

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.28 of 2021

Muhammad Ilyas S/o Muhammad Kamal
Versus
The STATE through D.G. NAB, Karachi

APPELLANT : Muhammad Ilyas
S/o Muhammad Kamal
Through Mr. Shahab Usto,
Advocate.

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

Date of Hearing : 05.03.2026

Date of Decision : 05.03.2026

J U D G M E N T

Syed Fiaz ul Hasan Shah, J: - Through instant Crl. Accountability Appeal, the Appellant has challenged the Judgment dated 20.05.2021 (“**Impugned Judgment**”) passed by the learned Judge, Accountability Court No.III, Sindh at Karachi (“**Trial Court**”) in NAB Reference No.23-A of 2015 filed by the National Accountability Bureau Sindh, Karachi (“**NAB**”) wherein the appellant was convicted and sentenced to suffer Rigorous Imprisonment (“**R.I**”) for ten (10) years and to pay fine of Rs.430 million and in default thereof, he shall suffer further R.I. for two (02) years more.

The appellant stood disqualified for a period of 10 years to be reckoned from the date they would be released after serving the sentence and further restricted to seek or 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 of any province and also restricted to apply or being granted or allowed any financial facilities in the form of any loan or advances from any bank or Financial Institution in the public sector, for a period of 10 years from the date of conviction while being extended the benefit of Section 382(b), Cr. P.C.

2 The brief facts of this case are that an inquiry was authorized after receiving information by the NAB against Revenue Officers & Others. Subsequently, inquiry was converted into investigation by the competent authority of NAB vide authorization letter No.2314/IW-2/CO-F/T-21/NAB Sindh/ 2011/ 1004 dated 28.10.2011. It was alleged that Appellant Muhammad Ilyas prepared a fake general power of attorney bearing Registration No.5928 dated 01.09.2004 which was purportedly executed by Mst. Lal Bai W/o Piyaro Khan in his favor. It revealed that principal donor was expired on 18.05.2000 and the Appellant and other by misused her obsolete NIC for fraud and forgeries in respect of immovable property i.e. Government land measuring 21 acres 20 ghuntas, Jeryan 29/169, NA-Class-162, situated in Deh Safooran Tapo Songal, Taluka & District Karachi attached with Form-VII, inconnivance with Revenue Officers and deceased accused Muhammad Zafar Baloch who was Sub-Registrar. It was also alleged that accused Muhammad Ilyas got bogus NOC for sale No.761/2005 dated 26.07.2005 issued in his name in connivance with convicted accused Khadim Hussain Kutrio, Mukhtiarkar (Rev) Malir, so also accused Ilyas through fake power of

attorney sold Government land measuring 21-20 acres to Khursheed Khan and Muhammad Arif Rogatia fraudulently, who was on the forefront in entire episode of fraud from registering fake General Power of Attorney, getting NOC of fictitious entry No.172/169 for registering Indenture of Lease No.184 & 185 dated 10.10.2005. It is further alleged by the prosecution that convicted accused Khadim Hussain /Kutrio Mukhtiar (Rev) Malir issued and signed bogus NOC for sale No.761/2005 and form VII in the name of present accused Muhammad Ilyas on the basis of fake General Power of Attorney. It was also the case of prosecution that NOC for sale No.761/2005 was forwarded by Sub-Registrar Agricultural Land Karachi (East) to DDO (Rev) Malir for verification, which was marked by the DDO (Rev) Malir to convicted accused Mushtaq Ali Solangi, Mukhtiarkar Malir Town for report, who verified the fake NOC and bogus entry of survey No.162 and confirmed the same to DDO (Rev) Malir, who subsequently passed on that confirmation to Sub-Registrar Agricultural Land Karachi (East), so also convicted accused Mushtaq Solangi confirmed the genuineness of said fake NOC and kept fictitious entries in record of rights through which government land measuring 21-20 acres worth Rs.430 Million (approximately) was illegal transferred to Khursheed Alam and Muhammad Arif Rogatia and subsequently these entries were cancelled in the record of rights by Suo Moto Notice of EDO (Rev) CDG Karachi. Thus, Appellant in connivance with convict accused Khadim Hussain Kutrio and Mushtaq Ali Solangi and deceased accused Muhammad Zafar Baloch committed criminal breach of trust manipulated record of rights in respect of government land measuring 21 acres 20 ghuntas and illegally sold-out land to Muhammad Arif Rogatia and Khursheed Alam

which caused loss of Rs.430 Million to the Government Exchequer and committed the offence of corruption and corrupt practices, hence the reference.

3 After usual investigation copies were supplied to the appellant under section 265-C, Cr.P.C. vide Exh.1 and the charge was framed against him on 28.02.2019 at Exh.2, which he pleaded not guilty and claimed to be tried vide plea at Exh.3. The prosecution in order to prove its case has examined ten (10) witnesses as PW-1 to PW-10, who produced the documents / record from Exh.4/1 to Exh.13/3 respectively. Thereafter, the prosecution closed its side at Exh.14 and the statement of accused was recorded under section 342, Cr.P.C. at Exh.15, whereby, he denied the allegations leveled against him by the prosecution, however, the appellant neither examined himself on oath, nor produced any witness in his defence. The learned trial Court after hearing the parties passed the judgment, which has been impugned herein before us.

4 The learned counsel for appellant argued that the appellant is innocent and has falsely been implicated in the case and the learned Trial Court has passed the impugned Judgment without proper appraisal of the evidence on record. Per learned counsel, the charge against appellant was that he had prepared/used a fake general power of attorney executed in his favour by alleged owner/khatedar Mst. Lal Bai and thereafter, the Appellant as an attorney of Lal Bai executed lease deed in favor of Muhammad Arif Rogatia son of Abdul Rehman and Khursheed Alam son of Hassan Imam, when subject land belonged to the State and the co-accused Khadim Hussain Kutrio and Mushtaq Ali Solangi, being the revenue officers, manipulated the record of rights and the deceased

accused Muhammad Zafar Baloch registered the documents on the basis of fake document. He further argued that neither Mst. Lal Bai on whose behalf appellant had acted as attorney, was joined nor beneficiaries were joined during the course of investigation and did not charge. Per learned counsel, even subject land was a private land and otherwise neither any loss was caused to the Government / State, nor any financial gain had been secured by the appellant, as the revenue entry in respect of the subject land measuring 21-20 acres situated in Na-class 162, Deh Safooran Tapo Songal, Taluka and District Karachi, was cancelled, therefore, the land has automatically resumed to the Government, therefore, it lacks objective of NAO as well as scheme of Section 25 of NAO.

5 Conversely, learned Special Prosecutor for NAB has supported the impugned judgment and submitted that the learned trial Court has rightly appreciated the evidence on record and no illegality or infirmity has been pointed out by the Appellant side and it does not warrant interference by this Court.

6 We have heard the learned counsel for the appellant as well as learned Special Prosecutor for NAB and with their assistance minutely perused the record of the case.

7 PW-4 Chandan Kumar, retired City Surveyor, Survey Superintendent, Karachi Division, testified that the subject land falls within the category of *Na-class land*. He categorically stated that the land was not surveyed and therefore could not be claimed as private property. It is universal fact that *private land* can either be *Kabuli land* (commonly known as *Moorosi lands*) are ancestral lands hold by private

individuals and its survey numbers were created during the British era (1880–1920s) *or* when State land allotted by Government in favor of a person or entity and its new Survey numbers are created against payment of occupancy value. The distinguishing feature between *State land* and *private land* lies in the existence of a valid survey number: private land is either Kabuli land with survey numbers created during the British period, or State land lawfully allotted to a person or entity for which new survey numbers are created. In contrast, land classified as Na-class forms part of State land and it can only be converted into surveyed land upon lawful allotment by the Government under the operative laws and its new Survey Numbers are created against payment of occupancy value and ground rent charges etc. The subject land does not fall within the category of *Private land* as confirmed by PW-4 Chandan Kumar in his testimony and corroborated through Map of the relevant *Deh* (Exh.7/1). Likewise, PW-8 Abdul Wajid Shaikh confirmed that no allotment existed in favour of Mst. Lal Bai. The absence of survey numbers in respect of subject land being an essential ingredient to claim private land (either ancestral or allotted) and absence of any Allotment Order by Government, it stands proved that subject land was State Land and therefore falls in Na-Class. Therefore, we have no doubt in our mind that subject land is untouched non-classified Land being integral part of *State land*. It stands further proved that the Appellant dishonestly used Power of Attorney acclaimed that it was private property of Lal Bai and a purported Power of Attorney was executed in his favor and therefore, he executed two Lease Deeds **Exh.12/1 and Exh.12/2** for the same State land.

8 Adverting to the last contention of the learned Counsel that neither any loss caused to State or Public exchequers nor the Appellant had obtained illegal gains and thus the essential elements of *mes rea* and *actus rea* are missing and therefore, Appellant is entitled for acquittal on the principles of benefit of doubts. We are in agreement with the learned Counsel for the Appellant that it is settled principle that criminal liability cannot be fastened in the absence of *mens rea*, i.e., a guilty mind or corrupt intention to obtain wrongful gain for himself or for any other person, or to cause wrongful loss to the State or a public body. The scheme of the NAO, as also reflected from the Preamble and the mechanism provided under Section 25 indicates that the primary object of the law is to curb corruption and recovery of State assets or ill-gotten gains. Where the prosecution fails to establish the existence of mens rea, unlawful gain, or financial loss to the State or national exchequer, the continuation of criminal liability becomes legally unsustainable. However, the record as well as the report dated 24.11.2025 of Mukhtiarkar, Taluka Airport, District Malir, Karachi submitted by the Investigating Officer today confirmed that Jaryan No./Revenue Entry No.169 dated 12.10.1969 has not been cancelled till to date and only seized notice under the letter dated 15.10.2009 of NAB was marked in Revenue record. Similarly, the Power Attorney and Two lease deeds are also intact.

9 When confronted with the aforesaid evidence, learned counsel for the appellant states that Appellant has already served the sentence for more than 09 years and he does not press the instant appeal and requested that the appellant may be undergone for the period which he has already served as well as the fine amount may be set aside as no loss

has been caused to the State and the land has been resumed in favor of the State without financial gains as per prosecution own evidence.

10 In view of above circumstances, we dismiss the present appeal while maintaining impugned Judgment with modification that the sentence for imprisonment of the Appellant is reduced for the period which he has already been undergone and the Sentence of fine amount is set aside. We direct the Nazir to take necessary steps to cancel Revenue Entry/Jaryan No.169 dated 12.10.1969 and all subsequent entries in Revenue Register VF-VII of Deh Safooran in favor of Lal Bai in respect of State land measuring 21-20 acres land out of Na-class No.162 of Deh Safooran as well as Power of Attorney in favor of the appellant Muhammad Ilyas Exh.4/2 and Lease deeds Exh.12/1 and 12/2 with the assistance of Investigating Officer of the case and restore the land in favor of State through new Revenue Entry coupled with digital scan record.

11 Consequently, instant Criminal Accountability Appeal is dismissed with above modifications.

J U D G E

J U D G E