

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Shamsuddin Abbasi

Criminal Accountability Appeal No.03 of 2021

Appellant Nisar Ahmed Morai son of Dr. Muhammad Bachal Memon.

Respondent National Accountability Bureau through its Chairman.

Criminal Accountability Appeal No.04 of 2021

Appellant Sultan Qamar Siddiqui son of Qamar-ul-Hassan.

Respondent The State through Director General NAB, Karachi.

Criminal Accountability Appeal No.05 of 2021

Appellant Haji Wali Muhammad son of Haji Yousuf.

Respondent The State through Director General NAB, Karachi.

Criminal Accountability Appeal No.06 of 2021

Appellant Imran Afzal son of Afzal Hussain.

Respondent The State.

Criminal Accountability Appeal No.07 of 2021

Appellant Shaukat Hussain son of Mustafa.

Respondent The State through Director General NAB, Karachi.

Criminal Accountability Appeal No.12 of 2021

Appellant The Chairman NAB, Islamabad.

Respondents Nisar Ahmed Jan Memon {Nisar Morai} and 5 Others.

Const. Petition No.D-2483 of 2021

Appellant National Accountability Bureau, Islamabad.

Respondent Presiding Officer/Incharge Judge, Accountability Court No.I, Sindh, Karachi.

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Mr. Khawaja Shamsul Islam a/w Amjad Ali Shah, Advocates in Crl. Acctt. Appeal No.03 of 2021.

Mr. Obaid-ur-Rehman, Advocate in Crl. Acctt. Appeal No.04 of 2021.

Mr. Obaid-ur-Rehman, Advocate in Crl. Acctt. Appeal No.05 of 2021.

M/s Muhammad Rehman Ghous & Raghieb Ibrahim, Advocates in Crl. Acctt. Appeal No.05 of 2021.

Ms. Sadia Khatoon, Advocate in Criminal Acctt. Appeal No.06 of 2021.

Mr. Muhammad Jamil, Advocate in Criminal Acctt. Appeal No.07 of 2021.

M/s Riaz Alam Khan, Special Prosecutors NAB.

Mr. Irfan Ahmed Memon, DAG.

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Dates of hearings 31.08.2021, 08.09.2021, 16.09.2021,
23.09.2021, 24.09.2021 and 28.09.2021

Date of judgment **15.10.2021**

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JUDGMENT

SHAMSUDDIN ABBASI, J:- Nisar Ahmed Morai, Sultan Qamar Siddiqui, Haji Wali Muhammad, Imran Afzal and Shaukat Hussain, appellants, alongwith four others namely, Abdul Saeed Khan, Riaz Ahmed, Gul Munir and Abu Bakar, were tried by Accountability Court No.I {Sindh}, at Karachi, in Reference No.02 of 2018. By a judgment dated 20.02.2021 all appellants were convicted under Section 10 of National Accountability Ordinance, 1999 (NAO, 1999) for commission of offences of corruption and corrupt practices under clauses (vi)(xii) of Sub-section (a) of Section 9 of NAO, 1999, and sentenced to undergo imprisonment for seven years each and to pay a fine of Rs.10 million each as well as to suffer a further imprisonment for two years each in lieu of fine while accused Abdul Manan, who was absconder and declared proclaimed offender at trial, was also convicted in his absentia under Section 33-A of NAO, 1999, and sentenced to imprisonment for three years. Nisar Ahmed Morai, appellant No.1 was also convicted under Section 10 of NAO, 1999 for commission of misuse of authority through illegal appointments in FCS as defined under Section 9(a)(vi) of NAO, 1999 and sentenced to imprisonment for four years and to pay a fine of Rs.500,000/- as well as to undergo imprisonment for a further period of five months in lieu of default while appellants No.2 Sultan Qamar Siddiqui and accused Abdul Saeed Khan were acquitted on the same charge. As the charges of embezzlement of funds of trash-fish through auction without gate-pass were not proved against appellants Nisar Ahmed Morai, Sultan Qamar Siddiqui, accused Abdul Saeed Khan, Riaz Ahmed, Gul Munir and accused Abu Bakar, the learned trial Court acquitted them of the charge. The sentences awarded to Nisar Ahmed Morai, appellant No.1, in both counts were ordered to run concurrently and the benefit in terms of Section 382-B, Cr.P.C. was extended in favour of all convicted accused.

