JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,

JUDICIAL DEPARTMENT

Criminal Appeal No.196/2018
Rashid Minhas
versus
National Accountability Bureau & another

Appellant by: Mr. Muhammad Afzal Janjua, Advocate.

Respondents by: Mr. Nasir Mehmood Mughal, Special Prosecutor, NAB.

Writ Petition No.1065/2020
Rashid Minhas
versus
National Accountability Bureau & 2 others

Petitioner by: Mr. Muhammad Afzal Janjua, Advocate.

Respondents by: Mr. Nasir Mehmood Mughal, Special Prosecutor, NAB.

&

Criminal Appeal No.141/2018
The State
versus
Abdul Rehman & another

Appellant by: Mr. Nasir Mehmood Mughal, Special Prosecutor, NAB

Respondent No.1 by: Mr. Zahid Asif Ch. and Mr. Muhammad Bilal, Advocates.

Date of Hearing: 24.08.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through this single judgment, we intend to decide the captioned criminal appeals and writ petition arising out of judgment, dated 13.07.2018, passed by the learned Accountability Court-II, Islamabad in Reference No.13/2014 (State vs. Rashid Minhas etc.), whereby Rashid Minhas (appellant) has been convicted and sentenced in following manner:

> *"For what it has been discussed above, this Court is firm in its view that prosecution has successfully established beyond shadow of doubt that accused Rashid Minhas has committed offence U/S 9(a)(ix) of NAO, 1999 and I do hereby convict him U/S 10 of the NAO, 1999 and accordingly sentenced him to 14 years R.I with fine of Rs.14 Crores. The*

amount of fine shall be recoverable as arrears of land revenue. NAB is also directed to trace the properties of the accused Rashid Minhas made by him through corruption and corrupt practices of this scam and confiscate it in favor of state.

Convict Rashid Minhas forthwith will ceased to hold public office, if any, held by him and further he shall stand disqualified/debarred for a period of ten years, to be reckoned from the date he is released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as the member or representative of any public body or any statutory local authority or in service of Pakistan or of any province, he shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances or other financial accommodation by any bank or financial institution owned or controlled by the Government for a period of ten years from the date of conviction.

The convict shall be entitled to the benefit of Section 382-B Cr.P.C. for the period he has already undergone."

2. Brief and consolidated facts are that on receiving a number of complaints from general public against Rashid Minhas (***appellant***), the Director General, National Accountability Bureau, Rawalpindi, on 26.02.2015, authorized an inquiry to Farzana Parveen and PW-276 Shahzad/Asst Director to be conducted against the appellant. During the inquiry, it revealed that FIR No.279, dated 12.08.2013, under Sections 420, 406, 468, 471, 291, 109 PPC, P.S. RA Bazaar, Rawalpindi has also been registered by some of the complainants against the appellant and Abdul Rehman/acquitted accused (Respondent No.2), who was already arrested in that case. On moving application under Section 16-A of the NAO, 1999 by the NAB authorities the case was transferred from the Court of Area Magistrate, Rawalpindi to Accountability Court, Islamabad. The inquiry was converted into investigation on the allegation of corruption and corrupt practices and the investigation was assigned to PW-276 Shahzad, Assistant Director/Deputy Director. Total 276 complainants have turned up and produced different documents relating to investment of their amount/hard earned money with the appellant and Respondent No.1, which were taken by the Investigating Officer through different recovery memos. An advertisement about the scam was

also published in different dailies, whereby some other complainants from Karachi also approached the NAB authorities with their respective claims and documents. Precisely, allegation against the appellant is that he with malafide intention, dishonestly and fraudulently induced the public at large to invest their amount in the Mudaraba business from a period starting from 2011 to May, 2013, as the appellant impersonated himself as Director/Sub-Director of Elixir Group of Companies and Capable Asia (Pvt.) Ltd., whereas, evidence brought on record by the SECP establishes that appellant had no connection whatsoever with the said two companies, even said companies were not authorized from Mudaraba/Musharaka evidence, however on inducement of appellant many affectees had made investment in the name of Mudaraba/Musharaka agreements with the hope to earn profit under Islamic scheme of businesses. The approximate amount received by the appellant through cash and banking channel summed up to Rs.144.10964 Million. After recording of evidence, the learned trial Court, vide impugned judgment dated 13.07.2018, convicted the appellant as referred above and acquitted Respondent No.1 of the charge. Hence, the captioned criminal appeals and writ petition.

3. Learned counsel for appellant at the very outset contends that the appellant does not dispute the conviction awarded, rather prayed for reduction of his sentence on the ground that he had already served 09 years and 06 months in jail i.e. w.e.f. 28.11.2013 and as such, he had served major portion of his sentence.

4. Conversely, learned Special Prosecutor NAB contends that Abdul Rehman (Respondent No.2/co-accused) was acquitted of the charge by the learned trial Court while ignoring his connivance and sharing of the crime proceeds, who is otherwise liable for conviction; that overwhelming evidence brought on record in shape of 276 PWs, including the affectees together with the financial experts of

SECP and banks, left nothing in favour of the appellant and Respondent No.1 to take a lenient view, whereby public at large has been deprived of their hard earned money for the illegalities and fraud committed by the appellant and Respondent No.1.

