

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

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

**CRIMINAL MISC. APPLICATION NO. 1659**  
**OF 2019 & CRIMINAL PETITION NOS. 509 &**  
**510 OF 2020**

(Against the order dated 07.08.2019 passed by High Court of Sindh, At Karachi in Criminal Accountability Appeal No.56/2018 and No.57/2018)

Utility Store Corporation of Pakistan (in CrI.MA .No.1659/19)  
through its Managing Director Islamabad

(in CrI.P.No.509-510/20)

Chairman NAB through PG NAB Islamabad

... Petitioner(s)

**Versus**

The State and another ... (in CrI.MA .No.1659/19)  
Masood Alam Niazi (respondent No.03) (in CrI.P.No.509/2020)  
Zia Ulla Khan Warsi (respondent No.04) (in CrI.P.No.510/2020)

Respondent(s)

For the Petitioner/Appellant : Mr. Aftab Alam Yasir, ASC  
(In CrI.MA No.1659/2019)

For the State : Mr. Nasir Mehmood Mughal, Special  
Prosecutor NAB (In CrI.P.No.509-510/20)

For the Respondent(s) Mr. Muhammad Munir Paracha, ASC  
on behalf of the respondent No.03  
(In CrI.MA.No.1659/19)

Mr. Muhammad Akram Gondal ASC on  
behalf of the respondent No.04  
(In CrI.MA.No.1659/19)

Mr. Muhammad Munir Paracha ASC on  
behalf of the respondent No.01  
(In CrI.P.No.509/20)

Mr. Muhammad Akram Gondal, ASC  
on behalf of the respondent No.01  
(In CrI.P.No. 510/20)

Date of Hearing : 24.11.2020

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-**

**Criminal M.A. No. 1659 of 2019**

This is an application filed by Utility Stores Corporation of Pakistan seeking permission to file Criminal Petition against the impugned judgment of the High Court dated 07.08.2019. At the very outset, we have asked learned counsel for the applicant as to how this application is maintainable in view of the specific bar contained in Section 32(a) of the National Accountability Ordinance, 1999, to which he could not give any plausible reason. Section 32(a) clearly mandates as under:

“any person convicted or the Prosecutor General Accountability, if so directed by the Chairman NAB, aggrieved by the final judgment and order of the Court under this Ordinance may, within ten days of the final judgment and order of the Court prefer an appeal to the High Court of the Province where the Court is situated”.

Provided that no appeal shall lie against any interlocutory order of the Court.”

2. The said Section also came under consideration by this Court in a case reported as Syed Masroor Shah etc Vs. The State (PLD 2005 SC 173) and in para 3, it has been held as follows:-

*“The words “any person convicted or the Prosecutor General Accountability if so directed by NAB” as employed in clause (a) of section 32 of the NAB Ordinance, 1999 are to be interpreted in the ordinary dictionary meaning that “any person” means “a person convicted for any offence under the NAB Ordinance, 1999 or the Prosecutor General NAB”. By no stretch of imagination in view of the language as used in section 32 of the NAB Ordinance, 1999, right of appeal can be conferred to anyone else except as mentioned in the section itself.”*

2. For what has been discussed above, this application is dismissed being not maintainable.

**Criminal Petition Nos. 509 & 510 of 2020**

3. The respondents Masood Alam Niazi and Ziaullah Khan Warsi, employees of Utility Stores Corporation, were tried by the Accountability Court No. III, Karachi on the charges of corruption and corrupt practices qua the embezzlement to the tune of Rs.19,236,702/- by such causing loss to the exchequer of the Government. The learned Trial Court vide its judgment dated 11.10.2018 found the respondents guilty of Section 9 of National Accountability Ordinance, 1999, as a consequence they were convicted under Section 10 of the NAB Ordinance, 1999. The respondent Masood Alam Niazi was sentenced to suffer RI for 5 years whereas respondent Ziaullah Khan Warsi was sentenced to suffer RI for 7 years and to pay a fine of Rs.62,92,151/- or in default whereof to further suffer RI for one year. Both the respondents were also disqualified for holding any public office for a period of 10 years. They were also given the benefit of Section 382-B Cr.P.C. The Appellate Court while adjudicating the matter before it, found that the evidence available on record is not sufficient to maintain conviction recorded by the learned Trial Court and while extending benefit of doubt, acquitted the respondents, hence these petitions seeking leave to appeal.

4. Briefly stated the facts of the case are that on a complaint received against the respondents, an investigation was conducted by NAB. It was found that respondent Masood Alam Niazi has misused his authority by illegally making payment of Rs. 19,236,702/- into the account of respondent Ziaullah Khan Warsi, Accounts Clerk, who was deputed as incharge for lifting of sugar from Pipri Godown of Trading Corporation of Pakistan on account of labour charges, which had already been paid by Trading Corporation to the handling agent. Charge was framed against the respondents vide order dated 25.11.2016 by the Accountability Court, which was denied by them, hence, claimed trial. The prosecution

produced as many as 8 witnesses. The respondents on 26.02.2018 while recording their statements under Section 342 Cr.P.C denied the allegations leveled against them on the ground that none of the prosecution witnesses had made any statement against them, which could substantiate the allegations. However, respondent Ziaullah Khan Warsi added that the only statement, which is incriminating against him is the statement of the Investigating Officer.

