

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi.

### CR. ACCOUNTABILITY APPEAL NO.16 OF 2001

Appellant: Adil Hayat Akhtar son of Muhammad Akhtar Ansari, through Mr. Muhammad Mushaffy, Advocate.

Respondents/State: NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB

Date of hearing: 07.09.2020

Date of announcement: 11.09.2020.

### J U D G M E N T

**Mohammad Karim Khan Agha, J.-** Appellant Adil Hayat Akhtar has filed this Criminal Accountability Appeal in Reference No.50 of 2000 whereby he has impugned the judgment dated 31.03.2001 passed by the Accountability Court No.III Karachi.

2. The brief facts of the prosecution case are that on 03.04.1996 Deputy General Manager CDB (Central Design Bureau) Pakistan Steel Mill had initiated the case for procurement and up-gradation of CAD system (Computer) to solve the future requirement of design and drawing works and expansion project of Pakistan Steel Mill. Technical proposal for up-gradation of available auto CAD system was obtained from M/s. CEMA International Corporation, UNIMECH Engineering Corporation and M/s. Advance Engineering System (Pvt.) Limited. The technical proposal was also submitted by the above named firms, which were technically evaluated by CDB Branch and the proposal of the M/s. CEMA International Corporation was found technically more suitable than the proposal of the other two firms. Thereafter the General Manager CDB had proposed to acquire 15 latest powerful computer system along with advance software to make the future requirement of design and drawing works covering reverse engineering as well as direct engineering, so that designing and engineering works of expansion project was catered for,

thereafter commercial offer submitted by M/s CEEMA International was opened on 26.5.1996 by which the price of required equipment / software was valued at Rs 4,32,906/- The said price was negotiated by which the M/S CEEMA International offered 15 higher resolution, Apple Monitors along with power macs computer amounting Rs.20,00,000/- free of cost and to pay 20% withholding tax, as such after negotiation the price of above items remained unchanged. The terms of payment offered by the party was as under -

- i) Advance payment with purchase order (50% of total order)
- ii) Part payment on part deliveries of the hardware.
- iii) Part payment of part deliveries of software.
- iv) Final payment including the training charges and any outstanding amount due at the time of final delivery.

3 The Chairman Pakistan Steel Mill had only modified mobilization advance from 50% to 25% and referred the case to Director Finance, who had accordingly gave financial concurrence to the tune of Rs 4,32,85,906/- and then the contract was awarded to M/S CEEMA INTERNATIONAL CORPORATION and material was supplied

4 The Investigation Officer started the investigation and collected the required record and recorded the statements of 08 PWs and submitted the interim challan before the Court of Special Judge, Anti-Corruption Central-II Karachi. After completing the investigation he had submitted the charge sheet against the appellant

5 The Chairman NAB transferred the case under section 16 (A) of the National Accountability Ordinance 1999 (NAO) from the Special Judge Anti Corruption Karachi to an accountability court at Karachi where the trial proceeded in accordance with law

6 The charge was framed against the appellant by the trial court to which he plead not guilty and claimed trial. In order to prove its case the prosecution examined 8 PW's and exhibited numerous documents. The appellant recorded his statement u/s 342 Cr PC whereby he proclaimed his innocence but admitted the award of contract to M/S CEEMA International Corporation but denied that the contract was given on exorbitant rate or without observing required formalities or rules. He however did not give evidence under oath or call any DW in support of his defense case

7. After assessing the evidence on record the trial court convicted and sentenced the appellant to suffer R.I. for 07 years and to pay fine of Rs.1,50,00,000/-. In case of non payment of fine the appellant was ordered to undergo further R.I. for 03 years. It was also ordered that the appellant shall be disqualified for 21 years from seeking or from being elected, chosen, appointed or nominated as a member of representative of any public office or any statutory or local authority of the Government; hence the appellant has filed appeal against the impugned judgment.

8. 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.

9. 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 the appellant present in court on bail did not want to argue the appeal on merits but instead only requested a reasonable reduction in sentence on the grounds that (a) he had served a substantial portion of his sentence (b) he was an old man of 76 years of age (c) that he suffered ill health (d) that the appellant showed remorse for his actions and (e) the appellant had been on bail for 15 years and that it would be inhumane to now send him back to jail after such a long time.

10. Learned Special prosecutor NAB based on the mitigating circumstances put forward by the appellant had no objection to a reasonable reduction in sentence of imprisonment however he submitted that the fine imposed on the appellant should be maintained and the other punishments handed down to the appellant in terms of disqualification.

11. 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 offense for which he was charged.

12. Thus, whilst taking into consideration the arguments/mitigating factors justifying a reduction in sentence of the appellant, and the no

objection given by Special Prosecutor NAB we hereby by exercising our judicial discretion under S 423 Cr PC maintain the appellant's conviction but modify the sentence of the appellant to the time which he has already undergone in custody which shall include the 3 year period for non payment of the fine which in any event is too harsh and is reduced to one year and for avoidance of doubt is a part of the time served, especially as it seems that he has already served out 5 years of a 7 year sentence. The appellant who is on bail, bail bonds stand released however he will still be liable to pay the fine imposed on him under the in the impugned judgment which shall be recovered in the manner laid down in the NAO and be subject to the same disqualifications as imposed in the impugned judgment

13 We are fortified by our decision in reducing the appellant's sentence of imprisonment based on the particular facts and circumstances of this case by placing reliance on 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 "*

14 The appeal stands dismissed **except** as modified above