

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hassan Shah

Criminal Accountability Appeal No.16 of 2017

Abdul Malik S/o Abdul Haque
Versus
The STATE

APPELLANT	:	Abdul Malik Through M/s. Zulfiqar Ali Nangah and Taj Muhammad Jamali, Advocates.
RESPONDENT / THE STATE	:	National Accountability Bureau (NAB) Through Syed Khurram Kamal, Special Prosecutor.
Date of Hearing	:	11.12.2025
Date of Decision	:	11.12.2025

JUDGMENT

Dr. Syed Fiaz ul Hassan Shah, J :- The Appellant has challenged the Judgment of conviction dated 03.08.2017 (“**impugned Judgment**”) passed by the learned Judge, Accountability Court No.IV Sindh, Karachi (“**Trial Court**”) in NAB Reference No.04 of 2014 filed by the National Accountability Bureau Sindh, Karachi (“**NAB**”) wherein the accused / appellant was convicted for having committed the offences of corruption and corrupt practices as defined under section 9(a)(i)(ii)(iii)(iv)(vi)(ix) (x)(xi) and (xii) of National Accountability Ordinance, 1999 (“**NAO**”) punishable under section 10(a) of NAO and sentenced

him to suffer Rigorous Imprisonment (“R.I”) for ten (10) years and fine of Rs.15 (fifteen) Million and in case of default thereof, to further undergo R.I. for two (02) years more while extended benefit of section 382-B Cr.P.C. However, the accused/appellant shall also stand disqualified in terms of Section 15 of NAO for a period of ten (10) years to be reckoned from the date of release after serving out sentence awarded to him and also from 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 any Province and also he shall not be allowed to obtain any financial facility in the form of loan or advances from any financial institutions controlled by Government for the period of ten (10) years.

2. The brief facts of this case, as alleged in the Reference and Supplementary Reference, are that the aforesaid Society was registered in 1971 under the Cooperative Societies Act, 1925 by the employees of Ministry of Information and Broadcasting, Government of Sindh and 25 Acres of land for the Society in Sector No.36-A/1, KDA Scheme-33 Gulzar-Nir Karachi was allotted by the Government. Out of which, 232 residential plots were allocated by the Society to its members through balloting. All the successful members paid all dues of the plots to the Society these 27 members could not get the plots due to non-availability of land and they were placed on the pool of waiting list for handing over plots whenever free due to cancellation of plots already given to any members on account of default or whenever request of society for additional land granted by the government. These 232 members of the Society paid

entire amount of cost of land and external and internal development charges. The said 27 members on waiting list could not get the plots when the cost of land is paid. The accused Muhammad Azam Brohi in the capacity of administrator CIECHS was involved in corruption and corrupt practices by misusing his authority. Azam Brohi being Administrator of CIECHS society has cancelled plot and re-allotted to illegible members. Azam Brohi as Official Administrator, CIESHS committed serious violations of law and byelaws of society. It is alleged that Muhammad Azam Brohi in the capacity of administrator CIECHS was involved in corruption and corrupt practices by misusing his authority embezzled an amount of Rs.8,824,568/ on account civil and electrical work through fake and fabricated record and bills. Azam Brohi caused loss of Rs.27, 133,264/- to the Society in allotment of three amenity plots of the Society in favour of Fahad Naseem Khan, Muhammad Shoaib Khan (both have entered into PB with NAB) and absconding accused/beneficiary Rasheed Gul. During his tenure of 18 months and thereby obtained wrongful gain of Rs.36,808,000/- for himself and extended wrongful gain to the above-named allottees and caused to withdraw huge money from the Society's fund and under table by re-sold the cancelled plots and such funds deposited in personal account bearing account No.1001861 maintained with MCB Bank, Maisam Plaza branch, Gulshan-e-Iqbal, Karachi. Accused Muhammad Azam Brohi. All this was done in connivance with co-accused Syed Muhammad Adnan fraudulently. Azam Brohi also awarded contracts to the fake contractors who neither paid income tax nor had the NTN which resulted into loss to the National

Exchequer to the tune of Rs. 1,680,000/-. Accused Muhammad Azam Brohi awarded a contract for plantation and development of Society's park to M/s. Choudhri Nursery for an amount of Rs. 3,40,000/- He in connivance with co-accused Syed Muhammad Adnan managed the forged quotation of Rs.1,240,000/- and withdraw the said amount from Society's account bearing No.14030001860803 maintained with HBL, Abdullah Haroon Road branch, Karachi thus caused a loss of Rs. 900,000/- to the Society and wrongful gain to himself. Accused Syed Muhammad Adnan, Honorary Secretary of the Society in the year 2010 in league with Muhammad Azam Brohi, official Administrator, credited an amount of Rs.2,010,300/- from Society's fund into his personal account bearing A/C No. 125522 maintained with Habib Metropolitan Bank, Gulshan Chowrangi branch Karachi. Further, 40 commercial plots of the Society without approval of layout plan in violation of Society's rules and bye-laws and thereby caused heavy loss of Rs. 50 million to the Society. Accused Abdul Qadir in his capacity as Chairman of the Society by unfair means in collusion, connivance and collaboration with co-accused Syed Muhammad Adnan, in order to favour illegal actions of acts of accused Muhammad Azam Brohi and Syed Muhammad Adnan credited an amount of Rs. 744,500/- from Society's funds into his personal account bearing Chowrangi branch, Karachi. Chairman of the Society accused Syed Muhammad Ronan also violated the rules and bye-laws of the Society with regard to sale and purchase of plots of the Society and allotted 40 commercial plots of the Society without approval of layout plan in violation of Society's rules and bye-laws and thereby

