

*Judgment Sheet*  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
*(Judicial Department)*

**Ehtesab Criminal Appeal No.42-P of 2018**

**State through Prosecutor General Accountability**  
**Versus**  
**Adeel Butt and another**

**JUDGMENT**

Date of hearing: 07.11.2019

Mr. Muhammad Riaz Mohmand, Special Prosecutor for the appellant/NAB.

Mr. Shahid Naseem Khan Chamkani, Advocate for respondents/accused.

**AHMAD ALI, J.-** The National Accountability Bureau, Islamabad, through its Prosecutor General has preferred the present appeal against the Judgment dated 14.09.2018, passed by learned Judge Accountability Court No. IV, Peshawar, in the case Reference No.02/2012.

2. Facts of the case, essential for the decision of present appeal as divulged in the NAB Reference No.02/2012, are that the respondents along with absconding co-accused Anjum Javed Butt, being real

brothers inter-se, established three property dealing office in Peshawar and deceived many persons by taking money from them on the pretext of high return on investment in the property business and purchasing plots in Hayatabad Peshawar and finally deprived them from their actual amount. The role attributed to each of the accused by the NAB is summarized as under:

- i. That the absconding accused Anjum Javed Butt established a property business in the name & Style of Mashoor-e-Alam Property Dealer who deceitfully deprived the complainant Professor Iqbal Ahmad Awan from a total amount of Rs.16,00,000/- on the ploy to invest the amount in the auction of plot at Phase-3, Hayatabad Peshawar, in the year 1997; and in return absconding accused handed over him three cheques of different amounts but the same were dishonoured. The absconding accused Anjum Javed Butt also deceitfully received amounts of Rs.5,60,000/- , Rs.2,00,000/- and Rs.4,40,000/- from Dr. Sahib Dad Khan making a total of Rs.12,00,000/- however, an amount of

Rs.1,60,000/- was returned to Dr. Sabid Dad Khan and an amount of Rs.10,40,000/- is still outstanding against him (Anjum Javed Butt) whereas, the cheques of the said amount have been dishonoured. Similarly, Mrs. Shahnaz Javed and Zahida Gulfam, Tahir Rauf were also defrauded by the absconding accused who were deprived of a total amount of Rs.73,40,000/-.

- ii. Adeel Butt, the respondent No.1, had also established an unregistered business of property dealing in the name & style of Zahoor-e-Alam Property dealer and the said respondent in connivance with his brother Anjum Javed Butt (absconding co-accused) succeeded in misappropriating an amount of RS.16,60,000/- from complainant Professor Iqbal Ahmad Awan. Likewise, one Irfan Orakzai was also deceitfully deprived of his amount Rs.500,000/- by respondent No.1 on the ruse of investment.

iii. The allegations against respondent No.2 are that, he was running a real estate business in the name & style of Aisha Business Centre and Mr. Gulfam Khan (late) purchased two plots in Phase-VI Hayatabad through the respondent No.2. However, documents were fake and therefore, Gulfam Khan contacted respondent No.2 for the return of his amount. In return, the respondent No.2 executed a promissory note dated 01.05.1993 for an amount of Rs.3,63,000/- with an affidavit dated 15.05.1993 in favour of Gulfam Khan. On 06.01.1994, he executed an agreement dated 06.01.1994 with the widow of Gulfam Khan namely Mst. Zahida Gulfam for the payment of amount till 02.02.1994.

3. That all three accused swindled different people by depriving them from a total amount of Rs.98,63,000/-; thus, affectees approached NAB Khyber Pakhtunkhwa and lodged complaint. Initially an inquiry was initiated which was later converted into investigation and upon completion of investigation the Reference No.02/2012 was sent for the trial of accused wherein all the three

accused were not arrested. Only present respondents No.1 & 2 faced the trial while their co-accused Anjum Javed Butt evaded to appear before the court, resultantly he was declared as proclaimed offender.

4. Trial of the NAB Reference No.02/2012 was commenced before learned Judge Accountability Court No. IV, Peshawar, whereby the prosecution produced 17 witnesses to support the charge against accused. Having recorded the prosecution evidence and that of the statement of accused u/s 342 Cr.P.C, finally, after hearing arguments, the learned Judge Accountability Court No. IV, Peshawar, acquitted both the respondents by extending them benefit of doubt vide Judgment dated 14.09.2018 and their properties were also unfrozen. Hence, present appeal has been filed against the acquittal order of respondents No.1 & 2.

5. Learned Special Prosecutor General argued that the respondents (acquitted accused) while joining hand with their absconding co-accused planned a setup of real estate business at three different places of Peshawar as a ploy to fetch the amount from general public on the pretext of high return on investment in the real estate business. They

use to manipulate the people to invest amount in the auction of plots in the Hayatabad Peshawar and after receiving the amount they embezzled the same. He maintained that respondents have played a pivotal role in the offence of cheating public at large and actively facilitated their absconding co-accused. The evidence so produced by the prosecution is sufficient to establish the charge against them but the learned court below has acquitted respondents without recording any cogent reasons. The leniency shown by the learned Accountability Court in favour of respondents is unfounded and without any plausible explanation.

