

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Naimatullah Phulpoto

Mr. Justice Shamsuddin Abbasi

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Criminal Accountability Acquittal Appeal No.20 of 2022

Appellant National Accountability Bureau through
Mr. Muhammad Anwar Shaheen, Special
Prosecutor NAB.

Respondent Muhammad Younis son of Ali
Muhammad Arain.

Date of hearing 19.05.2023

Date of judgment **27.05.2023**

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JUDGMENT

SHAMSUDDIN ABBASI, J:- National Accountability Bureau (NAB) through its Chairman, appellant, has challenged the validity of the judgment dated 31.03.2022, penned down by the learned Accountability Court No.I (Sindh), at Karachi, in Reference No.73 of 2007, through which Muhammad Younis (respondent) was acquitted of the charge after holding full dressed trial.

2. Learned Special Prosecutor NAB contends that the respondent/accused was lawfully proceeded for offences of corruption and corrupt practices and accumulation of assets beyond his known source of income as defined in clause (v) of Section 9(a) punishable under Section 10 of National Accountability Ordinance, 1999; that the prosecution has produced oral as well as documentary evidence showing involvement of respondent /accused in the commission of offences charged with; that the witnesses produced by prosecution were consistent on each and every aspect of the matter and defence did not shatter their evidence during cross-examination; 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 acquitting the respondent /accused; that the prosecution has successfully proved its case against respondent/ accused through valid and reliable evidence, duly supported by the documentary evidence, that the impugned judgment is bad in law and facts and liable to be set-aside and the

respondent /accused deserves to be convicted in accordance with law and, therefore, this Acquittal Appeal merits consideration.

3. We have heard learned Special Prosecutor NAB and perused the entire material available before us. After going through the record placed before us and the assistance provided by learned Special Prosecutor NAB, we are not inclined to issue notice to the respondent/ accused inasmuch it is an acquittal appeal and the entire burden lies on the prosecution to prove glaring error of law and fact resulting into grave miscarriage of justice in the judgment of acquittal.

4. The reference was filed in the background of a complaint made by one Mukhtar Ahmed son of Ghulam Rasool with regard to accumulation of assets beyond known source of income which led to initiation of an inquiry, followed by a thorough investigation. Allegations leveled against respondent /accused find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

5. Based on the allegation made in the reference, a charge in respect of an offence under Section 9(a)(v) punishable under Section 10 of National Accountability Ordinance, 1999, was framed against the respondent/ accused to which he pleaded not guilty and claimed a trial. At trial, the prosecution examined as many as eight witnesses. On close of prosecution evidence, the respondent /accused was examined under Section 342, Cr.P.C. wherein he denied the prosecution case, professed innocence and claimed his false implication, however, opted not to examine himself on Oath under Section 340(2), Cr.P.C. and did not lead any evidence in his defence.

6. A bare perusal of the reference and charge so framed against respondent /accused, it appears that the case of the prosecution relates to accumulation of assets beyond known source of income alleging therein that the respondent /accused joined Government service in 1967 as Overseer in Municipal Committee, Nawabshah and promoted as District Officer Services and Works in BPS-20 in 2003 and retired on the same post on attaining the age of superannuation in 2007, however, he was given one year extension. It is also the case of the prosecution that during the tenure of entire service, the respondent /accused acquired 11 properties, as detailed in para-4 (supra) in

his name, spouse and his two sons, beyond the known source of his income. It is noteworthy that out of 11 properties, only one plot in KMC Officers' Cooperative Society, Karachi, is owned by respondent /accused and remaining 10 are shown in the name of his wife and two sons, out of which three are in the name of his wife Tasneem Akhtar, four in the name of his son Irfan Younis and three properties in the name of his another son Furqan Younis, which according to the prosecution were acquired by the respondent/accused from his own funds and got registered the same in the name of his spouse and two sons just to save his skin. Surprising to note that none either from the wife and two sons has been shown as accused or front man/beneficiary. Record reflects that the wife and two sons of respondent /accused are tax payers and most of the properties have been shown in income tax returns. We have posed a query to the Special Prosecutor NAB as to the allegation and any relevant evidence, which could have been brought on record by the prosecution before the learned trial Court, and of which the learned trial Court failed to take notice of, and in response, he could not refer to any such evidence rather admitted that no such evidence is available on record. We are conscious of the fact that the prosecution has claimed involvement of the respondent /accused in a case falling under Section 9(a)(v) of National Accountability Ordinance, 1999, and once it is admitted that there is no evidence as to accumulation of assets beyond known source of income and acquiring properties by the respondent/accused in the name of his spouse and two sons from his own funds, then the case would be out of the ambit of Section 9(a)(v) *ibid*. We are, thus, of the view that no conviction could be awarded under such provision of law.

