

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Cr. Appeal No.S-37 of 2023

Appellant: Nadeem Ahmed son of Taj Muhammad
Abro, through Mian Taj Muhammad Keerio,
Advocate

The State: Through Mr. Nazar Muhammad Memon,
Additional P.G Sindh.

Date of hearing: 02.03.2026.

Date of judgment: 02.03.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through this Criminal Appeal, appellant has impugned the judgment dated 16.02.2023 passed by the learned Special Judge, Anti-Corruption (Provincial) Sukkur Division @ Camp at Shaheed Benazirabad in Special Case No.16 of 2011, whereby he has been convicted as under;

- (i) For offence under Section 409 PPC to undergo R.I for three years and to pay fine of Rs.25,000/-, in case of default in payment of fine, to suffer S.I for three months.
- (ii) For offence under Section 468 PPC to under R.I for two years and to pay fine of Rs.10,000/-, in default thereof, to suffer S.I for three months.
- (iii) For offence under Section 471 PPC to undergo R.I for three years and to pay fine of Rs.20,000/-, in default thereof, to suffer S.I for three months.
- (iv) For offence under Section 5(2) of Prevention of Corruption Act-II of 1947 to undergo R.I for two years and to pay fine of Rs.20,000/-, in default, to suffer S.I for three months. The aforesaid sentences were directed to run concurrently with benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case, as narrated in the FIR, are that this case was registered following an inquiry into Complaint No. 20 of 1997 by the ACE, Nawabshah. With the approval of the competent authority, allegations were leveled

against the accused, Nadeem, son of Taj Muhammad Abro. It is alleged that the accused, with dishonest and mala fide intentions, obtained an appointment as a Drawing Teacher by producing a forged and fictitious "Inter Grade Drawing Examination" certificate, purportedly issued by the Registrar of Departmental Examinations, Directorate of School Education, Hyderabad. This appointment order was issued by Mushtaque Ahmed Abrejo, the then District Education Officer (DEO) Male, Secondary Education, Nawabshah. The FIR further states that after securing the appointment, the accused was posted at Government Middle School Gul Muhammad Bhutto, where he fraudulently drew monthly salaries from August 1995 to July 1996, totaling Rs 23,968.20. Consequently, the accused is charged with preparing a bogus certificate, issuing a fraudulent appointment order, and misappropriating government funds. On these grounds, the Circle Officer of the Anti-Corruption Establishment, Nawabshah, lodged the formal FIR on behalf of the State.

3. Following the registration of the FIR, the appellants/accused obtained pre-arrest bail and joined the investigation. Upon completion of the usual investigation, the case was challaned, and the report under Section 173 Cr.P.C was submitted before the trial Court.

4. After providing the necessary documents to the appellant/accused as per legal requirement, a formal charge was framed against him at Exhibit-02. The accused pleaded not guilty and claimed to be tried.

5. At the trial, the evidence of PWs was recorded in sequence. P.W-1 Nasrullah Mallah was examined at Exhibit-5. P.W-2 Rahim Bux Khoso was examined at Exhibit-6. P.W-3 Amir Bux Bhatti was examined at Exhibit-7. P.W-4 Mazhar Hussain Hisbani was examined at Exhibit-8. P. PW-5 Gul Hassan Shaikh was examined at Exhibit-9. Thereafter, the prosecution side gave-up PWs Rawat Ali Chandio and Aijaz Ahmed Abbasi vide statement at Exhibits-10. Subsequently, PW-6 Sher Muhammad

Sahito was examined at Exhibit-11. The PWs produced various documents in their evidence and thereafter production side was closed.

6. After recording evidence, the statements under Section 342 Cr.P.C of the accused were recorded at Exhibits-13 & 14 respectively, wherein they pleaded their innocence and denied the prosecution allegations. Neither they examined themselves on oath, nor produced any witness in their defence.

7. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing the learned Counsel for the respective parties, the learned trial Court, vide impugned judgment, convicted and sentenced the appellant Nadeem Ahmed as referred in paragraph-I (*supra*). Whereas, co-appellant Vakeel Mal was acquitted of the charges.

8. Being aggrieved and dissatisfied with the judgment of the trial Court, the appellant Nadeem Ahmed has preferred this appeal with prayer to acquit him by setting aside the impugned judgment.

