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THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Crl. Appeal No.S-46 of 2016

Appellant : Assadullah son of Imam Ali Budh, who is present on bail, through Mr. Riaz Hussain Khoso, advocate.

Respondent : The State, through Mr. Sardar Ali Shah Rizvi, Deputy Prosecutor General.

Date of hearing: 04.12.2017.

J U D G M E N T .

Zafar Ahmed Rajput, J- This Criminal Appeal under section 410 of Cr.P.C is directed against the judgment, dated 17.05.2016, passed by the learned Special Judge Anti-Corruption, (Provincial), Larkana, in Special Case No.4 of 2008, arisen out of Crime No.12/2007, registered at Police Station, ACE, Larkana, under section 409 PPC R/w Section 5(2) Act-II of 1947, whereby the appellant was convicted under aforementioned provisions and sentenced to suffer three years R.I and to pay fine of Rs.50,000/- or in default thereof, to undergo six months S.I. Benefit of Section 382-B, Cr.P.C, however, was extended to appellant.

2. Briefly stated, the facts of the case are that on 11.06.2017, Niaz Hussain Khajar, Circle Officer, Anti-Corruption Establishment, Larkana, lodged aforementioned FIR on behalf of the State after receipt of permission from the competent authority on the report of District Food Controller Larkana, dated 22.07.2004, alleged therein that the appellant, while serving as Food Supervisor and posted as In-charge Procurement Centers Abdul Rahim and Hamal for wheat procurements crop 2004, misappropriated 217 wheat bags worth Rs.241,955/- as such; he caused loss to the government.

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3. After completion of investigation, the appellant was challaned. He was formally charged to which he pleaded not guilty and claimed trial.

4. To substantiate the charge, prosecution examined four witnesses, P.W-1 Bashir Ahmed examined at Ex-5, he produced reports at Ex-5-A to 5-E. P.W-2 Niaz Hussain Khajar examined at Ex-7, he produced the FIR, permission letters at Ex-7-A to 7-C. P.W 3 Qazi Sharafuddin examined at Ex-8, he produced mashirnama of arrest at Ex-8-A, and P.W-4 Moula Bux examined at Ex-9. Thereafter, statement of appellant/accused under section 342, Cr.P.C was recorded at Ex-11, wherein he claimed to be innocent. He, however, neither appeared on oath as his own witness nor produced any witness in his defence. Thereafter, upon assessment of evidence on record, the learned trial Court convicted the appellant and awarded sentence as mentioned above.

5. Learned counsel for the appellant has contended that the impugned judgment is outcome of misreading and non reading of evidence on record; that the prosecution has miserably failed to prove any shortfall of wheat bags at any of two procurement centers i.e. Abdul Raheem and Hamal under the supervision of appellant and for any shortfall of wheat bags at Collection Centre Warah and Nasirabad, the appellant cannot be held responsible; as such no criminal liability can be fixed upon him. Hence, the conviction recorded by the learned trial Court and sentence awarded to appellant is bad in law.

6. On the other hand, learned D.P.G has supported the impugned judgment and has maintained that as per arrival statement of Abdul Raheem Centre, dated 15.05.2004, the appellant purchased 8072 wheat bags but he dispatched only 7928 bags to Collection Centre

at Warrah causing shortfall of 144 bags of wheat and likewise he purchased 4332 wheat bags at Procurement Centre Hamal but he sent only 4259 wheat bags to Collection Centre, Nasirabad causing shortfall of 73 bags, which comes to total shortfall of 217 wheat bags; that the appellant admitting his guilt has deposited the cost of misappropriated bags which otherwise amounts to be an admission of guilt on his part; therefore, the impugned judgment is liable to be maintained.

7. I have heard the learned counsel for the appellant and learned D.P.G as well as perused the material available on record with their assistance.

8. It reflects from the evidence of prosecution witnesses that the appellant was posted as Procurement In-charge at Abdul Raheem and Hamal Centers in the year 2004. He was assigned duty to procure the wheat for the department and he procured on both the Centers total 12404 bags, however, when the stock was cleared, a shortage of 217 wheat bags was noticed valuing at Rs.241,955/- + Rs.200 price of each bag. Such report was made by Bashir Ahmed, the then District Food Controller, Larkana (Ex-5-A) to Anti-Corruption Authorities. It appears from the perusal of daily arrival report of Procurement Centre Abdul Raheem (Ex-5-B) that on 15.05.2004, total 8072 bags of wheat were entered in record, however, in arrival report of Collection Centre, Warah, dated 26.06.2004 (Ex-5/d), 7928 bags have been shown arrived from Procurement Centre Abdul Raheem, which reflect a shortage of 144 wheat bags. Similarly in report of Procurement Centre Hamal, dated 29.05.2004 (Ex-5/C), total 4332 bags of wheat were entered in the record but in arrival report of Collection Centre, Nasirabad dated 25.08.2004 (Ex-5/E) total 4259 of wheat have been shown as arrived from Procurement Centre Hamal, showing shortage of 73 wheat bags, thus it can be seen that there ^{was} no shortfall of bags in

Procurement Centers Abdul Raheem and Hamal, where the appellant was posted as In-charge and the alleged shortfall of 217 bags has been recorded at Collection Centres Warrak and Nasirabad after the aforementioned wheat bags were shifted from Procurement Centers of Abdul Raheem and Hamal.

9. It may be observed that the relevant columns of Bilty number, Invoice number and Truck number in Ex-5/D are blank, therefore, *prima facie*, it appears that if there was any shortfall of the wheat bags, the same was not at Procurement Center of Abdul Raheem and Hamal where the appellant was posted as In-charge but at Collection Centers Warrak and Nasirabad which was admittedly not under the control of appellant. Even the Bilty and Invoice has not been produced by the prosecution witnesses to ascertain the correct number of wheat bags shifted from Procurement Centre of Abdul Raheem and Hamal to Procurement Centers of Warrak & Nasirabad: hence, no criminal liability can be fixed upon the appellant for alleged missing of 217 wheat bags.

10. The prosecution has miserably failed to prove if any misappropriation of wheat bags was committed by the appellant at Procurement Center Abdul Raheem and Hamal and he cannot be held guilty merely on the ground that he subsequently adjusted the price of misappropriated wheat bags, which may be due to under compulsion, force and pressure. Resultantly, this appeal is allowed. The conviction and sentence of appellant recorded by the learned trial Court vide impugned judgment are set aside and the appellant is acquitted of the charge. The sentence of appellant was suspended by this Court vide order dated 27.05.2016, therefore his surety stands discharged from the liability of bail bond.