

Judgment Sheet  
**IN THE LAHORE HIGH COURT, LAHORE.**  
JUDICIAL DEPARTMENT

**Criminal Appeal No: 175/2007**

(Ali Sher v. The State etc)

**JUDGMENT**

Date of hearing \_\_\_\_\_ 18.06.2014 \_\_\_\_\_

Appellant by: Mr.M. D. Chaudhary, Advocate.

Respondent by: Mr.Iftikhar ul Haq Chaudhary, Additional Prosecutor General.

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**Aalia Neelum, J.** Ali Sher son of Hadayat Ali-appellant was involved in case F.I.R. No.35/2001 dated 06.11.2001, offence under Section 409 P.P.C., read with Section 5(2) 47 of Prevention of Corruption Act, 1947, registered at Police Station, Anti-Corruption Establishment, Pakpattan Sharif and was tried by Mr.Jalal-ud-Din Akbar, Senior Special Judge, Anti-Corruption, Punjab Lahore (Camp at Pakpattan Sharif). The learned trial court seized with the matter in terms of judgment dated 16.01.2007 convicted the appellant under Section 409 P.P.C., and sentenced him to three (3) years. The appellant was also convicted under Section 5(2) 47 of Prevention of Corruption Act, 1947 and sentenced him to one (1) year and was also burdened with a fine of Rs.1,00,000/-and in default thereof, to undergo S.I. for four (4) months. Benefit of Section 382-B of Cr.P.C. was also extended in favour of the appellant. The appellant has assailed the judgment of the learned trial court through the instant appeal.

2. The Prosecution story as alleged in the F.I.R. (Exh.P.A/1) lodged on the complaint (Exh.P.A) of Gul Noor Khan, District Forest Officer, complainant (PW-2) is that the appellant misappropriated 35 trees in number worth Rs.50,550/-. After receiving of complaint

(Exh.P.A) lodged by complainant-Gul Noor Khan (PW-2), Muhammad Anwar Chishti, Deputy Superintendent of Police (PW-5) was appointed as Inquiry Officer on 13.8.2001. During inquiry proceeding, he recorded statements of PWs whereas the accused did not appear before him. Accordingly, the accused was found guilty of the offence punishable under Section 409 P.P.C. read with Section 5(2)47 of the Prevention of Corruption Act, 1947 and case was registered against the accused vide F.I.R. (Exh.P.A/1). After obtaining due sanction from the concerned authority, the Federal Investigation Agency on 04.3.2002, the accused was declared proclaimed offender by the competent court and challan under Section 512 of Cr.P.C., was submitted before the learned trial court. Thereafter investigation was entrusted to Azmat Kamran, Inspector (PW-3), who arrested Ali Sher-appellant on 29.7.2003. During the course of physical remand, nothing was recovered from the accused. After recording statements of the prosecution witnesses, the Investigating Officer prepared report under Section 173, Cr.P.C. and sent the same to the court of competent jurisdiction. The learned Senior Special Judge, Anti-Corruption, Punjab Lahore (Camp at Pakpattan Sharif) vide order dated 09.01.2004, formally charge sheeted the appellant. The accused pleaded not guilty and claimed trial. The prosecution in order to substantiate its case, produced as many as six (6) witnesses to support its case.

3. Ocular account in this case had come out from the statements of Mumtaz Hussain (PW-1), Gul Noor Khan-complainant (PW-2), Javed Iqbal (PW-4) and Muhammad Anwar Chishti, D.S.P. (PW-5) and Azmat Kamran-Inspector (PW-3) are the Investigating Officers. On 13.05.2005, the learned A.D.P gave up Liaqat Ali (Constable) being un-necessary. However, the learned A.D.P. vide separate statement recorded on 29.07.2005, closed the prosecution evidence.

4. Ali Sher-appellant was examined under Section 342, Cr.P.C., wherein neither he opted to appear under Section 340 (2) Cr.P.C., as a witness of his own to disprove the allegations levelled against him nor to produce defence evidence. In response to the question why this case is against him and why the PWs deposed against him, the appellant made the following deposition:-

*“False case has been got registered against me by the D.F.C. The complainant is not a man of sound character and blackmails the employees. The complainant had got registered two other cases against Abdul Hameed, Forest Guard and both cases were cancelled. Actually hot words were exchanged with Shafiq PW Additional Forest Guard, who is close to the complainant and on the instance of said Shafiq, the complainant has got registered this false case at the instance of complainant.”*

5. After hearing the arguments advanced by the learned counsel appearing on behalf of both sides, the learned trial court, while evaluating the evidence available on the record, found version of the prosecution correct beyond any shadow of doubt, resulting into conviction of the appellant in the above stated terms.

