

BEFORE MR. JUSTICE ® FAQIR MUHAMMAD KHOKHAR,
ADJUDICATOR, PAKISTAN CRICKET BOARD, LAHORE.

Appeal No.1 of 2020.

Umar Akmal

Appellant

Versus

Pakistan Cricket Board

Respondent.

Present

For the appellant Mr. Shabbir Ahmad Lali, Advocate Supreme Court, M/s Tayyab H. Rizvi, Mr. Assad Buttar and Khawaja Ayaz, Advocates High Court, with appellant Mr. Umar Akmal in person.


For the respondents Mr. Taffazul H. Rizvi, Advocate Supreme Court and Mr. Haider Ali Khan, Advocate High Court with Mr. Danial Imran, Assistant Manager (Legal), Pakistan Cricket Board, Lahore.

Date of hearing:- 13-07-2020.

DECISION

1. The appellant Umar Akmal has preferred this appeal under Article 37 of the Constitution of the Pakistan Cricket Board, 2019 (herein referred to as "the PCB") read with Article 7 of the Pakistan Cricket

Board's Anti-Corruption Code for Participants, 2017 (referred to as **"the Code"**), from the impugned judgement dated 27-04-2020 passed by the learned Anti-Corruption Tribunal of the Pakistan Cricket Board.

- 
2. The appellant is a National Cricket Player. He was selected to participate in the cricket match PSL 20:20 at Karachi as a part of Quetta Gladiators commencing from 20-02-2020. At the eleventh hour, he was dropped from playing in the said match. During the wee hours of 20-02-2020, he was called for questioning/interview by the PCB's Vigilance and Security Department/ Anti-Corruption Unit. His audio statement was recorded by the Anti-Corruption Unit qua the charges of corrupt conduct against him. He was provisionally suspended vide letter dated 20-02-2020 issued by the PCB under Article 4.7 of the Code.
 3. The PCB's Anti-Corruption Unit issued him a show cause notice dated 17th March, 2020 on the following two disciplinary charges for breaches of the Code for Participants.

Charge No.1

“breach of Code Article 2.4.4. by failing to disclose to the PCB Vigilance & Security Department (without unnecessary delay) full details of the approaches and invitations received by you to engage in Corrupt Conduct under the Code”.

Charge No.2

“breach of Code Article 2.4.4., by failing to disclose to the PCB Vigilance & Security Department (without unnecessary delay) full details of the approaches and invitations received by you to engage in Corrupt Conduct under the Code in respect of Matches in PSL 2020”.

The appellant submitted his reply dated 22-03-2020 thereto. Thereafter, the matter was referred to the Chairman, Anti-Corruption Tribunal (hereinafter referred to as “**the Tribunal**”) presided over by a former Judge of the Lahore High Court for determination of the charges. By the impugned judgement dated 27-04-2020, the learned Chairman of the Tribunal found him guilty of both the charges. A ban of three years on each count was imposed upon the appellant with effect from 20-02-2020 i.e. the date of his provisional suspension. Both the sentences were to run concurrently

4. Mr. Tayyab H. Rizvi, Advocate, the learned Counsel for the appellant submitted that in order to substantiate the charges, the PCB was

required to prove three constituent ingredients i.e. (i) receipt of invitations/approaches by the participant (ii) failure of the participant to disclose to the PCB of such approaches and (iii) unnecessary delay. But the PCB as well as the Tribunal focused only on invitations/ approaches without satisfying the other two essential elements to sustain the charges. As a matter of fact on 10-02-2020, the appellant went to the PCB to see its Chairman and apprise him of the approaches made to him for match fixing. However, Miss. Nabeela, Secretary to the Chairman PCB did not arrange any time for a meeting with the Chairman. The PCB did not produce Miss Nabeela as a witness before the learned Tribunal. The learned Tribunal based its findings solely on the so-called confession of the appellant by means of his audio recorded statement and the reply to show cause notice. The learned Tribunal ought to have followed the due process and fair trial procedure as guaranteed by Article 10-A of the Constitution of Islamic Republic of Pakistan. The matter ought to have been decided by taking into account the balance of probabilities.

