

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Faisal Arab
Mr. Justice Yahya Afridi

Criminal Appeals No. 160, 161, 162, 163, 164 of 2010, 235 of 2014, 38 of 2018, Criminal Petition No. 27-Q of 2011 and Criminal Miscellaneous Application No. 554 of 2018 in Criminal Appeals No. 161 to 164 of 2010

(Against the judgment dated 02.03.2010, 01.06.2011, 11.09.2017 & 232.01.2013 passed by the High Court of Balochistan, Quetta in Criminal Ehtesab Appeals No. 01 of 2013, 04 of 2006, 04 of 2007, 08 of 2012 and 07 of 2009, Civil Petitions No. 536 of 2006, 201 of 2008 and Contempt Application No. 11 of 2010 in Criminal Ehtesab Appeal No. 07 of 2009)

The State (in Cr. As. 160, 161, 162, 163 and 164 of 2010)
Oazi Siraj Ahmed (in Cr. A. 235 of 2014)
Chairman National Accountability Bureau through
Prosecutor-General Accountability, Islamabad (in Cr. A. 38 of 2018)
Muhammad Kaleem Bhatti (in Cr. P. 27-Q of 2011)
...Appellants/Petitioner
versus

Muhammad Kaleem Bhatti (in Cr. A. 160 of 2010)
Nisar Ahmed, etc. (in Cr. A. 161 of 2010)
Mst. Ambreen, etc. (in Cr. A. 162 of 2010)
Abdul Mateen (in Cr. A. 163 of 2010)
Sher Ali (in Cr. A. 164 of 2010)
The State, etc. (in Cr. A. 235 of 2014)
Farooq Chaudrhy, etc. (in Cr. A. 38 of 2018)
Rooman Zaheer, etc. (in Cr. P. 27-Q of 2010)
...Respondents

For the appellants:

Mr. Haider Ali, Special Prosecutor-General, Accountability
(in Cr. A. 160, 161, 162, 163 and 164 of 2010)
Mr. Imran-ul-Haq, Special Prosecutor-General, Accountability
(in Cr. A. 38 of 2018)
Mr. Hadi Shakeel Ahmed, Sr. ASC
(in Cr. A. 235 of 2014)

For the petitioner/applicant: In person.
(in Cr. P. 27-Q of 2011 and
Cr.M.A.554 of 2018)

For the respondents: Mr. Haider Ali, Special Prosecutor-
General, Accountability
(in Cr. P. 27-Q of 2011 and
Cr.M.A.554 of 2018)
Ashfaq Ahmed son of Nisar Ahmed
in person (in Cr. A. 161 of 2010)
Mr. Jehanzeb Khan Jadoon, ASC
(in Cr. A. 162 & 164 of 2010)
Nemo. (Cr. As. 163 of 2010 & 38 of
2010)

Date of hearing: 02.07.2019

JUDGMENT

Asif Saeed Khan Khosa, CJ.:

**Criminal Miscellaneous Application No. 554 of 2018 in
Criminal Appeals No. 161 to 164 of 2010**

Through this miscellaneous application the applicant wanted an opportunity to be heard in the subject appeals and we have heard him in person at some length. This miscellaneous application is, therefore, disposed of.

**Criminal Appeals No. 160, 161, 162, 163, 164 of 2010, 235 of
2014, 38 of 2018 and Criminal Petition No. 27-Q of 2011**

2. These appeals and petition pertain to different References filed by the National Accountability Bureau against different persons and in such cases the trial court had convicted and sentenced the relevant accused persons and had passed an order regarding a term of imprisonment to be served by the convicts and a fine was also imposed. It was also ordered by the trial court that "the assets/properties of accused are forfeited as set off against the amount of fine, however, in case of non-recovery/non-payment of the amount/fine accused shall undergo further term of two (2)

