

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Jamal Khan Mandokhail
Justice Musarrat Hilali
Justice Malik Shahzad Ahmad Khan

Criminal Petition No. 498 of 2024

(Against the judgment dated 03.05.2024 of the Peshawar High Court, Peshawar passed in CrI. Appeal No. 888-P/2018)

Zulfiqar Ali

Petitioner

Versus

The State thr. DAG Islamabad

Respondent

For the Petitioner:

Mr. Malik Nasrum Minallah, ASC
Syed Rifaqat Hussain Shah, AOR

For the State:

Raja Muhammad Shafqat Abbasi,
DPG

For the Complainant:

Mr. Waqar Hussain, ASC

Date of Hearing:

30.09.2024

ORDER

Jamal Khan Mandokhail, J.- The petitioner was an employee of Utility Stores Corporation, Swat ('**Corporation**'). An allegation of embezzlement of an amount of rupees four lac forty-eight thousand and six-hundred four was levelled against him. He was tried by the Judge, Anti-Corruption (Central), Khyber Pakhtunkhwa, Peshawar ('**Trial Court**') and was convicted under section 409, PPC and was sentenced to suffer three years imprisonment with fine of Rs. 2,50,000/-. In addition, the petitioner was convicted under section 5(2) of the Prevention of Corruption Act, 1947 and was sentenced to suffer three years imprisonment with fine of Rs. 2,50,000/-. All the sentences were ordered to run concurrently with benefit of section 382-B, Cr.P.C. The petitioner feeling aggrieved filed an appeal before the High Court, which was dismissed on 03.05.2024 through the impugned judgment, hence this petition.

2. The learned counsel for the petitioner states that the petitioner has deposited the embezzled amount in the State exchequer and has placed on the record receipt thereof. The learned counsel states that the wife of the petitioner is a kidney patient and is undergoing dialysis, therefore, she needs help and support of the petitioner. He states that in such a peculiar circumstance of the case, the petitioner does not want to contest the impugned judgment and requests for reduction of the quantum of sentence to that already undergone with further request to reduce the amount of fine as well, so that he may be released for the purpose.

3. The learned Deputy Attorney General and the learned counsel for the complainant opposed the contention and state that the petitioner has caused loss to the Government exchequer, therefore, the courts below were correct in convicting and sentencing him. They state that in view of the fact that the petitioner has admitted his guilt, he does not deserve any leniency.

4. Arguments heard and have perused the record. The petitioner being an employee of the Corporation was on a carrier job. He was supposed to maintain highest standard of integrity, but he has failed to discharge his duty honestly and has committed an act of breach of trust. The petitioner did not plead guilty, hence, after trial, he was convicted and sentenced as mentioned above. The offer of no contest, means that the petitioner neither agrees nor disagrees with the charge and with his conviction. Upon deposition of the embezzled amount, he showed his intention simply to close the case, for the stated reason. By not pursuing the matter, the petitioner will certainly lose his job and would not be entitled for his post-retirement benefits, besides,

leaving a stigma on his career. His offer that he does not wish to contest the petition, is with a hope that he will succeed in getting reduction in the quantum of the sentences, awarded to him. Though, as a matter of right, the petitioner cannot claim reduction of sentence, however, he placed himself at the mercy of this Court. Depositing the embezzled amount and his plea of no-contest shows the intention of the petitioner to escape the agony of proceedings before this Court and to resolve the case in order to support his family, especially, his ailing wife. This Court while exercising its discretion, can do complete justice, keeping in view the facts and circumstances of each case. The act committed by the petitioner does not affect the public at large. The loss caused to the Government exchequer has been repaired by the petitioner after depositing the embezzled amount. He has been awarded three years sentence, out of which, he has served out a considerable period. Keeping in view the facts and circumstances of the case in hand, the petitioner has succeeded in making out a case for a lighter sentence. We are, therefore, inclined to take a lenient view.

Thus, in view of the above, the conviction awarded to the petitioner under sections 409, Pakistan Penal Code and 5(2) of the Prevention of Corruption Act, 1947 are upheld. However, sentences awarded to him in both the offences are reduced to that of already undergone, by extending the benefit of section 382-B, Cr.P.C to him. The amount of fine imposed upon the petitioner under section 409, PPC is reduced from Rs. 2,50,000/- to Rs. 40,000/-, in default whereof, the petitioner shall further undergo 15 days SI. The amount of fine imposed upon the petitioner under section 5(2) of the Prevention of Corruption Act, 1947 is also reduced from Rs. 2,50,000/- to Rs. 10,000/-, in default whereof, he shall further

undergo 10 days SI. With such modification in the quantum of sentence, the impugned judgment is upheld. Leave to appeal is refused and the petition is dismissed.

Judge

Judge

Judge

Islamabad
30th September 2024
Rizwan
Approved for Reporting