

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi.

Criminal Accountability Appeal No.18 of 2017.  
C.P. No.D-5989 of 2019.

Appellant/petitioner: Syed Hajan Shah S/o. Syed Jawan Shah, presently confined in Central Prison, Karachi through M/s. Shahab Sarki and Ahmed Raza Shah, Advocates.

Respondent/State (NAB) Mr. R.D. Kalhoro, Special Prosecutor NAB assisted by the I.O. Waliullah.

Date of hearing: 23.09.2020.

Date of Judgment: 06.10.2020.

J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J.-** Appellant Syed Hajan Shah was convicted by the learned Accountability Court No.1, Sindh at Karachi in Reference No.18/2002 vide judgment dated 19.08.2017 whereby the appellant was convicted under section 9(a) (vi) and (xi) of the National Accountability Ordinance, 1999 (NAO) and sentenced to suffer R.I. for ten (10) years and to pay fine of Rs.11,44,98,003/-. The appellant was also disqualified for a period of 10 years under section 15 of the NAO to be reckoned from the date of release after serving the sentence for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province and obtain any financial facility in the form of loan or advance from any financial institutions controlled by Government for the period of 10 years. The benefit of section 382(B) Cr.P.C. was extended to the appellant.

2. The brief facts relevant for the purpose of disposal of this appeal are that during the period 1997-1999 the present appellant Syed Hajan Shah, Project Director Saddar Cooperative Market and deceased accused Munawar Ali Butt the then Advisor to Chief Minister Sindh being holders of the public offices hatched conspiracy and in collusion, connivance and

collaboration with each other along with 35 co-accused/ beneficiaries, misused their official position and authority by leasing out 4 shops, 7 showrooms and 21 wall fixtures of the Saddar Cooperative Market, Karachi to accused No.3 to 35 and absconding accused persons on throughway price without open auction and publication just to achieve pecuniary advantages for themselves and to provide favour and benefits to the co-accused which caused a loss to the government to the tune of Rs.114,498,003/- and provided unlawful benefits to the co-accused and absconding accused and thereby committed the offence of corruption and corrupt practices as envisaged u/s. 9(a) of the NAO punishable u/s. 10 of the NAO which lead to the filing of the aforesaid reference against the appellant.

3. The charge was framed on 14.06.2002 and amended on 01.10.2002 against appellant Syed Hajan Shah to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 07 witnesses who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under Section 342 Cr.P.C whereby he maintained his innocence. He did not give evidence on oath or call any DW in support of his defence case.

5. Thereafter the trial court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellant through the impugned judgment dated 19.08.2017 as set out earlier in this judgment. Hence the appellant has filed the instant appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant contended that he was completely innocent; that there was no evidence against him; that the

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appellant was duly authorized to lease out the shops, show rooms and wall fixtures to the tenants; that there is no evidence that the appellant made any personal benefit; that he did not extend undue favour to any one; that there was no mens rea on the part of the appellant; that the prosecution witnesses improved their evidence from their original statements which made them untrustworthy and as such their evidence could not be safely relied upon and thus for any or all the above reasons the appellant should be acquitted of the charge by extending to him the benefit of the doubt. In support of his arguments, the learned counsel relied upon the cases of **Abdul Karim Nausherwani and another V The State through Chief Ehtesab Commissioner** (2015 SCMR 397), **Ghulam Muhammad Memon and 3 others V The State and another** (2012 P Cr. LJ 1677), **Mansur-ul-Haque V Government of Pakistan** (PLD 2008 Supreme Court 166), **The State through NAB, Islamabad V Commodore (R.) Mirza Ashfaq Baig and another** (Criminal Petitions Nos. 164 & 165 of 2004), **The State and others V M. Idrees Ghauri and others** (2008 SCMR 1118), **Dr. Farooq Sattar V The State and others** (PLD 2002 Lahore 95), **M. Siddique-ul-Farooqi V The State** (PLD 2002 Karachi 24) and **Muhammad Hayat and 2 others V The State** (PLD 2002 Peshawar 118).

8. On the other hand learned special prosecutor NAB has fully supported the impugned judgment and contended that the prosecution has proved its case against the appellant beyond a reasonable doubt through reliable and trust worthy oral and documentary evidence and that as such the appeal be dismissed

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. At the outset based on the particular facts and circumstances of this case we do not consider the case law relied upon by the appellant to be of much assistance to him.