5. Arguments heard, record perused.

6. Perusal of record reveals that the appellant as well as Respondent No.1 were tried by the learned Accountability Court in Reference No.13/2014 on the complaints of approximately 300 individuals, who have allegedly been deprived of their hard earned money to the tune of Rs.144.10964 Million invested in the name of Islamic financing i.e. Mudaraba/Musharaka business having been operated by the appellant. One of the prosecution witnesses, Saeed Ahmad, lodged FIR No.279, dated 12.08.2013, under Sections 420, 406, 168, 471, 291, 109 PPC, P.S. Raja Bazaar, Rawalpindi against the appellant, which led to the arrest of accused persons. During the course of inquiry by the NAB authorities, the NAB filed an application under Section 16-A of the NAO, 1999, whereby the case had been transferred from the Court of Area Magistrate, Rawalpindi to the Accountability Court, Islamabad to be tried on the allegations of corruption and corrupt practices.

7. In essence, private individuals/affectees i.e. PW-2, PW-7, PW-9 to PW-266, PW-271 & PW-272, strengthened their claims by producing different documents, agreements and receipts, which have further been supported by official witnesses i.e. PW-267 Nasir Ahmad Shah being Moharrar P.S. Raja Bazaar, Rawalpindi, PW-268 Amir Hussain being Investigating Officer of case FIR No.297/13, PW-269 Zubair Altaf being Financial Expert of NAB, Rawalpindi for analyzing the bank record, PW-270 Muhammad Arshad being recovery witness of motorcycle recovered from the house of respondent No.1, PW-273 Mazhar Iqbal as well as PW-274 Wajahat being the witnesses of seizure memo of the

relevant record, PW-275 Mustansar Hussain being associate of the Investigating Officer and PW-276 Shahzad being the Investigating Officer of the case in hand.

8. In order to straighten out the case, it is necessary to consider the status of agreement at first stage, therefore, only one document/agreement i.e. at Page-968 (Paper Book Part-3) is to be considered for being identical to rest of the agreements available on record. The document/agreement is reproduced as under:

01 April, 2013 ***AGREEMENT BASED ON MUSHARKA*** *A/C# 34-11*

The state that investor *Muhammad Shafiq*
S/o W/o D/o: *Muhammad Saddique* *Phone#* *0323-5274526*
Bearing NIC#: *37402-0975607-3* *Residence of:* *Kaka post office Bhora Hayat Teh.Kahota Dist Rawalpindi.*

Hand over a sum of PKR 45000 Only/- to director of ELIXIR Group of Companies Pvt. Ltd. for the period of 3 (three) years on investment based on Musharka also this agreement cannot be cancelled by any single party without informing and willingness of any other party.

Following condition will also be applied

1. *The first party (investor) is willingness to invest an amount of PKR 45000 Only/- equivalent to the amount in words Four Lac Fifty Thousand Only.*
2. *Profit will be divided in the ratio of 50% (fifty present).*
3. *The 1st party (investor) will start receiving profit after 1 (one month) of the agreement date.*
4. *From the date of this agreement (written on the stamp paper issued by Government of Pakistan) all the previous agreement will be considered as cancelled.*
5. *As investment has been made in PKR currency so in future all the matters between both the parties related to profit and loss will be settled in the same currency.*

Agreement Signed by 1st Party (Investor)		***Agreement Signed by 2nd Party (SUB DIRECTOR OF ELIXIR GROUP OF COMPANIES (PVT.) LTD.)***	
Investor Name:-	***Muhammad Shafiq***	***Rashid Minhas***	NIC# **37101-7231465-7**
Signature:-		*Signature:*	

NOK & Designed by 1st Party		***NOK & Designed by 2nd Party***	
Nosheen Akhtar	*NIC #* ***37402-0902672-2***	***Abid Hussain***	NIC# **37101-5758038-7**
Resident of:	***Kaka post office Bhora Hayat Teh.Kahota Dist Rawalpindi***	*Resident of:*	**Mohalla Bilal Colony Dhamiyal Road Rawalpindi Cantt Tehsil & Dist Rawalpindi.**

Witness		***Witness***	
Wasim Rauf	*NIC#* ***37405-4266651-9***	***Abdul Rehman***	NIC# **37405-0861107-7**
Signature:-		*Signature:-*	

9. The above referred document as well as receipts available on record confirm that the appellant while impersonating himself as Director of Elixir

Group of Companies received huge capital from majority of the individuals on the inducement of making investment in Mudaraba business in the name of Islamic financing. This aspect proves that the appellant is a key person in the entire scam and all the witnesses are consistent on a question of payment to the appellant.

10. Regardless of settled position, prosecution has to establish their own case as primary onus is upon the prosecution to discharge the burden to fulfill the requirement of law for the purpose of conviction and as such, the availability of overwhelming evidence is confidence inspiring and links the appellant with receiving of huge capital on his inducement from the public at large, however the technical experts i.e. PW-1 Saila Jamshed and PW-211 Muhammad Usman Mirza of SECP produced the record of M/s Capable Asia (Pvt.) Ltd., Analyzer Housing (Pvt.) Ltd. and Elixir Trading (Pvt.) Ltd. (Exh.PW211/1-5), wherein appellant has not been referred as Director of any of said companies, hence the initial allegation referred against the appellant has been substantiated by the private witnesses, but on the other hand the record negates the version of appellant, who impersonated himself to be the Director of said companies in order to receive investment from individuals through fraudulent means.

11. Similarly, PW-215 Muzaffar Abbas, PW-230 Muhammad Adnan Feroz, PW-265 Muzammil Subhani, PW-228 Yasir Rehman Siddique, PW-266 Imran Siddique and PW-254 Muhammad Javed Rafique, who are bankers by profession, have produced number of banking record confirming that the appellant has maintained different bank accounts having several debit and credit transactions. The documents reflect that appellant is a religious teacher at Jamia Farooqia, Rawalpindi.

