

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.213/2016

The State

versus

Muhammad Ammar Abbasi

State by: Barrister Rizwan Ahmad, S.P. NAB.

Respondent by: Nemo.

Date of Decision: 09.07.2020.

MOHSIN AKHTAR KAYANI, J: Through this criminal appeal, the State (appellant) has assailed order of the learned Accountability Court No.II, Islamabad, dated 05.12.2016, whereby respondent has been acquitted of the charge in case Reference No.01/2014.

2. Brief facts referred in the instant criminal appeal are that on the complaints filed by public at large the NAB has filed a Reference against Mufti Muhammad Ehsan-ul-Haq and 35 others, including the present respondent (Muhammad Ammar Abbasi), having allegations that the accused persons are involved in illegal business of Mudaraba & Musharika and have received heavy investments from the general public. After the arrest of respondent, he filed application under Section 265-K Cr.P.C. praying for his acquittal in the reference, which was accepted by the learned Accountability Court, vide order dated 05.12.2016, with the observations that the respondent owes nothing to any of the claimants / affectees, except one namely Wajid Ali, who entered into a compromise with the respondent, regarding which the said affectee had also sworn an affidavit. Hence, the instant criminal appeal against acquittal of respondent.

3. Learned Special Prosecutor NAB contends that the learned trial Court passed the order before framing of charge, without proper appreciation of record and before recording of evidence, which renders the impugned order nullity in

the eyes of law; that impugned order is based on surmises and conjectures and is a result of misreading and non-reading of oral as well as documentary evidence available on record; that the learned trial Court has erred in acquitting the respondent in presence of overwhelming evidence available on record against him, therefore, the impugned order may be set-aside and respondent may be awarded sentence in accordance with law.

4. Arguments heard, record perused.

5. Perusal of record reveals that the instant appeal is arising out of order dated 05.12.2016, passed by learned Accountability Court No.II, Islamabad, whereby Muhammad Ammar Abbasi/respondent was acquitted in Reference No.2/2014 in terms of Section 265-K Cr.P.C. only on the ground that the prosecution witness namely Wajid Ali has admitted that there was no inducement, cheating or fraud on the part of respondent / accused and the amount invested by the said witness / affectee has already been returned, as such, the entire background of the case clearly spells out that the invested amount, which is the main subject of the Mudaraba and Musharika agreement with the respondent / accused, has already been settled and in this regard there is no probability of conviction surfaced on record. Although, the learned Special Prosecutor NAB at this stage contends that the accused was specifically nominated with the role of receiving amount. However, he was confronted regarding status of other co-accused persons, whereby he contended that only those accused persons, who have confessed their guilt before the Trial Court, were convicted in this reference, whereas the principal accused was acquitted in the said reference by the appellate Court and in this backdrop the possibility of conviction is far-fetched.

6. On the other hand, the initial order of 02.02.2017 reflects that notice was issued to the respondent, but the instant appeal was placed before the learned Single Judge of this Court, which is not legally justiciable under the NAO, 1999

as instant matter falls within the ambit of Division Bench under the law and the office has wrongly placed the instant appeal before the learned Single Bench.

7. In this eventuality, this Court is fully equipped to rehear the matter in a Division Bench, which has been done accordingly. Learned Special Prosecutor NAB has failed to justify his grounds of appeal under the law, who has been confronted to prima facie justify his stance on legal grounds to connect the respondent with the offence of corruption and corrupt practices referred in Section 9 of the NAO, 1999, but to no avail and it has been observed that no case is made out on behalf of the appellant/State.

8. In view of above, the instant criminal appeal is hereby **DISMISSED** for being meritless and the impugned order of acquittal is **MAINTAINED**.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.