

NAB Appeal: Reduction in Sentence. On considering
Sentencing range sufficient mitigating circumstances
justified a reduction in sentence

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298

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

Criminal Accountability Appeal No.12 of 2018.

Appellant: Abdul Jabbar S/o. Abdul Ghaffar, presently confined
in Central Prison, Karachi through Mr. Syed
Mehmood Alam Rizvi, Advocate.

Criminal Accountability Appeal No.13 of 2018 a/w
C.P. No.D-6262 of 2018.

Appellant/Petitioner: Nasir Murad S/o. Abdul Sattar presently confined in
Central Prison, Karachi through Mr. Shabab Sarki
and Ms. Rubina K. Durrani Advocates.

Respondent/ (NAB) Mr. R.D. Kalhoro, Special Prosecutor NAB.

Date of hearing: 22.09.2020.

Date of Judgment: 01.10.2020.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- The appellants Abdul Jabbar and Nasir Murad were convicted by the Accountability Court No.II, Sindh Karachi, vide Judgment dated 02.04.2018 in Reference No.37 of 2015 under section 9(a)(iii)(iv)(vi) of the National Accountability Ordinance, 1999 (NAO) and convicted under section 10(a) of the NAO and both sentenced to undergo Rigorous Imprisonment for a period of 10 years and pay a fine of Rs.104,123,732/- each in terms of section 11 of the NAO and in default in payment of fine they were ordered to serve a further two years R.I. The accused persons were disqualified for a period of 10 years under section 15(b) of the NAO to be reckoned from the date of their release after serving their sentences from seeking or from being elected, chosen, appointed or nominated as a members or representatives of any public body or any statutory or local authority or in service of Pakistan or of any Province as required under section 15(a) of the NAO. Hence the appellants have filed the above Criminal Accountability

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Appeals against their conviction and Constitution of Petition for suspension of sentence and release on bail.

2 Briefly the facts as narrated in the reference are that on receipt of complaint by the National Accountability Bureau (NAB) against accused Abdul Jabbar, Ex-Cash Officer/Grade-I of Qasim International Cargo Terminal (QICT) Booth National Bank of Pakistan (NBP) Port Qasim Authority (PQA) filed by the Branch Manager N B P PQA, Liaqat Ali Sheikh regarding his involvement in acts of corruption and corrupt practices and shortfall of Rs 208 million an inquiry was authorized which was subsequently converted into investigation

3 During investigation, it was revealed that accused Abdul Jabbar was posted at QICT Booth on 01/01/2012 and accordingly vide order dated 30.07.2013 was made Incharge Weboc Collection Counter whereas accused Nasir Murad was running Murad Shipping Agency, a clearing agency mostly dealing in "edible oil" imports. It was also revealed that accused Abdul Jabbar in connivance with accused Nasir Murad were involved in shortfall of Rs 208,247,464/- The initial departmental inquiry into the matter was also conducted by the NBP authorities wherein accused persons were found responsible. It was further revealed that on 20/06/2015, accused Abdul Jabbar cleared twenty four (24) GDs of different Oil & Ghee importers pertaining to M/s Murad Shipping Agency amounting to Rs 209,233,459/- against the receipt of only eight (08) pay orders of Rs 985,995/- making a shortfall of Rs 208,247,464/- which was met against the pay orders of six other importers through clearing on 25.06.2015, 26.06.2015, 29.06.2015 and 30.6.2015. The name of other importers whose pay orders were utilized in clearance of GDs of remaining shortfall amount are Hameeda Industries, H M Extraction Ghee & Oil, Ikram Yakoob Oil & Ghee, Mujahid Oil, Latif Ghee Industries and Oil World Pvt. Ltd

4 During investigation it was also found that on 24/06/2015, a cheque bearing No 1546905276 amounting to Rs 35,00,000/- pertaining to account No 0731-2323-6100 in the name of son of accused Abdul Jabbar was transferred to the personal account of accused Nasir Murad bearing No.0103-7479-4100-0592. Accused Abdul Jabbar also received millions of rupees in shape of cheques from the personal account of accused Nasir Murad bearing No.0103-7479-4100-0592 which accused Abdul Jabbar deposited into his personal account bearing No 0731-2366-9100-2311. It further revealed that various accounts had been

found registered in the name of accused Abdul Jabbar and his family members in which transactions of millions of rupees have been found. Accused Abdul Jabbar also owns two precious bungalows situated on Plot No 19, Memon Society near Baloch Colony and Plot No 538, Naseem Cooperative Housing Society, Hum Road, Jamshed Quarters, Karachi.

