NFR : Conviction maintained
Sentence reduced
Fine maintained

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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

Criminal Accountability Appeal No.07 of 2015.

Appellant:	Mirza Altaf Baig S/o. Mirza Younus Baig through Mr. Khawaja Muhammad Azeem, Advocate.
Respondent/(NAB)	Mr. R.D. Kalhoro, Special Prosecutor NAB.
Date of hearing:	**23.09.2020.**
Date of Judgment:	**05.10.2020.**

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- The appellant Mirza Altaf Baig was convicted by the Accountability Court No.I, Sindh Karachi vide Judgment dated 26.08.2015 in Reference No.15 of 2011, whereby the appellant was convicted under section 10(a) of the National Accountability Ordinance, 1999 (NAO) and sentenced to suffer R.I. for five (05) years and fine of Rs.19,75,000/-. In case of default in payment of fine he was ordered to suffer further R.I. for a period of one year. The appellant was also disqualified for a period of 10 years under section 15(b) 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. Benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case are that an FIR bearing Crime No.169/2009 was registered by complainant Sher Muhammad S/o. Fazal Ellahi at P.S. New Karachi for an offence punishable U/s. 420, 468, 471,506, 34 PPC alleging therein that about 1 or 1½ years prior to the registration of FIR accused Mirza Altaf Baig who was posted as Recovery Officer at New

Karachi town dishonestly induced the complainant to deliver an amount of Rs.19,75,000/- against the sale of 35 provisional slips to be issued for the allotment of plots. It was further alleged that accused dishonestly signed, sealed and prepared forged provisional slips for the purpose of cheating and also extended threats of dire consequences to the complainant in case he demanded back his money and plots in his favour. After registration of the FIR the case was investigated and challaned before the concerned Magistrate having jurisdiction. During the trial of accused the NAB authorities however, filed an application U/s. 16-A of the NAO on 01.03.2011 before the trial court seeking transfer of the case to the Accountability Court. The learned Magistrate vide order dated 21.03.2011 allowed the said application and sent the R&Ps of the case to the Accountability Court.

3. The charge was framed against the appellant by the trial court to which he plead not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 5 PWs and exhibited numerous documents. The appellant recorded his statement under Section 342 Cr.P.C., whereby he denied the allegations leveled against him. The appellant did not examine himself on oath and did not call any DW in support of his defence case.

5. After assessing the evidence before it the learned Accountability Court convicted and sentenced the appellant by the impugned judgment as earlier mentioned in this judgment. Hence the appellant has filed this appeal against his conviction and also for suspension of his sentence.

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. It may be mentioned at this point that the appellant's conviction was suspended and he was released on bail by this court after serving 2 years of his sentence.

8 After the reading out of the evidence and the impugned judgment learned counsel for the appellant candidly conceded that the prosecution had proved the charge against the appellant beyond a reasonable doubt and that the appellant who was present in court on instructions did not want to argue his appeal on merits but instead only requested a reasonable reduction in sentence on the grounds that the appellant (a) had served a substantial portion of his sentence (b) he was an elderly man of over 80 years of age (c) that he suffered from severe ill heath being wheel chair bound and being unable to even walk or speak so that his instructions had to be interpreted through his wife who was also present in court (d) that the amount of loss caused by the appellant was relatively minor for a NAB case being only Rs 19,75,000 (e) that the appellant showed remorse for his actions by deciding not to contest the appeal (f) the appellant during his two years in jail had used his time productively which would contribute towards his reformation and he had been of good behavior after his release on bail and (g) that he had to provide for a large family who would sulfer if he was sent back to jail.