years R.I.” The said convictions and sentences of the convicts were subsequently upheld by the High Court and even by this Court with slight reduction in the sentence of imprisonment. This Court had clearly and expressly upheld the above quoted portion of the order passed by the trial court regarding payment of fine, forfeiture of assets and properties and the sentence of imprisonment in default of payment of fine. Subsequently an issue arose as to whether after the convicts had undergone the sentence of imprisonment in default of payment of fine the National Accountability Bureau could proceed with forfeiture of the relevant assets and properties as a set off for fine or not and it was maintained by the convicts that after serving out the sentence of imprisonment in default of payment of fine neither the amount of fine could be recovered nor the assets or properties could be forfeited. The High Court had held through the impugned judgments passed by it that the stand of the convicts was correct and after serving out the sentence of imprisonment in default of payment of fine the amount of fine could not be recovered nor could the assets and properties be forfeited. The High Court was also of the opinion that ordering otherwise would amount to double jeopardy. Hence, the present appeals and petition before this Court.

3. We have heard the learned counsel as well as the parties appearing in person and have perused the record of the case with their assistance.

4. It appears that the judgment rendered by this Court in the case of *Ahmad Ali Siddiqui v Sargodha Central Cooperative Bank Limited and another* (1989 SCMR 824) was not brought to the notice of the High Court at the time of passage of the impugned judgments. It had been held by this Court in that case in very clear and categorical terms that a sentence of imprisonment in default of payment of fine is not a substitute for payment of fine but as a matter of fact the said sentence of imprisonment is a punishment for non-payment of fine. It had also been made clear by this Court

in that case that even if such sentence of imprisonment in default of payment of fine is undergone by a convict the amount of fine is still to be recovered from him. In this view of the matter we have entertained no manner of doubt that the High Court had misdirected itself upon the law as declared by this Court in the above mentioned case of *Ahmad Ali Siddiqui*.

5. In some of the present cases an issue had also arisen as to whether by virtue of the provisions of section 70, PPC the amount of fine imposed upon a convict can be recovered after a period of six years after passage of the sentence or fine or not. We note that in section 33-E of the National Accountability Ordinance, 1999 it has categorically been provided that a fine imposed upon a convict is to be recovered by way of arrears of land revenue and the said provision is not controlled by or subject to the provisions of section 70, PPC. It appears that in the relevant present cases the High Court had again misdirected itself upon the law and had relied upon the provisions of section 70, PPC without appreciating that the provisions of the National Accountability Ordinance, 1999 were to prevail in the matter as that was the special law catering for the situation at hand.

6. In one of the present cases, i.e. Criminal Petition No. 27-Q of 2011 a petition seeking initiation of contempt proceedings against the relevant respondents had been dismissed by the High Court. If the High Court had felt satisfied that no occasion had arisen for proceeding against the respondents for committing contempt of court then there is hardly any occasion for us to interfere with such exercise of jurisdiction and discretion in the matter by the High Court.

7. For what has been discussed above Criminal Appeals No. 160, 161, 162, 163 and 164 of 2010 and Criminal Appeal No. 38 of 2018 are allowed, the impugned judgments passed by the High Court are set aside and it is clarified that by undergoing a sentence of imprisonment in default of payment of fine a convict is not

absolved of his liability to pay fine and the amount of fine can still be recovered from him despite undergoing the sentence of imprisonment in default of payment of fine because a sentence of imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine. Criminal Appeal No. 235 of 2014 is dismissed. It is also clarified that in the matter of recovery of fine in cases under the National Accountability Ordinance, 1999 the relevant provisions are those of section 33-E of the National Accountability Ordinance, 1999 and not those of section 70, PPC. Criminal Petition No. 27-Q of 2011 is dismissed. It is further clarified in the context of the present cases that if the convicts pay the requisite fine then their assets and properties shall not be forfeited as a set off for fine.

Criminal Miscellaneous Applications No. 23-Q of 2010, 327 of 2010, 632 of 2018, 25-Q of 2010, 27-Q of 2010, 29-Q of 2010 and 31-Q of 2010

8. As the main appeals and petition have been disposed of by this Court today, therefore, these miscellaneous applications have lost their relevance. Disposed of.

Chief Justice

Judge

Judge

Islamabad
02.07.2019

Approved for reporting.

Arif