6. Learned counsel, appearing on behalf of respondents, controverted the arguments so advanced by the Special Prosecutor General and argued that there is nothing on the record which may connect the respondents with the commission of crime. The material so collected by the investigating officer is against the absconding accused. The respondent Adeel Butt was a law student during the relevant days and he was having no concern with the business dealings of his brother, now absconding. The respondents have been implicated in the present case in order to pressurize them only for the reason that their

brother has gone into hiding. He maintained that the learned court below has properly appreciated the facts, evidence, record and reached at proper conclusion of the trial by acquitting both the respondents. He prayed for the dismissal of present appeal.

7. After arguing the case at blue streak by both the learned counsel, the record gone through.

8. Perusal of the record reveals that the allegation against respondent No.1 (Adeel Butt) are that, he established an unregistered business of property dealing in the name & style of Zahoor-e-Alam Property dealer and the said respondent in connivance with his brother Anjum Javed Butt (absconding co-accused) succeeded in misappropriating an amount of Rs.16,60,000/- from complainant Professor Iqbal Ahmad Awan. Likewise, one Irfan Orakzai was also deceitfully deprived of his amount Rs.500,000/- by respondent No.1 on the ruse of investment.

9. The prosecution could not produce the said Irfan Orakzai to depose against the petitioner and as such allegations to this extent are scanty of the proof. Whereas, Prof. Iqbal Ahmad Awan appeared in the witness box as

PW-16 and stated in his examination in chief that accused Adeel Butt received a total amount of Rs.16,60,000/- from him for investment. However, in his cross-examination, he admitted that he received a total sum of Rs.38,00,000/- from accused Adeel Butt on different occasions. In this way the said PW has not only received his principal amount but also received profit amount much more than the actual invested amount. Therefore, the accused Adeel Butt though took the amount for investment from PW-16 but paid him back the double of said amount with much more profit, and as such, there exists no charge against the respondent No.1.

**10.** Now adverting to the charges levelled against respondent No.2 / Muhammad Azeem Butt are that, he was running a real estate business in the name & style of Aisha Business Centre and Mr. Gulfam Khan (late) purchased two plots in Phase-VI Hayatabad through the respondent No.2. However, documents were fake and therefore, Gulfam Khan contacted respondent No.2 for the return of his amount. In return, the respondent No.2 executed a promissory note dated 01.05.1993 for an amount of Rs.3,63,000/- with an affidavit dated 15.05.1993 in favour of Gulfam Khan. On 06.01.1994, he



executed an agreement dated 06.01.1994 with the widow of Gulfam Khan namely Mst. Zahida Gulfam for the payment of amount till 02.02.1994.

11. There is no denial of the fact that the amount was allegedly given to the respondent No.2/Muhammad Azeem Butt by the deceased Gulfam Khan. There is no iota of evidence to show that what was the purpose, terms & conditions of the transaction between Gulfam Khan and respondent No.2 and whether this amount was actually for the purpose of plots or else. Also, there is nothing to suggest that the purported fake documents of plots were delivered by the accused Muhammad Azeem to deceased Gulfam Khan. So far as the statement of widow of deceased Mst. Zahida Gulfam recorded as PW-14 is concerned, she was not personally present on the occasion of any sort of deal between Gulfam Khan and the accused Muhammad Azeem Butt and as such, her evidence to this extent is only a piece of hearsay evidence, which cannot be taken into account. Nevertheless, her statement regarding execution of promissory note dated 01.05.1993 for an amount of Rs.3,63,000/- with an affidavit dated 15.05.1993 coupled with the agreement dated 06.01.1994 at the most constitutes civil liability. Had there been any

criminal intention in the mind of respondent No.2 then he would have not bound himself under the supra pro-note, affidavit and agreement admitting payment of Rs.3,63,000/-. It would not be out of place to mention that the deceased Gulfam Khan, during his lifetime, never opted to avail any legal remedy against the respondent No.2 for the recovery of purported amount of Rs.3,63,000/-. Not a single document is there to connect the respondent No.2 with the commission of offence.

**12.** Thus, elements of cheating, fraud and embezzlement of the amount with criminal intent are squarely missing against respondents No.1 & 2. The evidence so produced by prosecution is scanty and fall short of the required standard to establish charges against respondents No.1 & 2. It can be safely held that there is absolutely no direct or circumstantial evidence to bring the accused/respondent to the book; and it seems that the prosecution tried to make bricks without straw.

**13.** The depositions of prosecution witnesses are totally inconsistent with the safe administration of justice. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice. This

rule is based on the maxim “it is better if ten guilty persons are acquitted than one innocent person is convicted”. Under the Islamic Law too, the Holy Prophet (PBUH) said that the “mistake of Qazi in releasing a criminal is better than his mistake in punishing an innocent”. Reliance could be placed on **2009 SCMR 230, 2011 SCMR 664, 2011 SCMR 646, 1984 PLD SC 433, 2012 MLD 1358, 2007 SCMR 1825, 2008 P.Cr.L.J 376, 1994 PLD Peshawar 114, 2012 PLD Peshawar 01, 1999 P.Cr.L.J 1087, 1997 SCMR 449, 2011 SCMR 820 & 2006 P.Cr.L.J SC 1002.**

14. So, by cutting the cackle, the learned trial court has properly evaluated the prosecution evidence and rightly extended the benefit of doubt to both the respondents. Charges levelled against respondents only constitute civil liabilities, and as such, both of them have rightly been acquitted from the charges. Resultantly this appeals fails, hence, dismissed.

Announced  
07.11.2019

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