5 That investigation revealed that accused No 1 Abdul Jabbar and accused No 2 Nasir Murad in connivance with each other have misappropriated an amount of Rs 208,247,464/- and committed the offence of corruption and corrupt practices as envisaged u/s 9(a) NAO, 1999 and hence NAB filed a reference against them before the accountability courts.

6 The charge was framed against the appellants by the trial court to which they both plead not guilty and claimed trial.

7 In order to prove its case, the prosecution examined 10 PWs and exhibited numerous documents. The appellants both recorded their statements under Section 342 Cr P C, whereby they denied the allegations leveled against them. Neither appellants examined themselves on oath nor did either of the appellants call any DW in support of their defence case.

8 After assessing the evidence before it the learned Accountability Court convicted and sentenced both appellants by the impugned judgment as earlier mentioned in this judgment. Hence the appellants have filed these appeals against their convictions.

9 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.

10 After the reading out of the evidence and the impugned judgment learned counsel for both the appellants candidly conceded that the prosecution had proved the charge against both the appellants beyond a reasonable doubt and that both of the appellants on instructions did not want to argue their appeal on merits but instead only requested a reasonable reduction in sentence on the grounds that appellant Abdul Jabbar (a) had served a substantial portion of his sentence (b) he was an elderly man (c) that he suffered from ill health (d) that the appellant showed remorse for his actions by deciding not to contest the appeal.

(e) the appellant had used his time productively in jail which could contribute towards his reformation (f) that he had already been dismissed from service and (g) that he had to provide for a large family who were suffering due to his prolonged incarceration. With regard to appellant Nasir Murad almost the same mitigating factors applied but in particular he was of very bad health namely, (a) had served a substantial portion of his sentence (b) he was an elderly man (c) that he suffered from ill health and was now undergoing his second round of cancer which had re occurred (d) that the appellant showed remorse for his actions by deciding not to contest the appeal (e) the appellant had used his time productively in jail which could contribute towards his reformation and (f) that he had to provide for a large family who were suffering due to his prolonged incarceration

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

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

13 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 shows 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 5CMR 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"

14 We find the mitigating factors made out by the both the appellants do justify a reduction in their sentences keeping in view that NAB was unable to give any cogent reason as to why the 10 years sentence of imprisonment imposed on each of the appellants should be maintained 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 appellants For example, in this case the maximum sentence was 14 years under the NAO yet the appellants were both sentenced to 10 years imprisonment (for which they have both already served out about 9 years as explained later in this judgment) Thus, whilst taking into consideration the arguments/mitigating factors justifying a reduction in sentence of the appellants we hereby by exercising our judicial discretion under S 423 Cr PC maintain the conviction of both the appellants but modify the sentence of each of the appellants to the time which they have already undergone in custody (which amounts to almost 5 years despite neither of them being given the benefit of S 382 B Cr PC which in our view they were both entitled to under the law which amounts to around a further 3 years plus whatever remissions they were entitled to during this approximate 3 years in jail which means in effect that the appellants have spent about 9 years in jail when remissions and S 382 B Cr. PC are included) which time undergone shall include the two year period for non payment of the fine especially as we consider their original 10 year sentence of imprisonment to be too harsh and disproportionate to the offence for which the

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appellants were convicted keeping in view the sentencing range under the NAO and the loss caused to the State and that they were illegally denied the benefit of S.382-B Cr. P.C. The appellants shall be released unless they are wanted in any other custody case. With regard to the fine it appears that through the PW's the most loss which the appellants could have caused is RS 9 crore and as such each appellants fine is reduced from RS 10 crores to RS 4.5 crores each and it is made clear that each appellant is still liable to pay such fine which shall be recovered in the manner laid down in the NAO and each appellant shall also be subject to the same disqualifications as imposed in the impugned judgment.

15. We are further fortified by our decision in reducing the appellant's sentences 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 at P.1181 Para 9 which reads in material part as under:

".....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."

16. The appeals, any constitution petitions and listed applications stand dismissed **except** as modified above.