

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Justice Jamal Khan Mandokhail
Justice Syed Hasan Azhar Rizvi
Justice Naeem Akhtar Afghan

Criminal Petitions No.194 and 29-K of 2024
(Against the judgment dated 26.02.2024, passed by the High Court of Sindh at Karachi in Criminal Appeals No.638, 620 and 631 of 2022)

Abdul Hameed. (CrI.P.No.194/2024)
Khawaja Saeed Ahmed. (CrI.P.No.29-K/2024) ...Petitioner(s)

Versus

The State and another.
(in both cases) ...Respondent(s)

For the Petitioner(s) : Mr. Zulfiqar Khalid Maluka, ASC
(CrI.P.No.194/2024)

For the Petitioner(s) : Mr. Muhammad Nadeem Khan, ASC
(CrI.P.No.29-K/2024)

For the State : Mr. Saleem Akhtar Buriro, Additional
Prosecutor General, Sindh

Date of Hearing : 20.05.2024

J U D G M E N T

Naeem Akhtar Afghan, J. The petitioners Abdul Hameed [junior clerk in the Court of Additional District & Sessions Judge IV East Karachi, ('**AD&SJ-IV Karachi**') and Khawaja Saeed Ahmed s/o Khawaja Ghulam Muhammad (private person) and Muhammad Asif Nawaz s/o Muhammad Aslam (surety for accused Adnan Afzal) were awarded conviction and sentence vide judgment dated 28th October, 2022 by learned Special Judge, Anti-Corruption (Provincial), Karachi ('**the Trial Court**') as follows:

1.	Section 409 r/w section 34 PPC	Accused Abdul Hameed, Khwaja Saeed and Asif Nawaz are sentenced to suffer R.I. for four years and to pay fine of Rs.50,000/- each. In case of default in payment of fine amount, they shall further serve SI for four months more.
2.	Section 5(2) Prevention of Corruption Act, 1947.	Accused Abdul Hameed, Khwaja Saeed and Asif Nawaz are sentenced to suffer R.I. for one year and to pay fine of Rs.30,000/- each. In case of default in payment of fine amount, they shall further serve SI for one month more.

2. Both the petitioners and convict surety Muhammad Asif Nawaz challenged their conviction and sentence by filing three separate appeals before High Court of Sindh at Karachi (**'the Appellate Court'**).

While accepting appeal of convict Muhammad Asif Nawaz and acquitting him of the charge vide common judgment dated 26.02.2024, the conviction and sentence awarded to both the petitioners was maintained by the Appellate Court against which both the petitioners have filed the instant criminal petitions for leave to appeal.

3. After hearing learned counsel for the petitioners and learned Additional Prosecutor General, Sindh we have perused the available record.

According to the prosecution version, accused Adnan Afzal was granted post arrest bail in FIR No.672 of 2015 PS Ferozabad, Karachi by learned AD&SJ-IV Karachi by accepting Bail Application No. 2820 of 2015 subject to furnishing surety in the sum of Rs.100,000/-; surety Muhammad Asif Nawaz (acquitted by the Appellate Court) furnished bail bond for accused Adnan Afzal on 13.11.2015 which was accompanied with two Defence Saving Certificates (**'DSCs'**) bearing Nos:JB-383878 & JB-387879 amounting to Rs.50,000/- each; subsequently the petitioner Khawaja Saeed Ahmed along with surety Muhammad Asif Nawaz availed both DSCs from petitioner Abdul Hameed on the pretext of getting photocopies of the same but did not return; the two DSCs were encashed by surety Muhammad Asif Nawaz on 17.11.2015; the matter was brought to the notice of learned AD&SJ-IV Karachi by the petitioner Abdul Hameed by submitting report in writing in pursuance whereof petitioner Abdul Hameed was directed vide order dated 18.01.2016 by learned AD&SJ-IV Karachi to appear before SHO PS City Court and record his statement under section 154 Cr.P.C.; on the basis of the statement of petitioner Abdul Hameed, FIR No.5 of 2016 was registered with PS City Court on 18.01.2016 against petitioner Khawaja Saeed Ahmed under section 406

PPC; on completion of investigation, the investigating officer recommended for prosecution of the petitioner Abdul Hameed as per law; on the recommendation of the investigating officer, learned Judicial Magistrate VI Karachi South referred the case to the Anti-Corruption Establishment ('ACE') for further necessary action; the matter was taken up by the Anti-Corruption Committee No.II South Karachi; vide minutes dated 20.04.2017, the Anti-Corruption Committee No.II South Karachi approved for registration of FIR against the petitioner Abdul Hameed and others in pursuance whereof FIR No.45 of 2019 was registered with ACE Karachi on 15.04.2019 u/s 409/420/34 PPC r/w section 5(2) Act-II of 1947 against both the petitioners and surety Muhammad Asif Nawaz.

4. The beneficiary of encashing the two DSCs i.e. surety Muhammad Asif Nawaz has been acquitted of the charge by the Appellate Court and his acquittal has not been challenged by the State.

5. Record transpires that neither the bail bond of surety Muhammad Asif Nawaz was forfeited by learned AD&SJ-IV Karachi nor fresh surety bond was availed by learned AD&SJ-IV Karachi from accused Adnan Afzal.

6. As per record, after getting released on bail on the basis of surety bond submitted by Muhammad Asif Nawaz and despite encashing the two DSCs by Muhammad Asif Nawaz on 17.11.2015, the accused Adnan Afzal did not jump bail and after conclusion of trial proceedings of FIR No.672 of 2015 PS Ferozabad, Karachi, he was acquitted of the charge by learned AD&SJ-IV Karachi.

7. The evidence available on record reveals that Adnan Afzal had facilitated Muhammad Asif Nawaz for getting the two DSCs encashed but surprisingly accused Adnan Afzal was not arrayed as accused/put on trial in FIR No.45 of 2019 ACE Karachi.

8. Contents of the report submitted by the petitioner Abdul Hameed to learned AD&SJ-IV Karachi and contents of the order dated 18.01.2016 of AD&SJ-IV Karachi reveal that the two DSCs were availed by the petitioner Khawaja Saeed with surety Muhammad Asif Nawaz from the petitioner Abdul Hameed on the pretext of getting photocopies of the same.

Record does not reveal of any mens rea of the petitioner Abdul Hameed nor it reveals of any illegal consideration having been received by the petitioner Abdul Hameed from the petitioner Khawaja Saeed Ahmed or from acquitted accused Muhammad Asif Nawaz.

9. There is nothing on record to show that the petitioner Abdul Hameed as well as petitioner Khawaja Saeed Ahmed had dishonestly misappropriated the two DSCs or had converted the same to their own use. Hence no case for criminal breach of trust punishable u/s 409/34 PPC r/w section 5(2) Act-II of 1947 is made out against the petitioners.

10. In view of all the above infirmities in the case of prosecution, the conviction and sentence of both the petitioners u/s 409/34 PPC r/w 5 (2) Act-II of 1947 cannot be sustained.

11. Both the petitions were converted into appeals and same have been allowed vide short order dated 20.05.2024 which reads as follows;

For the reasons to be recorded separately, these petitions are converted into appeals and are allowed. The judgments dated 25.02.2024 and 28.10.2022, passed by the learned High Court and the trial Court respectively, are set aside. The appellants are acquitted of the charge and they be set at liberty, if not required to be detained in any other case.

The above are the reasons of our short order dated 20.05.2024.

Judge

Judge

Judge