12. Similarly, PW-52 Zahid Mehmood, Stamp Vender, produced different pages of the register pertaining to year 2012, whereupon Mudaraba agreement of the Elixir Group of Companies and Capable Asia (Pvt.). Ltd. was issued to appellant.

13. While recording statement of appellant under Section 342 Cr.P.C. on 21.02.2017, he has been confronted with all the documentary evidence as well as oral evidence in 268 questions, whereby he put forward his defence in the following manner:

i. *I did not instigate anyone for the purpose of investment in Elixir/Capable Asia, neither did I play any fraud nor misrepresented for the purpose of investment.*
ii. *I was requested to deposit the amount in the companies, which was duly done.*
iii. *It is correct that I executed the agreement, however this agreement and another like it were standard in nature and were provided by Abdul Rafay, Director of Elixir Company.*
iv. *I was merely an employee/commission agent for the aforementioned companies*.

14. The appellant has also recorded his own statement in terms of Section 340(2) Cr.P.C. in order to prove his case, which is reproduced as under:

"Statement u/s 340 (2) Cr.P.C of accused Rashid Minhas S/o Fida Hussain: On Oath,

It is stated that I completed my F.sc on 1988 and simultaneously started the course of Darse Nizami which was completed in the year 2005 from Dar ul Aloom Karachi. From 2005 till 2013, I was teaching the course of Darse Nizami at Dar ul Aloom Farooqia Rawalpindi. The course included Arabic grammar, Islamic jurisprudence, Arabic Literature and others. One of the teachers at our madrissa situated at Rawalpindi namely Qazi Abu Bakar Randawa and another namely Molana Shahid Aziz were associated with a company being run in the name of Friendship Telecom. I acquired knowledge about their association with afore mentioned company during casual discussion over a course of time. The information acquired by me from such discussions revealed that the company was dealing in PCO Sets, installment thereof and ancillary matters related therewith. At the said time, I was also informed due to my close proximity with teachers as we were teaching in the same institution that the company wants to expand its business in Malaysia as well and initiate other ventures. I was informed by Qazi Abubaqar that the owner of the company studied with him at the same madrissa and on his instigation Qazi Abubaqar had invested his own amount alongwith some others in the company. One namely Shahid Aziz sold his own house and

deposited the proceeds in the company where after I alongwith other teachers were also asked to invest. Since one of the senior teachers had sold his own house it instilled trust in us to also invest in the company. I upon the inducement of one Shahid Aziz met the owner of the company Friendship Telecom namely Osama Zia and he informed me about the entire business of the company in detail."

15. The appellant was cross examined at length, which led to following facts:

i. All the investments made in the separate offices were finally deposited on monthly basis in main office at 6th Road.

ii. I also issued stamp papers to those commission agents with my signatures and those of witnesses who normally were the people who brought the investment.

iii. Since there were huge sum of investment, hence many commission agents were hired by the company through its Director.

iv. 500 people used to receive profit through myself including many people who made investment directly with Elixir Group of Companies through me. Initially, investments were made and agreements used to signed by Abdul Rafay himself directly, however, with passage of time he authorized myself as Director to collect the amount from people making investment in Capable Asia.

v. Business name from Capable Asia converted into Elixir Group of Companies (Pvt.). Ltd. wherein 12 Directors were nominated. I asked Abdul Rafay who told me that everyone could not be indicated as Director same will result in complication and he stated that you will remain connected with me and I was designated as sub Director.

vi. All the stamp papers used for execution of modarba agreements with investors were not purchased by me directly rather it was the duty of Abdul Rafay who arranged stamp papers for the purpose of execution of agreement with investors.

vii. In June 2013, Elixir Group of Companies announced profit at rate of Rs.600 per each lac over I which I approached Abdul Rafay who told me that he will contact the company and same shall be enhanced in due course of time.

viii. Abdul Rafay told me that number of investors had withdrawn their investments due to which number of projects of company are yet to be completed while Mufti Ehsan has also been arrested by NAB due to which investors lost their trust and profit shall not be disbursed for sometimes.

ix. I was arrested and after lapse of one year the case was transferred to NAB. I joined investigation with I.O. of the NAB, narrated afore referred facts and handed photocopies of the receipts. I.O. did not record my true version nor initiated any proceedings against Elixir Group of Companies.

x. *I performed the duty of post office and transmitted profit to the investors as paid for disbursement to me by the Elixir Group of Companies.*

xi. *I neither induced any investor nor committed fraud, rather fraud has been played upon me and investors.*