9. Learned Counsel for the appellant has contended that the impugned judgment dated 16-02-2023, passed by the learned Special Judge Anti-Corruption (Provincial) Sukkur Division @ Camp Shaheed Benazirabad, was passed in a slipshod and perfunctory manner, without due application of judicial mind; that the impugned judgment is erroneous, contrary to the law and facts of the case, and is therefore not sustainable in the eyes of the law; that the learned trial court failed to appreciate that there is an unexplained delay of more than five years in lodging the FIR and no plausible explanation for this delay was furnished by the complainant in the FIR or during evidence, which inherently weakens the prosecution's case and points towards the false implication of the appellant; that the learned trial court failed to appreciate that there is no direct or incriminating evidence on record to connect the appellant/accused with the alleged commission of the offence; that the learned trial court failed to

appreciate that the appellant, being a B.Com graduate, was fully qualified for a teaching post; that the appellant did not personally submit any forged documents, and the allegation of producing a fake certificate remains unproven; that the learned trial court failed to appreciate that the appellant served in the Education Department bona fide and performed his duties in accordance with the prescribed requirements; that the learned trial court failed to appreciate the material contradictions in the ocular account (eyewitness testimony) furnished by the prosecution, which creates a shadow of doubt and renders the entire prosecution case unreliable; that the learned trial court failed to appreciate that the appellant has been facing the agony of trial for the last nine years. It is further argued that the allegations regarding the misappropriation of Rs.23,968.20 through a forged Drawing Grade certificate were never proved beyond reasonable doubt through independent and reliable evidence. After a flawed investigation, the case was challaned, leading to an unjust conviction. Lastly, it is prayed that appellant may be acquitted of the charge.

10. I have heard learned counsel for the appellant as well as the learned Assistant Prosecutor General for the State and have carefully gone through the entire material available on the record, including the impugned judgment, oral as well as documentary evidence, and the circumstances attending the prosecution case. The record reflects that the entire prosecution case rests upon the allegation that the appellant secured appointment as Drawing Teacher on the strength of a forged "Inter Grade Drawing Examination" certificate and, by virtue of such appointment, received salary from the Government exchequer for the period from August, 1995 to July, 1996. It is also manifest from the record that the case was initiated not on the basis of any immediate complaint by the appointing authority, nor through any contemporaneous detection of fraud, but after an inquiry into Complaint No.20 of 1997 and culminated in registration of FIR after an abnormal lapse of time. The question

requiring determination in the present appeal is whether the prosecution succeeded in establishing beyond reasonable doubt that the certificate in question was forged, that such forged document was knowingly used by the appellant, that the appointment was procured deceitfully, and that the amount received by way of salary constituted criminal misappropriation or corrupt practice within the contemplation of law.

11. Heard and record perused. It is by now a settled principle of criminal jurisprudence that the burden lies entirely upon the prosecution to prove its case beyond reasonable doubt through trustworthy, confidence-inspiring and legally admissible evidence, and the weakness of defence cannot be pressed into service to fill up the lacunae of the prosecution. It is equally settled that in criminal cases every reasonable doubt must be resolved in favour of the accused, not as a concession but as a matter of right. While reappraising the evidence in an appeal against conviction, the appellate Court is duty-bound to examine whether the conclusion reached by the trial Court is supported by the evidence on record and whether the prosecution had discharged the heavy burden cast upon it by law. If the evidence is found to be doubtful, inconclusive, suffering from legal infirmities, or incapable of safely sustaining conviction, the accused is entitled to acquittal.

12. The first glaring circumstance which strikes at the root of the prosecution case is the extraordinary and substantially unexplained delay in setting the criminal law into motion. The allegation pertains to the period August, 1995 to July, 1996, while the matter was taken up through inquiry on a complaint of 1997 and thereafter criminal proceedings were initiated after years had already passed. Such delay, in a matter concerning official appointment, service record, educational qualification and alleged wrongful drawal of salary from government treasury, is not a trivial or inconsequential circumstance. The prosecution was under a legal obligation to explain as to when exactly the alleged forgery came to notice, who first detected it, what steps were

taken immediately thereafter, why the appointing authority remained silent, why the Education Department did not promptly take departmental or penal action, and why the case was allowed to drift for years before formal registration of the FIR. No satisfactory explanation, much less one supported by documentary record, has been brought on record. Such inordinate delay naturally impairs the evidentiary worth of the prosecution version, gives rise to an apprehension of deliberation and afterthought, and makes the case inherently doubtful.