6. Learned counsel for the appellant has contended that the case against the appellant is highly doubtful; that the provisions of Section 409 P.P.C., do not attract in the case of the appellant; that the prosecution hopelessly failed to prove its case against the appellant beyond shadow of reasonable doubt; that any statement made by the appellant before the departmental authority, the same can not be used against the appellant as evidence. Learned counsel lastly submitted that this is a case in which evidence is not confidence inspiring, the prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt, therefore, he is entitled to be extended benefit of doubt and his ultimate acquittal from the charge.

7. As against above, the learned Additional Prosecutor General has vehemently opposed the contentions raised on behalf of the appellant. It has been contended by him that the appellant stands involved in F.I.R. with specific allegation; that the prosecution through leading cogent and confidence inspiring evidence on misappropriation, destruction of damage book, admission by accused and his absconsion prove its case against the appellant beyond reasonable doubt, therefore, the learned trial court was well within its jurisdiction to convict the appellant. It has lastly been argued that while convicting the appellant, the learned trial court has advanced cogent reasoning.

8. Arguments advanced from both sides have been heard. I have also gone through the record available on file with the able assistance of the learned counsel for the appellant as well as the learned Additional Prosecutor General.

9. Admittedly, the proceedings against the appellant commenced on the basis of complaint (Exh.P.B) submitted by Mumtaz Hussain (PW-1) to the District Forest Officer, Sahiwal alleging therein that some Government trees from Pakpattan Canal were found cut and Ali Sher, Shafiq Ahmed-Block Officer and Falak Sher-Gauge Reader were nominated as accused but no proceedings were initiated against Shafiq Ahmad-Block Officer and Falak Sher-Gauge Reader by Gul Noor Khan, District Forest Officer (PW-2). The District Forest Officer (PW-2) admitted during cross-examination that he had not initiated any proceedings against Shafiq Ahmed and Falak Sher. Whereas PW-2 on receiving initial reports prepared by Shafiq Ahmed and Rizwan Ahmed lodged complaint against the appellant regarding misappropriation of 35 trees in number (Government property) worth Rs.50,550/-belonging to the Forest Department whereas PW-2 admitted during cross-examination which reads as under:-

*“It is correct that I had submitted my report for proceeding against the accused prior to receipt of final checking report”.*

Even prosecution has not produced inquiry report during trial in the evidence. PW-2 while appearing in the witness box deposed that after his transfer the Inquiry Officer submitted his report, whereas, Shafiq Ahmed (PW-6) during cross-examination deposed as under:-

*“I can not produce the copy of inquiry report. Volunteered that the inquiry report is with Gul Noor-D.F.O”.*

10. It is surprising to note that complaint (Exh.P.B) was filed by Mumtaz Hussain (PW-1) against Shafiq Ahmed-Block Officer, Ali Sher-Forest Officer and Falak Sher but neither Shafiq Ahmad and Falak Sher were charged nor any inquiry was conducted against them. Even it is in the evidence that Shafiq Ahmad-Block Officer submitted initial report upon which complaint was lodged by the complainant (PW-2) whereas Mumtaz Hussain (PW-1) in his complaint (Exh.P.B) also levelled allegations against Shafiq Ahmad. Shafiq Ahmad (PW-6) Block Officer conducted spot inquiry with the District Forest Officer, namely, Gul Noor Khan (PW-2). During cross-examination Shafiq Ahmad (PW-6) deposed as under:-

*“It is correct that my name was included in Exh.P.B as accused. Gul Noor Khan-D.F.O. had inquired the matter. I was declared innocent.”*

Whereas the District Forest Officer (PW-2) admitted during cross-examination that he had not initiated any proceeding against Shafiq Ahmad and Falak Sher. PW-2 has failed to give any explanation for exonerating them. Shafiq Ahmad (PW-6) is not an independent witness whereas he is an interested witness as same allegations were levelled against him by PW-1. It is also noted that Muhammad Shafiq against whom allegations were levelled, he was directed to prepare

damage report against the appellant by the District Forest Officer (PW-2), which creates doubts regarding authenticity of allegations.