caused heavy loss of Rs.50 million to the Society. Accused Abdul Malik being President of the Society in collusion and connivance with accused Muhammad Azam Brohi, Syed Muhammad Adnan, Abdul Qadir and Muhammad Sadiq Rajar violated the provisions of Section 23(a) of National Accountability Ordinance 1999 by auctioning 40 Commercial plots of the Society and created title on the said properties illegally knowing that at the time of approval of layout plan there was only one commercial plot which was illegally converted into 40 commercial plots. Accused Abdul Malik being president of Central Information Employees Cooperative Housing Society (CIECHS) and accused Muhammad Azam Brohi, the then Administrator, Syed Muhammad Adnan, the then Honorary Secretary, Abdul Qadir, the then Chairman of CIECHS being holders of public office in collusion, connivance and collaboration with each other and in connivance and collusion with accused Muhammad Sadiq Rajar, Registrar Cooperative Societies Karachi and absconding accused/beneficiary Rasheed Gul have committed gross violation of rules and bye-laws of the Society by misusing their official position and authority embezzled Society's fund to the tune of Rs.35,957,832/- with regard to development work in the Society as well as allotment of 3 amenity plots and also caused wrongful loss of Rs.36,808,000/- to the previous allottees/members of the Society in the shape of 24 cancelled/re-allotted plots and also allotted 40 commercial Couplets of the Society without approval of layout plan in violation of the Society's rules and bye-laws and got pecuniary benefits for themselves in cancellation and re-allotment of Society's plots and extended favour to your favourite persons and

wilfully failed to exercise their authority to prevent the rendition of undue benefit to them and accepted illegal gratification from them to show them favour and thus by corrupt, dishonest and illegal means obtained for themselves pecuniary advantage and whereas absconding accused Rasheed Gul obtained wrongful gain to the tune of Rs.7,462,000/- in the allotment of leased amenity Plot No.PB-1 of 1066 Square yards for 99 years lease and thereby caused heavy loss to the Society. Accused Fahad Naseem Khan obtained wrongful gains to the tune of Rs.6,795,000/- in the allotment of leased amenity Plot No.ST-2 measuring 1359 square yards for 99 years lease and thereby caused heavy loss to the Society. Accused Muhammad Shoaib Khan obtained wrongful gains to the tune of Rs.13,590,000/- in the allotment of leased amenity Plot No.ST-5 measuring 2718 square yards for 99 years lease and thereby caused heavy loss to the Society. Accused Abdul Malik and accused Muhammad Azam Brohi, Syed Muhammad Adnan, Abdul Qadir. Muhammad Sadiq Rajar in connivance and collusion with absconding accused Rasheed Gul and other accused have committed gross violation of rules and bye-laws of Society and failed to exercise their authority to prevent huge loss to the Society due to their massive corruption and corrupt practices by means of embezzlement in Society's accounts, sale and re-allotment of already allotted plots of old members for personal gain to themselves and others acted in such a manner which resulted in huge loss of 24 residential plots, 40 commercial plots, 1 amenity plot and Rs. 10,504568/-million in respect of development work at exorbitant

rates to the Society and non-payment of income tax to the tune of Rs. 1,680,000/-.

3. After usual investigation copies were supplied to the appellant under section 265-C, Cr.P.C. and the charge was framed and, thereafter, amended charge was also framed against the Appellant on 18.04.2016. The prosecution examined 51 witnesses, who produced the documents from Exh.19 to Exh.71/5 respectively. Thereafter, the prosecution has closed its side at Exh.72 and the statement of accused was recorded under section 342, Cr.P.C. at Exh.73, whereby, he denied allegations levelled against him by the prosecution. The accused has neither examined himself on oath, nor produced any witness in his defence.

4. We have heard the learned counsel for the appellant as well as learned Special Prosecutor for NAB and with their assistance minutely perused the record of the case.

