IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

**Criminal Appeal No. S - 51 of 2012**

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| Appellant: | (1) Khan Muhammad S/O Rahim Dino, by caste Ansari through Syed Naimat Ali Shah, Advocate. |
| The State | Through Mr.Muhammad Raza Katohar, Deputy Prosecutor General Sindh. |
| Date of hearing: | 15.10.2026. |
| Date of decision: | 06.11.2026. |

**J U D G M E N T**

***SURESH KUMAR, J:-.*** This Criminal Appeal is directed against the impugned Judgment dated 30.06.2012, passed by the learned Special Judge, Anti-Corruption, Sukkur, in Special Case No. 23/2011, (Re: State v. Khan Muhammad Daim and another), arising out of FIR No. 74/1999 for offences under Sections 409/34 PPC read with Section 5(2) Act II of 1947 registered at ACE Khairpur, whereby the appellant was convicted and sentenced as follows:

> *"For the offence* 409/34 PPC read with Section 5(2) Act II of 1947 *to suffer R.I for five years and with fine of Rs. 29,00, 000/ (Rupees Twenty-Nine Lacs only) and in default of payment of fine, he shall undergo S.I for one year more. The benefit of Section 382-B Cr.P.C. was extended to him."*

2. The prosecution case, as set out in the FIR, is that the instant case was registered by Himmath Ali Chandio, Circle Officer, Anti-Corruption Establishment, Khairpur, on behalf of the State, after obtaining permission

from the competent authority, pursuant to a written report submitted by the District Food Controller, Khairpur. It was alleged that, during the wheat procurement season of 1998–99, the appellant/accused, while serving as In-charge of the Wheat Procurement Centre, Agra/Mithani, misappropriated 4,120 bags of wheat, valued at Rs. 28,84,000/-, thereby causing wrongful loss to the Government and corresponding wrongful gain to himself. On the basis of the aforesaid allegations, FIR No. 74/1999 was registered at the Anti-Corruption Establishment, Khairpur, for the commission of offences punishable under Sections 409/34, PPC, read with Section 5(2) of Act II of 1947.

3. During investigation, the appellant was arrested on 22.11.1999. After the submission of the charge sheet, the appellant was tried by the learned Special Judge, Anti-Corruption, Sukkur. Record shows that co-accused Muhammad Siddique S/O Akhtar Hussain was subsequently acquitted by the learned trial Court under Section 249-A Cr.P.C vide order dated 28-02-2008. Following the supply of copies to the appellant, a formal charge was framed against him, to which he pleaded not guilty and requested a trial.

4. At trial, the prosecution examined witnesses namely PW-1 Syed Mir Muhammad Shah At Exh. 5 and Himat Ali Chandio Circle Officer/Investigation Officer at Exh. 6, who produced photocopy of letter at Exh. 6/A, FIR at Exh. 6/B, mashirnama of arrest at Exh. 6/C, statement

of accused before I.O at Exh. 6 /D, mashirnama of securing the record at Exh. 6/E, official record 101 leaves of arrival, issue and balance reports as Exh. 6/F, one Challan as Exh. 6/G, posting order of accused as Exh. 6/H, attested signatures of accused as Exh. 6/I, authority letter issued by DFC Khairpur as Exh. 6/J and K, posting order of accused as Exh. 6/L, bank certificate issued by Manager NBP Agra Branch as Exh. 6/M, Bank Challans as Exh. 6/N to 6/P.

5. It is pertinent to mention here that after the evidence of the aforesaid witnesses, as well as the statement of the accused, the learned trial court convicted the appellant vide judgment dated 28-09-2010. Thereafter, the appellant/accused challenged the said judgment by filing Criminal Appeal bearing No. S-151/2010 before the High Court of Sindh. The High Court of Sindh, Sukkur Bench, vide order dated 14-04-2011, set aside the said judgment dated 28-09-2010 and remanded the matter to the trial court for a fresh decision after providing the opportunity for cross-examination to the Investigating Officer by the counsel for the appellant/accused.

6. After remand of the matter, learned counsel for the appellant conducted cross examination of Investigating Officer, thereafter, prosecution examined PW-3 Misri Khan at Exh. 11. Learned Special Public Prosecutor for the State closed the side of prosecution vide statement at Exh. 12.

7. Thereafter, the learned trial Court recorded the statement of the appellant under Section 342 of the Cr.P.C at Exh. 13. The appellant/accused also examined himself on oath at Exh. 14. After hearing the arguments, the learned Special Judge, Anti-Corruption, Sukkur convicted and sentenced the appellant as mentioned above in the impugned judgment.