ADMISSIONS

i. *It is correct that Exh.PW-142/4 bears my name and signatures on the receipt as it was issued to me volunteered the same amount in the receipt was included in the stamp issued by the company.*

ii. *It is correct that Exh.PW-2/1 & 2/2 bears my name and signatures on the receipt as it was issued to me volunteered the same amount in the receipt was included in the stamp issued by the company.*

iii. *It is incorrect to suggest that Exh.PW6/7 at page 805 & 808 of the reference was issued in my personal capacity.*

iv. *No FIR was either lodged by me or any of my relatives.*

v. *I did not move any application before Chairman NAB or Accountability Court narrating my grievance against admin of Elixir Group. It is incorrect to suggest that I did not move application against Elixir Group at any forum because I am running forged and fabricating business in name of Elixir Group.*

vi. *It is correct that in the reference no document has been placed whereby Elixir Group of companies were authorized to run modarbat business / modarba company. I cannot produce any document showing that Elixir Group of companies was authorized as modarba by competent authority / SECP. I cannot produce any instrument or resolution of the company whereby amount from investors through receipts collection was authorized by modarba business volunteered we collected amount on the verbal direction of Director namely Abdul Rafay.*

vii. *I did not move any application before any agency or police station against said Mudassir was carrying business of modarba volunteered I had informed I.O. of this case…….I.O. did not investigated with regard to said Mudassir.*

viii. *I do not produce any resolution or instrument whereby merger of Capable Asia into Friendship Telecom and Elixir had taken place.*

ix. *I did not produce any document in support of my appointment in Elixir or Capable Asia before I.O. or this Court.*

x. *I did not produce any document whereby Abdul Rafay, Director Elixir and Capable Asia was authorized to appoint me as Sub Director.*

xi. *It is correct that all the six bank accounts record of which has been produced by prosecution were open by me in the year 2011 or afterwards.*

xii. *Amount of investment received through online banking used to receive in my said accounts.*

xiii. *Exh.DW-40 bears my signatures on one side. Receipts Exh.DW-39, 40, 41, 42, 43, 44, 47 & 50 also bear my signatures.*

16. The juxtaposition of prosecution case and stance taken by the appellant in his statement under Section 342 Cr.P.C. read with statement recorded under Section 340(2) Cr.P.C. reflects that execution of Mudaraba agreements in favour of investor / affectees has been acknowledged and admitted by the appellant. Whereas, there is no denial that he claimed himself to be Director of the companies, signed the Mudaraba agreements and received huge capital in cash as well as through banking channel, as also confirmed by the banking witnesses and financial experts of the SECP/NAB authorities.

17. Likewise, the appellant has admitted all the facts in terms of Articles 33 and 34 of the Qanun-e-Shahadat Order, 1984 (*hereinafter referred to as "**Order, 1984**"*) i.e. regarding due execution of the agreements, his signatures and receiving of payments, which are key factors in such type of cases to be proved by the prosecution and as such, the burden has been discharged by the prosecution in terms of Article 117 of the Order, 1984. It is also well settled that admitted facts need not to be proved independently and as such, the statement of appellant recorded under Section 340(2) Cr.P.C. qualifies the test of admissibility regarding contents of the documents in terms of Article 35 of the Order, 1984, therefore, this Court while applying the principle in terms of Article 131 of the Order, 1984, the admissibility of evidence is clearly established on record and all the allegations have been proved against the appellant as he could not prove his stance of being an employee of the companies, therefore, the charges under Section 9(a)(ix) of the NAO, 1999 have rightly been established and proved in the trial.

ROLE OF ABDUL REHMAN (ACQUITTED ACCUSED)/RESPONDENT NO.2

18. On the other hand, on the basis of same set of prosecution evidence, the learned trial Court has acquitted Abdul Rehman (Respondent No.2/co-accused) of the charge in the following manner.

> *"As far as Abdul Rehman accused is concerned it is alleged that he abetted the accused Rashid Minhas and issued receipts of receiving of the amount.*

Many of the PWs/affectees have not named Abdul Rehman accused in the deposition before the Court. Only few of the affectees while deposing on oath came forward with stance that accused Abdul Rehman induced them and signed Modarba agreement. During cross-examination these PWs admitted that they have not named Abdul Rehman as accused in their applications submitted before the Chairman/DG NAB or before the I.O. while confronting them with their statement U/S 161 Cr.P.C. In scenario depicted by the PWs, the possibility that Abdul Rehman accused might have been acting as employee of Rashid Minhas accused cannot be ruled out in toto. In given circumstances mens rea cannot be out rightly attributed to accused Abdul Rehman. Hence, prosecution has failed to bring home the guilt of Abdul Rehman accused beyond shadow of doubt and while extending benefit of doubt I do hereby acquit him on the charge. He is present in Court on bail his surety stand discharged of liable of Bail Bond."

19. The impugned judgment to the extent of role of Respondent No.1 is to be reappraised from the stance recorded by PW-4, PW-108, PW-222, PW-223, PW-227, PW-229, PW-246, PW-250 and PW-261, who have referred the role of Respondent No.1. However, said witnesses have placed on record certain documents, which render Respondent No.1 as an employee of the appellant. Such stance has further been substantiated from the statement of PW-276 Shazhad/I.O., the relevant portion of his evidence is reproduced as under:

"*Accused Abdul Rahman belongs to AJK and presently residing at Rawalpindi. Accused was working with co-accused Rashid Minhas at his offices situated at Mall Plaza, Saddar and Jawad Plaza, Kalma Chowk, Bakkra Mandi, Rawalpindi. He also lured in and received investments from general public and issued Cash Received Receipts under his signatures as Accountant. He was arrested by RA Bazaar Police in FIR No.297/13 registered U/S 420, 406, 468 and 471 PPC and was granted bail after arrest by the Judicial Magistrate on 06.12.2013. During investigation, the accused Abdul Rahman was summoned through police to join investigation but he never turned up to avoid the process of law. Accused Abdul Rahman assisted, aided and abetted the co-accused Rashid Minhas in commission of crime and lured in & induced general public to receive investments from them dishonestly, illegally and fraudulently.*"

