

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Accountability Acquittal Appeal No. 15 of 2011

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Appellant:

The State (NAB),
Through Mr. Riaz Alam,
Special Prosecutor NAB.

Respondent:

Begum Slam Ahmed
Through Mr. Amir Raza Naqvi,
Advocate.

Date of hearing:

12.09.2022.

Date of Judgment:

12.09.2022.

J U D G E M E N T

Muhammad Junaid Ghaffar, J.- Through this Criminal Accountability Acquittal Appeal, National Accountability Bureau (NAB) has impugned Judgment dated 18.10.2011 passed by the Accountability Court No. IV Sindh at Karachi in Reference No. 04 of 2005, whereby, the Respondent was acquitted.

2. Learned Special Prosecutor NAB has contended that the learned Trial Court has failed to appreciate the evidence; that there were some admissions by the accused before the NAB Authorities as well as Trial Court; that the Project was though completed but belatedly; that sufficient evidence was led by NAB to seek conviction of the Respondent which the trial court has failed to appreciate; hence learned Trial Court ought not to have acquitted the accused; and therefore, this Acquittal Appeal merits consideration.

3. On the other hand, learned Counsel for Respondent has argued that there no loss was caused to the Government Exchequer inasmuch as initially an amount of Rs.13.30 million was sanctioned, whereas, the project was finally concluded at a value of Rs.53.30 million and the extra amount was generated by the respondent; that even if there was delay in completion of the Project, NAB has no jurisdiction in the matter; that none

of the witnesses has deposed against the Respondent nor any evidence has been led which could suggest that the funds were misappropriated by the Respondent, and therefore, no case is made out to entertain this Acquittal Appeal.

4. We have heard the learned Special Prosecutor NAB and the Respondent's Counsel and have perused the record as well. It appears that the NAB Authorities filed Reference No. 04 of 2005 (*The State v Begum Salma Ahmed*) before Accountability Court at Karachi and the precise allegation against the Respondent was stated in Para-12, which reads as under:-

"12. That the material and evidence collected during investigation establishes that accused dishonestly or fraudulently misappropriated or otherwise converted to her own use Government funds amounting to Rs.13.30 million entrusted to her or under her control and thus by corrupt, dishonest or illegal means obtained for herself pecuniary advantage. The accused thereby committed the offence of corruption and corrupt practices as defined in clauses (iii) and (iv) of section 9(a), punishable under section 10(a) of National Accountability Ordinance 1999 and Schedule thereto."

5. It further appears that the Charge was framed against the Respondent on 16.02.2006, wherein, it was alleged as under:-

"That your sole intention was to acquire funds from the government on the false pretext of establishing a women complex and after succeeding in getting an amount of Rs.13.30 million from EDF, you dishonestly and fraudulently misappropriated or otherwise converted to your own use government funds amounting to Rs.13.30 Million entrusted to you or under your control and thus by corrupt, dishonest or illegal means obtained for yourself pecuniary advantage and thereby you have committed offence of corruption and corrupt practices as defined under Section 9(a),(iii)&(iv) punishable under Section 10(a) of National Accountability Ordinance, 1999 and schedule thereto within the cognizance of this Court."

6. From perusal of the aforesaid allegation in the Reference and the Charge so framed, it appears that it is the case of the Appellant that the Respondent acquired funds from the Government through Export Promotion Bureau on false pretext of establishing a women complex, and thereafter obtained Rs.13.30 million, which she dishonestly and fraudulently or otherwise misappropriated and converted the said Government funds entrusted to her for her own use; and thus by this corrupt and dishonest means obtained pecuniary advantage. We had confronted the Special Prosecutor NAB as to this precise allegation and any relevant evidence, which may have been led by the Appellant before the learned Trial Court, and of which the Trial Court had failed to take notice of, and in response, he could not refer to any such evidence; rather

conceded that there was no such evidence that any funds of the Government were utilized or misappropriated for personal benefit of the Respondent. We may observe that the precise allegation against the Respondent was under Section 9(a)(iii)¹ & (iv)² of the NAB Ordinance, 1999, and once it is admitted that there is no evidence to that effect that any funds were misappropriated for the personal benefit or of others by the Respondent, then the case would be out of the ambit of Section 9(a)(iii) & (iv) *ibid*, and therefore, no conviction could be awarded under this provision of law. Even otherwise, the learned Trial Court has fully appreciated the facts and the evidence led on behalf of the Appellant and it has come to the conclusion³ that at most there was some delay in the completion of Project and pursuant to the agreement between the parties there was an Arbitration clause, which ought to have been invoked so that losses, if any, could have been overcome; but that was not done. Moreover, the Evaluation Report was also generated by M/s. NESPAK, which stated that the Project has been completed, therefore, we do not see any reason to interfere with the conclusion drawn by the learned Trial Court after a full fledged trial and appreciation of evidence.

7. 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 presumption⁴. 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*⁵. A judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous⁶. 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

¹ If he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or wilfully allows any other person so to do; or

² If he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or dependents or any other person, any property, valuable thing, or pecuniary advantage; or

³ "In this particular case not a single piece of evidence has been brought on record by the prosecution to show that the funds were used other than for which the funds were intended i.e. the construction of the project. The conviction cannot be based merely on presumptions. No evidence is produced by the prosecution to establish that funds were misappropriated by the accused and the same were used by her for her benefit..."

⁴ *Zaheer Sadiq v Muhammad Ijaz* (2017 SCMR 2007)

⁵ *Muhammad Shafi alias Kuddoo v The State* (2019 SCMR 1045)

⁶ *Syed Sadam Hussain v Faisal Shah* (2019 YLR 1292)

acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn⁷.

8. In view of hereinabove facts and circumstances of the case, in our considered view no case for indulgence was made out; hence by means of a short order in the earlier part of the day, this Criminal Accountability Acquittal Appeal was dismissed, and these are the reasons thereof.

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⁷ The State v Abdul Khaliq (PLD 2011 SC 554)