

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa, CJ  
Mr. Justice Mazhar Alam Khan Miankhel  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Appeal No. 266 of 2019**

(Against the judgment dated 24.08.2017 passed by the High Court of Balochistan, Quetta in Ehtesab Appeal No. 05 and 08 of 2009)

***Hashmat Ullah***

*...Appellant*

***versus***

***The State, etc.***

*...Respondents*

For the appellant:

Mr. Zahoor-ul-Haq Chishti, ASC

For the State:

Mr. Imran-ul-Haq, Special  
Prosecutor, National Accountability  
Bureau

Date of hearing:

07.08.2019

**JUDGMENT**

**Asif Saeed Khan Khosa, CJ.:**

**Criminal Miscellaneous Application No. 273 of 2018**

This miscellaneous application is allowed and the documents appended therewith are permitted to be brought on the record of the main appeal. Disposed of.

**Criminal Appeal No. 266 of 2019**

2. Hashmat Ullah appellant was in the business of selling medicines and many people had invested in the appellant's business with an understanding that regular profits would be paid to them by the appellant. The appellant statedly continued giving

profits to such investors for some time but later on he stopped paying profits and allegedly refused to return the invested amounts to the relevant persons. It was also alleged that many cheques issued by him in favour of such investors had been dishonoured. With these allegations Reference No. 4 of 2007 was filed against the appellant before Accountability Court-II, Balochistan, Quetta and after a regular trial the appellant was convicted by the trial court for an offence under section 9(a)(x) of the National Accountability Ordinance, 1999 and was sentenced to rigorous imprisonment for four years and to pay fine besides confiscation of a house standing in his name and disqualification for a period of ten years. The appellant challenged his conviction and sentence before the High Court through an appeal which was dismissed and his conviction and sentence recorded by the trial court were upheld and maintained. Hence, the present appeal by leave of this Court granted on 24.06.2019.

3. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

4. Agreements having been entered into between the appellant and some other persons, investments made by such persons in the appellant's business and payment of profits by the appellant to them for some time are facts which are not denied by the parties to this case. The appellant had throughout maintained that his liability was that of civil nature, particularly rendition of accounts, and not a criminal liability because he never had any criminal intent to commit the alleged offence. A perusal of section 9(a)(x) of the National Accountability Ordinance, 1999 shows that the relevant offence is attracted only if the accused person is proved to have committed the offence of criminal breach of trust as defined in section 405, PPC and if there was an entrustment of property involved in the matter. It has already been clarified by this Court in the cases of *Shahid Imran v The State and others* (2011 SCMR 1614) and *Rafiq Haji Usman v Chairman, NAB and another* (2015 SCMR 1575) that the offence under section 405, PPC punishable

under section 406, PPC is attracted only in a case of entrustment of property and not in a case of investment or payment of money. In the case in hand it is the prosecution's own case that a section of the public had invested money in the appellant's business and this undeniable fact had taken the present case out of the purview of section 9(a)(x) of the National Accountability Ordinance, 1999.

5. It has been argued by the learned Special Prosecutor appearing for the State/National Accountability Bureau that originally the charge framed against the appellant was in respect of an offence under section 9(a)(iii) of the National Accountability Ordinance, 1999 and if this Court finds that 9(a)(x) of the said Ordinance was not attracted to the case in hand then the original charge may be considered for the purpose of upholding and maintaining the appellant's conviction and sentence. We have attended to this aspect of the case and have found that the basic ingredients of the offence under section 9(a)(iii) of the National Accountability Ordinance, 1999 are dishonesty and fraud through which misappropriation takes place or some property is converted to the offender's use or for the use of any other person and such property had initially been entrusted to the offender or was under his control. In the case in hand the entire evidence produced by the prosecution was in respect of agreements having been entered into by some persons with the appellant for the purposes of investment in the appellant's business and it is written large on the record of this case that for some time after making of such investments the appellant had been paying profits to the investors. No evidence worth its name had been brought on the record to establish that at the time when the appellant stopped payment of profits to the investors the appellant's business was still running in profit or the appellant was doing good business. No independent evidence had been produced by the prosecution to prove that stoppage of payment of profits by the appellant to the investors was a result of dishonesty or fraud on his part. The prosecution had also failed to prove that the appellant had converted the investors' money for his own use or for the use of any other person. Even the provisions of section 9(a)(iii) of the National

Accountability Ordinance, 1999 speak of entrustment of property to the accused person before it is misappropriated by him and in the case in hand, as already observed above, there was no element of entrustment available in the agreements between the appellant and the investors. The record clearly shows that the investors had invested money in the appellant's business and they had not entrusted any money to him for such money to be paid back to them in its original form. Apart from that in such cases initial dishonest intention on the part of the accused person is an important factor but the evidence brought on the record clearly negated the same because admittedly the appellant had been paying profits to the investors for some time. It appears that, as admitted by some of the prosecution witnesses themselves, the appellant's business had hit the rocks and such adversity had brought misfortune not only to the appellant but also to the investors in his business. In the peculiar circumstances of this case we have failed to find any dishonest intention on the part of the appellant so as to convert his act into a crime. The case in hand has appeared to us to be a classical case of a civil dispute based upon alleged breach of agreements for which remedies lied somewhere other than in a criminal court. This appeal is, therefore, allowed the conviction and sentence of the appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge. We have been informed that the appellant has already served out his entire sentence of imprisonment and has since been released from the jail and, thus, no order needs to be passed regarding his release from custody.

Chief Justice

Judge

Judge

Islamabad

07.08.2019

Approved for reporting.

Arif