However, during the course of cross-examination, PW-276 Shazhad/I.O. acknowledged the following facts:

i. *It is correct that no specific application was moved against accused Abdul Rehman by any member of general public.*

ii. *It is correct that none of the witnesses in their written applications leveled allegations against Abdul Rehman accused that he was having business of Mudaraba or investment or induced investors to make investment in any business.*

iii. *None of the investors/applicants mentioned in their applications that they made investment with Abdul Rehman accused.*

iv. *None of the applicants/investors mentioned in their applications that amount was entrusted to Abdul Rehman accused who misappropriated the same, similarly, none leveled allegation of cheating in their applications.*

v. *None of the applicants mentioned the allegation of abetment, instigation and facilitation against Abdul Rehman accused regarding investment.*

20. The circumstances acknowledged by PW-276 Shahzad/I.O. clearly established that there is no evidence against Abdur Rehman/accused even there is no witness who has leveled any allegation in the application against him, even otherwise, there is no direct evidence available on record to prove that he has received the amount being an investor rather it is acknowledged by the Investigating Officer that Abdur Rehman/respondent is the employee of the principal accused. While considering such acknowledgment on the part of Investigating Officer the judgment rendered by the learned Trial Court qua the role of Abdur Rehman/accused has rightly been settled by way of acquittal.

21. The above referred settled position apparently links the appellant Rashid Minhas with the commission of offence on all counts, which has been acknowledged on the basis of admitted facts that the appellant had received investments, executed agreements with different individuals and on his inducement and instigation the private individuals have invested their hard earned money with him, although the appellant Rashid Minhas has taken the plea that the received amount was deposited in bank accounts of the companies but he failed to justify his stance or discharge his onus in terms of Article 122 of the Order, 1984. Whereas, Abdul Rehman (acquitted accused)/Respondent No.2

was found not guilty in the entire case, even PW-276 Shahzad/I.O. acknowledged that nothing incriminating was recovered to connect Respondent No.1 with said hideous crime, as such, the remote possibility of connection is not available, hence the only question left for determination of this Court is regarding the sentence awarded to the appellant. However, it has been argued by learned counsel for appellant that the sentence be reduced only on the ground that appellant has served almost nine and half years of imprisonment for such a crime and as such, the major portion of sentence is served.

PRINCIPLE OF REDUCTION OF SENTENCE THROUGH JUDICIAL PRISM.

22. In order to attend this proposition, we have gone through various judgments of the superior Courts reported as ***2020 SCMR 1063 (Allah Rakha vs. The State), 2020 SCMR 618 (Mukhtar Alam v. Fazal Nawab), 2020 SCMR 588 (Bakht Munir vs. The State), 2020 MLD 233 (Manzoor Ahmad Akhtar vs. The State)*** as well as ***2020 PCr.LJ N 52 Karachi (Shahid Hussain vs. The State)*** and come to an irresistible conclusion that in ordinary crimes relating to body injuries were dealt with by the superior Courts in different manner i.e. if motive has not been established the sentence was reduced or if the recovery was disbelieved the same was considered as a mitigating circumstance leading to reduction in sentence as opined in cases of *Mukhtar Alam and Bakht Munir supra*. Whereas, in case where allegations are relating to corruption and corrupt practices, the question of reduction in sentence was considered on the basis of amount misappropriated or the mode and manner in which the people have been cheated or deprived of their hard earned money or where public ex-chequer has been robbed is considered key factor. The concept of sentence has to be considered by the Court after conclusion of the trial with reference to the crime in question, however the changing need of the society sometime requires serious

consideration on the principle that serious crime merits serious punishment to foster deterrence. The court has to draw line between serious offences with graver, social ramification and less serious offences. The primary consideration while awarding the sentence by the Court is to create deterrence for people who have inclination towards crime and in order to reform the offenders a sentence should neither be so severe that offender, out of frustration, becomes desperate and hardened criminal nor it could be so mild that it encourages the offender to commit the offence again. Reliance is placed upon ***2016 P.Cr.LJ 1854 Quetta (Faqeer Muhammad vs. The State)***. While considering the principle that sentencing was to reform and rehabilitate the offender, it does not mean that the court let the hardened criminal be released in the name of leniency, such an outcome would supplant the retributive aspect of sentencing which is to make the hardened criminal an example for others so that sense prevails in the minds of masses that a criminal would receive his due if he commits the crime. Reliance is placed upon ***2017 YLR 594 Karachi (Amjad Ali vs. The State)***. The courts are not supposed to be mechanical that at the time of awarding sentence they are supposed to think and consider what a proper sentence ought to be. They should use their perception keeping in view the circumstances of the case, the society and the hardship which confront the accused. Reliance is placed upon ***2006 P.Cr.LJ 431 FST (Muhammad Ashraf vs. The State)***. The apex Court in reported case ***1995 SCMR 1525 (Muhammad Rafique vs. The State)*** has considered different theories of punishment such as (a) the protection of the public, (b) the prevention of crime and (c) reforms of offenders, whereby it has been directed to the courts and judges to think in terms of a range of sentence appropriate to the offence, which may vary according to gravity of sentence on the principles that sentence must be proportionate to the offender's culpability and must have some

relation to gravity of offence. In another case reported as ***2006 SCMR 109 (Zahid Imran vs. The State)***, the apex Court held that the sentence must be weighed in golden scales as it was to be properly balance, to punish the offender in proportion to the character and extent of his guilt, to be deterrent for him and for rest of the society, without being unnecessarily harsh or needlessly indulgent. In Pakistan, the courts have also taken the first time offender with some judicial leniency as referred in ***2016 YLR 1081 Karachi (Yar Muhammad vs. The State), 2016 MLD 1931 Karachi (Haji Muhammad Iqbal vs. The State)*** and ***2017 YLR 524 Lahore (Sarwat vs. The State***). We have also gone through another concept of giving a beneficial treatment to accused person with respect to awarding of sentence, where the accused person, who divulged the truth at trial instead of telling lies, would be entitled to beneficial treatment. Reliance is placed upon ***NLR 1993 SD 210 (Shah Wali vs. The State)***. [1]

CONCEPT OF PUNISHMENT UNDER ISLAMIC INJUNCTIONS/SHARIA.

