

IN THE HIGH COURT OF BALOCHISTAN QUETTA.**Criminal Ehtesab Appeal No. 12/2022**

Aslam Parvaiz s/o Ghulam Muhammad, r/o B.M.C.H Colony, Quetta.
Appellant.

VERSUS

The State through DG NAB Balochistan. **Respondent.**

**APPEAL UNDER SECTION 32 (b) OF NATIONAL
ACCOUNTABILITY ORDINANCE, 1999.**

Criminal Ehtesab Appeal No. 13/2022

Ahsan Tabbasum s/o Tabbasum Pervaiz, Ex-Pharmacist, PS & BU BMC
Hospital, Quetta, r/o Women Christian Hospital 85 Nusrat Road, Multan.
Appellant.

VERSUS

The State through Prosecutor General NAB Balochistan, Quetta.
Respondent.

**CRIMINAL EHTESAB APPEAL UNDER SECTION 32 OF
NATIONAL ACCOUNTABILITY ORDINANCE, 1999.**

JUDGMENT

Date of hearing 07.01.2025 Reasons Drawn on 11.01.2025.

In Criminal Ehtesab Appeal No.12 of 2022.

Appellant by: Mr. Faiz Ahmed Advocate.
State by: Mr. Asad Khan Khatak, Special Prosecutor NAB.

In Criminal Ehtesab Appeal No.13 of 2022.

Appellant by: M/s. Syed Ayaz Zahoor and Aster Mehak, Advocates.
State by: Mr. Asad Khan Khatak, Special Prosecutor NAB.

Muhammad Ejaz Swati, J:- Appellants are aggrieved against the judgment dated 20.04.2022 (impugned judgment) passed by the Accountability Court-III, Balochistan, Quetta, whereby in Reference No.12 of 2020, the appellants have been convicted and sentenced as under:-

"The Prosecution successfully proved beyond any shadow of doubt that the accused Ahsan Tabasum misused his authority for gaining benefit for himself and willfully failed to exercise his authority to prevent the loss occurred to the government ex-chequer. He also committed the offence of criminal breach of trust and



dishonestly and fraudulently misappropriate the government property, which was entrusted to him and was under his control therefore, accused Ahsan Tabasum s/o Tabassum Parvaiz is hereby convicted u/s 09 of the National Accountability Ordinance 1999 and sentenced to undergo R.1 of 07 years and fine of Rs.1,20,00,000/-. The Prosecution also proved that the accused Aslam Parvaiz s/o Ghulam Muhammad aided, assisted and abetted accused Ahsan Tabasum by not preparing and maintaining the proper record, which results in huge loss to the government ex-chequer. He is hereby convicted u/s 10 of the National Accountability Ordinance 1999 to undergo R.1 for six(06) months and fine of Rs.1,00,000/-, The accused are also seized to hold public office and shall stand disqualified for period of 10 years to be reckoned from the date they were released after serving the sentence for seeking or from being elected, chosen, appointed or nominated as member of representative of any public body, or in statutory or local authority or in service of Pakistan or of any province. Benefit of section 382-B Cr.P.C is extended to accused. The amount of fine shall be recovered as arrears of Land Revenue provided Under Section 33 (E) of National Accountability Ordinance 1999. They were on bail, they taken into custody to serve the aforementioned sentence."

2. Since both the appellants assailed the same judgment, therefore, we intend to dispose of both the appeals through this common judgment.

3. Facts of the case are that according to Reference No.12 of 2020 the allegation against the appellant Aslam Pervaiz is that he being Record Keeper, Main Medicine Store, Plastic Surgery and Burn Unit (PS&BU) Bolan Medical Complex Hospital (BMC) did not maintain proper record of medicines received from MSD and issued to the PS&BU and willfully abetted accused Ahsan Tabasum in the act of misappropriation of medicines worth Rs.11,061,700/- (11.06 million), whereas allegation against appellant Ahsan Tabuasum was that he being Incharge of Main Medicine Store PS&BU BMC Hospital embezzled the medicines of Rs.11.06 million in connivance with co-accused Aslam Pervaiz.

4. The trial Court vide impugned judgment convicted and sentenced the appellants as mentioned above.



5. During the trial the prosecution examined 07 witnesses. When examined under Section 342 Cr.P.C. the appellants denied the allegation of prosecution. Appellant Ahsan Tabasum recorded his statement under Section 340 (2) Cr.P.C and produced documentary evidence, while appellant Aslam Pervaiz did not record his statement under Section 340(2) Cr.P.C nor produced evidence in his defense.