5. Learned Special Prosecutor NAB *inter alia* contended that the learned High Court has passed the impugned judgment in a stereo style fashion without adverting to the real facts and circumstances; that it is a glaring example of misreading and non-reading of the evidence; that the learned High Court has given artificial reasonings, which is squarely hit by material irregularity and illegality and as such the impugned judgment of acquittal is not sustainable in the interest of safe administration of criminal justice; that there are statements of 8 witnesses coupled with documentary evidence, which clearly reflect that the finding given by the learned Trial Court was fully justified, which has been discarded by the learned High Court on flimsy grounds. Lastly contends that the impugned judgment is passed while ignoring established principles of appreciation of evidence, hence, interference by this Court would be well within the dictates of justice.

6. On the other hand, learned counsel for the respondents supported the impugned judgment. It has been contended by the learned counsel that neither oral or documentary evidence incriminating in nature was brought on the record to substantiate the allegations against the respondents; that there is no direct evidence available on the record connecting the respondents with the commission of crime; that the disputed amount was paid to the transporters through cheques; that respondent Masood Alam Niazi is neither a signatory of any cheque nor

has any connection with the issuance of cheques; that most of the cheques were signed by Kamal Mustafa and Muhammad Saeed but they were not involved in the case.

7. We have heard learned Special Prosecutor, NAB, as also learned counsel for the respondents and have gone through the record.

8. The learned High Court while acquitting the respondents has mainly observed that none of the prosecution witnesses have implicated the respondents with the allegation of misappropriation or embezzlement of amount; that the payments were made through cheques to the handling agents towards labour charges for loading and unloading and this position has been admitted in evidence by the prosecution witnesses; that the Investigating Officer had recorded statements of handling agents/transporters during investigation but none of them were examined during trial except Asad Ilyas, PW-4, who was doing job in a private company which was subsidiary of M/s International Equipment Corporation, Karachi to handle sugar from Port including transportation to Trading Corporation of Pakistan's nominee from Pipri Godown through delivery order. This witness has admitted in cross-examination that they did not make any demand of labour charges from Trading Corporation of Pakistan. It was also observed that no money trail has been sorted out and no evidence of whatsoever nature has been brought on record to show that the respondents were the beneficiaries and that nothing was brought on record to show that Trading Corporation had also made payment to the handling agents. The fact that no payment was made by Trading Corporation to the handling agents was also admitted by the Special Prosecutor NAB in the High Court. The High Court also mentioned about the letter written by the Trading Corporation of Pakistan to Utility Stores Corporation regarding arrangement of labour for loading of sugar bags into trucks and its transportation by the Utility Stores Corporation.

The question of payment of labour charges to handling agents does not constitute an offence by means of corruption and corrupt practices but mere a procedural irregularity. The judgments of this Court reported as The State Vs. Anwar Saif Ullah Khan (PLD 2016 SC 276), Mansoorul Haq Vs. Government of Pakistan (PLD 2008 SC 166) and Khan Asfandiyar Wali Vs. Federation of Pakistan (PLD 2001 SC 607) were also quoted to hold that the prosecution is never absolved from proving the charge beyond reasonable doubt and the burden shifts to the accused only when the prosecution succeeds in establishing the presumption of guilt.

9. This Court in the case of Ghulam Sikandar Vs. Mamaraz Khan (PLD 1985 SC 11) while hearing appeal against acquittal has held as follows:

*“.....that the acquittal carries with it the two well-accepted presumptions : One initial, that, till found guilty, the accused is innocent ; and two that again after the trial a court below confirmed the assumption of innocence. The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below : (a) disregarded material evidence ; (b) misread such evidence ; (c) received such evidence illegally.*

*.....  
The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion ; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualised in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.”*

10. The Indian Supreme Court in a case reported as Sadhu Saran Singh Vs. State of U.P (AIR 2016 SC 1160) while discussing the issue of appeal against acquittal held as follows:-

*“18. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption*

*of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, in the case of **Sambasivan and Ors. v. State of Kerala** (1998) 5 SCC 412, has held:*

*The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal are well settled. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal.”*

11. After perusing the impugned judgment of the High Court and the record of this case, we are of the considered view that the reasoning given by the High Court while acquitting the respondents is neither arbitrary nor perverse nor fanciful and the same does not call for any interference by this Court. These petitions having no merit are accordingly dismissed and leave is refused.

12. The above are the detailed reasons of our short order dated 24.11.2020 vide which all these cases were dismissed.

JUDGE

JUDGE

JUDGE

Islamabad  
24<sup>th</sup> of November, 2020  
Approved For Reporting  
Khurram