23. Besides the above referred sentencing principles, the guiding principle has also been drawn from Surah Ash-Shura [Verse:40], translation of which is reproduced as under:

"بدی کا بدلہ اسکی مانند بدی ہے۔ پھر جس نے معاف کیا اور صلح کی تو اس کا اجر اللہ پر ہے بے شک وہ ظالموں کو پسند نہیں کرتا۔"

Likewise, it has been ordained in Surah Al-Ma'idah [Verse:45] that:

"اور ہم نے ان لوگوں کے لیے تورات میں یہ حکم لکھ دیا تھا کہ جان کے بدلے جان اور آنکھ کے بدلے آنکھ اور ناک کے بدلے ناک اور کان کے بدلے کان اور دانت کے بدلے دانت اور سب زخموں کا اسی طرح بدلہ ہے لیکن جو شخص بدلہ معاف کر دے وہ اس کے لیے کفارہ ہو گا اور جو خدا کے نازل فرمائے ہوئے احکام کے مطابق حکم نہ دے تو ایسے ہی لوگ بے انصاف ہیں."

Another golden principle referred in the Holy Quran that the punishment should commensurate with the offence and not more. The said principle has been

[1] Sentencing Theory and Practice by Barrister Haya Iman Zahid/Executive Director of Legal Aid Society

highlighted for about six times i.e. in Surah Al-Bakarah (Verse 194), Yunus (Verse 27), Al-Haj (Verse 60), Ash-Shura (Verse 40) and An-Nahl (Verse 126).

24. We have also gone through different theories given by Islamic scholars in Islamic jurisprudence for the purpose of sentencing guidelines:

سزا کے بنیادی اصول

چونکہ سزا کا مقصد افراد کی اصلاح، اجتماعی تحفظ اور معاشرتی بہبود ہے اس لیے سزا کو ان اصولوں پر قائم ہونا چاہیے جن سے یہ مقصد حاصل ہو سکے اس مقصد کے حصول کے درج ذیل اصول ہیں:

۱۔ سزا ایسی ہونی چاہیے جس کی وجہ سے لوگ ارتکاب جرم سے باز رہیں اور جو مجرم ارتکاب جرم کرے اس کے لیے وہ سزا جرم پر اس کی تادیب کر سکے اور دوسروں کے لیے تنبیہ بن سکے کہ وہ اس جرم کی روش اختیار نہ کریں۔ اسی لیے عقوبات کے بارے میں بعض فقہاء کہتے ہیں۔

"عقوبات شرعیہ دراصل ارتکاب جرم سے روکنے والی اور ارتکاب جرم کے بعد اس کے دوبارہ ارتکاب سے باز رکھنے والی ہیں۔ یعنی جب ان عقوبات کی قانونی حیثیت کا علم ہو جائے تو انسان اس فعل کے ارتکاب سے رک جاتا ہے اور جو ارتکاب کر چکا ہے وہ دوبارہ اس فعل ممنوع کا ارتکاب نہیں کرتا۔"

۲۔ سزا کی تحدید میں اجتماعی ضرورت اور معاشرتی مفاد پیشِ نظر رکھا گیا ہے۔ چنانچہ اگر اجتماعی مفاد اس امر کا متقاضی ہو کہ سزا میں سختی کی جائے تو سزا میں سختی کی جائے گی اور اگر اجتماعی مفاد سزا میں تخفیف کا متقاضی ہو تو سزا میں تخفیف کی جائے گی۔ اس لیے سزا کا اجتماعی ضرورت سے زیادہ یا کم کرنا درست نہیں ہے۔

۳۔ اگر اجتماعی مفاد اس امر کا متقاضی ہو کہ مجرم کا استیصال کر کے یا حبس کر کے معاشرے کو مجرم کے شر سے محفوظ رکھا جائے تو لازمی ہے کہ مجرم کو سزائے قتل دی جائے یا حبس و دام کی سزا دی جائے یہاں تک کہ وہ مر جائے، یا اس کی اصلاح ہو جائے اور وہ توبہ کر لے۔

۴۔ اصلاح افراد اور معاشرتی تحفظ کی ضامن ہر سزا قانونی سزا ہے اس لیے کچھ مخصوص سزاؤں کو اختیار کر کے باقی سزاؤں کو چھوڑ دینا درست نہیں ہے۔

۵۔ مجرم کی تادیب کا مقصد اس سے انتقام لینا نہیں ہے بلکہ اس کی اصلاح ہے۔ اور عقوبات اپنی جملہ انواع کے ساتھ۔۔۔۔بقول فقہا۔۔۔۔"برائے اصلاح اور تنبیہ بطور تادیب جاری کی جاتی ہیں اور جرم کی نوعیت کے لحاظ سے مختلف ہوتی ہیں۔

