

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hassan Shah

Criminal Accountability Appeal No.11 of 2012

Nazir Ahmed Soomro and Waheed Murad Soomro
Both sons of Muhammad Ramzan Soomro

Versus
The STATE

APPELLANTS : 1. Nazir Ahmed Soomro (deceased) and
2. Waheed Murad Soomro (present)
Through Mr. Irshad Ali Jatui, Advocate.

RESPONDENT / : National Accountability Bureau (NAB)
THE STATE Through Syed Khurram Kamal,
Special Prosecutor.

Dates of Hearing : 10.12.2025, 17.12.2025 & 22.12.2025

Date of Decision : 16.02.2026

J U D G M E N T

Syed Fiaz ul Hassan Shah, J :-- The Appellant Nazir Ahmed Soomro through legal heir (Appellant No.1) and Appellant Waheed Murad Soomro (Appellant No.2) has challenged the Judgment dated 15.03.2012 (“**impugned Judgment**”) passed by the learned Judge, Accountability Court No.I Sindh at Karachi (“**Trial Court**”) in NAB Reference No.07 of 2009 filed by the National Accountability Bureau Sindh, Karachi (“**NAB**”), wherein the accused / appellants were convicted under section 10(a) of National Accountability Ordinance, 1999 (“**NAO**”) and sentenced to suffer Rigorous Imprisonment (“**R.I**”) for ten (10)

years each and to pay fine of Rs.50,00,000/- each and in case of default, they shall suffer further R.I. for two (02) years each.

The immovable properties, namely, Flat No. B-203 Afnan Arcade, Flat No.C-109 Sonly Apartments, Karachi, Flat No.C-3, Dolmen Courts, Flat No. C-4 Dolmen Courts, Four (04) acres Industrial Plot vide Na-class No.25, Survey No.25, Deh Ibrahim Haidery on which Five Star Fish Meal is being run and Flat No.25-C, Khalid Commercial Street No.2-A, DHA Phase-VII Extension, Karachi were confiscated to the Government u/s 10(a) NAO. The Bank Account No.4149-9 in the name of accused / appellant No.1 Nazir Ahmed Soomro, Current Account No.2226-4, Current Account No.2576-43, Account No.5159-16 and Saving Account No.7606-3 operated by accused / appellant No.2 Waheed Murad Soomro in Habib Bank Limited, Sir Syed Road Branch, Karachi and Account No.6094-6 Allied Bank Limited generalist colony, Hyderabad in the name of accused / appellant No.1 Nazir Ahmed Soomro were confiscated to the government forthwith and the directions were communicated to the Manager of these banks through D.G. NAB to stop further transactions in the said accounts. The accused / appellants were declared disqualified u/s. 15 of NAO for a term of 10 years from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or any Province and/or to obtain loan from any Bank, Financial Institution, Co-operative Society, Government Department, Statutory Body or any

authority established or controlled by the Government while being granted the benefit of Section 382(b) Cr. P.C.

2. The facts of the case are that the NAB authorities received a complaint against the appellant Nazir Ahmed Soomro (now deceased) that he is involved in corruption and corrupt practices and had accumulated the assets beyond his pecuniary source of income. It is the case of the prosecution that initially appellant No.1 joined civil services in the year 1974 as Sub-Engineer (BPS-11) in Irrigation Department, thereafter, in the year 1975 he was appointed as Assistant Engineer (BPS-17) in Public Health Engineering Department and in 2001 he was promoted as Superintending Engineer (BPS-19). It is alleged that the appellant No.1 during his service accumulated the assets and unjustified funds and hidden the same by using his brother appellant No.2 Waheed Murad Soomro.
3. Precisely, the investigation report revealed that during the service period from 1985 to 2001, appellant No.1 accumulated and held movable and immovable properties in his name, in the name of his son Master Salman Ahmed Soomro (minor), in the name of his daughter Baby Sana Nazir Ahmed Soomro (minor) as well as in the name of his younger brothers Mukhtiar Ahmed Soomro and Waheed Murad Soomro (appellant No.2). Details of which are as under: -

S. No.	Description of Properties	In the name	Total Amount / Instalments paid for Acquisition	Year of Acquisition	Year of Disposal
1.	Flat No.B-203 Afnan Arcade Gulistan-e-Jauhar, Bl-15, Karachi	Nazeer Ahmed Soomro	Rs.400,000/- Rs.150,000/- Rs.550,000/-	1991	Nil
2.	Flat No.C-3, Dolmen Courts Apartment Block-15, Gulistan-e-Jouhar, Karachi	Waheed Ahmed Soomro	Rs.595,000/-	1992	2003 (Sold to Mst.Fatima Sughra W/o Syed Qadir Mohiuddin)
3.	Flat No.C-4, Dolmen Courts Apartment, Block-15, Gulistan-	Mukhtiar Ahmed Soomro	Rs.660,000/-	1992	Nil

	e-Jouhar, Karachi				
4.	Flat No.C-109, Sohani Apartment, Gulshan-e-Iqbal, Karachi	Nazeer Ahmed Soomro	Rs.235,000/- Rs.150,000/- Rs.3,85,000/	1993	2003 (Sold to Imran Khan s/o Suleman Khan)
5.	Industrial Land 04 Acres, Class No.25, Survey No.25, Deh Ibrahim Hyderi, Karachi	Waheed Murad Soomro	Rs.200,000/-	1993	Nil
6.	Establishment of Business in the name of M/s. Five Star Fish Meal	-do-	Rs.5,438,500/-	1996	Nil
7.	Purchase of PLS Special Notice Time Deposit from HBL	-do-	Rs.5,200,000/-	1996	Nil
8.	Plot No.49-C, Khalid Commercial Street 4. No.5, DHA, Phase-VII (Extn), Karachi	Nazeer Ahmed Soomro	Rs.219,000/-	1996	Nil
9.	Flat No.25-C, Khalid Commercial Street No.5, DHA, Phase-VII (Extn), Karachi	Waheed Murad Soomro	Rs.200,000/-	1997	Nil
10.	Defence Saving Certificates	Sulman Ahmed Soomro	Rs.1,000,000/-	2000	Stopped delivery
11.	Defence Saving Certificates	Baby Sana Nazir Ahmed Soomro	Rs.1,000,000/-	2000	Stopped delivery
12.	Defence Saving Certificates	Waheed Murad Soomro	Rs.1,000,000/-	1999	Stopped delivery
13.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil
14.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil
15.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil
16.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil
17.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil
18.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil

4. Furthermore, it was alleged that Industrial Plot No.37 measuring 4.00 acres in Rehri Goth, Ibrahim Hyderi, Karachi was also purchased by the appellant No.1 in the name of appellant No.2 and in the year 1991 a business was established in the name and style of Five Star Fish Meal with an initial capital of Rs.5.4 million. Further, six bank accounts in the names of appellants No.1&2 were found. Details of which are as under: -

S. No	A/c. No. & Name of Bank	Title	Period	Initial amount	Total credits	Total credits of major entries
1.	4149-9 HBL Sir Syed Road Branch Karachi	Nazeer Ahmed Soomro	15-12-1983 to 31-12-2005	Rs.48,000/-	Rs.14,437,431/-	Rs.13,099,598/-
2.	6094-6, ABL Journalist Colony Branch, Hyderabad	-do-	10-03-2001 to 13-10-2006	Rs.1000/-	Rs.4,135,847/-	Rs.2,102,000/-
3.	226-14, HBL Sir Syed Road Branch, Karachi	Waheed Murad Soomro	21-01-1992 to 14-02-2001	Rs.348,500/-	Rs.36,378,439/-	Rs.15,005,000/-
4.	5195-16 HBL, Sir Syed Road Branch Karachi	-do-	17-06-2004 to 06-08-2005	Rs.1,000/-	Rs.44,231,095/-	Rs.16,482,030/-
5.	7606-3, HBL Sir Syed Road Branch Karachi	-do-	08-11-1994 to 26-06-2004	Rs.500/-	Rs.38,206,827/-	Rs.15,925,000/-

6.	2576-43, HBL, Sir Syed Road Branch Karachi	Five Star Fish Meal	20-01-1994 to 18-06-2004	Rs.500/-	Rs.132,054,642/-	Rs.12,500,000/-
			Total:		Rs.269,444,281/-	Rs.75,113,628/-

5. As per the prosecution, total salary received by the appellant No.1 during his service from 1985 till 2008 was Rs.27,63,907/-, which is the only known source of income of the appellant No.1. The prosecution has also considered Rs.2 Million from the income on account of lucky draw price bond winning price while after deducting such income from the price bond, still one business account, appearing at Sr.No.6 above, shows that Rs.132,054,642/- remained hugely unexplained money and not in proportion to his source of income.
6. After usual formalities, copies were supplied to the appellants under section 265-C, Cr.P.C. and the charge was framed against them on 13.11.2010 at Exh.2, which the appellants pleaded not guilty and claimed to be tried at Exh.3 and 4 respectively. The prosecution in order to prove its case has examined twenty-one (21) witnesses, who produced the documents / record from Exh.5/1 to Exh.29/2 respectively. Thereafter, the prosecution has closed its side at Exh.30 and the statement of the appellants were recorded under section 342, Cr.P.C. at Exh.31 & 32, who also filed written statement at Exh.31/1, therein they have denied allegations levelled against them. The appellants have neither examined themselves on oath, nor produced any witness in their defence and the trial Court, after hearing the parties has passed the judgment of conviction, which has been impugned before us.
7. Learned counsel appearing on behalf of the Appellants has contended that the appellants had additional sources of income after

excluding the income from the salary of appellant No.1. He further contended that income from (i) agricultural land situated at Taluka Sehwan District Jamshoro; (ii) price bonds money drawn; (iii) rental incomes from the food farm owned by the wife of appellant No.1; and (iv) income generated from the dowry articles and its accessories received at the time of marriage by the appellant No.1. Per learned counsel, the trial Court did not consider such aspect and only considered and discussed the aspect of income from the salary and compared it with existing assets and properties of the appellants and his brother appellant No.2. Such misreading or non-reading of material record is un-justification and the trial Court erred in passing the judgment of conviction.

8. On the other hand, learned Special Prosecutor for NAB has supported the impugned judgment and requested to dismiss the listed appeal.
9. We have heard the learned counsel for the appellants and learned Special Prosecutor for NAB and with their assistance minutely perused the record of the case.
10. It is an admitted position that the Appellant No.1 was appointed as Sub-Engineer in 1974, Assistant Engineer (BPS-17) in 1975 and retired in 2005 as Superintending Engineer. As per prosecution case, during period commencing from January 1985 till 2nd September 2005, the appellant No.1 received Rs.27,63,907/- on account of salary. However, the Counsel for Appellants contended that there is a slight error in calculation and that the total amount drawn is Rs.35,00,000/-. His contention is supported from the admission of PW-1 Sikander Ali, District Accounts Officer, Hyderabad, who was

examined at Exh.5 and has produced the salary details of Appellant No.1 for the period from 1975 to 2005. The Second I.O. PW-21 Muhammad Wasif Bhatti has also admitted such fact and deposed *“It is correct to say that the statement of pay and allowances of Accused Nazir Ahmed SoomroEx.5/1 shows that his pay and allowances from 20.01.1977 to 06.08.1983 are not included in the statement of pay and allowances Ex.5/1.”* Therefore, we accept the contention of the learned counsel that Appellant No.1 had earned Rs.35,00,000/- from monthly salaries during the relevant period.