8. I have heard learned counsel appearing on behalf of the appellant and learned **Deputy P.G. for the State.**

9. Learned counsel for the appellant has primarily contended that the impugned judgment suffers from misappreciation of evidence and that the prosecution failed to establish the appellant's involvement and participation beyond a reasonable doubt. He further contended that the prosecution case was based mainly upon the official record and the statement of the appellant allegedly recorded during the investigation. Learned counsel further contended that the alleged shortage of wheat bags was not, by itself, sufficient to establish misappropriation by the appellant. According to the appellant's statement recorded during the investigation, payments had been made to various wheat suppliers on the instructions of the then D.F.C., and the suppliers had failed to supply the wheat or deposit the amount. Learned counsel, therefore, argued that the prosecution had failed to prove that the alleged wheat was dishonestly misappropriated or converted by the appellant to his own use. He prayed

that the impugned judgment be set aside and that the appellant be acquitted.

10. Learned Deputy P.G. for the State, while supporting the impugned judgment, has contended that the prosecution has proved its case through trustworthy evidence. He has lastly contended that the conviction and sentence awarded by the trial court may be maintained in the interest of justice.

11. Before reappraising the evidence produced by the prosecution during the trial, it would be appropriate to decide the consequences of the death of the appellant during the pendency of the appeal, as per the report furnished by the concerned police/official authorities. The appellant expired on 26.11.2025, and to that effect, the death certificate of the appellant issued by the Secretary of the concerned Union Council has been perused and taken on record.

12. In view of the fact that the appellant expired during the pendency of the appeal, the first question that arises for determination is whether this appeal abates in light of the provisions of the Code of Criminal Procedure, 1898, or not. The consequences of the death of an appellant during the pendency of his criminal appeal against conviction or sentence are elaborated in Section 431 of the Cr.P.C. The provisions of Section 431 Cr.P.C. deal with the abatement of appeals upon the death of the appellant. Since Section 431 Cr.P.C. is relevant to decide such a question, it is therefore reproduced as follows:

> ***"431. Abatement of appeals.—*** *Every appeal under section 411A, sub-section (2), or section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant."*

13. From a bare reading of the above section, it reveals that an appeal under Section 411A, Sub-section (2), or Section 417, or every other appeal under Chapter XXXI, except an appeal from a sentence of fine, shall finally abate on the death of the appellant, and under Chapter XXXI, an appeal against fine shall not abate by reason of the death of the appellant.

14. In the case of ***Shaikh Iqbal Azam Farooqui v. Chairman, NAB*** **(2020 SCMR 359)**, it has been held that an appeal automatically abates regarding a corporal sentence (imprisonment), but must be decided on its merits regarding the financial liability, which shifts to the estate of the deceased. The Hon'ble Supreme Court observed as under:

> *"Corporal consequences of a conviction wither away with the death of the convict, severing temporal links, thus abating the appeal regarding imprisonment. However, financial liability consequent upon conviction shifts to the estate, requiring the appellate Court to decide the appeal on its own merits under Section 431 of the Code of Criminal Procedure, 1898."*

Similarly, the Hon'ble Supreme Court in the case of ***Dr. Ghulam Hussain v. The State*** **(1971 SCMR 35)** held that where an appellant had died during the pendency of the appeal, but a sentence of fine was imposed by the court below in addition to imprisonment, the appeal does

not abate under Section 431 Cr.P.C. Further reliance is placed upon the case of ***Mehar Ali Solangi v. The State*** **(2023 YLR 1500)**.

In view of the above dictum laid down by the Hon'ble Supreme Court and this Court, the corporal consequences of conviction wither away with the death of the convict, severing temporal links, thus abating the appeal regarding imprisonment. However, the financial liability consequent upon conviction shifts to the estate, requiring the appellate court to decide the appeal on its merits under Section 431 Cr.P.C.

It is the case of the prosecution that the appellant/accused during wheat procurement season 1998-99 was Incharge, Wheat Procurement Centre, Agra/Mithani, and mis-appropriated 4120 bags worth of Rs.28,84,000/- thereby caused loss to the Government and wrongful gained to himself.

