

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal Nos. 285 & 287 of 2014

Appellants : G.M. Durrani & Muhammad Arshad  
through M/s. Mehmood Alam Rizvi & Muhammad  
Farooq, Advocates

Respondent : The State  
through Mr. Abrar Ali Khichi, Addl.P.G.

Date of hearing : 23<sup>rd</sup> February, 2023

### JUDGMENT

**Omar Sial, J:** Reams of paper have been filed, a lot of them unnecessary; however, the facts that I understand from the learned counsels and the learned Additional Prosecutor General are given below. The learned counsels for the appellants, in addition to their verbal arguments also filed written arguments which are on file and thus for the sake of brevity are not being reproduced. The learned Additional Prosecutor General, while supporting the judgment of the learned trial court, had a difficult time in justifying certain aspects of the impugned judgment. He tried his best though.

2. A plot of land bearing no. 194 was allotted to one Najma in the year 1980. Najma applied for and obtained an approved plan to build a building consisting of a ground and three floors. The building however made on the said plot was ground plus six floors. The apartments and shops built were sub-leased. A constitutional petition (No. 243 of 2001) was filed in this court by a Haji Mohammad. On 29.04.2009 this court passed an order in that petition directing that the 3 illegally constructed floors on the building be demolished. The same Haji Mohammad, who had filed the petition, then as an afterthought maybe, lodged an F.I.R. (No. 39 of 2006) now complaining that the plot on which the building was built was actually an

amenity plot reserved for a park and thus a building was illegally built. Both the appellants, amongst others, were nominated as accused in the F.I.R.

3. Although the F.I.R. was registered under sections 420, 466, 468, 471, 447, 217, 109 and 149 P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947, after a full dress trial, the 2 appellants were convicted for 5 years imprisonment only for an offence under section 217 P.P.C. Section 217 P.P.C. provides that whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

4. While exploring what was the "direction of the law" which the appellants violated, it appears that on 27.01.1997 the then Deputy Controller of Buildings of the KBCA gave its no-objection to the proposed plan for the construction of the building. One of the appellants, Durrani, on 21.02.1998 took over the office of the Deputy Controller of Buildings and based on the earlier no objection given on 27.01.1997 proceeded to issue the approval for the building. It was the case of the prosecution that Durrani issued the approval based on the 27.01.1997 no objection whereas 2 months after the no objection was given the same was withdrawn on 12.03.1997. The other appellant, Mohammad Arshad, was an Assistant Controller of Buildings and was one of the officers who had forwarded the disputed approval for signatures of the officer above him in hierarchy.

5. The appellant's stance has been through out that no withdrawal of the initial no objection was known to them or communicated to them. The learned counsels appearing for the 2 appellants have both argued that the learned trial court did not appraise the evidence on record in its true

perspective. In particular, they argued that the proceedings in the petition filed earlier by Haji Mohammad was not taken into consideration by the learned trial court and thus the learned trial court did not notice that during those entire proceedings the competent authorities had taken the stance that the only violation of the building plans was that 3 extra floors had been constructed. Several compliance reports were filed in those proceedings, which were brought in as evidence in the present case, and none of those reports showed that there was ever an issue that no objection for the entire building was ever in question. The record reflects that the learned counsels are correct in their argument.

6. Whether or not the no objection given earlier on 27.01.1997 was withdrawn on 12.03.1997 was shrouded in mystery and was not conclusively clear in light of the evidence led at trial. Although there is a copy of the said withdrawal notification, prosecution's own witness Aijaz Ahmed (PW-12) who was the then Controller Town Planning testified at trial that *"the order of withholding was a verbal order to my Assistant Controller."* This witness further testified that the power to withdraw a no objection rested with the Controller of Buildings. The then Controller of Buildings, Mohammad Misbahuddin (PW-7), at trial testified that *"it is correct that no permission was obtained for withholding town planning NOC. It is correct that the withholding of the town planning NOC was under the domain of the Chief Controller or concerned Controller."* He himself was the Chief Controller. To exacerbate matters further for the prosecution the complainant himself and the investigating officer were both not examined at trial. No cogent reason having been given for the absence of the 2 important witnesses, raises the presumption that they themselves might not have supported the prosecution case. Interestingly, Haji Mohammad, the complainant, himself is reported to have 2 apartments on the second floor of the same building. Malafide on the part of the complainant in initiating this case cannot be conclusively ruled out, as it could hardly be the case of the Haji that his own 2 apartments should also be lot in his quest to have the building demolished. The person who was examined was

Inspector Bashiruddin (PW-16) and he testified that *“it is correct that I had not collected any document in respect of the withholding of the NOC from the Town Planning Department”*. I am also skeptical that it was the ambit of a criminal court to determine matters such as whether allotment of the plot had been validly made, whether the land was supposed to be a park or not, whether the requisite permissions were obtained etc. These were matters best left to the civil court to determine after the relevant evidence had been produced before it. Perhaps that is the reason that the appellants were acquitted of all other offences but the one under section 217 P.P.C. It should also have been explored at trial whether the withdrawal of the no objection would fall within the ambit of the word “law” as used in section 217 P.P.C. The learned trial court did not however analyze the case from this perspective.

7. The evidence produced at trial was not of such a nature that would conclusively conclude that the 2 appellants were liable under the criminal law. The above observations made are some that created doubt in the prosecution case. The appellants are given the benefit of doubt and acquitted of the charge. The fact that they have suffered the agony of trial for 17 years also makes them entitled to some concession. The appellants are 82 and 63 years of age now. They are on bail. Their bail bonds stand cancelled and sureties discharged. None of the observations made herein will impact any proceedings that the competent authority may initiate against the building in question. This judgment shall stay restricted to the question of whether the 2 appellants were criminally liable for an offence under section 217 P.P.C.

8. The prosecution having failed to prove its case, the appeals are allowed and the conviction and sentence given to the appellants is set aside. They are on bail. Their bail bonds stand cancelled and sureties discharged which may be returned to its depositor upon identification.