5. The learned Counsel next submitted that the appellant was discriminated against in as much as, other participants/players

namely Sharjeel Khan, Khalid Lateef, Muhammad Irfan and Muhammad Nawaz were awarded much lesser penalties for the same charges under Article 2.4.4. of the Code. However, in the case of appellant the constitutional guarantees and fundamental rights of equality provided by Article 4 and 25 of the of the Constitution of Islamic Republic of Pakistan 1973 were blatantly disregarded. The learned Counsel has relied on the cases of "Province of the Punjab vs. Samel Bhatti (2009 SCMR 1034) , Shabbir Ahmad Bhai vs. Pakistan Employees Cooperative Housing Society (2017 CLC 1683-Sindh) and Rimsha Shakhani vs. NIXOR College (PLD 2016 Sindh 405) in that all equals should be treated alike.

6. The learned Counsel finally contended that the learned Chairman of the Tribunal failed to apply the doctrine of proportionality as laid down in the cases of D.G. Khan Cement Company versus Federation of Pakistan (PLD 2013 Lahore 693) and Sabir Iqbal vs. Cantonment Board (PLD 2019 SC 189). The harsh and exorbitant penalty was not called for in the facts and circumstances of the case. Somewhat parental attitude was required to be shown in the case deserving lenient view to be taken. Mr. Asad Buttar, Advocate, the other

learned counsel for the appellant also added that three years ban imposed upon appellant was too harsh a punishment. The appellant was a national player of high repute. The matter involving deprivation of appellant's livelihood was fraught with serious consequences which would ruin his career forever just for one human error. Mr. Shabbir Ahmad Lali, ASC, also earnestly pleaded for modification of the impugned judgment by adopting a merciful attitude on the quantum of sentence of the appellant, a national player. He further stated that the appellant should have reported, with promptitude, the incidents to the relevant quarters of the P.C.B.

7. On the other hand, Mr. Taffazul H. Rizvi, Advocate Supreme Court assisted by Mr. Haider Ali Khan, Advocate submitted that the appellant Umar Akmal had admitted the charges against him both in his audio recorded interview with the Anti-Corruption Unit on 20-02-2020 as also in his reply dated 22-03-2020 in respect of match fixing. The proceedings before the learned Tribunal were in the nature of domestic determination. The appellant failed to report the approaches/invitations on both the occasions by different persons to

the PCB's Vigilance and Security Department/ Anti-Corruption Unit at any time before he was interrogated on 20-02-2020. He relied on the case of Ishtiaq Ahmad vs. Honourable Authority (2016 SCMR 943) in which it was laid down that the disciplinary proceedings before a domestic tribunal were different from criminal proceedings and the same did not attract Article 10-A of the Constitution of Pakistan, 1973. He also relied on the case of Army Welfare Trust Rawalpindi vs. Collector of Sales Tax, Peshawar (2017 SCMR 9) in which the distinction between a Court and Tribunal was drawn. He further submitted that Article 6 of the Code provided the scale of penalties and under Article 6.2 thereof, the minimum penalty for the offence falling under Article 2.4.4. was six months which could extend to life-time ban coupled with fine. The Tribunal had awarded the penalty of three years only and that too without any fine. The penalty was quite appropriate in the facts and circumstances of the case. He had nowhere stated in his interview or reply to the show cause notice that he had met Miss Nabeela, Secretary to the Chairman PCB in order to arrange an interview with the Chairman for the purpose of making a disclosure about the match fixing. Even otherwise, a disclosure was required to be made to the Vigilance

and Security Department/Anti-Corruption Unit. The learned Counsel argued that the cases of Sharjeel Khan, Khalid Lateef, Muhammad Irfan and Muhammad Nawaz had no nexus or similarity with the case in hand. Both Muhammad Nawaz and Muhammad Iran participants had themselves reported belatedly the matter of match fixing. Therefore, they were awarded agreed sanction/ban for a lessor period of time in view of Article 5.1.1 of the PCB's Anti-Corruption Code. The other two participants namely Sharjeel Khan and Khalid Lateef were banned for a period of five years on various counts. The appellant was a repeat offender who was proceeded against on two charges having been approached for match fixing on two different occasions by two different persons. The penalty already awarded by the learned Chairman of the Tribunal was just and fair. The doctrine of proportionality as invoked by the learned Counsels for the appellant was out of place.