13. In offences of the present nature, where the accusation is founded upon an allegedly forged educational certificate, the most crucial piece of evidence is the primary proof regarding the falsity of the document. Mere suspicion, internal note, opinion, or assumption by departmental or anti-corruption officials cannot substitute strict proof. The prosecution was required to establish through cogent evidence from the competent custodian of record that no such certificate was ever issued to the appellant by the concerned authority, or that the particular certificate number, roll number, entry, seal, signature or format was fictitious or fabricated. From the record, however, it appears that such foundational requirement has not been proved with the certainty required in criminal law. No unimpeachable primary evidence has been discussed by the learned trial Court to demonstrate that the certificate was conclusively forged. The prosecution witnesses, being mostly formal or departmental witnesses, could at best speak about inquiry, forwarding of papers or official process, but unless the competent record-keeper or authorised official from the issuing authority produced the relevant original registers and categorically denied issuance of the certificate in question, the allegation of forgery remains resting in the realm of suspicion rather than proof.

14. It is also significant that the prosecution failed to prove the authorship of the alleged forged certificate. Even if, for the sake of argument, it is presumed that the certificate was not genuine, the prosecution was still required to prove that it was the

appellant who forged it, got it forged, knowingly produced it, or dishonestly used it as genuine with full knowledge of its falsity. There is a marked distinction in law between the document being allegedly false and the accused being proven to have forged or knowingly used it. Conviction under sections 468 and 471, P.P.C. cannot be sustained merely because a document later turns out to be doubtful. The mens rea of knowledge and fraudulent intention must be affirmatively proved. In the present case, no witness has deposed that the appellant himself submitted the certificate in person, prepared the document, procured it through any identified source, or made any false representation beyond the normal process of service induction. No handwriting expert was produced; no forensic comparison was undertaken; no admission was made by the appellant; no recovery of any incriminating material was effected from him. In absence of such evidence, the element of conscious use of a forged document remains unproved.

15. The prosecution also appears to have suffered from a serious omission in not examining the most material persons connected with the appointment process. The appointing authority, office staff dealing with scrutiny of documents, clerks maintaining service files, and persons who actually processed the appointment order were the natural witnesses to establish as to what documents were submitted, who verified them, whether the certificate was checked at the time of appointment, and whether the appellant had played any deceitful role in the process. If the department itself issued the appointment order and posted the appellant in a school where he actually served, then strong and independent proof was required to show that the appellant had induced the authority through deception. Where official machinery itself processes an appointment and allows an incumbent to serve, a criminal Court cannot lightly infer that the appointee alone engineered the entire affair unless such role is established through convincing evidence. Failure to examine the most natural and material witnesses gives rise to an adverse inference against the prosecution.

16. The prosecution case further becomes doubtful because the appellant's actual service and drawal of salary do not, by themselves, constitute criminal misappropriation. Salary paid for a post on which a person actually worked under a government appointment order stands on a wholly different footing from money dishonestly taken away or embezzled. In order to attract section 409, P.P.C., the prosecution was required to establish entrustment and dishonest misappropriation or conversion. The facts narrated in the FIR, even if taken at their face value, primarily indicate alleged wrongful appointment on defective qualification, not entrustment of property in the legal sense required for criminal breach of trust. If the appellant was appointed by the department, posted at a school, and paid monthly salary in the regular course of service, then receipt of such salary, without more, would not automatically amount to misappropriation unless it is shown that he had dishonestly and knowingly deceived the department into disbursing money to him. That latter ingredient again depends upon strict proof of knowledge and deceit, which is conspicuously lacking here.

17. Similarly, the charge under section 5(2) of the Prevention of Corruption Act, 1947 could not have been recorded mechanically. Criminal misconduct within the meaning of the said provision is not to be presumed merely because an irregularity or even illegality is alleged in appointment. It must be shown through reliable evidence that the accused, being a public servant or acting in conspiracy with others, dishonestly or fraudulently obtained for himself or for another person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing position. In the present case, the prosecution was required to prove not only the falsity of the certificate but also the dishonest design on the part of the appellant to obtain pecuniary advantage by corrupt means. No such chain of evidence has been completed. The learned trial Court appears to have treated the alleged invalidity of the certificate as sufficient in itself to establish all

connected penal offences, which approach, with respect, is legally unsustainable.