6. Learned counsel for the appellants contended that the impugned judgment reflects misreading and non-reading of evidence; that prosecution has failed to prove entrustment contemplated with dishonesty; that the Investigating Officer Pw-4 specifically stated that after completion of inquiry he recommended for closure of the case for want of material against the appellant but that disclosure statement was not made part of the record; that the prosecution did not produce any record showing detail of medicines received in Burn Unit from MSD and distribution of the same to the concerned ward; that appellant Aslam Pervaiz was Dispenser and he retired from service on 23.02.2021 vide officer order dated 22.01.2021, Art.P/21, the prosecution has failed to produce any evidence to establish that he was ever assigned duty of

Store Keeper.

The learned Special Prosecutor contended that the appellant Ahsan Tabasum being Incharge of Burn Unit Store has failed to perform his duty and left the Burn Unit Store without intimation and handing over the charge. On 12.04.2013 look after charge was given to Pw-2 Hajra Zaman, that this witness through Art.P/246 brought into the notice of competent authority about the missing and expired drugs in the Store; that evaluation committee report Art.P/340 to Art.P/364 clearly establish the missing and expired medicines that Art.P/2 to Art.P/393 including Art.P/6, Art.P/8, Art.P/17 to Art.P/28 are the price detail, the missing of the disposable and missing injections were established through documentary evidence Art.P/89 to Art.P/95; that the



documentary evidence make it clear that appellant remained absent without sanction of his leave application by the competent authority; that appellant being Incharge of Store was solely responsible and was rightly held guilty by the trial Court.

8. We have heard the learned counsel for the parties and perused the record. It was the case of prosecution that appellant Ahsan Tabasum (Pharmacist) being Incharge of Main Medicine Store Plastic Surgery (PS) & Burn Unit (BU) Bolan Medical Complex (BMC) Hospital had embezzled Rs.11.06 million in connivance with appellant Aslam Pervaiz (Record Keeper Main Store). It was further alleged that appellant being a Record Keeper did not maintained proper record of the medicines received from MSD and issued to the PS&BU wards.

9. To substantiate the charge, the prosecution examined Pw-1 Salah-ud-Din (Pharmacist) stated that on 28.09.2013 Medical Superintendent BMC assigned duties to check and evaluate Plastic Surgery Main Store. He alongwith Committee Members prepared detail of the stock through staff, according to Inspection Team, there was shortage of medicines and expired medicines to the tune of Rs.1,11,00,000/-, the Inquiry Committee submitted report to MS BMC. He produced Art.P/2 to Art.P/244, this witness in cross examination admitted that in 2011 appellant Ahasan Tabasum received injuries in bomb blast. He shown his ignorance that referred appellant remain hospitalized for two months and in 2012-13 there was disturbance in Quetta City and Ahsan Tabasum alongwith his family went to Multan. He admitted that during inspection of the store the key of the store was with Dr. Hajra. He further demonstrated his ignorance that from April 2013 untill the inspection, the store charge was with Dr. Hajra.



10. Pw-2 Hajra Zaman, (Pharmacist) deposed that on 12.04.2013 appellant Ahsan Tabasum was on leave, whether it was sanctioned or not, she

was given look after charge, she further stated that prior to leave the appellant brought some medicines after checking, she found shortage and expired, regarding which she prepared a list and sent to the head of department, therefore, Inquiry Committee prepared its report.

11. Pw-3 Eran, deposed that she was Incharge of Burn Unit from 2003 to 2016, thereafter appellant Ahsan Tabasum went on leave. The key of the store was with appellant Ahsan Tabasum, who on telephone told to Ghulam Rasool that he left the key with staff, and from whom they received key and thereafter on the direction of MS the key was with her. In cross examination, she admitted that appellant Ahsan Tabasum was performing his duty honestly and they never complaint of shortage of medicines.

12. Pw-4 Ghulam Rasool, he stated that on 23.11.2020 he was called by the Investigation Officer and shown report dated 28.11.2013, in which the prices of some medicines were missing. He instructed them to prepare a detail report including price, thereafter, another report Art.P/17 to Art.P/34 was prepared.

13. Pw-5 Abdul Haq, stated that he alongwith Salah-ud-Din and Ghulam Rasool went Burn Unit, where appellant Ahsan Tabasum was on leave and they had given charge of look after to Aslam Pharmacist. After preparation of report, he after making remarks forwarded the report to MS, in cross examination, this witness admitted that appellant Aslam did not have the charge of the Store Keeper.



14. Pw-6 Sherbaz, attested recovery memo Ex.P/6-A, on the basis whereof document Art.P/1 to Art.P/393 were taken into possession .This witness admitted that all the documents are photocopies.

15. Pw-7 Sheryar Jameel, Investigating Officer, he produced Reference Ex.P/7-A, in cross examination; he admitted that during inquiry he made recommendation for close of the case, but Chairman again authorized

investigation. He admitted that his closure report is not part of the record; he has not taken original record, he admitted that all the documents are uncertified; he admitted that on 12.04.2013 Dr. Hajra was the Store Incharge, he admitted that he himself never went to BMC for collecting the record, he admitted that during first inquiry authorization the record annexed with reference was taken into possession. He admitted that Stock Register of medicines was not taken into possession the court also observed:-

”ریکارڈ کا ملاحظہ کیا گیا 2010 سے 2020 تک رجسٹر کا ریکارڈ
نہ پایا گیا۔“

The Investigation officer further admitted that he did not obtained the detail of medicines received by the Burn Unit.

16. From the above evidence and perusal of the documentary evidence Art.P/1 to Art.P/393, it reveals that as per Art.P/1 to Art.P/245 the look after charge of the Main Store was given to Pw-2 Hajra Zaman on 12.04.2013 and as per Art.P/249 to Art.P/291, she prepared detail dated 28.06.2013 of L.P items, Disposable items, present in record, present in stock, difference and D.O.E.



According to Pw-7 Investigation Officer, he has not taken any record from the MSD nor taken any stock register to ascertain the correct evaluation of received medicines to the Burn Unit. In absence thereof, the calculation of present record in the store and difference is not ascertainable nor the said detail supported the case of prosecution against appelland Ahsan Tabasum. The prosecution is also not clear about the posting of the Main Medicine Store Incharge of Burn Unit during period from 2011, 2012 and 2013. As per the transfer posting order Art.P/293 dated 20.11.2011, Mr. Rehman Gul, has been transferred from the Main Medicine Store to Incharge Main Medicine Store Burn Unit. To substantiate the embezzlement/corruption of the appelland Ahsan Tabasum, the prosecution mainly relied upon the report prepared by the Committee including Pw-1 Salah-ud-Din, Pw-4 Ghulam Rasool. According to Pw-4 Ghulam Rasool,

the Investigation Officer called them on 23.11.2020 and shown report dated 28.11.2013, which did not include price of the medicines and on his instruction another report Art.P/17 to Art.P/34 was prepared. It is on record that Pw-1 and Pw-4 were assigned duties by the competent authority vide office order dated 28.09.2013, Art.P/295, to check and evaluate the drugs and disposable of Plastic Surgery & Burn ICU, for the financial year 2011-12 and 2012-13 of BMC Hospital Quetta and were also directed to submit the brief report regarding missing drugs and disposable. In this regard two reports had been produced by the prosecution, the first report of Pw-1 is Art.P/301, that pertains for the month of August 2013, which reads as under:-

"To determine and identify the gapes and shortcomings in the drug management system of the hospital and other problems faced/confront by the patients in the hospital pertinent to drugs and medicine.

Description:

The drug monitoring visit was started from the main medicine store of this hospital. Where I performed a walkthrough of some areas of the store and noted the available stock. Thereafter, I visited different units of the hospital which are as (labor Room, casualty, neurology unit, neurosurgery unit, Gynae unit-1, plastic surgery department, Micro lab, Chemical lab Histo lab), In these different locations/units, all the received indents from the Store was checked with reference to the stock registers and the stock registers with reference to the patients' treatment charts and stock on the ground. The drugs stock registers were maintained in all units except neurology unit."



17. The other report of the period 2011-12 and 2012-13 prepared by the Pw-1 is Art.P/339 to 341, dated 25.10.2013, none of the above reports attend detail of missing drugs, disposable items, received from MSD for Burn Unit, missing indent from MSD, Bogus indent, expired items nor their price, therefore, the Investigating Officer Pw-7 in his cross examination admitted as under:-

"یہ درست بیکہ انکوائری کے بعد میں نے مقدمہ کو کلوز کرنے کی سفارش کی تھی۔ یہ درست بیکہ closure کی recommendation کی

گنی تھی از خود کہا اس کا اختیار چیرمین نیب کو تھا جنہوں نے دوبارہ تفتیش authorize کی۔ یہ درست ہے کہ مجھے تفتیش پر DG NAB نے معمور کیا تھا۔ یہ درست ہے کہ انکوائری کے دوران جو ریکارڈ موجود تھا اسی کی بنیاد پر چیرمین صاحب نے انکوائری دوبارہ authorize کی۔ یہ درست ہے کہ میں نے Closure Report کو ریکارڈ کا حصہ نہیں بنایا۔"

18. From the above, it appears that on the basis of above reports i.e. Art.P/301 and Art.P/339 to 341, inquiry of case was recommended to be closed but on the direction of Chairman NAB again authorized the investigation, therefore, the Investigating Officer called Pw-4 Ghulam Rasool on 23.11.2020 to prepare another report including price of the medicines. The relevant statement of Pw-4 is reproduced as under:-

"مورخہ 23.11.2020 کو مجھے تفتیشی آفیسر نے طلب کیا اور ہمیں 28.11.2013 کی رپورٹ دکھانی جس میں کچھ ادویات کی قیمتیں ہم نے نہ لگا ئی تھیں۔ تفتیشی آفیسر نے مجھے ہدایت کی کہ تفصیلی رپورٹ بنا کر لائیں جس میں ادویات کی قیمتوں کا تذکرہ بھی ہو میں نے صلاح الدین اور عبد الحق شیرانی نے ملکر تازہ رپورٹ مرتب کی اور جا کر تفتیشی آفیسر کے حوالے کی۔ رپورٹ Art.P/17 تا Art.P/34 پر اپنے دستخط شناخت کرتا ہوں۔ بس اس قدر بیان ہے۔"

From the above, it appears that reports Art.P/17 to Art.P/34 produced by Pw-4 as well as Art.P/342 to Art.P/364 were prepared on the instruction of Investigating Officer instead of competent authority after 23.11.2020; therefore, said documents cannot be taken into consideration.

19. The prosecution also alleged that appellant Aslam Pervaiz, was Record Keeper of Main Store of PS & BU and did not maintain proper record of the medicines received from MSD and issued to the PS& BU ward and willfully abated the appellant Ahsan Tabasum. Pw-1 to Pw-7 has not connected Aslam Pervaiz in any manner in the commission of the offence. The Art.P/1 to Art.P/393 are also silent. Moreover, not a single document has been produced to substantiate that Aslam Pervaiz, was Record Keeper; even Pw-5 admitted in cross examination that Aslam Pervaiz did not have the charge of the Store Keeper. Art.D/21 office order further affirmed that he was retired as dispenser on 23.02.2021, which has not been rebutted by the prosecution. It was alleged



گئی تھی از خود کہا اس کا اختیار چیرمین نیب کو تھا جنہوں نے دوبارہ تفتیش authorize کی۔ یہ درست بیگہ مجھے تفتیش پر DG NAB نے معمور کیا تھا۔ یہ درست بیگہ انکوائری کے دوران جو ریکارڈ موجود تھا اسی کی بنیاد پر چیرمین صاحب نے انکوائری دوبارہ authorize کی۔ یہ درست بیگہ میں نے Closure Report کو ریکارڈ کا حصہ نہیں بنایا۔"

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by the prosecution that after disciplinary action, appellant Ahsan Tabasum was terminated but the documentary evidence i.e. Art.D/11, the appellant was absent from duty w.e.f. 11.04.2013 to 17.04.2014 and vide notification dated 08.12.2014 Art.D/13, his absence period i.e. 17.03.2013 to 28.09.2013, was treated as extraordinary leave without pay allowance, thereafter, vide notification dated 03.04.2015, Art.D/14, he posted as Pharmacist at District Headquarter Hospital Ziarat. As per Art.D/15 and Art.D/16, appellant joined his above posting on 10.08.2015; all these documentary evidence had not been rebutted by the prosecution, which further makes dent in the case of prosecution. The reappraisal of the evidence reflects that prosecution has failed to prove the charge against the appellants beyond reasonable doubt, therefore, considering the above aspects of the matter, the appellants were acquitted of the charge, vide short order dated 07-01-2025, which is reproduced herein below:-



"For the reasons to be recorded later on, Criminal Ehtesab Appeals No.12 of 2022 is allowed. The impugned judgment dated 20.04.2022 passed by the Accountability Court-III, Balochistan Quetta is set aside. The appellant namely Aslam Pervaiz son of Ghulam Muhammad is acquitted of the charge in Reference 12 of 2020. He is on bail his bail bond stands discharged.


For the reasons to be recorded later on, Criminal Ehtesab Appeals No.13 of 2022 is allowed. The impugned judgment dated 20.04.2022 passed by the Accountability Court-III, Balochistan Quetta is set aside. The appellant namely Ahsan Tabbasum son of Tabbasum Pervaiz is acquitted of the charge in Reference 12 of 2020. He is on bail his bail bond stands discharged."

These are the reasons of our short order dated 07.01.2025.

**SD/-MUHAMMAD EJAZ SWATI
JUDGE**

**SD/-SARDAR AHMED HALEEMI
JUDGE**

Reasons drawn on:
11th January, 2025

1 
06/12/25
SHARIFULLAH
Assistant Registrar
(Judicial DB)
High Court of Balochistan
Quetta.
06/12/25