

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 234 of 2024

Appellants : 1) Muhammad Yousuf s/o Muhammad Ismail  
2) Abdul Junaid s/o Abdul Aziz  
3) Mehmood Baqi Molvi s/o Abdul Baqi Molvi  
4) Sarfaraz Ahmed s/o Saleh Khan  
5) Muhammad Sajid s/o Muhammad Ishaq  
6) Muhammad Javed s/o Muhammad Yousuf  
7) Nasir Abdullah s/o Abdullah  
8) Muhammad Hanif Juma s/o Juma  
9) Muhammad Hanif Thara s/o Muhammad Idrees Thara  
10) Adnan Abrar s/o Abrar Ahmed Siddiqui  
11) Nasir Hussain s/o Mian Ghulam Rasool  
12) Noor ul Arifeen s/o Shamsul Arifeen  
13) Muhammad Iqbal s/o Abdul Hameed  
14) Zain ul Abideen s/o Ishtiaq Ahmed  
15) Muhammad Iqbal Khan s/o Noorullah Khan  
16) Bihari Lal s/o Durgoo Mal  
17) Muneer Ahmed s/o Abdul Haque  
18) Arif Ali s/o Sheikh Rehmat Ali  
19) Iftikhar Ahmed s/o Muhammad Iqbal  
20) Arsalan Raza s/o Raza Muhammad  
21) Zahoor Ahmed s/o Abdul Hameed  
22) Muhammad Saleem s/o Noor Muhammad  
23) Muhammad Aamir s/o Muhammad Bashir  
24) Khalid Masood s/o Reham Ali

Through M/s. Yousuf Moulvi, Ms. Raafia Murtaza  
& Bisma Memon, advocates.

Respondent : The State  
Through M/s. Fayyaz Hussain & Tanseera Yaqub,  
Asstt: P.G Sindh

Date of hearing : 16.05.2025

Date of judgment : 23.05.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J** - This Criminal Appeal is directed against the Judgment dated 19.03.2024, passed by the Special Judge, Anti-Corruption Court, (Provincial) Karachi, in Special Case No.51/2019, arising from FIR No.50/2019 of ACE Karachi. By the said judgment, the Learned Trial Court convicted the Appellants under Section 420 PPC and Section 5(2) of the Prevention of Corruption Act II of 1947, and sentenced each Appellant to imprisonment till the rising of the Court, along with a

fine of Rs.50,000/- under each head, totaling Rs.100,000/- per Appellant. In default of payment of fine, the Appellants were ordered to suffer simple imprisonment for six months for each offense.

2. The facts, as gleaned from the record, are that FIR No. 50/2019 was registered by the Anti-Corruption Establishment (ACE) Karachi on 10<sup>th</sup> May 2019, against Muhammad Aslam, the then District Food Controller (DFC) Malir & East, and 43 Flour Mills of District East and District Malir, Karachi. The FIR was registered following approval granted on 7<sup>th</sup> May 2019, subsequent to a raid conducted on the Landhi Wheat Godown on 11<sup>th</sup> April 2019. The primary allegation in the FIR was that DFC Muhammad Aslam, in collusion with other officers/officials of the Food Department and the Mill Owners, illegally issued wheat bags to the Mill Owners on a maximum 30-day credit period, without any bank guarantee and without approval from the competent authority, thereby causing a substantial loss to the government exchequer.

3. PW-01 conducted the investigation, recorded statements of witnesses, and submitted a report to the Additional Director Legal, ACE, Sindh Karachi, who, in turn, forwarded the report, along with relevant documents, to the Deputy Director, Anti-Corruption Establishment, East Zone, Karachi.

4. Upon completion of the investigation, PW-01 submitted a final charge sheet, which initially did not include the names of the Mill Owners, but only mentioned the flour mills, which led the trial court to not accept it. The trial court directed the Director, ACE, Sindh, Karachi, to depute another IO to submit a proper final charge sheet, including the names of the beneficiaries. Consequently, Yasir Lateef Khanzada (PW-7) was nominated as the Investigating Officer. PW-7 then presented an amended charge sheet, which was accepted by the Court on 13<sup>th</sup> September 2019. The Trial Court framed charges against DFC Malir, Mr. Muhammad Aslam, and 26 Mill Owners, under Sections 409, 420, 467, 468, 471, and 34 PPC, read with Section 5(2) of the Prevention of Corruption Act-II, 1947.

