

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Crl. Appeal No. 74/2014.

Saleem Daud

Versus

Ibad Ali Zahid, etc.

Appellant by: Mr. Asim Shafi, Advocate.

Respondents by: Mr. Sadaqat Ali Jahangir, State Counsel.
Respondents No.3, 4 & 5, Muhammad Amin,
Ahsan Ali and Waqar Ahmed Fayyaz are in
person.

Date of Decision: 13.01.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Crl. Appeal, the appellant has assailed the judgment 28.05.2014, passed by learned Judge Special Court (Central), Islamabad, whereby, respondents No.1 to 6 nominated as accused in case FIR No.396, dated 09.08.2011, U/S 409/109 PPC read with Section 5(2)47 PCA, P.S. Sabzi Mandi, Islamabad were acquitted.

2. Brief facts referred in the Ex.PC complaint got lodged by Engineer Saleem Daud/PW-3 complainant are that he was working as Registrar National University of Science & Technology (NUST), which is dealing with entry test every year for engineering, medical, I.T, etc. and in this regard an entry test was conducted on 16/17 July, 2011 in the NUST all around Pakistan in 13 different cities and 31 centres. A questionnaire booklet was prepared and all the staff dealing with the affairs of those questionnaire booklets, were administered oath in order to secure the same. All the questionnaire booklets were sealed in different bundles and sent to different test centres through the staff of University,

whereby 22,000 students had participated in the test, however, on 18.07.2011 University administration came to know that engineering questionnaire booklet for test on 17.07.2011 was already available with different students and majority of the students had paid a huge amount for the purchase of said booklet. An inquiry committee was constituted in this regard comprising of Dr. Muhammad Nasarullah Khan, Dr. Safdar Ali Shah, Engineer Zuhar Khan and Engineer Saleem Daud. During the course of inquiry it revealed that Altaf Hussain, DPO and Muhammad Riaz, Naib Qasid, who were dealing with the printing affairs of university misused their authority and leaked questionnaire booklet information to Bakhat Nawaz and Ahmed Saeed, employees of NUST who received huge amount from different individuals namely Waqar Fayyaz, Raja Faisal, Umer Farooq, Rana Ibad, Ahsan Nawaz, Amin Saqib and Ahsan Ali, who confessed their guilt before the Inquiry Committee, however, an amount of Rs.5,00,000/- was recovered from Altaf Hussain, Rs.2,30,000/- from Muhammad Saeed, Rs.80,000/- from Amin Saqib and Rs.18,000/- from Muhammad Riaz and as such they misused their official position and committed the offence of criminal breach of trust.

3. The police after completion of their investigation submitted challan against Ibad Ali, Muhammad Riaz, Muhammad Amin Saqib, Waqar Ahmed Fayyaz, Ahsan Ali, Umer Farooq, Altaf Hussain in different intervals of time. The trial has been conducted and learned Judge Special Court (Central), Islamabad acquitted all the respondents by giving them benefit of doubt, hence, this appeal.

4. Learned counsel for the appellant contends that all the accused were guilty of offence of criminal breach of trust and they in connivance with each other misused their official position and received huge amount from different individuals/students and sold out the questionnaire booklet information for

entry test conducted by NUST; that huge amount was recovered from all the accused which is sufficient proof to connect the respondents with the alleged crime; that trial Court has not appreciated the evidence in its true perspective and ignored the inquiry despite the fact that all the witnesses before whom respondents confessed their guilt have put appearance before the trial Court and reiterated the stance which is sufficient for the conviction of the respondents.

5. Conversely, learned State Counsel and respondents in person namely Muhammad Amin Saqib, Ahsan Ali and Waqar Ahmed Fayyaz state that they have been dragged in the instant criminal litigation without any substance and as such there is no evidence available on record to connect the respondents with the alleged crime.

6. Arguments heard, record perused.

7. From the perusal of record, it reveals that respondents No.1 to 6 are accused in case FIR No.396, dated 09.08.2011, U/S 409/109 PPC read with Section 5(2)47 PCA, P.S. Sabzi Mandi, Islamabad registered on the complaint of Engineer Saleem Daud, Registrar, NUST/PW-3, who appeared before the Court and contended that he filed a complaint Ex.PC dated 04.08.2011, which was converted into FIR Ex.PC/1 with the allegations that NUST is dealing with the entry test for different discipline for engineering, medical and I.T., etc. in the year 2011, for which a questionnaire booklet was prepared and transmitted to 31 centres in 13 different cities of Pakistan for entry test to be conducted on 17/18 July, 2011, however, he received information that in the entry test of engineering university conducted on 18 July the questionnaire was sold out to different individuals prior to the examination and huge amount was received.

