

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE YAHYA AFRIDI

CRIMINAL PETITION NO. 300 OF 2018

(on appeal against the judgment/order dated 22.01.2018 of the Islamabad High Court, Islamabad passed in Criminal Appeal No.95/2017)

Malik Din s/o Azeem Khan

...Petitioner(s)

VERSUS

Chairman National Accountability
Bureau and another

...Respondent(s)

For the Petitioner(s): Raja M. Ibrahim Satti, Sr. ASC.
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s): Mr. Jehanzeb Bharwana, Addl. PG
NAB

Date of Hearing: 06.12.2018

Judgment

YAHYA AFRIDI, J.— Through the instant criminal petition for leave to appeal, the petitioner (*Malik Din*) assailed the judgment of the learned Islamabad High Court, Islamabad, whereby his Criminal Appeal No.95/2017 was dismissed being devoid of merit.

2. Briefly stated facts of the present case are that National Accountability Bureau ("**NAB**") filed a Reference against the petitioner under Section 18(g) read with Section 24(b) of the National Accountability Ordinance, 1999 ("**Ordinance**") before the learned Accountability Court-II Islamabad ("**Accountability Court**") for misusing his authority as Administrator of Federal Government Employees Cooperative Housing Society of E11/1 and E11/2 ("**Society**") for illegally allotting and converting plots and thereby causing it huge financial loss. The learned Accountability Court, on taking cognizance of the matter, charged the petitioner for the offence of corruption and corrupt practices under section 9(a)(vi) punishable under section 10 of the Ordinance, who denied the same and claimed a trial. After producing five witnesses, the prosecution closed its evidence, and thereafter, the Accountability Court examined the petitioner under section 342 of the Criminal Procedure

Code, 1898, who denied all allegations imputed upon him by the prosecution, but refused to be examined on oath and instead produced one witness in his defense. On conclusion of the trial, the Accountability Court convicted and sentenced the petitioner under Section 9(a)(vi) punishable under Section 10 of the Ordinance *vide* judgment dated 01.06.2017 in terms;

"five years rigorous imprisonment and fine of Rs. 500,000/-. The amount of fine shall be recoverable as arrears of land revenue. The convict-petitioner forthwith seized to hold public office if any held by him and further he shall stand disqualified for period of ten years to reckon from the date he is released after serving sentence, after seeking for being elected chosen appointed or nominated as member or representative of any public body or any statutory local authority or in service of Pakistan or of any province, he shall also not be allowed to apply for or be granted or allowed any financial facilities in form of any loan for advances or other financial accommodation by any bank or financial institution owned or controlled by the Government for a period of ten year from the date of conviction".

3. Aggrieved thereof, the petitioner challenged the decision of the Accountability Court before the Islamabad High Court, which was also dismissed through the impugned judgment dated 22.01.2018.

4. The learned counsel appearing for the petitioner vehemently contended that the case against the petitioner lacked jurisdiction, as it was initiated on the recommendation of the Standing Committee of the Senate of Pakistan on Law, Justice and Human Rights (**“Standing Committee”**), which was alien to the prescribed procedure ordained in the Ordinance, and thus, vitiated the entire structure built thereon. Secondly, he contended that there was stark discrimination on the part of the NAB to single out the petitioner, when admittedly there were 109 illegal housing societies directed to be investigated; and thirdly, he submitted that the steps taken by the petitioner, as Administrator of the Society, were day-to-day routine tasks and did not involve any illegal act, which could saddle penal consequences on him. Finally, the learned counsel submitted that the petitioner did not derive any personal financial gain from the transactions for which he was charged, tried and

convicted; moreover, when there is no reported financial loss to the Society, as all the impugned transactions have been reversed.

4. Strongly opposing the contentions of the learned counsel for the petitioner, the learned Additional Prosecutor General contended that the petitioner was lawfully proceeded against under the enabling provisions of the Ordinance, which were strictly in accordance with the settled principles of the criminal justice system of providing the petitioner with complete opportunity to defend himself.

5. We have heard the learned counsel for the petitioner as well as the learned Additional Prosecutor General NAB and with their valuable assistance gone through the available record.

6. Let us first take up the contention of the learned counsel for the petitioner challenging the very jurisdiction of NAB to initiate proceedings against the petitioner on the ground that it was based on the directions of the Standing

Committee vide letter dated 18.11.2015. Subsection (b) of Section 18 of the Ordinance deals with the initiation of a reference by NAB, which reads:

"Cognizance of Offences:

(b) A reference under this Ordinance shall be initiated by the National Accountability Bureau on—

- (i) a reference received from the appropriate Government; or*
- (ii) receipt of a complaint or*
- (iii) (its) own accord."*

(Emphasis Provided)

7. The above stated provision clearly provides three different modes to initiate a reference. Clause (ii) (*supra*) is so worded to encompass a complaint filed by any person against another accusing him of committing corruption to be the basis for NAB to initiate a reference under the Ordinance. Now, when we consider the letter of the Standing Committee dated 18.11.2015, the same would surely fall within the purview of a complaint, as provided under clause (ii) of Subsection (b) of Section 18 of the Ordinance stated above. Thus, the stance taken by the learned counsel for the petitioner to

challenge the entire reference on the touchstone of this alleged jurisdictional defect in initiating a reference against the petitioner is misconceived.

8. Moving on to the next contention of the learned counsel for the petitioner that the action of NAB was discriminatory, as it had singled out the petitioner to the exclusion of the other hundred housing societies mentioned in the letter of the Standing Committee. We are afraid this contention is legally incorrect. It is by now a settled principle of criminal jurisprudence that challenging prosecution on the ground of discrimination by the State cannot be a complete valid defence to absolve an accused from criminal liability arising from his actions or inactions. Any person charged for a crime is answerable for his own acts or omissions and has to defend himself in a trial for the said charged offence.

9. Before we consider the submissions of the learned counsel for the petitioner regarding the routine day-to-day working of the petitioner

as an administrator of the Society, it would be appropriate to first review the charge sheet framed against the petitioner by the Accountability Court, which was as follows:

"Charge Sheet"

I, ... do hereby charge you the above named accused as under:

- 1. That you accused Malik Din was appointed as Administrator of Federation of Employees Foundation Housing Society by Registrar cooperative societies Islamabad vide Notification No.228/CR/ICT/B dated 14.02.2012 for sixty days to hold fresh election of the society and to run day to day affairs. But you violated the terms of notification.*
- 2. That you accused in violation of your appointment order illegally and without any appointment with malafide intention executed agreement dated 15.03.2012 with MianSohaillqbalQureshi and Rana M. Javed regarding creation and allotment of commercial plots over the land of residential plots and land reserved for graveyard.*
- 3. That you accused in violation of your appointment notification illegally and malafide converted the residential plots and land reserved for graveyard and created a commercial bearing No.20-C measuring 3940 Square yard and allotted the plot to Rana M. Javed and MianSohaillqbalQureshi on 04.02.2013 without any consideration amount and extended undue benefit to Rana M. Javed and MianSohaillqbalQureshi.*
- 4. That you accused vide your appointment notification were not authorized to make any allotment whether fresh and pending but you violated the terms and conditions of your appointment notification and without authority and misused the office and illegally enter into agreement with private persons for purchase of land and*

allotment of commercial plots measuring 3940 Sq.y.

- 5. That you accused violated that modalities and procedure framed under ICT (Zone) 1992 and terms and condition of layout plans by converting a plot of graveyard into commercial plot.*
- 6. That you accused illegally allotted the plot No.20-C to Rana M. Javed and MianSohaillqbalQureshi by granting them illegal favour of 2262 Sq.y. of the commercial land approximately value of which is 686 Million without any consideration and deprived the society of their amenity plot hence committed offence of misuse of authority.*
- 7. That you accused misused authority and illegally allotted commercial plots and rendered illegal and undue benefit to RanaJaved and MianSohaillqbalQureshi.*
- 8. That you accused has committed offence u/s 9(a)(VI)&(XII) punishable u/s 10 NAO of 1999."*

10. Reviewing the contents of the above charges against the petitioner, it is noted that, in essence, there are two major allegations against the petitioner. Firstly, that he proceeded to act as Administrator of the Society beyond the 60 days for which he was appointed; and secondly, that he allowed allotments and conversion of reserved residential or graveyard plots for commercial purposes.

11. As far as the first allegation is concerned, there is sufficient evidence on the record to prove that the election of the Managing Committee of the Society did take place. However, the petitioner could not solely be held responsible for the non-functioning of the newly elected committee as there were restraining Court orders. This being so, the prosecution was unable to concretely prove the criminality on the part of the petitioner to continue as an administrator beyond the 60 days stipulated in his appointment order.

12. Moving on to the other allegation, which entails the illegal allotment and conversion of residential plots for commercial use and wrongful allotment and conversion of plots reserved for a graveyard for commercial purposes. Canvassing through the record, it is noted that the petitioner was unable to produce any justifiable explanation for his actions, while the prosecution evidence overwhelmingly proved his active involvement in the commission of the charged offences. In fact,

the most striking evidence was his appointment order dated 14.02.2012, which reads as under:

"

Islamabad 14.02.2012

NOTIFICATION

Whereas, the Managing Committee of Federation of Employees Cooperative Housing Society, Islamabad was elected on 11.01.2009.

2. Whereas, after completion of terms of 03 years as per byelaw No.31(2) the period of the Managing Committee has expired on 11.01.2012.

3. Whereas, it is mandatory to appoint a caretaker Committee of 05 members of an Administrator who shall hold elections of new Managing Committee within period of 60 days as per byelaw No.31(2) of the Registered Byelaws of the Society.

