

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

**CRIMINAL REVISION NO.131 OF 2024**

**MATEEN SADIQ**

**VS**

**THE STATE**

**Petitioner by : Mr. Babar Mumtaz, Advocate for the Petitioner.**

**Respondents by : Raja Zamir ud Din Ahmed, Assistant Attorney General.  
Mr. Afzal Hussain Niazi, Deputy Director, FIA.  
Ms. Ambreen Rasheed, S.I/O, FIA.**

**Date of hearing : 19.02.2025**

**MUHAMMAD AZAM KHAN, J.**

1. Through the instant Criminal Revision Petition under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 (“Cr.P.C”), The Petitioner/Accused has assailed the Order dated 12.07.2024 (“**Impugned Order**”) passed by learned Special Judge Central, Islamabad whereby the Application under Section 265-K, Cr.P.C, filed by the Petitioner in case FIR No. 92 dated 29.12.2014 under Sections 109 and 409, Pakistan Penal Code, 1860 (“**PPC**”) and Section 5(2) of the Prevention of Corruption Act, 1947 (“**PCA**”) registered with Police Station FIA/ACC, Islamabad (“**Subject FIR**”), was dismissed.

2. The brief facts of the case in hand as per the Memo of Petition are that in or around June 2011, the Employees Old Age Benefits Institution (“**EOBI**”), through its Director General, Investment, advertised the bid for the project. The Petitioner/Accused was awarded the project following a competitive bidding process. Out of twenty-six companies, eighteen submitted prequalifying documents for evaluation, and six companies were declared prequalified based on the criteria set forth. Three companies obtained the tender documents, and technical and financial proposals were received from two companies. The process concluded with Builders Associates (Private) Limited, where the Petitioner/Accused serves as the Chief Executive Officer. Subsequent to the public tendering process, an Agreement dated 4.1.2012 (“**Agreement**”) was signed between EOBI (as the client/employer for the Project) and Builders Associates (Private) Limited (as the

contractor for the Project) regarding the civil engineering construction, together with the mechanical, electrical and plumbing works on the Project for a contract price of Rs.1,539,976,379/- (rupees one billion five hundred thirty-nine million nine hundred seventy-six thousand three hundred seventy-nine only). Subsequently, the Agreement was assigned by EOBI to Pakistan Real Estate Investment Management Company (Private) Limited (**“PRIMACO”**) as the client for the project. On 29.12.2014, the Subject FIR was lodged wherein it was alleged that the consultancy contract awarded to SAKA-PRIMACO JV (**“Consultant”**) was done without prior approval and subsequently the consultancy fee was enhanced without authority and approval. Interim report under Section 173, Cr.P.C was submitted in the court in the year 2015. Subsequently, challan was filed on 12.01.2016 wherein the Petitioner/Accused was declared proclaimed offender. A supplementary challan dated 23.12.2023 was filed in the court accusing the Petitioner/Accused as the main beneficiary of the enhanced project cost. After submission of challan against the Petitioner/Accused in the court, he filed an application under Section 265-K, Cr.P.C which was dismissed vide the Impugned Order. Being aggrieved of the Impugned Order, the Petitioner/Accused has filed the instant Criminal Revision Petition.

3. The learned counsel for the Petitioner/Accused argued that there is no incriminating material against the Petitioner/Accused on record; that the learned Court below deliberately failed to consider the admitted fact that the Petitioner/Accused was awarded the project following a public bidding process, with a contract price of Rs. 1,539 million; that the Impugned Order disregards the fact that the charges in the supplementary challan are vague accusations based on miscalculated assumptions and do not align with the facts and circumstances of the case; that the Impugned Order is erroneous, as it fails to recognize that after nine years of investigation, the prosecution has not uncovered any criminality related to the public bidding process; that there is no evidence or incriminating material on record to support the commission of the alleged offence; that the material collected during the investigation, which is intended to be presented at trial, is insufficient; that subsequent evidence will not strengthen the prosecution's case in any way; that the Impugned Order ignores the fact that Section 409, PPC is not applicable to the Petitioner/Accused, as he has neither misappropriated any property nor is he a public servant, banker, merchant, factor, broker, attorney, or agent, as described in

the said section; that the Petitioner/Accused has no connection with the Consultant or the consultancy agreement; and that there is no likelihood of conviction for the Petitioner/Accused, and continuing the trial would not only be an abuse of the legal process but also a violation of Article 4 of the Constitution. The learned counsel requested that the instant Petition be accepted, the Impugned Order be set aside, and the Petitioner/Accused be acquitted from the case.

4. The learned counsel on behalf of the Respondent No.2 argued that the Impugned Order is passed while keeping in view the facts and material available on record; that the learned Court below passed a well-reasoned order; that there is sufficient material available on record for the conviction of Petitioner/Accused in the instant case; and that instant Criminal Revision Petition may kindly be dismissed.

5. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

6. The main allegations against the Petitioner/Accused in this case are that he in collusion with the other co-accused, and with *malafide* intention for wrongful gain, as the contractor of the project, enhanced the construction cost/contract price from Rs. 600 million to Rs. 1,539 million, thereby causing a significant loss to the exchequer. The available record, *prima facie*, reasonably connects the Petitioner/Accused to the case as a beneficiary of the alleged actions.

7. For ready reference, Section 265-K, Cr.P.C is reproduced as under: -

*“265-K. Power of Court to acquit accused at any stage. Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the Case; if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence.”*

8. The prosecution has submitted challan under Section 173, Cr.P.C before the learned Trial Court, charge has been framed and as many as five prosecution witnesses’ statements have already been recorded. The trial is in progress and at present the learned Trial Court cannot arrive at a conclusion that the facts alleged by the prosecution do not constitute commission of any offence by the Petitioner/Accused. The culpability of the Petitioner/Accused or otherwise can only be determined after recording of evidence. The Petitioner/Accused remained absconder for a long time of 6/7 years which is evident from the record. The

learned counsel for the Petitioner/Accused has failed to establish that there is no likelihood of Petitioner/Accused's conviction based on the available evidence attached with the challan. The learned counsel for the Petitioner/Accused emphasized that the report of the Auditor General of Pakistan is in favor of the Petitioner/Accused. However, it is important to note that the learned Trial Court will evaluate the evidence produced by the prosecution, and after the conclusion of the trial, the court will be in a position to determine the Petitioner/Accused's innocence or guilt. Without recording the evidence, *prima facie*, this Court is not satisfied that there is no likelihood of conviction of the Petitioner/Accused based on the available prosecution evidence.

9. In view of the observations made hereinabove, the instant Criminal Revision Petition is **dismissed** as being devoid of merit. However, the learned Trial Court is directed to conclude the trial expeditiously, as it pertains to the year 2014.

**(Muhammad Azam Khan)**  
**JUDGE**

*Sajid/--*