11. Further, it is a matter of record that the appellant No.1 directly holds the following movable and immovable properties as well as bank account in his personal name. The details of which are as follows: -

Movable & Immovable Properties in the name of Appellant No.1:

S. No.	Description of Properties	In the name	Total Amount / Instalments paid for Acquisition	Year of Acquisition	Year of Disposal
1.	Flat No.B-203 Afnan Arcade Gulistan-e-Jauhar, B1-15, Karachi	Nazeer Ahmed Soomro	Rs.400,000/- Rs.150,000/- Rs.550,000/-	1991	Nil
2.	Flat No.C-109, Sohani Apartment, Gulshan-e-Iqbal, Karachi	Nazeer Ahmed Soomro	Rs.235,000/- Rs.150,000/- Rs.3,85,000/	1993	2003 (Sold to Imran Khan s/o Suleman Khan)
3.	Plot No.49-C, Khalid Commercial Street No.5, DHA, Phase-VII (Extn), Karachi	Nazeer Ahmed Soomro	Rs.219,000/-	1996	Nil
4.	Defence Saving Certificates	Sulman Ahmed Soomro	Rs.1,000,000/-	2000	Stopped delivery
5.	Defence Saving Certificates	Baby Sana Nazir Ahmed Soomro	Rs.1,000,000/-	2000	Stopped delivery

Bank Account in the name of Appellant No.1:

S. No	A/c. No. & Name of Bank	Title	Period	Initial amount	Total credits	Total credits of major entries
1.	4149-9 HBL Sir Syed Road Branch Karachi	Nazeer Ahmed Soomro	15-12-1983 to 31-12-2005	Rs.48,000/-	Rs.14,437,431/-	Rs.13,099,598/-
2.	6094-6, ABL Journalist Colony Branch, Hyderabad	-do-	10-03-2001 to 13-10-2006	Rs.1000/-	Rs.4,135,847/-	Rs.2,102,000/-

- 12.** The learned counsel for the Appellants vehemently argued that Appellant No.1 had also earned income from other sources which were not considered by the Trial Court while delivering the impugned judgment. The first claim was advanced by Appellant No.1 during investigation and in his statement before the trial under section 342(1) Cr. P.C. that Appellant No.1 derived income from agricultural land belonging to his father. It was asserted that father of the Appellants had obtained agricultural land measuring 27.16 acres in Deh and Tapu Bhanba, Taluka Sehwan, District Jamshoro, for a term of five years and another agriculture land acquired on lease (Mukata) measuring 42.29 acres in the same locality from Muhammad Yousf Rahpoto and Muhammad Hasan Rahpoto for a period of ten years commencing from 1985, which continued until 1995.
- 13.** We are unable to agree with the learned counsel for the Appellants that the alleged income from these agricultural lands should be added to the income of Appellant No.1 in addition to his salary. Neither any specific amount of agricultural income was disclosed, nor were details of such income produced before the Trial Court. No receipts of Dhal (lease money) were furnished to establish that the lands were indeed obtained, cultivated, or that any crops were sold in the market. Furthermore, the Mukhtiarkar, Taluka Sehwan, examined at Exh.28/5, confirmed that no revenue entry stood in the name of the deceased father of the Appellants in respect of the said lands. The Appellants have thus failed to substantiate the existence of such agricultural income. Consequently, this Court draws the inference that no additional income accrued to the Appellants from

the purported agricultural lands. The contention of learned counsel that the Appellants had an additional source of funds from agricultural income is therefore devoid of merit.

- 14.** The second additional source urged was prize money from prize bonds draw. Appellant No.1 at Exh.31/1 has claimed to have received Rs.30,55,000/- as cash awards. However, no documentary proof was produced in support of this claim. The Respondent NAB during investigation has already accepted the cash award of Rs.2 million benefit in favour of the Appellant No.1 and such prize winning amount was included in the income of the Appellant No.1. The remaining claim of Rs.30,55,000/-, after deduction of Rs.20 lacs, leaving Rs.9,45,000/-, which was not accepted by the prosecution during investigation, and no proof was produced by the Appellants in this regard, save vague assertions in this regard. Therefore, the contention of learned counsel that Appellant No.1 had a second additional source of income of prize winning rewards Rs.9,45,000/- from the Prize Bond is also devoid of merits.
- 15.** The third additional source of income claimed by the learned Counsel was the income from rental earnings of the inherited fruit farm of the wife of Appellant No.1, as well as rental income from a portion of a bungalow allegedly rented out to the Export Promotion Bureau (EPB), now the Trade Development Authority of Pakistan (TDAP), at a monthly rent of Rs.50,000/-. It was asserted that for the past thirty years the said bungalow has been rented out, initially at Rs.15,000/- per month and subsequently at Rs.50,000/- per month. It was further claimed that agricultural land measuring 61 acres, including a fruit garden purchased by the father-in-law of

Appellant No.1, was leased out by the brother-in-law of Appellant No.1 for Rs.20,00,000/- per year, from which the wife of Appellant No.1 allegedly drew her share. Upon consideration of this contention, it is noted that neither title documents were produced showing the wife of Appellant No.1 as co-owner, nor were any co-sharers examined to confirm the claim. No bank statements of the wife of Appellant No.1 were produced to establish that income from the fruit farm or rental income from the bungalow at Hyderabad was deposited in her account during the relevant period. Therefore, this additional pecuniary source of income of Appellant No.1 has not been established from evidence on record. However, PW-20 has admitted that appellant No.1 had earned income Rs.8,47,000/- from his wife. We, therefore, give such benefit to the Appellant No.1. In the light of evidence of I.O, the appellant No.1 is entitled for the benefits of funds Rs.8,47,000/- in view of the admission of PW-20 Muhammad Mahesar DD, NAB (first I.O), who deposed as under:

“..... I had not recorded the statement of Mrs. Farhana Quresti w/o accused Nazir Ahmed Soomro relating to the share of her inheritance from her father. It is correct to say that Imadad Ali Qureshi brother of Mrs. Farhana Qureshi w/o accused Nazir Ahmed Soomro had confirmed the share of his sister inherited in fruit farm and bungalow of GOR colony during the course of inquiry. I had not recorded the statement of any person to ascertain the share of Mrs. Farhana Qureshi w/o accused Nazir Ahmed Soomro from the properties left by her father. It is correct to say that the accused Nazir Ahmed Soomro in his detailed plea had disclosed for purchase of Flat NO.C/109 Sony apartments for a consideration of Rs.3,55,000/- in the year 1999 and subsequently it was disposed of to one Imran Khan for a consideration of Rs.600,000/-. It is correct to say that Mrs. Farhana

Qureshi w/o accused Nazir Ahmed Soomro received SSC in the sum of Rs.2,35,000/- and subsequently purchased some other certificates and subsequently all the said certificates were disposed of for a consideration of Rs.8,47,000/- including profit.”

16. The final additional source of income claimed by Appellant No.1 relates to dowry articles and accessories, including gold ornaments, allegedly received by his wife at the time of their marriage. However, this defence was not set up during investigation or at trial before the learned Trial Court. The plea was not raised in Appellant No.1's statement recorded under Section 342, Cr.P.C. at Exh.31, nor in his written statement at Exh.31/1. The contention of learned counsel that income was derived from dowry articles and gold ornaments is therefore unacceptable at this stage, being hit by the doctrine of improvement. No witness was examined in defence under Section 340(2), Cr.P.C., nor was any documentary proof produced before the Trial Court. Consequently, the contention that dowry articles and ornaments constituted a fourth additional source of income is devoid of merit and stands rejected.
17. There was credit transaction of Rs.1,85,73,278/- in the above-mentioned two bank accounts, one is personal and other is salary, maintained by the Appellant No.1. According to the prosecution, the justified and legitimized amount of Rs.27,63,907/-, is income from salaries which we have modified as Rs.35,00,000/- while further source income was Rs.Two Million earned by the Appellant No.1 from Prize Winning reward of Prize Bond and Rs.8,47,000/- received from his wife's income. The appellants have failed to give plausible explanation and valid justification for the remaining assets

and amount of **Rs.1,30,73,278/-**. The plea of purchase of saving certificates by appellant No.2 in the name of son and daughter of appellant No.1 will not be acceptable to a person of prudent mind for two reasons; first why the appellant No.2 did not purchase such saving certificates in the name of his own children and second, if it is accepted that appellant No.2 had purchased out of love and affection for his nephew or niece, then why appellant No.2 never purchased the saving certificates in the name of nephew or niece of other brother or sister. His explanation at question No.9 and 10 of his statement Exh.32 about self-created fact is unacceptable to a prudent mind and failure to discharge his burden through cogent evidence or reasonable explanation coupled with the fact that main charge was the dirty money of his brother earned / usurped by abusing official post, established that the said certificates were not purchased by appellant No.2, instead it was purchased by appellant No.1 for his own children and comprehensible that these funds were part of income beyond known pecuniary resource.

18. The Ex.23/3 produced by the PW-16 Ghulam Mustufa of Beacon House School, Latifabad, Hyderabad confirmed that the Appellant No.1 borne expenses of Rs.2,74,140/- on account of payment of school fees for the period 1998-2005. Therefore, after excluding the income of Rs.35,00,000/- (Rupees thirty-five lac), prize bond price at Rs.20,20,000/- (Rupees twenty lac twenty thousand) and Rs.8,47,000/- (Rupees eight lac forty-seven thousand) that too, subject to the deduction of cost of living and utilities and other expenditures, Appellant No.1 has failed to give valid justification or rebuttal evidence that the above assets were generated from the

legitimize money or funds. Conversely, the record establishes that following his promotion to the posts of Executive Engineer and Superintending Engineer, there was a sharp and disproportionate rise in the assets and properties of Appellant No.1 and his family. We hold that his properties and assets mentioned at Para-7 above are liable to be confiscated and all income to be deposited in the Government head with SBP/NBP. Further, the property tabulated at Serial No.2 have already been sold by the Appellant, the NAB is directed to recover amount equivalent to the price of said property.

19. Now moving towards the details of assets brought up by the prosecution purportedly owned by the Appellant No.1 in the name of his two brothers, the details of immovable properties allegedly owned by Appellant No.1 as ostensible owner which are standing in the name of his brothers are as under: -

Immovable Properties in the name of Appellant Waheed Murad Soomro:

S. No.	Description of Properties	In the name	Total Amount / Instalments paid for Acquisition	Year of Acquisition	Year of Disposal
1	Flat No.C-3, Dolmen Courts Apartment Block-15, Gulistan-e-Jouhar, Karachi	Waheed Ahmed Soomro	Rs.595,000/-	1992	2003 (Sold to Mst.Fatima Sughra W/o Syed Qadir Mohiuddin)
2	Flat No.C-4, Dolmen Courts Apartment, Block-15, Gulistan-e-Jouhar, Karachi	Mukhtar Ahmed Soomro	Rs.660,000/-	1992	Nil
3.	Industrial Land 04 Acres, Class No.25, Survey No.25, Deh Ibrahim Hyderi, Karachi	Waheed Murad Soomro	Rs.200,000/-	1993	Nil
4.	Flat No.25-C, Khalid Commercial Street No.5, DHA, Phase-VII (Extn), Karachi	Waheed Murad Soomro	Rs.200,000/-	1997	Nil
<u>Movable Properties:</u>					
5	Establishment of Business in the name of M/s. Five Star Fish Meal	Waheed Ahmed Soormo	Rs.5,438,500/-	1996	Nil
6	Purchase of PLS Special Notice Time Deposit from HBL	-do-	Rs.5,200,000/-	1996	Nil
7	Defence Saving Certificates	-do-	Rs.1,000,000/-	1999	Stopped Delivery
8	Defence Saving Certificates	-do-	Rs.1,000,000/-	2000	Stopped Delivery
9.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil
10.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil
11.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil

12.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil	
13.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil	
14.	NSTDRs No.230855	-do-	Rs.20,00,000/-	1999	Nil	
<u>Bank Accounts:</u>						
S. No	A/c. No. & Name of Bank	Title	Period	Initial amount	Total credits	Total credits of major entries
1.	226-14, HBL Sir Syed Road Branch, Karachi	Waheed Murad Soomro	21-01-1992 to 14-02-2001	Rs.348,500/-	Rs.36,378,439/-	Rs.15,005,000/-
2.	5195-16 HBL, Sir Syed Road Branch Karachi	-do-	17-06-2004 to 06-08-2005	Rs.1,000/-	Rs.44,231,095/-	Rs.16,482,030/-
3.	7606-3, HBL Sir Syed Road Branch Karachi	-do-	08-11-1994 to 26-06-2004	Rs.500/-	Rs.38,206,827/-	Rs.15,925,000/-
4.	2576-43, HBL, Sir Syed Road Branch Karachi	Five Star Fish Meal	20-01-1994 to 18-06-2004	Rs.500/-	Rs.132,054,642 /-	Rs.12,500,000/-

20. The concept of benamidar under Section 5(da) of NAO requires proof that the ostensible holder possesses property for the benefit and enjoyment of the accused, and Section 9(v) mandates that such person be given an opportunity to reasonably account for the asset. The Honourable Supreme Court in *Mst. Zahida Sattar v. Federation of Pakistan (PLD 2002 SC 408)* held that disputes between a real owner and an ostensible owner are civil in nature, triable by Civil Courts under Section 9 CPC, whereas criminal jurisdiction under NAB arises only in cases of accumulation of wealth through corrupt practices. Similarly, in *Iqbal Ahmed Turabi v. The State (PLD 2004 SC 830)*, the Court emphasized that source of consideration and title documents are decisive when the dispute is between the real owner and benamidar, while conduct and surrounding circumstances are relevant when third parties are involved. Thus, unless NAB establishes that the property held in the name of a relative was acquired for the benefit of the accused and beyond his lawful means, mere ostensible ownership cannot suffice to brand the relative as a benamidar.

21. We have observed that property at Serial No.2 stands in the name of appellants' brother Mukhtar Ahmed Soomro. The second Investigation Officer Muhammad Wasif Bhatti (PW-21) deposed that *"I have exonerated one accused namely Mukhtar Ahmed Soomro. I had not obtained any order from the Court regrading dropping of Mukhtar Ahmed Soormo in view of Section 9(c) of National Accountability Ordinance, 1999."* Since NAB did not join Mukhtar Ahmed Soomro during investigation and there was no prosecutorial decision to prosecute Mukhtiar Ahmed Soomro, therefore, this property tabulated at Serial No.2 cannot be found subject matter of the prosecution as well as instant appeal. Therefore, it is hereby excluded.
22. The rest immovable properties tabulated at Serial No.1,3,4,5 & 6 were purchased in the name of Appellant No.2 Waheed Murad Soormo during the years 1992, 1993, 1996, 1997 respectively. Admittedly the Appellant No.2 had started his own business in the year 1994 and opened a bank account in the name of M/s Five Star Fish Meal from the period 20.1.1994 to 18.6.2004.
23. The two properties bearing (1) Flat No.C-3, Dolmen Courts Apartment Block-15, Gulistan-e-Jouhar, Karachi and (2) Industrial Land measuring 04 Acres, Class No.25, Survey No.25, Deh Ibrahim Hyderi, Karachi were purchased in the name of Appellant No.2 prior to the establishment of his business in 1994. In such circumstances, the trial Court is justified to draw a presumption under Article 122

of the Qanun-e-Shahadat Order, 1984 that the said properties were generated from the illicit funds of Appellant No.1, who is the ostensible owner. The prosecution has sufficiently brought on record that Appellant No.2, at the relevant point of time, had no independent source of income. The Appellant No.2 failed to controvert such presumption as he did not furnish any plausible explanation or cogent evidence to establish that these properties were acquired from his legitimate funds. The absence of such explanation allows the Court to invoke the presumption under Article 129(g) that the apparent ownership was not genuine and that Appellant No.2 was merely a benamidar for Appellant No.1. Thus, the evidentiary record, coupled with the statutory presumptions under the Qanun-e-Shahadat Order, 1984, supports the conclusion that the properties in question were acquired through illicit means and belong to Appellant No.1 and are liable for confiscation and auction by crediting income in favour of national treasury. Since the Appellant No.2 has already sold out property at Serial No.1 as admitted by the PW-20 Muhammad Haneef Mahesar, DD, NAB, during the cross-examination on the suggestion of the Appellant No.2. Therefore, the NAB is directed to recover amount sold property mentioned at serial No.1 from the Appellant No.2 or from his bank accounts.

24. While Properties tabulated at Serial No.4 and serial No.6 to 14 have been claimed by Appellant No.2 that he had self-purchased these properties out of the income from his business.
25. The evidence of PW-15 Abdul Hameed Anjum, Dy Commissioner, Income Tax, FBR confirmed that the Appellant No.2 was filing annual Tax Returns as well as Wealth Tax Return since the year 1997-98 onwards. The evidence of PW-20 did not support the case of prosecution. He deposed as under: -

“ It is correct to say that he was a registered contractor in Irrigation department. It is correct to say that Nazir Ahmed Soomro has shown the share of his inheritance from the agricultural land to the tune of Rs.14,15,000/- in his detailed plea. It is correct to say that I had also recorded the plea of co-accused Waheed Murad Soomro the real brother of accused Nazir Ahmed Soomro. It is correct to say that I had also recorded the plea of accused Waheed Murad Soomro on 27.09.2006 and he had also given in writing his plea on 16.03.2006 which was also received by me. I see plea of accused Waheed Murad Soomro recorded by me as well as submitted by him and say that both are same, photocopy of which are produced vide Ex.28/6 and Ex.28/7. It is correct to say that accused Waheed Murad Soomro had claimed inherited amount of Rs.40,88,865/- from the agricultural income of his father from the year 1989 to 1995. It is correct to say that accused Waheed Murad Soomro had also disclosed that he himself had acquired 266 acres of agricultural land in Deh Ubh kabi Tapu Shah Bandar, District Thatta in the year 1999 on lease for 10 years. It is correct to say that accused Waheed Murad Soomro had also disclosed in his plea that he had earned Rs.67,65,000/- from the agricultural land of District Thatta from the year 2000 to 2008, I had summoned the Mukhtiarkar Shah Bandar, District Thatta as well as Tapedar to

investigation agricultural land disclosed by the accused Waheed Murad Soomro and the said Tapedar and Mukhtiarkar Shah Bander on the basis of their record informed me that there is no record available with them regarding lease of 266 acres of agricultural land to the accused Waheed Murad Soomro or the details of agricultural crops and income. I during the course of investigation remained with me, had not recorded the statement of Mukhtiarkar and Tapedar of Tapo Shah Bander, District Thatta u/s. 161 Cr.P.C. It is correct to say that Let. Commander NAB had addressed a letter to EDO (Revenue) on 01.08.2005 thereby summoned the Mukhtiarkar and Tapedar Shah Bander District Thatta. I produce the photocopy of the letter dated 01.08.2005 as Ex. 28/8. It is correct to say that I myself had not stated in list of witnesses regarding the name of Mukhtiarkar Shah Bander, Tapedar Shah Bander, nor the said statement in inquiry, has been submitted alongwith the documents of reference in court nor it has been supplied to the accused. The statement of Mukhtiarkar, supervising Tapedar were called during the course of inquiry to verify the claim of the accused and their statements were not recorded during the course of inquiry however, I do not know as to whether their statement was recorded during the course of investigation subsequent to transfer of investigation from me to Mr. Wasif Bhatti I.O. I produce the photocopy of certificate of attendance of Mukhtiarkar and Tapedar Shah Bander regarding their attendance in the office during the course of inquiry as Ex.28/9. It is incorrect to suggest that the accused Waheed Murad Soomro purchased Flat No.C-3, Doleman Court for a sum of Rs.6,10,000/-. Voluntarily says that the said flat was purchased for Rs.5,95,000/-. It is correct to say that the accused Waheed Murad Soomro had disposed Flat No.C-3 to Mst. Fatima Sughra for a consideration of Rs.13,75,000/-. It is correct to say that the accused Waheed Murad Soomro in his written plea has also stated about Rs.13,29,000/- as profit of Defence Saving Certificates since 1988 to 2005. It is correct to say that the accused Waheed Murad Soomro in his detailed plea

had stated about money won by him on prize bonds to the tune of Rs.29,70,000/- in the year 2005. I had called the statement of accounts of both the accused operating in HBL Sir Syed Road branch, Karachi. It is correct to say that I had not scrutinized the statement of account of accused Waheed Murad Soomro received from HBL Sir Syed Road branch as after receipt of the said statement I met with an accident and the investigation was transferred from me.”

- 26.** The PW-21 Second Investigation Officer Muhammad Wasif Bhatti also deposed such facts. He deposed *“I had internally discussed with the Manager of the Banks regarding deposit of cross-cheques in the 4 accounts of accused Murad Waheed Soomro and the said discussion had not been recorded by me in the shape of their statement under section 161 Cr.P.C. to the that effect. I have not inquired from the banks as to from where those cross-cheques were received by accused Waheed Murad Soomro and deposited in his 4 accounts. Voluntarily says that it was the responsibility of the accused to disclose the sources of receipt and encashment of cheques.”*
- 27.** In the absence of direct evidence that the properties were purchased by appellant No.1 or funds were provided by the Appellant No.1 from his dirty money, we are constrained to hold that the said properties at Serial No.4, Serial No.6 to 14 are subject matter of Tax evasion for the reasons given in following paragraphs. Therefore, the NAB shall refer the matter to FBR to inquire and decide the matter in accordance with Tax laws.
- 28.** It has come on record that bank account of M/s Five Star Fish Meal was maintained since 20.01.1994, whereas Appellant No.2 became a

registered taxpayer only from 1999-2000. Secondly, that after 1999, the Appellant No.2 started to file Annual Tax Returns between the fiscal year 1999 to 2006, Appellant No.2 filed annual tax returns declaring very low income and which were not equivalent to or par with the assets and cash in hand. The trial Court, on mere analogy, concluded that the income and credit transactions in the said account were “dirty money” supplanted by Appellant No.1, which finding is erroneous. Under Article 117 QSO, the burden lay upon the NAB prosecution to establish that the business of Appellant No.2 was financed by illicit funds of Appellant No.1, yet no direct or circumstantial evidence was produced to discharge this burden. Mere disparity between heavy credit transactions and low-income returns cannot, without supporting material, give rise to a presumption of illegality under Article 118 QSO.

29. While Article 129(g) QSO requires that in absence of evidence to the contrary, it must be presumed that the business account opened in 1994 was maintained in the ordinary course of business. Further, Article 71 QSO clarifies that bank statements are relevant but not conclusive proof of the source of funds, and NAB failed to link these entries with any corruption or corrupt practices of Appellant No.1. The prosecution did not allege, nor did the investigation establish, that Appellant No.2 commenced his business with illicit money of Appellant No.1, nor was any incremental material brought on record to show the quantum of alleged dirty money injected at the time of opening the account or at any subsequent stage. Mere non-filing of tax return or declaring low-income while filing annual tax returns does not warrant criminal interference by NAB, as such

matters fall within the jurisdiction of the Federal Board of Revenue (FBR), which has statutory mechanisms under the Income Tax Ordinance, 1979 and routinely distinguishes between “Filers” and “Non-Filers” for purposes of taxes such as withholding tax etc.

30. The trial Court failed to appreciate that the proper forum for examining disparity between declared income and bank transactions was the FBR, not NAB. Therefore, it is held that NAB prosecution failed to discharge its burden of proof under Article 117 QSO, no admissible evidence under Article 71 QSO was produced to establish that Appellant No.1 contributed illicit funds, and the disparity between credit transactions and declared income cannot automatically become the criminal intent or criminal charge or by itself, constitute proof of corruption under Section 9 of NAO. At best, the matter amounts to possible tax evasion, which falls within the exclusive jurisdiction of FBR for audit, assessment, and recovery. Accordingly, the income, funds, and properties generated from the business account of M/s Five Star Fish Meal are not part of the assets of Appellant No.1 and cannot be subjected to seizure, confiscation, or auction under NAO, 1999.

31. In *Ghani ur Rehman v. NAB* (**PLD 2011 SC 1144**), the Supreme Court of Pakistan reiterated the principles earlier laid down in *Hakim Ali Zardari v. State* (**2007 MLD 910**). It was emphasized that, in order to establish an offence under Section 9(a)(v) of the National Accountability Ordinance (NAO), the prosecution must prove the essential ingredients that (1) the accused was the holder of a public office (2) the nature and extent of the pecuniary resources or property found in his possession (3) the known sources of his

income and (4) the resources or property in his possession were disproportionate to his known sources of income. Once these four elements are established, the offence stands completed unless the accused is able to satisfactorily account for such resources or assets.

32. According to the reference filed and the charge framed, Appellant No.1, through corruption and corrupt practices, accumulated assets both in his own name and in the names of his children and brother (Appellant No.2). The worth of such assets was charged almost Rs.29,00,00,000/- (Rupees twenty-nine crore), whereas Appellant No.1's declared income was Rs. 63,47,000/- (Salary income = Rs. 35,00,000/-, Prize bond income = Rs. 20,20,000/-, and rental income of wife = Rs. 8,47,000/-). The trial court, however, committed misreading and non-reading of evidence by failing to consider Appellant No.1's salary income as Rs. 35,00,000/- instead of Rs.27,63,907/- and also disregarded the rental income of Rs. 8,47,000/- earned through his wife. Therefore, after adding up the salary allowance and rent income, the Appellant legitimate income is modified to Rs.63,47,000/- and after excluding the assets and the properties to the extent of Rs.63,47,000/- subject to deduction of minimum 40% cost of living, all remaining assets and properties including bank accounts or saving certificates stand in the name of Appellant No.1 or his legal heirs including Master Salman Ahmed Soomro and minor Baby Sana are rightly confiscated by the trial court for onward auction and transmission of such income to the Government Head with SBP/NBP.

33. The assets of Appellant Waheed Murad Soomro can be divided into two distinct phases:

Phase-I (Prior to 1994): During this period, Appellant Waheed Murad Soomro had no independent source of income and failed to give pecuniary resources for two properties tabulated. He acquired properties but failed to demonstrate that the two properties listed at Serial Nos.1, 2 and 3 were obtained through his own income. It was undisputed that in 1992 and 1993 he was neither engaged in any business nor had any source of income and his claim of income from father's agricultural land has already been rejected by us while dealing with identical claim of appellant No.1 Nazir Ahmed Soomro in earlier paras of impugned judgment while his claim of agricultural land at District Thatta could not be established in view of evidence of Mukhtiarkar Revenue, Shah Bandar, District Thatta and I.O. PW-20. Consequently, the trial Court rightly held that these properties were acquired from the illicit funds of Appellant No.1, in the absence of any credible evidence to the contrary and are liable to be confiscated and put for auction. PW-20 Muhammad Haneef Mahesar, DD, NAB has admitted in cross-examination that the Appellant Waheed Murad Soomro has sold out the Property mentioned at Serial No.1 at Rs.13,29,000/- therefore, the NAB shall recover the sale price from the Appellant Waheed Murad Soomro.

Phase-II (Post-1994): In 1994, Appellant No.2 Waheed Murad Soomro established his business under the name *M/s Five Star Fish Meal*. This fact was corroborated by bank records produced by the NAB prosecution. There is no evidence on record to suggest that Appellant No.1 provided illicit funds to Appellant No.2 for the establishment of this business. Therefore, the properties and assets acquired by Appellant No.2 after 1994 can reasonably be attributed

to his business income. The fact that Appellant No.2 was not registered with the FBR as a taxpayer until 1999, or that he subsequently declared low income disproportionate to his assets, falls within the jurisdiction of the FBR. Unless direct and cogent evidence is produced to establish a link between the illicit funds of Appellant No.1 and the assets of Appellant No.2, such matters remain outside the scope of accountability proceedings under the NAO, except that the appellant No.2 in his statement Exh.32/1 had himself claimed that he received Rs.40,88,865/- from father's agricultural land at Jamshoro. Since, we have already rejected the identical claim of appellant No.1, the claim of appellant No.2 is also rejected for same land. The appellant No.2 has even otherwise failed to discharge his initial burden at Jamshoro's agricultural land and its income and the prosecution successfully discharged burden through Exh.28/4, Exh.28/5, Exh.28/6 and Exh.28/7. While the plea of income from the land at Thatta has neither been proved by appellant No.2, nor disproved by the NAB. PW-20 deposed:

“..... It is correct to say that accused Waheed Murad Soomro had also disclosed that he himself had acquired 266 acres of agricultural land in Deh Ubh kabi Tapu Shah Bandar, District Thatta in the year 1999 on lease for 10 years. It is correct to say that accused Waheed Murad Soomro had also disclosed in his plea that he had earned Rs.67,65,000/- from the agricultural land of District Thatta from the year 2000 to 2008. I had summoned the Mukhtiarkar Shah Bandar, District Thatta as well as Tapedar to investigation agricultural land disclosed by the accused Waheed Murad Soomro and the said Tapedar and Mukhtiarkar Shah Bander on the basis

of their record informed me that there is no record available with them regarding lease of 266 acres of agricultural land to the accused Waheed Murad Soomro or the details of agricultural crops and income. I during the course of investigation remained with me, had not recorded the statement of Mukhtiarkar and Tapedar of Tapo Shah Bander, District Thatta u/s. 161 Cr.P.C. It is correct to say that let Commander NAB had addressed a letter to EDO (Revenue) on 01.08.2005 thereby summoned the Mukhtiarkar and Tapedar Shah Bander District Thatta. I produce the photocopy of the letter dated 01.08.2005 as Ex.28/8. It is correct to say that I myself had not stated in list of witnesses regarding the name of Mukhtiarkar Shah Bander, Tapedar Shah Bander, nor the said statement in inquiry, has been submitted alongwith the documents of reference in court nor it has been supplied to the accused. The statement of Mukhtiarkar, supervising Tapedar were called during the course of inquiry to verify the claim of the accused and their statements were not recorded during the course of inquiry however, I do not know as to whether their statement was recorded during the course of investigation subsequent to transfer of investigation from me to Mr. Wasif Bhatti LO. I produce the photocopy of certificate of attendance of Mukhtiarkar and Tapedar Shah Bander regarding their attendance in the office during the course of inquiry as Ex.28/9.”

34. Therefore, the claim of income at Rs.67,65,000/- from agricultural land at Taluka Shah Bandar, District Thatta, stand not proved. Consequently, an amount of Rs.40,88,865/- alleged income from agricultural land at Sehwan Shareef, Jamshoro as self-claimed by

appellant No.2 cannot be made basis of income from his business and such amount is liable to be recovered from appellant No.2. The NAB authorities shall take necessary steps for its recovery. Similarly, the fact of illicit funds by appellant No.1 to establish business M/s. Five Star Fish Meal stands neither proved, nor disproved in view of no oral or documentary evidence produced by both the parties.

- 35.** We have carefully considered the evidence. Considerations such as the motive for a benami transaction or the status of an ostensible owner through accumulation of assets derived from illicit funds are merely guiding principles for courts in cases involving benami titles or ostensible ownership. Such disputes are essentially factual in nature, and their resolution must therefore rest upon the specific facts and circumstances of each case. The guidance provided by superior courts does not constitute an absolute rule of law, as held in *Wadi ud Din v. Fakhra Akhtar* (**2011 SCMR 1550**). Furthermore, in *Mst. Zohra Begum and six others v. Mohammed Ismail* (**2008 SCMR 143**), it was observed that the question of ostensible ownership is a question of fact, which may involve multifarious aspects. These include, inter alia, evidence showing that the source of fund was provided by the ostensible owner for the purchase of the disputed property, or that the benami owner was not a person of independent means and, therefore, could not have provided funds for such purchase.
- 36.** These considerations were not duly taken into account by the trial court, which decided the matter against Appellant No.2 in a cursory manner. It is imperative that the Court takes notice of all relevant

circumstances arising in each case, rather than relying on presumptions or incomplete evaluation of evidence. In the present matter, the evidence does not establish that Appellant No.2's assets post-1994 were funded by Appellant No.1. On the contrary, the record supports the conclusion that Appellant No.2's business was independently established and whatever disparity exists squarely falls as concealment for Tax Evasion. Accordingly, the findings of the trial court against Appellant No.2 cannot be sustained to the extent of assets of properties of Appellant No.2 which he had obtained after 1994, except that appellant No.2 Waheed Murad Soomro self-claimed income from agricultural at Sehwan Shareef and failed to discharge burden, therefore, such income of Rs.40,88,865/- is recoverable from said appellant 2 as observed at Para-34 above.

- 37.** Consequently, while maintaining the impugned conviction the sentence of imprisonment and fine is modified to the period which appellant No.1 (now deceased) and appellant No.2 have already undergone while the amount of fine is maintained only upon appellant No.2. The confiscation of the properties is also modified and the properties, namely, (1) Flat No. B-203 Afnan Arcade, (2) Flat No.C-109 Sonly Apartments, Karachi, (3) Plot No.49-C, Khalid Commercial Street 5, Phase-VII, D.H.A., Karachi, (4) DSC Rs.1 Million each in the names of Sulman Ahmed Soomro and Baby Sana, (5) Flat No.C-3, Dolmen Courts, (6) Flat No.C-4 Dolmen Courts, (7) Four (4) acres Industrial Plot vide Na-class No.25, Survey No.25, Deh Ibrahim Haidery, (8) Bank Account No.4149-9 of HBL, (9) Bank Account No.6094-6 of ABL and (10)

Flat No.25-C, Khalid Commercial Street No.2-A, DHA Phase-VII Extension, Karachi are confiscated in favour of the Government of Pakistan and the Nazir is directed to proceed with auction of immovable properties after taking over possession with the assistance of I.O. and shall deposit the income in Government head with SBP/NBP and all movable assets should immediately transmit accordingly. The NAB authorities are directed to take action as per paragraphs 18, 23, 27, 33 and 36 above.

38. We observed certain issue appears regarding the determination of valuation of immovable properties, as some properties had already been sold by the Appellants much prior to the filing of the NAB reference. Before the recent amendments in the NAO, the absence of a statutory mechanism for valuation created significant uncertainty as to which price or value to be fixed / recovered. The subsection (v) of section 9 provided:

“if he or any of his dependents or benamidar owns, possesses, or has acquired right or title in any assets or holds irrevocable power of attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income; or....”

39. The legislature through enactment National Accountability Ordinance (Amendment) Act, 2022 dated 22.06.2022 and National Accountability Ordinance (Amendment) Act, 2023 dated 29.05.2023 substituted various provisions. Such legislation directly affects the procedural and jurisdiction points. It is settled law that a beneficial legislation for procedural law or rules can be applied retrospectively. Section 9 (v) as under:

“[if he or any of his dependents or other Benamidars, through corrupt and dishonest means, owns, possesses or acquires rights or title in assets substantially disproportionate to his known sources of income which he cannot reasonably account for.”

“Explanation 1.- The valuation of immovable property shall be reckoned on the date of purchase either according to the actual price shown in the relevant title documents or the applicable rates prescribed by District Collector or the Federal Board of Revenue whichever is higher. No evidence contrary to the later shall be admissible.

Explanation II.- For the purpose of calculation of movable assets, the sum total of credit entries of bank account shall not be treated as an asset. Bank balance of an account on the date of initiation of inquiry may be treated as a movable asset. A banking transaction shall not be treated as an asset unless there is evidence of creation of corresponding asset through that transaction.]”

40. The insertion of the **Explanation** mandated that highest value be taken from the recorded value in the instrument or DC Collector rate or the FBR valuation rate and no other value is acceptable. The scope of the **Explanation** is thus procedural and jurisdictional. Although provision framed for cases of assets beyond known resources, this benchmark addresses entire NAO as no other procedural law has provided in the NAO and no different procedure can be allowed for a special statute. Rather principle of harmonious statute construction ought to be followed. Any approach contrary to such given statutory procedure would create jurisdictional error and deficiency of uniform standard, internal inconsistency and discriminatory enforcement of penal law in view of section 5(o) NAO. Consistent with the Hon’ble Supreme Court’s principle on harmonious construction, the valuation formula under section 9(v)

must therefore be treated as the guiding standard for procedural threshold and jurisdictional purposes across the NAO to inquire or investigate by NAB or to hold trial by the Accountability Courts being not inherent jurisdiction but wholly statutory and derivative. Therefore, we direct the NAB to strictly adhere with above-said scheme in order to ascertain value of immovable properties in accordance with ***Explanation I*** and restricted to follow any other procedure. Accordingly, NAB shall recover the value of sold properties in the light of Explanation I of Section 9(v) NAO.

41. With the above observations the impugned judgment is modified, however, instant Crl. Accountability Appeal stands dismissed.

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