


PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.  
FORM "A"  
FORM OF ORDER SHEET.

Date of Order or Proceeding	Order or other proceedings with Signature of judge
<p>30.04.2020</p> 	<p><u>Cr.A.No. 375-A/2019</u></p> <p>Present:</p> <p style="text-align: right;">Tipu Muhammad Sultan, Advocate for the appellants.</p> <p style="text-align: center;">****</p> <p><b><u>AHMAD ALI, J.</u></b> Complainant/Hospital Director, Ayub Teaching Hospital, MTI, Abbottabad has filed instant Criminal Appeal against the judgment and order dated 22.08.2019 passed by learned Special Judge Anti-corruption (Provincial), Khyber Pakhtunkhwa, Camp Court, Abbottabad, whereby the learned trial court acquitted the respondents No.1 to 3 from the charges leveled against them in case FIR No. 08 dated 31.12.2011 under Section 409 PPC read with Section 5(2) PC Act, of Police Station ACE, Abbottabad.</p> <p>2. The allegations against the respondents in the FIR were that they embezzled/misappropriated an amount of Rs. 05.07.860/ from the public funds, while posted</p>

at the Ayub Medical Teaching Institute, Abbottabad.

3. The complainant wrote letter to the Director ACE, Abbottabad on 01.08.2011 to probe into the matter of embezzlement. In the initial inquiry no one could be held responsible for the embezzlement and upon advice of legal advisor, a second inquiry was conducted whereby responsibility was fixed upon accused Naseer Khan and Zameer Hussain and a criminal case was registered against them. The ACE Abbottabad conducted an open inquiry and found that an amount of Rs. 5, 07,860/- was embezzled and the responsibility was fixed upon accountant, superintendent and other officials of Accounts Branch, however, on the basis of affidavit submitted by accused/respondents Naseer Khan and Zameer Hussain, present case was registered against the respondents and upon completion of investigation, challan was submitted against the accused for trial. Learned trial court summoned the accused, provided copied to them and framed charge to which they pleaded not guilty and claimed trial. In order to

prove its case, prosecution produced and examined as many as 07 witnesses and closed its evidence. Thereafter, statement of accused/respondents No. 1 to 3 were recorded under Section 342 Cr.P.C. Accused/respondents neither opted to produce defense evidence nor wished to be examined on oath. After hearing arguments of learned counsel for the parties, the learned trial court acquitted the accused/respondents No. 1 to 3, vide the impugned judgment and order, hence the instant appeal.

4. Arguments in motion heard and record gone through.

5. Perusal of record reveals that it is the case of prosecution that embezzlement amounting to Rs. 6,02,000/- was committed in receipt/collection of OPD, Admissions fees. The respondents were admittedly not posted in Accounts branch, rather respondent Mujahid was employed as Computer Programmer on contract basis while respondents Naseer Khan and Zameer Hussain were appointed as IT Assistants on daily wages. The reappraisal of

entire prosecution evidence suggests that the prosecution has miserably failed to prove that the respondents were responsible for collection and deposit of said fees, rather their duties are computer related and not related to accounts. Moreover, none of them is permanent employee of the department and from the available record, it seems that they have been made scapegoat in order to save the skin of actual culprits.

6. Apart from the above, the name of respondent Mujahid was not mentioned in the application submitted by complainant (PW-5) to the Director ACE, Abbottabad. PW-7 failed to collect any evidence against Mujahid regarding his involvement in the matter and no record regarding his appointment and posting etc. was brought on record to suggest that he was having any nexus with the collections and deposit of fees. The PW-4 who is an audit officer, fixed the responsibility against the respondents, has based his findings on surmises as there is nothing in his inquiry to suggest that the respondents were involved in collection or deposit of fees in any manner, while no official/officer from the



accounts branch was made as an accused in the case. During course of investigation PW-1 collection recorded as Ex P-1 to Ex P-20, however, the said record also does not connect the respondents with the commission of offence in any manner, rather the investigation even failed to prove the appointment of the respondents in the department in any capacity.

7. The sifting of evidence available on record suggest that the prosecution has miserably failed to prove its case against the accused/respondents beyond any reasonable shadow of doubt. Moreover, it is settled proposition of law that after acquittal, the accused earns double innocence. Reliance is placed on "Zaheer Sadiq Vs. Muhammad Ijaz & others (2017 SCMR 2007), Mst. Anwar Begum Vs. Akhtar Hussain alias Kaka & others (2017 SCMR 1710), Muhammad Zaman Vs. The State (2014 SCMR 749), Muhammad Tasweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53), Shahid Abbas Vs. Shahbaz & others (2009 SCMR 237), Muhammad Shafi Vs. Muhammad Raza & others (2008 SCMR

329)”.

8. For what has been discussed above, it is held that learned trial court has committed no legal or jurisdictional error by acquitting the respondents. No illegality or irregularity could be pointed out in the impugned judgment and order passed by the learned trial court warranting interference by this court.

9. Resultantly, instant appeal fails which is, thus dismissed *in limine*.

Announced;  
30.04.2020



**JUDGE**