8. I have heard the learned Counsel for parties at length and have also carefully perused the available record.

PCB'S ANTI-CORRUPTION CODE AND THE TRIBUNAL:-

9. Before dealing with the merits of case, it is necessary to understand the nature of proceedings before the learned Tribunal. The learned Chairman of the Tribunal is appointed by the Chairman of the PCB under Article 5.1.2 of the Code to determine a charge/charges against a participant having been referred to by the PCB under Article 5.1.1 thereof. The Code is neither a statute nor a statutory instrument and the same is purely in the nature of bye-laws of the PCB. The Tribunal is not a statutory tribunal with judicial trappings or a Court of Law but a domestic tribunal. The proceedings before a domestic Tribunal are sui-generis in nature. The law of evidence is not applicable in such cases. The witnesses before it are not necessarily to be formally examined or cross examined by a party in every case. The Tribunal does not hold a criminal trial of a criminal offence. Of course, such a forum is required to act justly, fairly and reasonably as the cases before it involve serious consequences with imposition of departmental penalties upon the participants. Before being selected the participants bind themselves to abide by the provisions of the Code. It serves a very useful purpose to maintain discipline and to

curb the corruption, corrupt practices, corrupt conduct and other pernicious acts of omission or commission which have unfortunately permeated into all spheres of life including the sport of cricket.


10. India has also established a Board of Control of Cricket of India (BCCI) which has made the BCCI's Anti-Corruption Code for the Participants. It appears that the PCB while drafting the PCB's Anti-Corruption Code for Participants had borrowed, mutatis mutandis, the provisions of the Indian Anti-Corruption Code. The functions of the BCCI and the scope of the Anti-Corruption Code have been elaborated in a recent case of the Board of Control of Cricket in India (BCCI) vs. Cricket Associations of Bihar (AIR 2015 SC 3194) = (2015) 15 SCC 251. The Supreme Court of India observed as under:-

“BCCI is a very important institution that discharges important functions. Demands of institutional integrity are, therefore, heavy and need to be met suitably in larger public interest. Individuals are birds of passage while institutions are forever. The expectations of millions of cricket lovers in particular and public at large in general, have lowered considerably the threshold of tolerance for any mischief, wrongdoing or corrupt practices which ought to be weeded out of the system”.

“The Anti-Corruption Code of the BCCI accepts that if the confidence of the public in the purity of the game is undermined then the very essence of the game of cricket shall be shaken. BCCI has in no uncertain terms declared to resolve to protect the fundamental imperatives constituting the essence of the game of cricket and its determination to take steps in its power to prevent corrupt betting practices undermining the integrity of the sport including any effort to influence the outcome of any match.”

11. In the case of *Ishtiaq Ahmad supra*, the Hon'able Mr. Justice Umar Atta Bandial of the Supreme Court of Pakistan took the view that

“procedural statutes which regulate the Court proceedings and grant the right of representation to an accused or a defendant, do not apply to the proceedings of a domestic appellate forum in disciplinary proceedings also become plausible. These statutes are the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908. Their exclusion does not offend or violate any higher right conferred on an accused person in disciplinary proceedings by the law or the Constitution. There is significant difference between the substantive nature of trial by a Court of law as against the proceedings in a domestic disciplinary forum”.

 In the cases of *Khadim Mohi-ud-din and others vs. Chadhary Rehmat Nagra and others* (PLD 1965 SC 459) and *Abdul Majeed vs. Syed Azhar Ali Shah and others* (PLD 1985 SC 191), it was held that the Rent Controller exercising his powers under the West Pakistan Rent Restriction Ordinance, 1959 was not a Court of law but an executive

officer and that the provisions of the Code of Civil Procedure, 1908 and the Evidence Act, were not applicable. In *Sheikh Abdul Haq vs. The Crown and another* (PLD 1955 FC 401), it was held that the Chief Justice and a Judge of a High Court appointed as a Court of Inquiry did not exercise the judicial power of the State and in fact it was a Tribunal. In *Army Welfare Trust supra*, the Supreme Court took the view that Inland Tribunal could neither be categorized as a Court nor equated with the Tribunal exercising the judicial powers as envisaged in the Constitution. In another case of *Krishhna vs. The State* (PLD 1972 SC 1), it was held that a judge of a High Court acting as Reviewing Authority under the Official Secrets Act, 1923 and Enemy Agents Ordinance, 1943 was merely a *persona designata*.

12. In the case of *State of Haryana vs. Rattan Singh* (AIR 1975 SC 1512)

late Mr. Justice Krishna Iyer of the Supreme Court of India¹ held as under:-

“It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.”