11. As far as allegation of mis-appropriation of 35 trees in number (Government property) by the appellant is concerned, no evidence was brought on record by the prosecution as to the mis-appropriation of said 35 trees worth Rs.50,550/- by the appellant or allowed some other offenders to misappropriate the said Government property. The ingredients of Section 405 P.P.C., regarding mis-appropriation within the definition of Section 5 (2) of the Prevention of Corruption Act, 1947 have at all not been proved. The case of the prosecution is that 35 trees in number (Government property) were mis-appropriated by the appellant, whereas PW-4 Javed Iqbal deposed before the learned trial court which reads as under:-

*“Muhammad Ashraf local Zamindar had pointed out that 20 trees were lying on the spot, I had checked these 20 trees at the spot. These trees were on superdari with three different persons.-----The accused had given 15 trees in the charge prior to the superdari of 20 trees.”*

12. Javed Iqbal (PW-4) during cross-examination deposed that loss of the Government was complete. In the instant case, no ingredients of Section 409 P.P.C. have been proved by the prosecution that 35 trees in number owned by the Government were mis-appropriated by the appellant and have caused loss of Rs.50,550/-to the Government exchequer. Even Investigating Officer-Muhammad Anwar Chishti, D.S.P.(PW-5) during cross-examination admitted that he did not inspect the site. He had not recorded any PWs except PWs, mentioned in the inquiry report. All this speaks about the unsatisfactory investigation.

13. As far as allegation of torning and spoiled away damage report No.41/7 along with its counterfoil is concerned, no charge was

framed in this regard against the appellant and as such without framing of charge, the recording of evidence would be nullity in the eyes of law to that extent. The requirement of law under Section 221 Cr.P.C. is that a charge should state precise formulation of specific accusation made against an accused. It is held in the case reported as "**Muhammad Attique Butt and another** v. **The State**" (2009 YLR 507) that:-

*"Purpose of the charge is to tell the accused as precisely and concisely as possible the nature of the offence for which he is charged and the charge-sheet must convey to him with sufficient clarity and certainty as to what material prosecution intends to produce against him at the trial"*

14. As far as allegation of admission of destroying of damage book by the appellant and his absconsion are concerned, yet such questions were not put to the accused while recording his statement under Section 342 Cr.P.C. thereby he was deprived from giving explanation to that extent which could not be used against him. It is held by the Hon'ble Supreme Court of Pakistan in the case of "**Munir Ahmed alias Munni** v. **The State**"(2001 SCMR 56) that:-

*"When an incriminating piece of evidence is not put to an accused, the same has not to be considered as evidence against him.....Absence of any challenge to such circumstances may in appropriate case amount to admission that no prejudice thereby has been caused to the accused."*

15. The evidence is highly doubtful and, therefore, it was the bounded duty of the prosecution to have brought on the record corroborated evidence to connect the appellant with the commission of alleged offence and as such the learned trial court has failed to properly appreciate the evidence available on the record. All the above narrated facts and circumstances lead this Court to only one

conclusion that prosecution case hinges upon surmises and conjectures and it had badly failed to lead evidence of that stature required for conviction of any person. The learned trial court was not justified in convicting the appellant while basing upon such uncorroborated evidence which even otherwise is full of flaws and contradictions and conviction passed by the learned trial court in the circumstances is against all cannons of law recognized for the dispensation of criminal justice.

16. **Consequently, while setting aside** the conviction and sentence recorded by the learned trial court in terms of judgment dated 16.01.2007, Criminal Appeal No.175 of 2007 filed by Ali Sher-appellant is **accepted**. He is ordered to be acquitted of the charge in case F.I.R. No.35/2001 dated 06.11.2001, offence under Section 409 P.P.C. read with Section 5 (2) 47 of the Prevention of Corruption Act, 1947, registered at Police Station, Anti-Corruption Establishment, Pakpattan Sharif. Ali Sher, appellant is already on bail. His bail bonds and the sureties are discharged accordingly.

**JUDGE**

Approved for reporting.

Hamid/\*