5. We do not find any merits in the contention of the learned counsel for appellant that allotment of seven commercial plots in Central Information Employees Cooperative Housing Society, Scheme No.33, Karachi (“CIECHS”) were allotted in favour of the family members of the appellant by way of auction held in the year 2009 while the appellant has become the President of the said CIECHS in the year 2012 and therefore the Appellant has no influence at the relevant point of time. It is not denied that the Appellant has secured seven commercial plots measuring 150 square yards each in an auction conducted by the Managing Committee of CIECHS and these 07 plots were given to the close family members

of the appellant. We have noted that the appellant has presided over the meeting of CIECHS in which it was decided to auction the commercial plots of CIECHS, which has been produced by PW-33 at Exh.55/2. We have further noted that the Appellant as President, CIECHS signed the auction sheet alongwith other office bearers at Exh.42/F. The auction was conducted despite the notice of caution issued and delivered by the NAB under section 23 NAO. Furthermore, the NAB seized the record of such auction process of the commercial plot vide Exh.51/8, thereafter, the Registrar Cooperative Societies Karachi directed the said CIECHS to halt auction. Therefore, the contention of the learned Counsel for the Appellant repelled out.

6. A careful examination of record, it appears that the said CIECHS has one commercial plot measuring 6037.7 square yards, which was illegally converted into 40 commercial plots as mandatory approval for proposed layout plan for conversion was not obtained from the Sindh Master Plan Authority (erstwhile Master Plan Deptt). Out of such 40 plots, 24 plots were sold out by pocketing money for personal gains while Seven (07) commercial plots were obtained by the appellant in the name of his close family members i.e. wife, father, brother etc. In view of the unimpeachable and direct evidence against the appellant coupled with the fact that dishonestly violated the laws regarding non-approval of layout plan in respect of unilateral conversion of 24 plots proved the criminal intents, mes rea and actus rea.

7. We are of the firmed view that the NAB prosecution has proved its case against the appellant involved in the corruption and corrupt practices and actively played role in conversion of one big commercial plot into 24 commercial plots and committed offence for obtaining illegal gain of seven commercial plots into the name of his close relative.

8. When we confronted such facts to the learned counsel for appellant that allotment of seven commercial plots to the close relative of the appellant in an auction bidding has also been done in any other place or society, the learned counsel replied in negative and, therefore, we draw an additional adverse inference against the Appellant that the commercial plots have been given under the garb of auction to the close family members of the appellant by systematic way of auction triggering out as source of looting and plundering money and assets of Members of CEICHS, otherwise, the appellant ought to obtain such type of commercial plots in any other Cooperative Housing Society by way of auction, which has not been done as he was not the President and thus we have reached to conclusive inference that appellant is guilty for the commission of offences.

9. The next contention of the learned counsel for appellant that the post of President is a ceremonial post to preside over the meeting(s) and Annual General Body Meeting(s) and he has no concern with the embezzlement of fund in respect of development charges and that too, his case at par with the case of Siddique Rajar, who has been acquitted and similar treatment may be given to the

appellant. Such contention has been rebutted by the evidence of PW-27 Muhammad Ismail Khan, who deposed that the auction process has been finalized and their allotment has been made despite the fact that the NAB has already issued a coercive notice under section 23 of NAO and the appellant and others in utter violation of the said notice finalized the auction proceedings in a very unusual and haphazard manner without adopting the requirement as demanded under the Cooperative Societies Act and Rules. Sufficient evidence has been brought on record by the NAB prosecution to prove that one commercial plot measuring 6037.7 square yards duly approved by KDA Master Plan was converted into 40 commercial plots without approval of Regulator and disposed of in offensive juggernaut auction conveniently attributes the basic ingredients of section 9(a) (iv) and (vi) of the NAO.

10. Simultaneously, we do not find any direct embezzlement material against the Appellant. Although no specific charge was framed against the appellant with regard to the embezzlement of fund or illegal cancellation or re-allotment of the plots of the said CIECHS by depriving original members except a joint recital in the Charge. However, the charge mainly fixed and framed upon Muhammad Azam Brohi the then Administrator, Muhammad Zaman Brohi the then Honorary Secretary, Syed Muhamamad Adnan, Abdul Qadir and Rasheed Gul of the said CIECHS and no direct evidence has been brought against the appellant with regard to the embezzlement of fund on account of developing charges, cancellation of plots and its re-allotment to the members of their choice by depriving the original members, which may prove against

the appellant by the oral testimony or any documentary evidence, therefore, on this account the prosecution has failed to prove the case against the appellant, even the charge has not been attracted to such allegations against the appellant, therefore, the conviction under section 9(a) (i),(ii),(iii) (ix),(x),(xi) and (xii) against the appellant has not been proved.

11. In view of hereinabove facts and circumstances of the case, we are of the considered view that the impugned judgment passed by the learned Trial Court stands maintained for the offence under section 9(a)(iv) & (vi) of NAO with modification that the sentence of the appellant to undergo R.I. for ten (10) years stands reduced to five (05) years while maintaining fine of Rs.15 (fifteen) Million and in default thereof, appellant would have to further undergo R.I. for two (02) years so also the benefit of section 382-B, Cr.P.C. as has been extended by the trial Court. Consequently, the Criminal Accountability Appeal is dismissed with above modification.

12. The appellant is absent. Office is directed to issue non-bailable warrants through Investigating Officer of the case against the appellant for his arrest and completion of his remaining sentence accordingly.

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