In R. vs. Jockey Club, Ex Party Ram Rececourses Ltd. {(1993) 2 ALL E.R. 225} (244), Lord Justice Stuart-Smith observed that:-

“Quite clearly the majority of cases, involving disciplinary disputes or adjudications between participants in the sport, will be of an entirely domestic character and based on the Commercial relationship between the parties. Such disputes have never been amenable to judicial review.”

In Administrative Law by H.W.R. Wade, fifth Edition, 1982 at page 806, it is stated that “most tribunal proceedings are conducted informally without requiring witnesses to be sworn.”

ON MERITS:-


13. The PCB issued a show cause notice dated 17-03-2020 to the appellant on two charges in that on two different occasions, he had held meetings with two different persons wherein the discussions took place regarding fixing of match PSL 20:20 and that he failed to disclose the same to the PCB's Vigilance and Security Department which called for a disciplinary action under Article 2.4.4. of the Code. For facility of reference Article 2.4.4 is reproduced as under:-

“Failing to disclose to the PCB Vigilance & Security Department (without unnecessary delay) full details of any

approaches or invitations received by the participant to engage in Corrupt Conduct under the Code”.

Article 6.2 of the Code provides for the imposition of sanction/ineligibility for a minimum period of six months and a maximum period of life-time ban for the offence falling under Article 2.4.4. of the Code. In addition, the Tribunal has the discretion to impose a fine on a participant of such amount as it deems appropriate. In his reply dated 22-03-2020, the appellante admitted that his interview was recorded by the PCB but there was nothing to report to the PCB regarding his conversation about match-fixing on both the occasions. He also admitted that one [REDACTED] was a friend of someone whom he knew and was introduced for the purpose of resolving the family issue but he did not know him from Adam nor had any reason to believe that [REDACTED] was a bookie/match fixer. He admitted in the reply that [REDACTED] had told him that he would be willing to help him in exchange of some favour which could be related to match fixing. He acknowledged that he was wrong in not reporting the approach by [REDACTED] to the PCB and the delay might seem unnecessary. In the reply he stated that he had disclosed every single detail of his meetings at the beginning of his interview with the PCB

Officials and the information was divulged voluntarily at the start of interview. He, however, stated, that he had tried to contact Mr. Waseem Khan, M.D. and Chairman Mr. Ihsan Mani regarding previously leaked information and to disclose the approach from

 He also left a message for the Secretary to Waseem Khan to arrange a meeting. However, before the meeting could be arranged, the PCB Officials conducted his interview. He made a plea of clemency in view of his past and on-going commitment to the PCB and against corruption in the game of Cricket. In his reply it was nowhere stated that he had ever contacted Miss Nabeela , Secretary to the Chairman PCB. Therefore, his assertion that he had met Miss Nabeela, for arranging a meeting with the Chairman PCB seems to be an afterthought. In any case, he never made any request to the Tribunal for producing Miss Nabeela as a witness. In the case of University of Dacca vs. Zakir Ahmad (PLD 1965 SC 90) it was held that a domestic tribunal was required to act in good faith, justly, fairly and was not bound to treat the matter as if it was a trial or to administer oath or to examine witnesses in the presence of accused or to give him the facility of cross examining the witnesses appearing against him or even to serve a formal charge sheet. The constitutional

guarantees of fair trial and due process of law as envisaged by Article 4 and 10-A of the Constitution do not seem to have been disregarded in the present case.

14. The learned Chairman of the Tribunal has taken pains of hearing the audio recorded statement of the appellant and to reproduce the relevant contents thereof in the impugned judgment. The same would throw sufficient light in proving the case against the appellant on the rule of preponderance of probabilities. It goes without saying that the interview of the appellant was recorded pursuant to the PCB's intelligence reports. The PCB has not disclosed its source/sources, and rightly so. Such a disclosure would be hazardous, against the public interest and dry up its sources of information and intelligence.