PW-1 Syed Mir Muhammad Shah stated that the appellant had procured 18,195 bags of wheat and dispatched 14,075 bags, leaving 4,120 bags unaccounted for. He further stated that the appellant subsequently deposited the price of 500 bags, and on that basis, 3,620 bags remained outstanding, valued at Rs. 25,34,000/- at the rate of Rs. 700/- per bag; the said witness disclosed these figures based on verified official records. PW-2 Himmat Ali Chandio, Investigation Officer, produced 101 leaves of arrival, issue, and balance reports along with the appellant's posting order, authority letter, and other official documents Exh. 6/D to 6/P; these records provide a documentary basis for the procurement, dispatch, and balance stock of wheat. The I.O. has relied upon official records concerning the operation of the Procurement Centre. During cross-examination, the I.O. stated that he did not remember the precise number of bags supplied to the appellant and the amount deposited by him for the bags. He also admitted that the FIR did not mention the total number of bags actually supplied to the appellant, and bank challans showing

subsequent deposits were produced during the investigation. These admissions are relevant in determining the outstanding quantity and financial liability; however, these admissions do not erase the official record and documents, which must be read as a whole.

PW-3 Misri Khan, examined after remand, was associated with the arrest and investigation process; however, his evidence does not independently establish that he witnessed the appellant removing, selling, or converting the wheat. The charge against the accused principally rests on the official record, the evidence of the DFC, the appellant's official responsibility, and his explanation.

The appellant, in his written statement at Exh. 6/D, stated that he had made advance payments to various suppliers on the instructions of the then DFC, and that those suppliers neither delivered the wheat nor deposited the corresponding amount. The statement named the suppliers and the referred quantities; however, his explanation is totally contradictory to his statement under Section 342 Cr.P.C., as well as his statement on oath under Section 340(2) Cr.P.C. The appellant has stated that he has taken two different pleas: in his statement under Section 340(2) Cr.P.C., he claimed that the DFC asked him to supply Bardana against the policy and also demanded illegal gratification, which he refused; therefore, he has been involved in this false case. In contrast, in his statement on oath recorded under Section 340(2) Cr.P.C., he has taken a different plea, stating that as the wheat was recovered late, the DFC involved him. However, the accused has neither produced defense witnesses nor documentary evidence to prove his contentions. Having kept the prosecution evidence juxtaposed with the defense, it appears that the prosecution's case is based upon documentary evidence, which goes unchallenged and unrebutted.

Section 409 PPC requires proof of entrustment or dominion over property and dishonest misappropriation, conversion, or dishonest disposal of that property. To bring home the charge, it is sufficient if it is

established by the prosecution that the property was entrusted to the accused as a public servant, and that the public servant either did not return that property or used it for a purpose other than that for which it was entrusted. If the prosecution discharges the initial burden of proving that the property was entrusted to the accused, then the burden shifts to the accused to establish that he has not misappropriated the government property, and it is not further necessary to prove in what manner the government property was misappropriated. In the present case, the prosecution has been able to prove that the wheat stock was entrusted to the appellant as per the available documents produced by I.O. Himmat Ali (PW 2). In such circumstances, requiring the prosecution to establish the manner of misappropriation is not necessary, as the burden lies on the defense. The burden shifted to the accused to account for the stock, which he failed to discharge in respect of the misappropriated stock of 3,620 bags. In this regard reliance is placed on the case of ***The State v. Iftikhar Hussain Gilani*** **(PLD 1991 Peshawar 143)**, it has been held:

> *"Once entrustment is admitted or proved, the burden shifts to the accused to prove proper utilization. Failure to produce evidence leads to an inference of misappropriation. Under Article 122 of the Qanun-e-Shahadat Order, 1984, the burden of proving facts especially within a person's knowledge lies on him. If an accused admits entrustment but fails to prove proper utilization through receipts or witnesses, an adverse presumption of dishonest misappropriation arises under Article 129."*

The learned trial court relied upon the alleged misappropriation of 4,120 bags valued at Rs.28,84,000/-. The evidence also records the subsequent payment for 500 bags, leaving 3,620 bags valued at Rs.25,34,000/-. Accounting for the initial shortage and giving credit for the subsequent payment, the later payment does not wipe out the

remaining shortage; therefore, it has been established that 3,620 bags valued at Rs.25,34,000/- have been misappropriated, for which the appellant failed to account through material evidence. On the contrary, the prosecution has produced confidence-inspiring evidence to establish the guilt of the accused.

For the foregoing reasons, the appeal, insofar as it relates to the sentence of imprisonment, stands abated upon the death of the appellant. The surviving challenge to the conviction and sentence of fine is decided on merits for the reasons recorded above. The conviction and fine shall stand maintained with some modification to the extent of the fine of Rs. 25,34,000/- instead of Rs. 28,84,000/-; any recovery of the fine from the deceased's estate shall remain subject to applicable law, including Section 70 PPC and Section 386 Cr.P.C, and the legal requirements governing enforcement and limitation.

J U D G E