

Order Sheet
IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr.Justice Muhammad Iqbal Kalhoro
Mr.Justice Adnan-ul-Karim Memon

Cr. Acctt. Appeal No.18 of 2022
(Muhammad Salik Nukrich Vs. The State)

1. For orders on office objection
2. For orders on MA No.9274/2022(U/S 426 Cr.PC)

Cr. Acctt. Appeal No.19 of 2022
(Shakeel Sultan Vs. The State)

1. For orders on office objection
2. For order on MA No.9307/2022 (U/S 426 Cr.PC)

Date of hearing:- **10.03.2023**

Date of order:- **17.03.2023**

Mr.Ashok Kumar Galani and Metha Ram Dharani Advocate for appellant in Cr.Acctt.A.No.18 of 2022.

Mr.Ahmed Ali Hussain a/w Saif Sohail Younus Advocate for appellant in Cr.Acctt.A.No.19 of 2022.

M/s. Abdullah Munshi & Mr. Raja Ali a/w Ayaz Ali Sidduqi for Complainant.

Syed Dilshad Hussain Shah, Special Prosecutor for NAB.

ORDER

MUHAMMAD IQBAL KALHORO, J:- By the listed applications (CMA MA No.9274/2022 & MA No.9307/2022) under section 426 Cr.PC appellants namely Muhammad Salik Nukrich and Shakeel Sultan are seeking suspension of execution of the sentence of rigorous imprisonment of 10 years and fine of Rs.11 Million u/s 9 r/w Section 10 of National Accountability Ordinance, 1999 meted out to them in Reference No.03 of 2011, consolidated with Reference No.02/2010, in terms of impugned judgment dated 06.07.2022.

2. Their counsel have argued that applicants are old persons, aged more than 60 years, suffering from various diseases which require constant medical supervision and family support; keeping them in jail is against the natural norms of justice and would put their life in peril. They next contended that disputed land was registered in the name of Morio Khan through Entry No.145. And from his legal heirs Pak Ideal purchased the

disputed land through oral settlement. The necessary entries were recorded in the record of rights. However, in reality the disputed land was transferred by way of inheritance in favour of legal heirs of Morio in record of rights on 24.02.1974. On the demise of one legal heir namely Amanat, her share was transferred in favour of five legal heirs, her siblings, in the record of rights on 19.05.1981. The contention of prosecution that Entry No.213 dated 24.-02-1974 allegedly inserted at the instance of applicant Shakeel Sultan was forged and result of interpolation is not correct. They further submitted that in the year 1976 one Bachal Khan, who was one of legal heirs of Morio Khan had filed a Suit No.1866 of 1976 before this Court to support his ownership claim over a portion of disputed land admeasuring 5.14 acres. According to him, that Entry No.213 existed since the year 1974 and therefore, the allegation against appellant Shakeel Sultan that he caused insertion of the entry through appellant, Muhammad Salik Nukrich is completely erroneous, misconceived and not maintainable in law. They further submitted that before filing of the reference applicant, Shakeel Sultan had filed a civil suit for declaration and consequential relief against the applicant; that presence of civil litigation between the parties over the issue has watered down severity of the offence, if any, as the disputed question of facts are involved and until and unless the civil controversy, claim of ownership, etc. over the suit land is decided, applicants cannot be saddled with responsibility of having committed the offence. Further learned counsel have read out selected portion of evidence from the depositions of the witnesses including cross-examination to bring home their point of view that the case against the applicant requires further enquiry and they are entitled for suspension of sentence. Besides submitting oral submissions, learned counsel have filed written synopsis and had relied upon case laws reported in **2002 SCMR 1555, 2020 MLD 1614, 2019 MLD 841, 2019 P.Cr.L.J.886, PLD 2014 Sindh 95, 1995 SCMR 1819, 2016 SCMR 1325 and PLD 2013 Sindh 357.**

3. On the other hand learned counsel for the complainant, Special Prosecutor for NAB and I.O. have opposed this application and have submitted that Section 426 Cr.P.C. requires only tentative assessment of material available on the record along the same lines, as the material is examined tentatively u/s 497 Cr.P.C. They have further submitted that

prosecution has been able to prove the case against the appellants which is evident from the perusal of impugned judgment, wherein incriminating evidence has been specifically referred to against the applicants. They have further submitted that paper book is ready and the appeals are ripe for hearing and can be decided without resorting to interim arrangement u/s 426 Cr.P.C. They have relied upon case laws reported in **2013 SCMR 1403, 2007 SCMR 246, PLD 2000 Supreme Court 18, PLD 1992 Supreme Court 463, PLD 2010 Supreme Court (AJ & K) 29, 2021 YLR 188, 2018 P Cr.L J Note 54, 2014 YLR 2685, PLD 2003 Karachi 266, 1986 P Cr. L J 64, PLD 1996 Lahore 466.**

4. We have heard the parties and perused material available on record. Before delving into merits of the case, we would like to observe that scope of Section 426 Cr.P.C. is limited to appreciating the evidence/material available on the record superficially/tentatively to form an opinion as to whether there is *prima facie* evidence against the applicant or not which may justify exercise of authority thereunder resulting in suspension of the sentence and release of the accused on bail during pendency of the appeal. In this case, after a full-fledge trial, the trial Court has found the appellants guilty of the offence u/s 9(a) (vi) (xi) (xii) read with section 10 of National Accountability Ordinance, 1999. While discussing the case, the trial Court has referred to evidence of the witnesses, which prima-facie connect the applicants with the allegations leveled against them that applicant, Muhammad Salik Nukrich working as Mukhtiarkar Malir Town had deliberately authenticated Entries No.213, 36/126 and 213, 36/2017 dated 26.05.1997 and Entry No.126/134 dated 25.10.1997 at the instance of appellant Shakeel Sultan and issued Farad Copy in favour of newly created Khatidars i.e. Mahpara Shakeel, Shabana Ali and Khalid Masood.

5. Learned counsel for the appellants while arguing the case had taken us to the cross-examination of the witnesses to show that there existed discrepancies in the evidence of the witnesses and the appellants were entitled to benefit thereof. Suffice it to say, at the cost of repetition, that while deciding application u/s 426 Cr.PC deeper appreciation of the evidence is not permissible. Examining cross examination and forming an opinion based on that would amount to deeper appreciation, as thereafter

there would be left nothing to be decided in the main appeal. A perusal of record, as it stands, leads us to conclude that appellants are *prima facie* involved in the alleged offence, until and unless an exercise to deeply appreciate evidence of the witness is undertaken and the appellants are found innocent. The pendency of civil litigation is of no help to appellants either for the reasons that criminal and civil litigation can be parallelly taken up by the aggrieved party. The consequence of one are altogether different than the other and does not dilute the severity of criminal offence particularly when a resort to civil litigation has been taken only after initiation of criminal case.

6. And then, as has been pointed out, the paper book is ready and the appeal is ripe for regular hearing, therefore, it would be appropriate to hear the entire appeal and decide it on merits instead of adverting to an interim arrangement of suspending the sentence under section 426 Cr.P.C. This being the position, we find the applications in hand meritless and dismissed them. However, we direct the offence to post these appeals for regular hearing after notice to all concerned after four weeks as per roster.

Office to place a copy of this order in connected aforesaid appeal.

JUDGE

JUDGE

Rafiq/PA