15. The learned Counsel for the appellants could not demonstrate from the record as to how the cases of Sharjeel Khan, Khalid Latif, Muhammad Nawaz and Muhammad Irfan were identical with that of the appellant. In none of those cases, there was a repetition of offence falling under Article 2.4.4. of the Code as was the present case. The case against the appellant stands on altogether different footings and

cannot be equated with those cases. Needless to say that Sharjeel Khan and Khalid Latif were banned for a period of five years, whereas Muhammad Nawaz and Muhammad Irfan were awarded lesser penalty as they, on their own volition, had come forward to report the incidents with some delay. Therefore, no parallel can be drawn between those cases and the case in hand which is quite distinguishable. It is well settled that equality is amongst equals and unequals cannot be treated as equals. In "Animal Farm", (page 90), George Orwell says that, "All animals are equal but some animals are more equal than others".

16. The self-incriminatory admission by the appellant both in his interview and reply to the show cause notice regarding the non-disclosure of vital information of approaches made to him about match fixing on two occasions by two different persons leaves no room for doubt as to the veracity of the charges against him. On the one hand, he stated that the approaches were not worth reporting and in the same breath he with a volte-face took somersault in that he tried to contact Managing Director and Chairman PCB for reporting the same. The stance taken by the appellant is self-contradictory and

not a credit-worthy. The case against the appellant stands proved to the hilt. The learned Chairman of the Tribunal has quite justifiably found the appellant guilty of both the charges.

17. The learned Tribunal has observed that the appellant is not prepared to show any remorse and seek apology, and make admission that he failed to fulfil his responsibility under the Code. However, by a cursory glance of his reply dated 22-03-2020 and the contents of his audio-recorded interview dated 20-02-2020 (as reproduced by the Tribunal) and the submissions made before me, one gets a different impression. Not only the appellant, in a way, admitted the charges but also made an earnest request for taking a lenient view on account of his past conduct and cooperation with the PCB. He seems to have been under great stress of some knotty family issues. It is not borne out from the record whether or not he made any commitment or gave any under-taking or struck any financial bargain with any of the bookies on either or both the occasions which could have aggravated the offence. During the arguments, the learned Counsel for the appellant also unequivocally pleaded with great humility for taking a compassionate view as the questions of deprivation of his livelihood,

career and reputation were involved. In my opinion, the case calls for modification and mollification of the impugned judgment qua the quantum of punishment as awarded by the learned Chairman of the Tribunal.

18. For the forgoing reasons, this appeal is partly allowed. The period of sanction/ ban for a period of three years imposed upon the appellant by the learned Chairman of the Tribunal is reduced to that of a sanction/ban for a period of one year and six months on each count commencing from 20-02-2020, when he was provisionally suspended under Article 4.7 of the Code. Both the penalties awarded on charges No.1 and 2 shall run concurrently. The impugned judgment dated 27-04-2020 by the learned Chairman of the Tribunal shall stand modified accordingly. During the period of ban, the appellant/participant/player shall not play cricket, coach or otherwise participate or be involved in any capacity in any cricket match or any relatable kind of function, event or activity (other than authorized anti-corruption education or rehabilitation Program) that is authorised, recognized sanctioned, or supported in any way by the PCB, the ICC or other national cricket federations, or receive

accreditation previously issued would be treated to have been withdrawn/rescinded.

19. I have also noticed that no action whatsoever is ever taken against the third persons/bookies who are also responsible for spoiling and polluting the game of cricket and the cricketers. I am sanguine that the Chairman of the PCB shall take stock of the situation for revamping the system for good governance. All does not seem to be well. Corruption has become rampant in all sections of society. William Shakespeare had aptly said in "Hamlet" that "Something is rotten in the State of Denmark." In appropriate cases, where credible material is available, constituting a cognizable offence, the PCB should make a reference to the Federal Investigation Agency (FIA) for inquiry/investigation against the cricketers and other persons including bookies who are prima facie involved in corruption, corrupt conduct, malpractices and criminal misconduct, ² ~~constituting~~ ² ~~cognizable~~ offences. The Federal Government may also be approached to undertake the process of legislation in case some lacunae or loopholes are found in the existing law. It goes without saying, that a criminal action can be taken by the PCB

simultaneously with, and independently of, the disciplinary proceedings. Such measures would serve as a deterrent to weed out corruption and corrupt practices. Let the bookies be also booked for commission of criminal offences.

Before parting with the judgment, I would like to place on record my appreciation for valuable assistance rendered by the learned Counsel for the parties.

Lahore

Dated:- 27 th July, 2020.



Justice (R)

Faqir Muhammad Khokhar

Former Judge, Supreme Court of Pakistan.

INDIPENDENT ADJUDICATOR.