7. We have examined the impugned judgment and found that the learned trial Court has fully appreciated the evidence and documents brought on record by the prosecution and rightly arrived at a conclusion that prosecution has failed to establish the charge of accumulating assets beyond known source of income. Relevant excerpt of the impugned judgment is reproduced below:-

“the record shows that on request of the accused evaluation of some properties was conducted by a neutral evaluator i.e. Sultan M.K. Durani of Engineering Management and Consultants but he too was not examined during trial. Thus, as pointed out by the learned Advocate, the case tested only on the evidence of I.O which was not only insufficient but defective as while it was case of prosecution that the accused had joined service in the year 1967 but his income considered here was only of the period after 1985. This meant that

his earning and the savings during the period of 1967 to 1985 were not taken into consideration and neither was the monetary assistance/gifts given to him and his wife also considered during the investigation. As against it, the stance of the accused was supported from the documents produced in terms of Section 265-F Cr.P.C. left with him after theft at his house, but stated by P.Ws Abdul Jabar, Zulfiqar and Mohammad Akhtar Aziz that the accused and his wife belonged to a well-off family with land-holding and transport business which also does not seem to have been considered by I.O. Thus there seems no worthwhile evidence with the prosecution to sustain the charge against the accused. With regard to the case law cited by the learned S.P NAB, suffice to say that in these cases it was held by the superior courts that income of accused from all his sources has to be checked and taken into consideration because mere possession of property by itself was no offence under the NAO 1999. It would make offence only if a person could not satisfactorily account for it and that all known resources of a person charged with such offence are to be thoroughly checked and ascertained before raising presumption of his guilt and that the onus to set off such presumption would shift to the accused in terms of Section 14(c) of NAO, 1999 only after investigating and ascertaining all his resources, his property/assets are found disproportionate to the said resources whereas here the said exercise was not at all done.

Turing to the V.R. allegedly offered by the accused, it may be stated that according to the accused at that time he was behind the bars and the said statement/V.R was thus taken from him under duress and threats which in any case was later withdrawn by him. Needless to mention here that the prosecution has to establish the charge on its' own strength and not bank upon the weakness of the defence much less a plea taken from the accused when he was admittedly in custody. In the circumstances, the prosecution in my considered view has failed to discharge the onus of proving the charge against accused who has nonetheless suffered agony of trial for 15(fifteen) long years. Consequently, Point No.2 is answered as 'not proved.

Point No.3 In view of my findings on the above points, it is concluded that the prosecution has failed to establish the charge of accumulating assets beyond known sources of income against Muhammad Younis Arain, who is accordingly acquitted. He is present on bail. His bail bond stands cancelled and surety discharged.

8. Reviewing the findings of the learned trial Court, noted above, we are of the view that the impugned judgment does not suffer from misreading or non-appraisal of evidence or lack of appreciation of material evidence or reception of evidence illegally or jurisdictional defects or evidence of material nature produced by the prosecution was not recorded or the acquittal order on the face of it is contradictory and/ or the order of acquittal is based without affording opportunity to the prosecution by violating principles governing the appreciation of evidence or that the acquittal judgment is based upon surmises, suppositions and conjectures

and the order of acquittal is based upon reasons which do not appeal to a reasonable mind. The settled criteria to entertain the appeal against acquittal as laid down by the Superior Courts is that if two different views or positions of the case and the view taken by the trial Court can be justified on the basis of facts or on principle of law, then the order of acquittal may not be interfered. It is also well settled that extraordinary remedy of an appeal against an acquittal is quite different from an appeal preferred against the findings of conviction and sentence. Undoubtedly, the accused is presumed to be innocent until 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. The acquittal carries with it double presumption of innocence and 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. Scope of appeal against acquittal of accused is considerably limited, because presumption of double innocence of the accused is attached to the order of acquittal more particularly when the accused is acquitted from a case after a protracted trial. This is in line with the dictum law laid down by the Hon'ble apex Court in the case of *Iftikhar Hussain and others v. The State* (2004 SCMR 1185). Guidance is also taken from the case of *Haji Amanullah v. Munir Ahmad and others* (2010 SCMR 222).

9. For what has been discussed above, we are of the considered view that the learned Special Prosecutor NAB has failed to point out any illegality or material irregularity committed by the learned trial Court while recording acquittal of the respondent /accused through impugned judgment dated 31.03.2022, which is well-reasoned, cogent, confidence inspiring and based on fair evaluation of evidence available on record, hence warrants no interference by this Court. By means of our short order dated 19.05.2023, this Criminal Accountability Acquittal Appeal No.20 of 2022 was dismissed and these are the reasons thereof.

JUDGE

JUDGE