5. The prosecution examined 08 witnesses, including two from the Anti-Corruption Establishment, five from the Food Department, and one from the judiciary (a Magistrate who supervised the raid). The principal

accused, Muhammad Aslam, expired during the trial, after examination of 03 prosecution witnesses. The Appellants/Accused persons pleaded innocence in their statements recorded under Section 342 Cr.P.C. They did not examine themselves on oath under Section 340(2) Cr.P.C., nor did they produce any defense witnesses. The Learned Trial Court framed the following points for determination:

- a) Whether accused Muhammad Aslam, while posted as District Food Controller (DFC) Malir, Karachi, in collusion with the rest of the co-accused persons/mill owners/beneficiaries, issued bags of wheat to them on a maximum 30-day credit period, illegally, without any bank guarantee and without approval of competent authority, due to which heavy loss was caused to Government Exchequer, as alleged?
- b) Whether the accused have committed an offense punishable under Section 5(2) of Act-II, 1947?
- c) What offense, if any, has been committed by the accused, and what should the order be?

6. The Learned Trial Court decided points No. 1 and 2 in the affirmative, holding that there was sufficient evidence on record to establish that the accused, being beneficiaries, derived benefit from the actions of the deceased DFC Muhammad Aslam, and that they had cheated the government. The court noted that the accused had deposited the principal amount with the government after the FIR was filed, and that the practice of releasing wheat on credit was unusual, commencing in 2017 and being restricted in 2018-19.

7. On point No. 3, the Learned Trial Court convicted the Appellants under Section 245(2) Cr.P.C. till the rising of the Court, under Section 420 PPC, and sentenced them to pay a fine of Rs. 50,000/- each, and in default of payment of fine, to undergo six months simple imprisonment and also a fine of Rs. 50,000/- each under offence 5(2) Prevention of Corruption Act, 1947 and in default to undergo six months simple imprisonment.

8. The Appellants were on bail throughout the trial. The Appellants have challenged the impugned judgment on several grounds, including, inter alia that the Appellants' names were not mentioned in the FIR dated 10<sup>th</sup> May 2019, nor in the initial charge sheet submitted by PW-01. Their names were included as accused persons later, pursuant to the orders of the Trial Court dated 30<sup>th</sup> August 2019. That the Appellants were charged

under Sections 409, 420, 467, 468, 471, and 34 PPC, read with Section 5(2) of the Prevention of Corruption Act, 1947, but were ultimately convicted only under Section 420 PPC and Section 5(2) of the Prevention of Corruption Act, 1947. That the prosecution failed to produce any incriminating evidence against the Appellants. That there is no evidence on record to suggest that the Appellants offered any bribe to the deceased accused, Muhammad Aslam, to induce him to release wheat on credit, nor is there any evidence of any corrupt practice between the Appellants and any government official, or of any loss incurred by the government. That the evidence regarding the payment of the principal amount by the Appellants after the filing of the FIR is contradictory. That the Appellants, being private individuals, cannot be proceeded against under Section 5(2) of the Prevention of Corruption Act, 1947, in the absence of any incriminating evidence connecting them with government functionaries. That the death of the principal accused, Muhammad Aslam, during the trial, rendered the proceedings coram non iudice. That the convictions and sentences are based on conjectures and suppositions. That the Learned Trial Court misread and non-read the evidence on record. That the prosecution failed to prove the charge of cheating the government, as evidenced by the fact that neither the trial court nor the public prosecutor questioned the Appellants about this in their statements under Section 342 of the Cr.P.C. That the Learned Trial Court failed to appreciate that the Food Department's Wheat Release Policy for 2018-2019 places the responsibility for any violations on the DFC and Deputy Director Food, and provides for recovery to be made from them as per the Notification No. SO (IV)-4(07) 2018-19, Release by Government of Sidh Food Department dated: 19<sup>th</sup> November, 2018. That being a beneficiary of a legal transaction does not constitute a crime, nor does it, by itself, prove mens rea. That the transaction in question extended over a period of three months, and was not a single-day event. That this is a case of "no evidence," and that a violation of policy does not constitute a crime, as the consequences of such violation are specified in the policy itself. That the prosecution has wrongly converted a civil liability into a criminal liability. That the act of the deceased accused, Muhammad Aslam, in issuing wheat bags on a 30-day credit period, does not violate any penal law, and that the said transaction was legal and lawful. That the Learned Trial Court failed to appreciate the depositions of the prosecution witnesses, which favored the Appellants.