4. In view of the above, the Managing Committee of the Society has been removed under Byelaw No.31(2) an Malik Din, Circle Registrar Islamabad is appointed Administrator of the Society for a period of 60 days or until holding fresh election of the Society (whichever is earlier) with immediate effect.

5. The Administrator is assigned the following tasks:-

i. The Administrator shall not make any allotment of plots, whether fresh or pending, initiate any development work or make any payments pertaining to any development work and sale or purchase of land or any other payment except salary of staff and utility bills, if salary of any employee exceeds Rs.10,000- approval of the Cooperative Societies Departmental, ICT, Islamabad shall be obtained in writing.

ii. No fresh appointment of any employee shall be made except with the approval of the Registrar.

iii. The Administrator shall facilitate and discharge his duties and obligations as laid down in Byelaws of the Society and Cooperative Societies Election Rules, 2004 in coordination with Election Commission and the Cooperative Societies Department, ICT, Islamabad.

iv. The Administrator shall take over proper charge of the books, documents, furniture and fixture belonging or kept in office of the Society under receipt and complete inventory of the same shall be prepared and submitted to this Department.

v. The Administrator shall not be entitled for any remuneration of his services.

vi. The Administrator shall submit monthly report to the Cooperative Societies Department, ICT, Islamabad regarding affairs of the Society.

vii. The Administrator shall prepare a report regarding management of affairs of the Society by the instantly preceding Managing Committee including accounts, allotment of plots, sale or purchase of land and development work undertaken during its tenure.

viii. The Administrator shall make necessary arrangements in coordination with Election Commission and the Cooperative Societies Department to hold elections of the Managing Committee of the Society within stipulated period."

(Emphasis Provided)

13. The terms of the above appointment order is very clear in its intent. The petitioner has been expressly barred, *inter alia*, not to make any allotment of plot, whether fresh or pending. In view of the said express bar stipulated in the very appointment order of the petitioner, he has exceeded his said authority by not only allotting fresh plots, but also converting amenity plots reserved for the graveyard for commercial purposes benefiting the two beneficiaries namely Rana M. Javed and Mian Sohail Iqbal Qureshi. There was no plausible explanation brought on record by the petitioner to justify this action. In addition thereto, it is noted that the prosecution produced sufficient evidence to prove the illegal

exercise of authority by the petitioner during his fifteen months stint as Administrator of the Society; the transfer of eleven plots, the merger of two residential plots with part of land reserved for the graveyard and converting the same for commercial purposes for a twelve story building thereon; and finally, the adverse financial implications of Rs. 686 million to the Society. The sole defence witness produced by the petitioner was his son-in-law, namely Mudassar, whose testimony was mainly aimed to discredit the mode and manner of the search and recovery of material seized by the NAB personnel at the time of the petitioner's arrest. The testimony in no way justifies the illegal allotments and conversions carried out by the petitioner in favour of the two above named beneficiaries. Interestingly, the said beneficiaries, *vide* their joint application dated 17.4.2014 applied for *voluntary return* to NAB offering the reversal of all allotments and conversion of plots illegally carried out by the

petitioner. The said joint request was accepted by NAB *vide* order dated 28.7.2018.

14. As far as the last contention that the petitioner had not drawn any personal gain or caused any financial loss to the Society is concerned, suffice it to state that the offence of corruption or corrupt practices as provided in clause (vi) of Subsection (a) of Section 9 of the Ordinance includes even an attempt to misuse authority so as to gain any benefit to any other person and it need not necessarily result in any personal gain to the accused. The said provision reads:

"9. Corruption and Corrupt Practices:--"(a)(vi)

[If he] misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempt to render to do so, [or willfully fails to exercise his authority to prevent grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority]."

(emphasis provided)

15. Accordingly, for the reasons stated above, it is clear that the Courts below were correct in adjudging that the prosecution was able to prove beyond doubt the charges No. 2 to 8 for

illegal allotments and conversions carried out by the petitioner. In view thereof, the conviction of the petitioner, as awarded by the Accountability Court and maintained by the High Court, does not warrant any interference of this Court. However, as far as the sentence is concerned, in view of the facts and circumstances of the present case, this Court is inclined to revisit the quantum thereof for the following reasons: firstly, the fact that the prosecution failed to prove any financial gain derived by the petitioner from the impugned charged acts; secondly, that all illegal acts have been reversed, redeeming all financial loss to the Society; and finally, that other societies highlighted the letter of the Standing Committee has not been proceeded against by NAB.

16. To sum up, this Court maintains the conviction of the petitioner; the sentence of five years R.I. reduced to four years R.I.; and the fine, disability and disqualifications which were

awarded by the Accountability Court and confirmed by the Appellate Court.

17. In view of what has been discussed above, we convert this petition into appeal and partially allow the same in the above terms.

Judge

Judge

Judge

ISLAMABAD.
6th December, 2018.
Mudassar/☆

"Not approved for reporting"