2. Short but relevant facts of the case are that on 21.12.2017 the Director General, NAB, Karachi, filed Reference No.02 of 2018, nominating 13 accused persons including appellants, stating therein that they being holders of public office have misused their authority and caused a colossal loss to the tune of Rs.343.796 million to Fishermen Cooperative Society {FCS}, which constitute an offence of corruption and corrupt practices as defined under Section 9(a) of NAO, 1999 punishable under Section 10 of the Ordinance and Schedule thereto.

3. Based on an information regarding misuse of authority, embezzlement of funds and illegal appointments in FCS, an inquiry was initiated against Nisar Ahmed Morai, Ex-Chairman FCS and Sultan Qamar Siddiqui, Ex-Vice Chairman FCS, which was upgraded into investigation. It was revealed that Nisar Ahmed Jan Memon {Nisar Morai}, appellant No.1, was appointed as Director in FCS vide Sindh Government Notification dated 31.12.2013 and then elected as Chairman FCS on 09.01.2014 in the meeting of Board of Directors and despite his appointment in FCS on 31.12.2013 he drew salary of his earlier post as Medical Officer {BS-18} in Health Department, Government of Sindh till May 2015 in addition to his post as Chairman FCS from January 2014 to June 2015. During such period he appointed 343 persons in FCS on different posts without following the prescribed procedure as provided in Recruitment Rules. The investigation further revealed that Sultan Qamar Siddiqui, appellant No.2, got appointed his brother-in-law Asad Zaman {BS-17}, father-in-law Mazhar-ul-Islam as Assistant Manager {Market} and his friend Abdul Manan as Personal Assistant without fulfilling the requisite criteria for appointment. Besides, 343 illegal appointments appellant No.1 also appointed eight legal consultants against retainer-ship fee of Rs.100,000/- per month without following the proper procedure and requisite criteria. He also appointed 14 advisors and one coordinator against a monthly salary of Rs.35,000/- each without adopting proper prescribed procedure and requisite criteria. In 2014, he created posts of Special Task Force and Security Guards and appointed five persons in Special Task Force and 30 Security Guards. Nisar Ahmed Morai and Sultan Qamar Siddiqui, appellants No.1 and 2, in connivance with appellants Haji Wali Muhammad {Manager FCS}, Imran Afzal {Contractor}, Shaukat Hussain {Manager Audit FCS} and accused Shahid Hussain {Manager Finance FCS} {now deceased} awarded contracts in millions of rupees to non-existent fake companies, which neither applied for any contract nor participated in any bidding process and even never carried out any construction work in FCS. All these contracts were awarded in violation of the prescribed rules and regulations and the entire amount was paid to fake companies through open cheques, which were withdrawn by appellant Imran Afzal, accused Abdul Manan and other anonymous persons. All contracts of Rs.22.35 million were awarded to appellant Imran Afzal {Contractor} against fake and forged documents in the name of Syed Muhammad Rehang Abbas {owner of M/s Bright Associates}, who being close aide of appellant No.1 was also awarded the post of Special Task Force in FCS. He also showed himself as owner of M/s Pak Corporation and obtained fake contracts of Rs.16.23 million. On verification

one Riaz Ahmed Awan was found to be the owner of M/s Pak Corporation, who stated that Imran Afzal was residing in his colony and once he took his CNIC and letter-head of his company on the pretext of filing a quotation and estimated cost to construct a room and thereafter never came back. The said Riaz Ahmed Awan also denied to have visited the office of FCS and obtained any kind of contract from FCS. He also denied his signatures and stated that Imran Afzal got printed forged letters-head of his company and used the same in obtaining fake contracts. The investigation further revealed that Nisar Morai, Sultan Qamar Siddiqui and Haji Wali Muhammad, appellants No.1 to 3, showed Imran Afzal as their front man to award fake contracts and withdrew money from bank through open cheques. The appellants No.1 and 2 in connivance with accused Riaz Ahmed {Manager Market FCS}, Amjad Iqbal Warraich {Assistant Manager Market FCS}, Gul Munir Shaikh {Assistant Manager Market FCS}, Abubakar Mariwala {Assistant Manager} and Zulfiqar Ali {Assistant Manager Market FCS} embezzled the funds of trash-fish in the shape of commission, FCS charges 3.25% commission on all its sales done through auction in terms of gate pass.