9. Conversely, the learned APG for the State rebutted the above arguments and argued that the mere fact that the Appellants were not named in the FIR or the initial charge sheet is not conclusive of their innocence. Their involvement was discovered during the course of investigation and, upon availability of material evidence, their names were rightly included in the supplementary challan pursuant to the Trial Court's order dated 30th August 2019. The process followed is lawful under Section 173 Cr.P.C., which permits submission of supplementary challans if further evidence surfaces. They further argued that while the Appellants were charged under multiple sections, the Trial Court convicted them only for those offences that stood proven beyond reasonable doubt. Conviction under Section 420 PPC (cheating and dishonestly inducing delivery of property) and Section 5(2) of the Prevention of Corruption Act, 1947 (criminal misconduct) was rightly recorded on the basis of cogent evidence showing fraudulent intent and abuse of official process for wrongful gain. They argued that the prosecution is not required to prove a direct monetary transaction or bribe between the Appellants and the deceased government official. It is sufficient that the evidence shows *collusive conduct* leading to wrongful issuance of government wheat stocks without adherence to policy, which directly benefited the Appellants. The offence under Section 420 PPC does not require proof of bribery but rather dishonest inducement and mens rea — both of which are established by the pattern of conduct and facilitation through fraudulent means. They argued that the purported payment of the principal amount *after* the registration of the FIR does not exonerate the Appellants or neutralize the offence already committed. It is a settled principle that restitution post-offence may mitigate sentence but does not absolve criminal liability. They argued that while the Prevention of Corruption Act primarily targets public servants, private individuals who *aid, abet or conspire* in the commission of an act of criminal misconduct by a public servant are equally liable under the law. In the present case, the Appellants' active and knowing participation in the unauthorized release and misappropriation of government wheat stock renders them liable. They argued that the demise of co-accused Muhammad Aslam does not render the proceedings *coram non judice*. The liability of each accused is to be determined on the basis of his own acts and omissions. The prosecution

proceeded against the surviving accused based on independent evidence and incriminating material, which was duly tested through cross-examination and trial. They argued that the learned Trial Court has given a detailed and well-reasoned judgment after thorough appreciation of the evidence. The findings are based on documentary evidence including the wheat release registers, stock records, deposit slips, and witness testimonies which cumulatively establish dishonest facilitation and undue benefit. They argued that it is not necessary for every ingredient of the charge to be put to the accused in mechanical form. The questions posed under Section 342 Cr.P.C. adequately encapsulated the incriminating material, giving the Appellants a fair opportunity to explain their position. No prejudice has been shown to have been caused by any alleged omission. They argued that the policy document relied upon by the Appellants governs *administrative recovery* but does not shield against *criminal liability* in cases of deliberate, unauthorized and fraudulent release of wheat stocks. The existence of an administrative mechanism does not oust the jurisdiction of criminal courts when penal provisions are violated. They argued that the transaction cannot be deemed lawful when it was not sanctioned under the prescribed procedure. The benefit was derived through misrepresentation, collusion with an official acting beyond his authority, and deliberate evasion of verification mechanisms — all pointing towards fraudulent intent. They further argued that the argument that this is a case of civil liability is misconceived. Where fraud and dishonesty are involved in obtaining government property, the matter assumes a criminal dimension. The Hon'ble Superior Courts have consistently held that a colourable exercise of authority and deliberate breach of policy for pecuniary gain constitute criminal offences. They further argued that the testimonies of prosecution witnesses, particularly those from the Food Department, support the prosecution's case and corroborate the documentary trail showing the illegality of the transaction. The learned Trial Court has appreciated the evidence in its correct legal perspective. In last, they prayed that the conviction of the Appellants is based on legally admissible and trustworthy evidence. The arguments raised by the defence are primarily aimed at diluting the criminality of a manifestly fraudulent transaction. The judgment does not suffer from any legal infirmity warranting interference by this Hon'ble Court.

