

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate jurisdiction)

**PRESENT:** Justice Muhammad Hashim Khan Kakar  
Justice Salahuddin Panhwar  
Justice Ishtiaq Ibrahim

33/25

**Criminal Petition No. 1221-L/2021**

(Against the judgment/order dated 24.06.2021  
passed by the Lahore High Court, Lahore  
in CrI. A. No.842/2010)

Agha Hussain

Petitioner(s)

Versus

The State, etc.

Respondent(s)

For the Petitioner(s):

Mr. Saeedullah Khan, ASC  
(through video link, Lahore)

For the State:

Mr. Tariq Siddique, APG

Date of Hearing:

28.04.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar, J.** This petition for leave to appeal is directed against the judgment dated 24.06.2021, passed by the Lahore High Court, Lahore, whereby the appeal preferred by the petitioner was dismissed and the judgment dated 25.03.2010 of the learned Special Judge Anti-Corruption, Sargodha has been kept intact whereby the petitioner was convicted and sentenced to suffer rigorous imprisonment for 10 years under section 409 PPC with fine of rupees Rs.200,000. He was also convicted under section 5 of the Prevention of Corruption Act, 1947 and sentenced to rigorous imprisonment for 7 years with fine of Rs.100,000 and in case of default whereof to further undergo simple imprisonment for 3 months.

2. Briefly stating the facts of the case are that Mst. Masooda Akhter being the Principal, Government Higher Secondary School, Khushab had moved complaint (Ex.PF) in consequence whereof FIR (Ex.PF/1) was registered stating therein that Agha Hussain was working as Junior Clerk since long but from 04.12.2002 he was missing from the

department. He was also not found available at his house. It has come on the surface that registration fee of 2<sup>nd</sup> year students, collected by him, was not deposited in the Board. Upon checking, different irregularities were found in different accounts of school which shows that Tuition Fee Rs. 693,787/-, Medical Fund Rs. 211,202/- Union Fund Rs. 62,788/-, Farooqh-e-Taaleem Fund Rs. 390,857/-, Library Fund Rs. 235,211/-, Domestic Fund Rs. 62,915/-, Health Fund Rs. 53,432/-, Girls Guide Fund Rs. 24,230/-, Red Cross Fund Rs. 5,944/-, Fine Fund Rs. 1,638/-, Magazine Fund Rs. 3,813/- and 1<sup>st</sup> year Admission Fee Rs. 144,960/- total amount Rs.1,890,797/- was found to be embezzled by the petitioner Agha Hussain.

3. The petitioner alongwith the complainant Mst. Masooda Akhter and one Mazhar-ul-Haq (since acquitted) were investigated by different investigating officers. They were declared guilty and report under section 173 Cr.P.C was submitted before the Trial Court. After full-dress trial, the learned Special Judge Anti-Corruption convicted and sentenced the petitioner and Mst. Masooda Akhter, as stated above, whereas acquitted the co-accused Mazhar-ul-Haq which was upheld by the learned Single Judge of Lahore High Court up to the extent of petitioner, hence this petition.

4. It is mainly contended by Mr. Saeedullah Khan, the learned counsel for the petitioner, that the petitioner has been vexed twice for one and the same offence in sheer violation of Article 13 of the Constitution of the Islamic Republic of Pakistan. It is also contended that the impugned judgment deserves to be set aside being passed in violation of section 234 Cr.P.C. While concluding his arguments he further contended that the petitioner has been convicted on the evidence which was disbelieved by the Trial Court qua the co-accused.

5. On the contrary, Mr. Tarique Siddique, the learned Additional Prosecutor General, Punjab, at the very outset, while making reference to the observations made by the learned Single Judge, stated that the appeal was never argued on merits but only reduction in sentence was prayed. He further stated that the instant petition for leave to appeal is not maintainable as none can take two different stances on the same



point before two courts as approbation and reprobation. The learned counsel for the petitioner, when confronted with the observations made by the High Court, contended that in spite of all this it was bounden duty of the Court to have examined the entire evidence with diligent application of mind.

6. The learned APG contended that the instant petition for leave to appeal is not maintainable as the request of petitioner regarding reduction of his sentence was accepted by the High Court. A party who has accepted or benefited from a particular position or decision cannot later reject or challenge it on a contradictory ground. After accepting the reduction, the petitioner has effectively approbated (accepted) the Court's decision and cannot reprobate (reject) it on inconsistent grounds. On the contrary learned counsel for the petitioner contended that despite the plea of reduction, the Appellate Court was required to decide the fate of appeal on merits. We are of the view that plea of reduction in sentence does not constitute a bar for the Appellate Court from interfering where the findings rendered by the Trial Court are based on erroneous or speculative presumptions or non-reading or misreading of evidence, violation of settled judicial principles concerning administration of justice and reviewing the entire case to draw its own conclusion. The record reflects that the appeal was not pressed on merits and only request for reduction in sentence was made before the High Court, however, the record shows that the appeal in question was decided on merits after having gone through record of the case and critical evaluation of the entire evidence. The Appellate Court while exercising its power under section 423 Cr.P.C. has rightly reduced the sentence of the petitioner after dilating upon the merits of the case. While holding this view, we are benefited from the observation made by this Court in the case of *Muhammad Siddique v State* (NLR 1995 Criminal 559) wherein it was observed as follows:

“It is true that the learned counsel appearing for the convicts before the Appellate Court quite often pray for the leniency in the sentence without challenging conviction on merits and consequently, the Courts straightaway reduce the sentences and dispose of the matter without examining the conviction on legal and factual plane. We have noted it with concern that despite obtaining relief in the shape of reduction in sentence, the convicts invariably approach this Court questioning their conviction on

merits. It is well-settled that once appeal is filed or is admitted to regular hearing, it can neither be withdrawn nor dismissed for non-prosecution and it becomes obligatory on the Appellate Court to decide the same on merits. We are of the view that despite the concession made by the counsel appearing on behalf of the convicts the Appellate Court is always obliged to examine the merits of the case and in case the Court finds that a case for acquittal is made out, the Court must acquit the accused despite the prayer made by the counsel for the reduction of sentence only. Furthermore, to avoid the possibility of remand it would be in the fitness of things that an appeal is decided on merits even in cases where the counsel appearing for the appellant/convict do not challenge the conviction and pray for reduction in sentence only."

7. Reverting to the contention of the learned counsel for the petitioner regarding section 234 Cr.P.C. which requires one trial of the offences of same kind committed within the space of twelve months from the first to the last of such offences, it is worth mentioning that under the said provision of law combination of only three offences is permissible in one trial. Nevertheless, it does not bar separate trial of the accused for rest of the offences having been committed within a period of twelve months. Even otherwise, record is indicative of the fact that the amount in question has been embezzled within a period  $\frac{3}{4}$  year.

8. Returning to the merits of the case, the record indicates that both courts below have reached a conclusion regarding the guilt of the petitioner after evaluating the entire evidence available on record. Upon our own evaluation of the evidence, we are unable to identify any reason to differ from the concurrently reached conclusion by the courts below. Consequently, this petition is dismissed and leave to appeal is refused.



Judge



Judge



Judge

Islamabad  
28.04.2025  
(Farrukh)