18. Another important aspect of the matter is that the prosecution evidence does not appear to be free from contradiction, omission and uncertainty. The witnesses examined by the prosecution were not eyewitnesses to the alleged forgery. Their knowledge was derivative and based on departmental inquiry or subsequent verification. Evidence of such nature must be scrutinised with greater caution. Where the prosecution witnesses are formal in character and do not directly connect the accused with the essential ingredients of the offence, conviction cannot safely rest upon such testimony. The record also shows that certain witnesses were given up by the prosecution. When the prosecution withholds natural or material witnesses without satisfactory cause, the Court is entitled to draw an inference that their examination might not have supported the case set up by the prosecution.

19. It is also to be noted that one of the co-accused, namely Vakeel Mal, was acquitted by the learned trial Court itself. Though the case of each accused must stand on its own footing, yet where the substratum of the prosecution case is common and the evidence is interlinked, the acquittal of one accused on substantially similar evidentiary foundation assumes importance. If the process of issuance of appointment order, scrutiny of documents and official handling was itself under challenge, and one set of allegations failed against a co-accused, then the Court was required to more cautiously evaluate whether the remaining evidence against the present appellant was of such sterling quality as to exclude every hypothesis of innocence. The impugned judgment does not demonstrate such careful distinction.

20. The learned trial Court, in my humble view, did not adequately advert to the settled distinction between suspicion and proof. There may have existed some suspicion that the certificate

relied upon by the appellant was not genuine, but criminal conviction cannot be founded upon moral belief, departmental opinion, or administrative doubt. The evidence must travel the whole distance from “may have been” to “must have been.” In the present case, important links in the chain are missing: the prosecution has not satisfactorily proved the source and custody of the alleged certificate; it has not conclusively demonstrated from original record that the certificate was fake; it has not established that the appellant knowingly used a forged document; it has not proved dishonest intention at the inception; it has not shown entrustment and misappropriation in the legal sense; and it has not excluded the possibility that the appointment was processed through departmental negligence or irregular verification for which criminal liability cannot automatically be shifted upon the appellant in absence of clear proof.

21. The benefit of doubt available to the accused in criminal jurisprudence is not confined to cases in which there are several circumstances creating doubt. The combined weight of these deficiencies utterly eclipses the prosecution’s story. As the Hon’ble Supreme Court famously held in **Muhammad Hassan and Another v. The State (2024 SCMR 1427)**¹, it is not necessary for the defence to establish a multitude of doubts; even a single circumstance that creates reasonable doubt in a prudent mind about the guilt of an accused entitles him to be acquitted. In the present matter, there are not one but multiple circumstances creating serious doubt: the abnormal delay in FIR; absence of direct evidence; failure to produce conclusive primary record from

¹ “According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused.” See also, Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).

Tariq Pervez v. The State (1995 SCMR 1345; For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.”

issuing authority; non-establishment of knowledge and intent; non-examination of material witnesses connected with appointment process; doubtful applicability of section 409, P.P.C. to the salary drawn on the basis of an official appointment; and the overall insufficiency of the prosecution evidence to establish guilt beyond reasonable doubt. When these circumstances are read cumulatively, the prosecution case becomes unsafe for maintaining conviction.

22. The prolonged agony of criminal proceedings faced by the appellant is also not an altogether irrelevant factor while evaluating the quality of evidence. Though mere delay in conclusion of trial does not by itself furnish a ground for acquittal, yet where the prosecution evidence is already doubtful and the appellant has remained under the shadow of criminal litigation for a considerable period, the Court must be all the more circumspect in sustaining conviction on uncertain footing. Criminal law deals with the liberty, dignity and reputation of a person; therefore conviction cannot be allowed to stand on shaky, deficient or speculative evidence.

21. Upon reappraisal of the entire evidence, I am of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The learned trial Court fell into serious error in drawing conclusions of guilt from evidence which was insufficient to establish the essential ingredients of the offences charged. The impugned judgment, therefore, cannot be sustained.

22. For the foregoing reasons, this Criminal Appeal is allowed. The judgment dated 16.02.2023 passed by the learned Special Judge, Anti-Corruption (Provincial), Sukkur Division @ Camp Shaheed Benazirabad, in Special Case No.16 of 2011, insofar as it relates to appellant Nadeem Ahmed son of Taj Muhammad Abro, is set aside and he is acquitted of the charge in respect of offences under sections 409, 468 and 471, P.P.C. as well as section 5(2) of the Prevention of Corruption Act, 1947, by

extending him benefit of doubt. He is on bail; his bail bonds shall stand cancelled and surety discharged.

23. These are the reasons for the short order announced in open Court on 02.03.2026.

JUDGE

Shahid