سزا کے بارے میں شریعت اسلامیہ کا تصور

شریعت میں جن اصولوں پر سزا کی بنیاد رکھی گئی ہے ان اصولوں کا مرجع دو اہم قواعد ہیں یعنی بعض اصول جرم سے بر سرِ پیکار ہیں اور مجرم کی شخصیت کو نظر انداز کیے ہوئے ہیں اور بعض اصول مجرم کی شخصیت کو مد نظر رکھے ہوئے ہیں مگر جرم سے بر سر پیکار بھی ہیں۔ گویا جو اصول جرم سے بر سر پیکار ہیں ان کا مقصد معاشرے کو جرم سے محفوظ رکھنا ہے اور وہ اصول جو مجرم کی شخصیت کو ملحوظ رکھے ہوئے ہیں ان کا مقصد جرم کی اصلاح ہے۔

بلاشبہ ان دونوں قواعد میں ظاہری تضاد موجود ہے کیونکہ اگر معاشرے کو مجرم سے بچایا جائے تو مجرم کو نظر انداز کرنا پڑتا ہے اور اگر مجرم کی ذات کو ملحوظ رکھا جائے تو معاشرتی پہلو کو فراموش کرنا پڑتا ہے۔

مگر شریعت اسلامیہ نے نہ صرف یہ کہ اپنے نظام عقوبات کی اساس ان بظاہر متضاد قواعد پر رکھی ہے بلکہ ان کے اس ظاہری تضاد کو مٹا کر تمام حالات میں معاشرے کو جرم سے محفوظ رکھنے کی رعایت کی ہے اور بیشتر حالات میں مجرم کی ذات کی رعایت بھی ملحوظ رکھی ہے کیونکہ شریعت نے اجتماعی تحفظ کے قاعدے کو مطلقاً اختیار کر لیا ہے اور جرائم کی تمام مقررہ سزاؤں میں اس امر کو ملحوظ رکھا ہے، چنانچہ ہر سزا مجرم کی تادیب کے لیے اس قدر کافی ہے کہ وہ دوبارہ اس جرم کا اعادہ نہ کرے اور مجرم کے علاوہ دوسرے لوگ اس سزا سے متنبہ ہو جائیں اور اس جرم کے ارتکاب کا ارادہ بھی نہ کریں۔ لیکن اگر صرف مجرم کی تادیب سے معاشرہ مجرم کے شر سے محفوظ نہ رہ سکے یا اجتماعی تحفظ اس امر کا متقاضی ہو کہ مجرم کا استیصال کر دیا جائے تو مجرم کا استیصال لازمی ہو گا یا اسے حبس دوام کی سزا دی جائے گی۔ بہر حال جو جرائم معاشرے کے وجود پر برا اثر ڈالنے والے ہیں ان میں شریعت نے مجرم کی ذات کو نظر انداز کر دیا ہے کیونکہ معاشرتی تحفظ کا تقاضا ہی یہ ہے کہ اسے نظر انداز کر دیا جائے۔ اس نوع کے جرائم طبعاً قلیل اور محدود ہیں، جب کہ ان کے علاوہ تمام جرائم میں شریعت مجرم کی ذات کو مد نظر رکھتی ہے اور یہ لازم قرار دیتی ہے کہ مجرم کی شخصیت، اس کے حالات، اس کے اخلاق اور اس کی سیرت کا اندازہ سزا کے اجراء کے وقت عدالت کے پیش نظر رہے۔" [2]

PRINCIPLES OF SENTENCE REDUCTION IN CASES OF CORRUPTION

25. The apex Court in cases of corruption and corrupt practices has laid down a parameter in case reported as ***2017 SCMR 669 (Sohrab Khan Marri Khuda Bakhsh vs. The State)*** and has held that:

> *"12. The Courts in the past, have extended lenient treatment to the accused involved in such crimes but now, when corruption is cutting the very root of the economy of the country at a large scale in a very organized manner and it has become free for all then, it has become the primary and foremost obligation of the Court to arrest this evil monster which would ultimately be a threat not to latter alone but to the very survival of the State. Due to massive corruption the poor among poorer are not getting even safe drinking water and other facilities to live a honourable life as envisaged by the provisions of the Constitution. Majority of the children in millions could not go to school as their parents cannot afford the education expenses, same is the problem in the health care sector for the poor and other departments. This homeland was not gifted to us but millions of lives were sacrificed in achieving independence for a better and honourable life style and to become a welfare state where every citizen whether belongs to majority or minority would be entitled to equal rights as laid down in Part 1 of Chapter 1 of the Constitution of Pakistan, 1973. However the nation is still dreaming this dream which is yet to be given practical shape. If massive corruption is allowed to go unchecked, we would, remain unable to drop from our hands the begging bowls. In view*

[2] (باب اول عقوبات (سزائیں): اسلام کا فوجداری قانون: تالیف عبد القادر عودہ شہید: جلد دوم: ناشر اسلامک پبلیکیشنز لاہور: ۱۹۸۸)

> *of the globalization of the world, the independence of a country/State is mainly dependent on sound economy therefore, in the larger interest of the State and the nation, the Courts have to apply strict standards and to show a zero tolerance for corruption and people involved in such type of crimes whose guilt is well established should get the maximum and no mercy to be shown to them."*

However, certain relaxation has been shown by the apex Court in case reported as ***2020 SCMR 1177 (Tariq Saeed vs. The State)*** on the following principle:

> *9. …… As far as the contention of the learned counsel appearing on behalf of petitioner qua the old age and indisposition of the petitioner is concerned, it is observed that very genesis of white-collar crime has engulfed the educated-cum-privileged class while intruding its contours into the society which has almost become epidemic leaving miserable repercussions individually as well as collectively. It is detrimental to the very fabric of the society. However, while relying on case titled "Muhammad Ashraf alias Chaudhry v. The State" (1994 SCMR 667) and while taking into consideration that the petitioner is an old man with poor health condition, whereas he has already undergone substantial part of sentence recorded by both the courts, we deem it appropriate to meet the ends of justice reduce the sentence already inflicted upon the petitioner from seven years to five years while maintaining the sentence of fine of Rs.1,63,00,000/- and confiscation of farm-house belonging to petitioner in favour of the State."*

26. Likewise, this Court with regard to the principle of proportionality has also gone through a foreign judgment, reported as ***2020 SCMR 765 (Supreme Court of Canada - Her Majesty the Queen vs. Justyn Kayle Napoleon Friesen)***, wherein it has been held that:

> *"All sentencing started with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Sentencing judges must also consider the principle of parity. Similar offenders who committed similar offences in similar circumstances should receive similar sentences. Parity was an expression of proportionality and gave meaning to proportionality in practice. A proportionate sentence for a given offender and offence could not be deduced from first principles; instead, judges calibrated the demands of proportionality by reference to the sentences imposed in other cases. Sentencing precedents reflected the range of factual*

situations in the world, embodied the collective experience and wisdom of the judiciary, and were the practical expression of both parity and proportionality."

27. We have also gone through another judgment of apex Court reported as ***2020 SCMR 1063 (Allah Raka vs. The State)***, whereby a Civil Nazir of Senior Civil Judge Sialkot was found involved in misappropriation of various amounts deposited under different heads and was convicted for his criminal misconduct by the Special Judge Anti-Corruption (Provincial) Gujranwala, as such, the counsel for said accused had prayed for reduction of sentence under Section 409 PPC from 10 years to 05 years. The apex Court while considering the request held as under:

2. We have thoughtfully considered the alternate submission. The petitioner has been facing the consequences of his misconduct since the year 2015; he deposited back a sum of Rs.700,000/- and failed to clear the remainder liability on account of his obvious financial incapacity; he has been dismissed from the service. The learned trial Judge considered a period of five years as appropriate sentence on coordinate charges, however, awarded maximum sentence provided for an offence under section 409 of the Code ibid. Although the petitioner being a part of system of administration of justice was certainly under a heavier onus to maintain highest standard of integrity and rectitude, nonetheless, his indiscretion has not brought him anything other than an abiding stigma and loss of post retirement comforts, therefore, in the above backdrop, reduction of sentence recorded on the said count to five years' RI would be a wage, conscionable in circumstances. The petition is dismissed, however, the sentence is accordingly reduced to run concurrently with coordinate charges, pre-trial period inclusive.

28. While considering the above referred guiding principles deduced from different enunciations of superior Courts as well as from Islamic jurisprudence, it is the duty of this Court to highlight all those principles to consider the concept of reduction in sentence, whereby the factors are as under:

a) If the period already served by the accused behind bars is more than three-fourths (75%) of the total sentence awarded, then a

lenient view has to be taken by the appellate Court in appeal subject to other factors referred.

b) If majority of the complainants/affectees have failed to prove their cases, the sentence so awarded to the accused has to be reduced.

c) If the accused had paid back major portion of embezzled amount to the affectees, maximum sentence could not be awarded and sentence shall be reduced.

d) The mode and manner in which the crime was committed, if same was on the basis of impersonation, cheating and fraud with general public depriving them of their hard earned money, the sentence shall not be reduced.

e) If there are number of accused persons involved in depriving the general public of their hard earned money, then the liability has to be considered against each of them. In such eventuality, the sentence may be reduced while considering the role of each accused in juxtaposition with other co-accused persons.

f) The fine or confiscation of the property so imposed by the trial Court as a sentence in case of corruption shall not be reduced in any manner.

g) If the convict is of advanced age, sick or woman, sentence may be reduced subject to other factors discussed above.

29. This Court has to apply the principle of *culpae poenae par esto* i.e. "***let the punishment be equal to the crime***". The sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender. We are also bound by the divine authority of Quranic injunctions referred in Surah Al-Bakarah, Yunus, Al-Haj, Ash-Shura and An-Nahl, whereby it has been settled *that punishment must be commensurate with the offence and not more*. Keeping

in view the entire evidence and record, this Court comes to an irresistible conclusion that Rashid Minhas/appellant is guilty of offence under the NAO, 1999 and has rightly been convicted by the learned Trial Court, therefore, while maintaining the conviction of the appellant, this Court while taking into account the principle that the punishment must equate with the crime is of the view that the maximum punishment awarded to Rashid Minhas/appellant i.e. 14 years is in accordance with law and as such, he is not entitled to any leniency.

30. In view of above discussion, the captioned *Criminal Appeal No.196/2018 (Rashid Minhas v. NAB & another)* and *Criminal Appeal No.141/2018 (The State v. Abdul Rehman & another)* are hereby ***DISMISSED***. Accordingly, the captioned *W.P. No.1065/2020 (Rashid Minhas v. NAB & others)* has become ***INFRUCTUOUS*** and same is hereby ***DISMISSED***.

(FIAZ AHMAD ANJUM JANDRAN) **(MOHSIN AKHTAR KAYANI)**
JUDGE JUDGE

Announced in open Court on: _____ October, 2020.

JUDGE JUDGE

Approved for reporting.

Khalid Z.

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