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11. After our reassessment of the evidence we find that the prosecution has proved its case beyond a reasonable doubt against appellant Syed Hajan Shah for the following reasons;

- (a) It is an admitted fact that at the time of the grant of the leases to the non shifting card holders the appellant was Project Director of Saddar Co-operative market, Karachi being 4 shops, 9 show rooms and 21 wall fixtures.
- (b) That he disposed of such shops, show rooms and 21 wall fixtures on lease in violation of existing laws without public auction or publication.
- (c) That as per the audit Report the shops, show rooms and 21 wall fixtures were leased out at much less than the market value in order to favour the new lessees through his misuse of authority and criminal breach of trust as he was holding such shops, show rooms and 21 wall fixtures on trust.
- (d) The key evidence was given by PW 1 Hafeezullah who took over charge of the post from the appellant and as such was fully conversant with the facts of the case. He deposed that when the Army monitoring team and NAB asked him to look into the matter of illegal allotments he found that leases of certain premises (not belonging to the original shifting card holders) had been leased out by the appellant without the approval of the competent authority who were not entitled to such leases and the illegality only came to light when the tenants who had been granted the illegal leases stopped paying the rent and from ledgers maintained at the office of the project director which were exhibited at trial. Despite lengthy cross examination he was not shaken in his evidence and there seems to be no suggestion that the appellant did not grant the leases but only that he had delegated authority to do so which we have not found from the record.
- (e) This lack of delegated authority in respect of the non shifting card holders is corroborated by PW 3 Ghulam Sarawar Kerio who was Secretary Food and Co-operation Government of Sindh and Administrator of Saddar Co-operative Market who in his evidence states as under;

*"During my tenure, as Administrator of Project 127 original shifting cardholders made application to the Advisor to Chief Minister to Sindh Mr. Munawwar Ali Butt requesting for grant of lease to them as they were original shifting card holders and in possession of shops from many years.....The application of those 127 shifting card holders was processed and report was prepared by Project Director which was put up to me and we had recommended that the lease may be issued to the original shifting card holders." (bold added)*

- (f) PW 4 Rafiq Shafiq gave evidence that the leases were granted to non shifting card holders based on favoritism. His evidence was

not shattered in cross examination and we have no reason to disbelieve his evidence.

- (g) PW 5 Rafi Haider was the chartered accountant who carried out the audit of the value of the leases granted illegally to non shifting card holders based on the records of the Society and found in his audit report which was exhibited at trial that the shops, show rooms etc were leased out at RS 5,000 per Sq ft (despite being in a very valuable location) instead of the market value of RS 20,000 per Sq ft which showed that the shops, show rooms etc had been given on rent at throwaway rates which caused a massive loss to the state amounting to over RS 11 crores.
- (h) That all the PWs are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). We note that there are also some improvements in the evidence of some of the PW's however such improvements in our view are not of much significance and certainly not so great as to effect the quality and reliability of their evidence. Overall the evidence of the PW's when taken with the documentary evidence provides a believable corroborated unbroken chain of events from the time of the illegal grant of the leases to the non shifting card holding tenants to their discovery through non payment of rent.
- (i) Most damaging of all to the case of the appellant is the fact that nearly all of the illegal tenants who were illegally granted leases by the appellant who were non shifting card holder tenants of the shops, show rooms etc entered into plea bargains with NAB whereby they admitted their guilt and paid back any outstanding liabilities against them. In our view it does not appeal to logic, common sense and/or reason that nearly all such tenants which amounted to 23 in total bar some absconders would have entered into plea bargains if both they and the appellant were innocent. It may be that one or two may have entered into a plea bargain to avoid trial under the NAO but not 23 which was nearly all of them.

12. As such the conviction against the appellant is maintained.

13. With regard to sentencing, we note that the appellant has been sentenced to 10 years RI and a fine of RS 114498003. In our view keeping in mind the loss caused to the State which is RS 11 crores (some of which has already been recovered by plea bargain) which is not that significant keeping in view NAB's mandate to prosecute mega corruption cases of billions of RS and the sentencing range of up to 14 years under the NAO and the fact that 23, being most of the beneficiaries, have paid back some

of the loss caused to the State and based on the particular facts and circumstances of this case whilst placing reliance on **Muhammed Juman V State** (2018 SCMR 318) we consider the sentence of imprisonment of 10 years RI handed down to the appellant to be too harsh. We therefore reduce the sentence of imprisonment handed down to the appellant to 7 years RI and reduce the amount of fine to RS 5 crores. Apart from these modifications all other punishments, disqualifications and penalties in the impugned judgment shall remain intact.

14. The appeal, any constitution petition and listed application stands dismissed **except** as modified above.

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