10. Having considered the arguments advanced by the Learned Counsel for the Appellants and the learned APG for the State, and upon a careful perusal of the record, this Court finds merit in this appeal for the reasons that the prosecution's case rests primarily on the fact that the appellants, as Mill Owners, were beneficiaries of the wheat issued on credit. However, mere benefit, without more, does not establish criminal liability. Particularly in the given notification of 19<sup>th</sup> November, 2019 there is no penal proceedings provided, upon which the prosecution acted and lodged the instant case. There is a conspicuous absence of any direct evidence demonstrating a collusive arrangement between the appellants and the deceased accused, Muhammad Aslam, to cheat the government. The prosecution has not presented any evidence to show that the appellants offered any inducement, bribe, or undue influence to secure the release of wheat on credit.

11. The evidence regarding the alleged loss to the government exchequer is tenuous at best. While the prosecution argues that the release of wheat on credit was irregular, it is admitted that the principal amount was eventually recovered. The deposition of PW-02, the Director of the Food Department, suggests that no financial loss was ultimately incurred by the government. Furthermore, there are several other contradictions in the evidence of prosecution witnesses. The conviction of the Appellants under Section 5(2) of the Prevention of Corruption Act, 1947, is problematic. The appellants are private individuals, and the said provision typically applies to public servants who engage in criminal misconduct. To extend its application to private individuals, there must be clear and cogent evidence of their involvement in abetting or participating in the corrupt practices of a public servant. In this case, such evidence is lacking. The mere act of receiving wheat on credit, even if irregular, does not, ipso facto, constitute an act of corruption on the part of the Mill Owners.

12. The prosecution has attempted to equate a violation of the Wheat Release Policy with a criminal offense. However, a departmental policy, while it may prescribe administrative consequences for its violation, does not necessarily create criminal liability. The Wheat Release Policy, in this case, appears to primarily place the responsibility for any deviations on the DFC and the Deputy Director Food, and provides for recovery of any outstanding amounts from them, which as per the prosecution has been

finalized and paid by each individuals to the Government and there is an admission of the prosecution witness that there is no loss to the Government exchequer. Nonetheless, the death of the principal accused, Muhammad Aslam, during the trial, raises a significant question. While the trial against the other accused could proceed, the absence of the central figure in the alleged conspiracy weakens the prosecution's case, particularly in establishing the element of collusion.

13. A careful examination of the trial court record reveals instances where crucial evidence appears to have been either misread or not given due consideration. For instance, the deposition of PW-01, where he admits that no witness deposed to the appellants having given any bribe, and that the cheques submitted by the mill owners were a guarantee against the wheat obtained on credit, seems to have been overlooked. The transaction in question involved the sale of wheat by the government to the Mill Owners. While the credit facility extended may have been irregular, it was, at its core, a commercial transaction. The prosecution's attempt to portray this as a case of cheating and corruption, without substantial evidence, is not persuasive.

14. In light of the foregoing discussion, this Court is of the considered view that the prosecution has failed to establish the guilt of the appellants beyond a reasonable doubt. The evidence on record is insufficient to sustain the convictions under Section 420 PPC and Section 5(2) of the Prevention of Corruption Act, 1947. The Learned Trial Court's findings appear to be based more on conjecture and suspicion, rather than on a thorough and objective appraisal of the evidence. This Court is mindful of the principle that in criminal cases, the burden of proof rests squarely on the prosecution to prove its case beyond any reasonable doubt, and any doubt, however slight, must be resolved in favor of the accused. In the present case, that threshold has not been met.

15. For the reasons stated above, this appeal is allowed. The impugned Judgment dated 19<sup>th</sup> March 2024, passed by the Special Judge, Anti-Corruption Court, (Provincial) Karachi, in Special Case No. 51/2019, is hereby set aside. The Appellants are acquitted of the charges framed against them.

**J U D G E**