9 Learned Special prosecutor NAB based on the mitigating circumstances put forward by the appellant however did not agree to a reduction in sentence for the appellant however when confronted by the court that why based on the particular facts and circumstances of the case the appellant was not entitled to any reduction in his sentence of imprisonment he had no answer except to submit that the prosecution had proved the case against the appellant beyond a reasonable doubt and that he stood convicted and his sentence was in accordance with law

10 Having gone through the evidence on record and the impugned judgment we are of the view that the prosecution has proved its case against the appellant beyond a reasonable doubt in respect of the offence for which he was charged based on both oral and documentary evidence and thus the only issue before us is one of sentencing

11 We note that sentencing is at the discretion of the court and is not a mechanical exercise. In exercising its discretion the court should consider numerous factors such as the minimum and maximum sentence which

can be imposed on conviction, the role of the accused, the gravity of the offence, in a NAB case the amount of loss caused to the State, whether the accused showed any kind of remorse, whether the accused is capable of reformation, the age of the appellant, the health of the appellant, his conduct in jail and how long he has already spent in jail etc. In this respect reliance is placed on **Muhammed Juman V State** (2018 SCMR 318) which held as under at P322;

> *"Inflicting conviction and imposing sentence is not a mechanical exercise but it is onerous responsibility to inflict, fair, reasonable and adequate sentence, commensurate with gravity and or severity of crime, looking at the motive, attending and or mitigating circumstances that provoked or instigated commission of crime and it involves conscious application of mind. No mathematical formula, standard or yard stick could be prescribed or set out to inflict conviction and sentence, such factors vary from case to case and while undertaking such exercise Court must keep in light provisions contained in Chapters-III and IV of the P.P.C. Unfortunately, no sentencing guideline is laid down in Pakistan, though Courts have set out certain parameters in many cases as to what is mitigating and or aggravating circumstances that may warrant alteration and or varying in conviction and or sentence within the parameters provided under the charging or penal provision".*

12. We find the mitigating factors made out by the appellant do justify a reduction in his sentence keeping in view that NAB was unable to give any cogent reason as to why the 5 years sentence of imprisonment imposed on the appellant should be maintained in the face of the mitigating factors raised by the appellant. This is especially so keeping in view the various factors mentioned above which should be taken into account whilst exercising our discretion on sentencing and the mitigating factors put forward by the appellant. For example, in this case the maximum sentence was 14 years under the NAO yet the appellant had only caused a loss of RS 19,75,000 which was relatively minimal considering that the mandate of NAB was to prosecute mega corruption cases of billions of rupees. Thus, whilst taking into consideration the arguments/mitigating factors justifying a reduction in sentence of the appellant we hereby by exercising our judicial discretion under S.423 Cr.PC maintain the conviction of the appellant but modify the sentence of the appellant to the time which he has already undergone in custody

which time undergone shall include the one year period for non payment of the fine especially as we consider the original 5 year sentence of imprisonment to be too harsh and disproportionate to the loss caused by the appellant keeping in view the sentencing range under the NAO. The appellant who is on bail, bail bonds shall be released. It is made clear however that appellant is still liable to pay the fine imposed on him by the impugned judgment which shall be recovered in the manner laid down in the NAO and the appellant shall also be subject to the same disqualifications as imposed in the impugned judgment.

13. We are further fortified by our decision in reducing the appellant's sentence of imprisonment based on the particular facts and circumstances of this case by the recent supreme court case of **Tariq Saeed v State** (2020 SCMR 1177) which was also a NAB appeal against conviction where despite the appellant not showing any remorse and arguing his case on merits it was held as under in material part at P.1181 Para 9;

> *".....However, while relying on case titled "Muhammad Ashraf alias Chaudhry v. The State" (1994 SCMR667) and while taking into consideration that the petitioner is an old man with poor health condition, whereas he has already undergone substantial part of sentence recorded by both the courts, we deem it appropriate to meet the ends of justice reduce the sentence already inflicted upon the petitioner from seven years to five years while maintaining the sentence of fine of Rs.1,63,00,000/- and confiscation of farm-house belonging to petitioner in favor of the State. In the above said terms, this petition is converted into appeal and partly allowed."*

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