cases to maintain a conviction a higher degree of evidence is needed as compared to civil proceedings arising out of the same transaction.

9. Lastly, it is well settled by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption[1]. It is further settled that acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, resting upon fringes of impossibility and resulting into miscarriage of justice. It cannot be set aside merely on the possibility of a contra view[2]. A judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous[3]. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn[4].

10. Therefore, in our considered view the Appellant keeping in mind the narrow scope of an Acquittal Appeal has not been able to make out a case and we do not find any reason to interfere with the judgment of the Trial Court; as such the same is upheld and maintained. As a consequence thereof, this Criminal Accountability Acquittal Appeal is hereby dismissed in *limine*.

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[1] Zaheer Sadiq v Muhammad Ijaz (2017 SCMR 2007)
[2] Muhammad Shafi alias Kuddoo v The State (2019 SCMR 1045)
[3] Syed Sadam Hussain v Faisal Shah (2019 YLR 1292)
[4] The State v Abdul Khaliq (PLD 2011 SC 554)