8. The Engineer Saleem Daud, Registrar, NUST contended that an inquiry was conducted in which Dr. Nasarullah, Dr. Safdar Ali Shah, Engineer Zuhar and Engineer Saleem Daud were members who have concluded the inquiry

wherein evidence was collected against Muhammad Riaz Naib Qasid and Altaf Hussain, DPO, who leaked paper to accused Bakhat Nawaz and Muhammad Saeed; that all the accused confessed before the Inquiry Committee and further disclosed that in connivance with Muhammad Amin Saqib, Rana Ibad, Waqar Fayyaz, Raja Faisal, Umer Farooq, Ahsan Ali and Ahsan Nawaz booklet paper was sold against huge amount, whereas accused Altaf Hussain gave Rs.5,00,000/-, Muhammad Saeed handed over Rs.2,30,000/-, Amin Saqib paid Rs.80,000/- and Muhammad Riaz paid Rs.18,000/- to the inquiry committee as proceed of the crime total amounting to Rs.8,28,000/-, which was handed over to the I.O.

9. During the course of cross-examination, Registrar NUST acknowledged that leakage of paper was known to him and FIR was lodged in P.S. Waris Khan (Rawalpindi) prior to his complaint. He also acknowledged that he has not recorded the statement of any student or parents regarding leakage of paper and no specific role has been mentioned qua the accused Rana Ibad of project management office in the inquiry report and has also acknowledged that there was no independent witness against accused namely Waqar Ahmed and Ahsan Ali.

10. The prosecution has also produced Ayub Khan, Security Guard as PW-2 who only gave his testimony to the extent of Rs.8,28,000/- being witness of recovery memo Ex.PB. Brig. (Rtd) Dr. Muhammad Nasarullah Khan appeared as PW-1 and stated that he was head of committee to inquire the matter regarding leakage of paper through YouTube and complaint was referred in P.S. Waris Khan, Rawalpindi, police party raided the place whereupon video was recovered wherein one person namely Raja Faisal, student of NUST was recognized, who acknowledged before the Committee that he helped the candidates in preparation of entry test and further nominated Ahsan Nawab and Umer Farooq

to get the paper against payment. PW-1 further stated that he called Ahsan Nawab before the committee, who nominated one Waqar Fayyaz, student of NUST, who was inquired about the involvement. PW-1 further nominated Bakhat Nawaz in this case and submitted inquiry report Ex.PA comprising of 03 pages and its annexures comprising of 75 pages.

11. During the course of cross-examination, PW-1 acknowledged that the amount paid by Altaf Hussain (Rs.5,00,000/-) was brought by one relative of accused Altaf Hussain, same is the case with accused Saeed, who paid Rs.2,30,000/-, which was brought by his relative. He also admitted that FIR No.758/2011, P.S. Waris Khan, Rawalpindi was got registered by media and name of Raja Faisal was mentioned in the said FIR. He also admitted that in his inquiry 25/27 persons were involved in the crime, however, four major persons were involved and only 5/6 persons were referred in the FIR. No independent person came forward to narrate that present accused have received money in this case, nor any independent witness came forward regarding leakage of questionnaire booklet, neither any booklet was recovered from the accused persons.

12. While considering the above scenario the entire prosecution case rests upon the testimony of PW-1 & PW-3 but surprisingly no recovery has been made from any of the accused persons regarding leaked questionnaire booklet and the amount of Rs.8,28,000/- received from different accused persons referred in inquiry dated 09.10.2011 were paid by individuals through their relatives before the inquiry committee and at present said amount is retained at Police Station. As such there is no direct evidence qua the leakage of any paper, nor any evidence was brought by the prosecution on record to justify that respondents were custodian of that record, neither is the case of prosecution that respondents

accused were entrusted with the questionnaire booklet or data for the conduct of entry test.

13. Both prosecution star witnesses PW-1 & PW-3 have no clue as to how, when and where the questionnaire booklet was leaked rather the evidence is deficient in terms of *Qanun-e-Shahadat* Order, 1984. The prosecution has miserably failed to justify the requirement of Section 409 PPC which provides the element of entrustment to the employee, servant or clerk in such capacity with the property or with any dominion over the property which was converted into his own use or dishonestly uses such property and as such the entire element of entrustment is missing. No document of handing over of questionnaire booklet was placed on record rather the entire case is built upon the report of inquiry committee/Ex.PA which is an inadmissible document and the same could not be relied upon, which is an internal inquiry and could only be made basis for departmental action but the same could not be used for prosecution purposes.

14. I have gone through the judgment of learned trial Court whereby all the respondents have been acquitted from the charges while rightly appreciating the facts that there is not an iota of evidence against the respondents, nor any direct evidence is available, neither entrustment was made, therefore, trial Court has rightly acquitted the respondents as the charge has proved as groundless and benefit of doubt emerges on record, which could be extended to the respondents as a matter of right. The prosecution has miserably failed to discharge its onus, hence, instant criminal appeal is misconceived and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid