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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

Criminal Appeal No. 07 of 2016

The State/Anti-Narcotics Force

Vs.

Parvez Hassan Haravi & another

Date of hearing:	01.06.2016
Date of Order	08.06.2016
Appellant:	Through Mr. Muhammad Ishaque Memon, Special Public Prosecutor, ANF.
Respondents:	Through Mr. Muhammad Akram Shaikh, advocate for respondent No.2 along with Mr. Behzad Haider advocate.

JUDGMENT

Mohammed Karim Khan Agha, J. This criminal appeal is directed against the order dated 05.11.2015, passed by learned Special Judge Control of Narcotic Substances (CNS) Court-II, Karachi in Miscellaneous Application No.13/2005 Re: State v. Parvez Hassan Haravi & another (the impugned order) whereby the application of the appellant under section 40 of Control of Narcotics Substances Act 1997 (CNSA) was dismissed. The appellant has prayed as under:

P R A Y E R S

- Set-aside the impugned order, dated 05.11.2015 passed by learned trial court and order for confiscation of the property being Bungalow No.22-A, KDA Scheme-1, Karachi in favour of Federal Government and order for delivery of its possession to Administrator, who is appointed under section 44 of CNS Act, 1997.
- Suspend the implementation of the impugned order dated 05.11.2015 passed by learned trial court.
- Any other relief which this Court deems fit and proper may please be provided.

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2. It is stated by the appellant in the appeal that respondent No.1 (Parvez Hassan Haravi), who is a Pakistani national engaged in the illegal business of narcotics was found involved in smuggling 12.5 metric tons of Hashish to the United Kingdom (U.K) which consignment was intercepted by British authorities. Respondent No.1 was arrested in London where he was prosecuted and ultimately convicted and sentenced to imprisonment for 11 years by the Crown Court of Isleworth U.K. vide -Judgment dated 01.01.2000.

3. During the investigation against respondent No.1 it transpired that he had acquired / possessed Bungalow No.22-A, KDA Scheme No.1, Karachi (the Property) which was now in the name of his wife, respondent No.2 Mrs. Mehwish Hassan Haravi, which was registered on 02.02.1987. The Property was frozen u/s 6 (5) of the Anti Narcotics Force Act 1997 (ANF Act) vide order dated 15.03.2001.

4. Thereafter the appellant moved an application under section 40 CNSA before the Sindh High Court which was dismissed for want of jurisdiction and then before the CNS Court which was initially dismissed due to non production of some documents and finally again before the CNS Court on 12.7.2007 for having the Property forfeited in favor of the Federal Government which was rejected by the CNS Court by the impugned order which in effect held that the Property belonged to respondent No.2 and not respondent No.1 and had not been purchased out of proceeds from the drug trade and as such it could not be subject to forfeiture under S.40 CNSA.

5. Learned counsel for the appellant submitted that the impugned order passed by the learned trial court is against the facts, law and evidence hence it is liable to be set-aside, as the learned trial court has not taken into consideration the fact that accused Parvez Hassan Haravi was previously convicted abroad and even the trial court failed to frame points for determination and the trial court has erred in law in framing point No.2 for determination that the Property under freezing was sold by respondent No.1 to respondent No.2.

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6. He submitted that the learned trial court erred in holding that there is no distinction between section 39 and 40 of CNS Act, 1997 and that the trial court has misinterpreted section 40 of CNSA and made section 68 of CNSA applicable in this case.

7. He further submitted that the learned trial court did not appreciate that originally the Property was purchased by respondent No.1 from original owner Azra Farooqi, vide sale agreement dated 01.7.1985 and supplementary sale agreement dated 20.10.1986 for Rs.8, 50,000/- and that respondent No.1 paid the entire price to her and also got executed power of attorney from her in favour of respondent No.2 Mehwish on 20.10.1986 and the same has not been challenged by respondent No.2. After completion of all formalities the Property was transferred in the name of Mehwish Haravi who is holding the same as benamidar for respondent No.1.

8. According to learned counsel the CNSA had retrospective effect, it was not relevant that the Property was not purchased from drug money and that the Property belonged to respondent No.1 and not respondent No.2 in which regard he placed reliance on the Supplementary Lease dated 20-10-1986 to show that respondent No.1 was the real owner of the Property and respondent No.2 was holding it as benimadar for respondent No.1 and as such it was subject to forfeiture under S.40 CNSA. He thus submitted that for all the above reasons the impugned order should be set aside and the Property should be forfeited under S.40 CNSA in favor of the Federal Government.

9. Learned counsel for respondent No.2 vehemently denied the submissions of the appellant and fully supported the impugned order.

10. According to learned counsel for respondent No.2 the appellant had no right to forfeit the Property under S.40 CNSA and in his concise statement made the following submissions all supported by relevant case law:

"1. The present appeal is liable to be dismissed in line with the consistent practice of the High Courts to not interfere in acquittals unless the judgment of trial

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Court is perverse, completely illegal, impossible and tantamount to miscarriage of justice

- II. That not following the procedures and safeguards laid out in S.38 (2) and S.40 amounts to malicious prosecution, abuse of authority, mala fide and makes the entire action taken by the appellant without lawful authority and thereby vitiating the entire proceedings.
- III. That the appeal is liable to be dismissed being a case of no evidence.
- IV. The CNSA cannot have retrospective effect and bring within its scope a property purchased in 1987 in the absence of similar provisions in older laws keeping in view the constitutional bar against retrospective punishment.
- V. The prosecution cannot rely on a foreign judgment which contains a finding of fact that the convict was a first time offender whilst leading evidence that he is a habitual drug dealer and the same is barred under estoppel, resjudicta and double jeopardy.
- VI. The CNSA generally and S.40 in particular does not also include forfeitures from an innocent owner unaware of any connection of the property with drug proceeds who is not a benamidar and innocent family members not convicted under the CNSA cannot be penalized for crimes they have not committed
- VII. That S.40 allows for the forfeiture of any and all properties only when the properties have been purchased out of drug proceeds and thereby connected to drug profits in the same spirit as S.39 and not otherwise
- VIII. That the prosecution cannot benefit from the presumption that assets are acquired through drug proceeds outlined under S.68 without fulfilling the precondition of producing "reasonable grounds" which they failed to do in this case.

11. Learned counsel submitted that for all the reasons mentioned above the Appeal warranted dismissal

12. We have considered the submissions of the learned counsel for the parties, perused the material available on record and the case law cited by them at the bar.

13. The brief facts of the case are that respondent No.1 was convicted in the UK in 2000 for drug related offenses and sentenced to 11 years imprisonment. In 2001 the appellant moved the High Court of Sindh for forfeiture of the Property purchased by Respondent No.2 allegedly in 1987 under S.40 CNSA which is

currently owned by respondent No.2 based primarily on the ground that it was acquired through proceeds arising out of the trade in illegal drugs by her husband and she was simply a benamidar. The Sindh High Court rejected the application for want of jurisdiction by order dated 23-05-2003. On 4-1-2005 the appellant filed a forfeiture application under S.40 CNSA before the Special Court (CNS) which was rejected as all the necessary documents were not annexed to the application and thereafter refiled the application with all the appropriate and relevant documents.

14. The crux of the matter seems to be whether the appellant can forfeit the Property under S.40 CNSA which had been brought by and was in the name of respondent No.2 since around 1987. After the recording of evidence and hearing arguments the application was rejected by the impugned order. Hence this Appeal.

15. In our view the Appeal against the impugned order primarily revolves around the following issues which we will address each in turn.

1. Whether the CNSA has retrospective effect.
2. Whether the Property needs to be proceeds of drug related crimes under the CNSA to be forfeited under S.40 CNSA.
3. Whether the appellant through evidence has shown reasonable grounds that the respondent No.2 could not afford to purchase the property or whether it belonged to her genuinely or as benamidar.
4. Whether this is a case of no evidence.

Firstly, turning to whether the CNSA has retrospective effect.

16. It is a general principle of criminal law that criminal statutes do not have retrospective effect and are only prospective in nature. The reason in our view is quite simple in that a citizen of a State must know at the time that the act or omission which he is doing would amount to an offense under criminal law at the time he does it so as to ensure certainly in the law especially as an offense under the criminal law may lead to the loss of liberty through imprisonment which is one of the most important rights of an individual.

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17. This general principle is enshrined in Article 12 of the Constitution of the Islamic Republic of Pakistan (the Constitution) which provides as under:

"Article 12. Protection against retrospective punishment. (1) No law shall authorize the punishment of a person---

(a) **for an act of omission that was not punishable by law at the time of the act or omission; or**

(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time of offence was committed.

(2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence". (bold added).

18. There may be exceptions to this general rule and these are rare and generally apply when the retrospective effect has been provided specifically in the statute and thus being a clear manifestation of the intention of the legislature.

19. For example, the National Accountability Bureau Ordinance 1999 which by virtue of S.2 provided that it shall come into force on 1st January 1985 was challenged before the Hon'ble Supreme Court on, amongst other grounds, that it was in violation of Article 12 of the Constitution being of retrospective effect. It was however held by a larger Bench of the Hon'ble Supreme Court in the case of **Khan Asfanyar Wali Khan V Federation of Pakistan** (PLD 2001 SC P.607) at P.920 as under:

"It is also well settled principle of interpretation of statutes that only a matter of procedure would be retrospective. **However, if in this process any existing rights are affected on the basis of a statute the same would not operate retrospectively unless the legislature had either by express enactment or necessary intendment given the legislation retrospective effect**". (b old added)

20. This principle of retrospective effect being applicable only if there was clear legislative intendment was recently followed by the Hon'ble Supreme Court in the cases **Mst Sarwar Jan V Mukhtar**

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Ahmed (PLD SC 2012 217) although this related to the law of inheritance and **Lt.Gen (Rtd) Jamshed Gulzar V Federation of Pakistan (2014 SCMR 1504)** albeit in relation to amending a civil as opposed to a criminal statute where certain persons had claimed vested rights and as such is by now well settled law.

21. In dealing with a similar point under Pakistani narcotics legislation back in 1996 with respect to the question of retrospectively it was held as under in the case of **Haji Nawab Din V the State** (PLD 1996 Lahore 304) at P.307 as under:

"7. The petitioner allegedly committed an offence under Article 3/4, the Prohibition (Enforcement of Hadd) Order 4, 1979 on 4-3-1992 which was punishable with imprisonment for life or with imprisonment which is not less than 2 years and whipping not exceeding 30 stripes and shall also be liable to fine. The persons accused of these offences were not liable to be punished to death. The trial of the petitioners for the offences under section 9(c) of the Ordinance would be in violation of the safeguard provided under Article 12 of the Constitution of Islamic Republic of Pakistan, 1973. **In the Ordinance VI, 1995 it is nowhere provided that it would have retrospective effect. The Ordinance cannot be termed merely a procedural law but it materially affects the rights of the individuals, and therefore, cannot be permitted to have retrospective effect. As a matter of fact this Ordinance is prospective in nature and persons who committed the offences prohibited by this Ordinance on the day of its enforcement or thereafter shall be governed by this Ordinance and not the persons who have committed offences prior to its enforcement. The nexus is the time of commission of offence and not the time of commencement of the trial or its conclusion. Any piece of legislation which deals with the punishment cannot be termed a mere procedural legislation.**" (bold added)

At P.308, "On 25-1-1996 learned Standing Counsel for the Federation of Pakistan half-heartedly supported the impugned order of transfer of the cases but he was directed by the Court to take an unambiguous stand. He sought adjournment to have instructions from the Federation of Pakistan. **Today he sated that he has consulted the Federal Law Secretary and the Solicitor to Government of Punjab and on their instructions he submitted that Ordinance VI, 1995 is to be implemented prospectively and not retrospectively.**" (bold added)

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22. It is to be noted that at Section 1 CNSA it is specifically stated that the CNSA shall come into force at once i.e. the date of passing of the Act which was 11th July 1997. As such there is no intention on the part of the legislature for the Act to be retrospective. Thus we find that the CNSA is only applicable to offenses committed under the CNSA after 11th July 1997.

23. On the particular facts and circumstances of this case respondent No.1 was convicted for drug related offenses and sentenced to imprisonment for 11 years by the Crown Court of Isleworth U.K. vide Judgment dated 01.01.2000 whereas the Property was transacted in 1986 and 1987 by the respondents (approximately 13 years before the conviction) and thus in our view cannot have any nexus to an offense related to offenses committed after 1997.

24. Thus, bearing in mind that the CNSA is not retrospective in effect and the Property in issue was transacted in 1986/87 between the respondents we find that on this score alone it could not be subject to forfeiture in favour of the Federal Government under S.40 CNSA.

25. Although strictly speaking the matter ends here as the CNSA is not applicable to the facts and circumstances of the issue in this case we will nevertheless by way of completeness briefly examine some of the other issues mentioned above.

Turning to the second issue as to whether the Property needs to be proceeds of drug related crimes under the CNSA to be forfeited under S.40 CNSA.

26. When considering this issue we need to consider the CNSA in a holistic manner. Chapter IV CNSA (S.37 to 44) deals with the freezing and forfeiture of assets.

27. S.39 deals with an order for forfeiture of assets and for ease of reference is set out in relevant part below:

"S.39. Order for forfeiture of assets.---(1)
Where the Special Court convicts an accused under
section 13, or sentences him to imprisonment for
 more than three years, the Director-General or an
 officer authorized by him may request the said Court
 by an application in writing alongwith a list of the

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assets of the convict or, as the case may be, his associate, relative or any other person holding or possessing such assets on his behalf, for forfeiture thereof.

(2) **Where the Special Court is satisfied that any assets specified in the list referred to in subsection (1) were derived, generated or obtained in contravention of section 12 or are liable to be forfeited under section 19, it may order that such assets shall stand forfeited to the Federal Government.** (bold added)

28. As can be seen S.39 largely applies to convictions by the Special Court under the CNSA. In the case in hand there has been no conviction by the Special Court however in our view in answering the question in issue it would be informative to see how forfeiture is dealt with arising out of convictions by the Special Court under the CNSA.

29. Under S.39 the Special Court can order forfeiture of assets derived, generated or obtained in contravention of section 12 or are liable to be forfeited under section 19.

30. It is therefore significant to consider Sections 12 and 19. S.12 concerns the Prohibition of assets derived from narcotic offenses under the CNSA whilst S.19 provides as under:

19. Forfeiture of assets of an offender:- Notwithstanding anything contained in Section 13, where the Special Court finds a person guilty of an offence punishable under this Act and sentenced to imprisonment for a term exceeding three years, **the Court shall also order that his assets derivable from trafficking in narcotic substances shall stand forfeited to the Federal Government unless it is satisfied, for which the burden of proof shall rest on the accused, that they or any part thereof, have not been so acquired.** (bold added)

31. Reading the sections of the CNSA in a holistic manner in our view clearly indicate that assets can only be forfeited if they are derived from an offense under the CNSA i.e. drug related. Even a brief perusal of S.37 (Freezing of Assets) and S.38 (Tracing of Assets) tend to indicate that the object is to identify assets which have been derived from drug related offenses so that they may be forfeited under S.39 upon conviction by a Special Court.

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32. We are fortified in our view by the decision of the Hon'ble Supreme Court which in the case of **The State V Umer Hayat** (2011 SCMR P.1527) held as under at P.1530 in respect of S.39 CNSA and forfeiture.

"A bare perusal of the aforesaid provision (S.39) would indicate that the forfeiture is not automatic; that the trial Court has to be satisfied that the assets in question were derived or generated or obtained in contravention of section 12 of Control of Narcotic Substance Act, 1997 and that too not without providing an opportunity of hearing not only to the accused but also to the person who are "being affected by such order". In not confiscating the property, the learned trial Court was persuaded by two factors, first; that the property in question was not in the name of the respondent, convict, second; the persons who in terms of the record, were owners, were not impleaded as party. Learned counsel for the State has not challenged the factual premise of the afore-referred findings and has not referred to any piece of evidence, which could persuade us to interfere with the findings rendered by the trial Court vide the impugned judgment. In the afore-referred circumstances, we do not find any merit in this petition, which is dismissed and leave refused." (bold added)

33. Having ascertained that under S.39 assets can only be forfeited if they are derived from drug related offenses under the CNSA on conviction by a special Court the question arises whether the scenario would be different under S.40 CNSA which concerns forfeiture of assets of persons convicted abroad i.e. not by the Special Court under the CNSA. For ease of reference S.40 is set out below:

"S.40. Forfeiture of assets of person convicted abroad.__(1) Notwithstanding anything contained in any other law for the time being in force, where a citizen of Pakistan is convicted by a foreign court for an offence which is also an offence punishable under this Act, the Court may, on an application made by the Director-General or any other officer authorized by the Federal Government, order that the assets acquired in Pakistan by such citizen shall be forfeited to the Federal Government.

(2) The Special Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record, but such presumption may be displaced by proving want of jurisdiction.

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Provided that the judgment or order or conviction---

- (a) is passed by the foreign court of competent jurisdiction:
- (b) has been pronounced on the merits of the case:
- (c) has not been obtained by fraud:
- (d) has not been made in contravention of any law in force in Pakistan:
- (e) has assumed finality through appeal, revision or review and is not subjudice before any appellate forum:

Provided further no order under this section shall be made without providing an opportunity of being heard to such citizen.

Provided also that, notwithstanding anything contained in clauses (a) to (e) of the first proviso, during the pendency of the application the Court may, by an order, freeze all or any of the assets or restrain such citizen, his associates and relatives from alienating such assets by lease, sale, gift, transfer or in any other manner.

Explanation.---For the purpose of this section, the expression "Court" means the High Court of the Province where the assets or any portion thereof are located".

34. Prima facie it would appear that under S.40 CNSA the property to be forfeited does not have to arise out of drug money. However when we consider the process of forfeiture under S.39 where forfeiture can only relate to assets arising from a drug related offense under the CNSA, fairness/due process especially when the CNSA is read in a holistic manner and specifically since S.39 and 40 are a part of Chapter IV CNSA (S.37 to 44) which deals with freezing and forfeiture it appears S.40 also only applies to assets acquired through drug related offense in the foreign jurisdiction. This is even more so when we consider that under S.40 there is a right for the effected party to be heard (presumably to enable them to show that the assets have not been derived from a drug related offense) and the presumption in S.68 CNSA which will only kick in if (a) there is reasonable ground to believe that the assets of a person or any part thereof were acquired before or after the commission of an offence under this Act and (b) there was no other likely source of acquiring such assets or part thereof and (c) it shall be presumed, **unless the contrary is proved, that such assets or part thereof were acquired, generated or obtained through narcotic related offenses.** S.68 is set out below for ease of reference.

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"S.68. Presumption to the assets acquired through dealing in narcotics.---Where there is reasonable ground to believe that the assets of a person or any part thereof were acquired before or after the commission of an offence under this Act and there was no other likely source of acquiring such assets or part thereof, if shall be presumed, unless the contrary is proved, that such assets or part thereof were acquired, generated or obtained through cultivation, manufacture, production, sale, purchase, dealing or trafficking of narcotic drugs, psychotropic substance or controlled substances".(bold added)

35. It also needs to be considered that assets in terms of a person's property cannot be easily interfered with bearing in mind the protection given to property under Articles 4, 23 and 24 of the Constitution

36. Hence, for the reasons discussed above when the CNSA is read in a holistic manner in our view S.40 shall only apply to assets which have been acquired through drug related offenses under the CNSA.

Turning to whether the Appellant through evidence has shown reasonable grounds that the respondent No.2 could not afford to purchase the property or whether it belonged to her genuinely or as benamidar and whether this is a case of no evidence.

37. We are of the view that these questions are interlinked and can be answered together.

38. The Property would definitely fall within the definition of an asset as defined by S.2 (b) CNSA as under:

"S.2 (b)—"assets" means any property owned, controlled or belonging to an accused, whether directly or indirectly, or in the name of his spouse or relatives or associates whether within or outside Pakistan for which they cannot reasonable account;"

39. In essence the appellant either needs to prove through reliable, cogent evidence that the Property has been acquired through a drug related offense under the CNSA and that it belongs to the respondent No.1 and not his wife (or his wife is holding it as benamidar on his behalf) or at a minimum there are reasonable grounds for so believing under S.68 CNSA.

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40. The first hurdle, however, which in our view the appellant needs to cross is that of nexus. Namely, since this is an application under S.40 for forfeiture arising out of a person convicted abroad that the Property was connected to the drugs related offense for which the person was convicted for in 2000. In our view this would be almost impossible to show since the Property was purchased way back in 1986/87 i.e. approximately 13 years before the conviction and the appellant has adduced no convincing evidence of such linkage.

41. Even if S.68 CNSA could be relied upon the appellant would have to show through evidence that there are reasonable grounds to believe that the assets of a person or any part thereof were acquired before or after the commission of an offence under the CNSA.

42. As is well known reasonable grounds must be more than suspicion. The only piece of evidence which the appellant has relied on to show that respondent No.2 is a benamidar of respondent No.1 is a Supplemental lease deed dated 20-10-1986 which is an unregistered photocopy which pales into insignificance when compared with the original sale deed dated 02-02-1987, which was exhibited by respondent No.1 whereby respondent No.2 purchased the Property from Begum Azra Farooqui for Rs 9, 50,000 and which has been duly registered to which a presumption of correctness applies. Thus, in our view it appears that the appellant had no reasonable grounds under S.68 to believe that the Property of respondent No.2 was acquired before or after the commission of an offence under the CNSA and as such the burden of proof would not shift to respondent No.2.

43. It is also observed from the impugned order that certain properties were also forfeit on the conviction of Mahmood-Ul Hasan (the brother of respondent No.1) for offenses under CNSA and although these included properties belonging to Mahmood Ul Hasan, Parvez Hassan and Mahvish Haravi the Property in issue in this case was not amongst them. Hence on 30-08-2001 it appears that that the appellant had no evidence that the Property was acquired through an offense under the CNSA. Even otherwise the Hon'ble Supreme Court has overturned the conviction of Mahmood Ul Hasan and all the properties subject to the forfeiture order have

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been released. It also appears that since the 2000 conviction the appellant did not immediately apply for a forfeiture order against the Property under S.40 and only did so in 2003 and there appears to be no reasonable explanation for this delay. Let alone the delay since 1986/87.

44. Although there are no time limits for a forfeiture application to be made under the CNSA the Hon'ble Supreme Court indicated that such time limits for forfeiture under S.39 CNSA ought to be a reasonable time which generally was regarded as 90 to 120 days in the case of **The State V Rana B Nisar Ahmed** (2012 SCMR 167) at P.168 in the following terms:

"3. We have examined the contents of the application, moved under section 39 of the Act, 1997, which was essentially filed after the lapse of a considerable time. **Although there is no time period prescribed under section 39 of the Act, still the law always insists the initiation of such application within a reasonable time and in a number of authorities by this Court reasonable time has been assessed between 90 to 120 days.** Be that as it may, there is no, prima facie, believable evidence that the properties acquired in the name of wife and sons etc, of Rana Nisar Ahmed were brought through drug money. **The trial Court had passed the judgment on 5.10.2001 and no prompt action was initiated by the State and a belated application was submitted on 8.1.2003.** However, this Court in its judgment under review on having taken into consideration all the attending circumstances declined to maintain the judgments impugned before this Court to the extent of forfeiture of the properties of Rana Nisar Ahmed. **We may observe here that it is always the duty of the State to remain vigilant in respect of proceedings of the Court and it should also know the law on the subject; if therefore the prosecution was of the opinion that the properties have been acquired by the late convict out of the drug money, it should have furnished at least prima facie evidence about it at the relevant time with promptitude, but this as earlier stated has not been done and in the meanwhile matter has come before this Court when the order dated 6.5.2009 was passed, therefore, under these circumstances and keeping in view the attending circumstances of the case, we are of the opinion that no interference is called for as far as judgment of this Court dated 6.5.2009 is concerned".** (bold added)

45. It is to be observed that the appellant's application under S.40 was dismissed by the Sindh High Court on 23-05-2003 (despite the conviction being in 2000) yet the appellant did not

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move the application before the Special Court until 2005 which was a delay of almost 2 years. It should also be observed that the appellant alleged that they were aware that the Property was the subject of drug money as long ago as 1986/87 and yet they had not mentioned it in the forfeiture proceedings in respect of the respondents brother's case (Mahmood ul Hasan) as mentioned above.

46. In our view in terms of the time for filing the application S.39 and S.40 CNSA should be the same and should be regulated by the same reasonable time as set out in the above cited Supreme Court Judgment i.e. between 90 and 120 days. Hence, once the appellant came to know of the UK conviction against respondent No.1 in 2000 in the UK it should have perused its forfeiture application vigorously especially as it allegedly had identified the Property as being proceeds of a drug related offense under the CNSA well before this time. However it appears that an application was not moved before the Special Court until approximately 2 years after the initial application was rejected by the Sindh High Court and on initially being dismissed by the Special Court in 2005 was not moved again until a lapse of a further two years in 2007. With regard to the earlier mentioned case regarding Mahmood Ul Hasan the Property was never included in the list of properties allegedly acquired from drug money despite apparently the appellant being of the view that it was. In none of the cited examples of delay was any reasonable explanation offered by the appellant for such prolonged delay in moving the applications which clearly shows a lack of vigilance on their part. In such circumstances it seems to us that the appellant's application under S.40 in respect of the Property is also hit by the doctrine of laches and is not entertainable.

47. In our view however the final nail in the coffin of the case of the appellant under S.68 comes from the cross examination of the IO who while replying to a suggestion admitted that it was correct to suggest that he had no evidence that the property in question was purchased from drug money except the conviction of Parvaiz Hassan Haravi (respondent No.1) at abroad London UK and likewise admitted during cross examination that it was correct to suggest that he had no reasonable suspicion and no reasonable satisfaction or proof

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that the property in question was purchased by Respondent No.2 from drug money of respondent No.1.

48. Hence by the admission of the IO during cross examination this appears to be a case of, at best, woefully lacking evidence or at worst no evidence at all in support of the application under S.40 CNSA and thus we find no reason to interfere with the impugned order.

49. Hence, for all the reasons mentioned above, namely the CNSA not being of retrospective effect, the need under S.40 for the Property to be acquired from a drug related offense under the CNSA which could not be shown in this case and the lack of evidence in respect of the prosecution's case the appeal is dismissed.

Dated: 08-06-2016