4. Para-16 of the reference relates to accusation against Abdul Saeed Khan, the then Chairman of FCS, who during his tenure of posting accommodated 155 persons in FCS through fake appointments. He also embezzled the funds of FCS through commission, FCS charges 3.25% commission on all sale through auction in terms of gate pass and awarded a contract to carryout trash-fish to a suspicious company M/s Moon International against monthly charges of Rs.300,000/-. Appellants Haji Wali Muhammad {Manager FCS}, Shaukat Hussain {Manager Audit} and accused Shahid Hussain {now deceased} aided and abetted the Chairman and Vice Chairman in awarding contracts in millions of rupees to fake companies. It is, thus, established that all accused persons being holders of public office misused their authority and caused a colossal loss to the FCS, which constitute an offence of corruption and corrupt practices as defined under Section 9(a) of NAO, 1999 punishable under Section 10 of the Ordinance and scheduled thereto.

5. The learned Accountability Court, on taking cognizance of the matter, charged the appellants and other co-accused for the offences of corruption and corrupt practices as defined in clauses (iii), (iv), (vi) and (xii) of Section 9(a) punishable under Section 10 of the Ordinance, who pleaded not guilty and claimed a trial.

6. The gist of evidence adduced by the prosecution in support of its case is as under:-

7. **Abdul Nasir** {Assistant Manager (Recovery) FCS} appeared as **witness No.1** Ex.21. He deposed about the agreement of trash-fish executed between FCS and Moon International and provided relevant record to investigating officer, who seized the same, and also exhibited the same in his evidence. **Syed Tanveer Akhtar** {Proprietor of M/s Moon International} appeared as **witness No.2** Ex.22. He has given the details of awarding contract for carrying trash-fish to his company by Abdul Saeed Khan, the then Chairman FCS. **Faisal** {Supervisor Admin Department FCS} appeared as **witness No.3** Ex.23. He provided relevant record pertaining to appointment of Nisar Ahmed Morai and Sultan Qamar Siddiqui, Chairman and Vice Chairman to investigating officer, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Muhammad Abid Arifeen** {Secretary Board of FCS} appeared as **witness No.4** Ex.25. He provided byelaws of the Society and relevant record to investigating officer, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Abdul Mateen** {Admin Officer FCS} appeared as **witness No.5** Ex.26. He provided relevant record relating to appointments during the tenure of Abdul Saeed Khan, the then Chairman to investigating officer, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Anwar Hussain Umeri** {Manager Administration FCS} appeared as **witness No.6** Ex.27. He provided relevant record pertaining to appointments during the tenure of Nisar Ahmed Morai and Sultan Qamar Siddiqui, the then Chairman and Vice Chairman FCS to investigating officer, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Abdul Ghaffar** {Proprietor of M/s Venus Enterprises} appeared as **witness No.7** Ex.28. He deposed about misusing of his company name in obtaining contract works in FCS. **Abdul Rab** {Accounts Officer FCS} appeared as **witness No.8** Ex.29. He provided relevant record relating to salaries of staff employed on contract in FCS during the tenure of Nisar Ahmed Morai and Abdul Saeed Khan, the then Chairmen FCS to investigating officer, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Muhammad Rehan Abbas** {Private Contractor} appeared as **witness No.9** Ex.30. He deposed about managing fake letter head of his company "Bright

Associates” for construction work in FCS. **Rafiq Hassan Jindani** {Manager Pioneer Protein (Pvt) Ltd} appeared as **witness No.10** Ex.31. He provided relevant record relating to purchase of fish from FCS for the period from 01.01.2015 to 31.12.2015 to investigating officer and exhibited the same in his evidence. **Inayat Ali** {Manager Kanpa International Sale} appeared as **witness No.11** Ex.32. He has given the details of purchasing trash-fish during the period of 2013-2014 and 2014-2015 and exhibited the same in his evidence. **Gul Nabi** {Supervisor Master Poultry Proteins} appeared as **witness No.12** Ex.33. He has given the details of purchasing trash-fish during the period of 2014 and 2015. **Naveed** {Manager M/s Abideen & Company} appeared as **witness No.13** Ex.34. He has given the details of purchasing trash-fish during the period of 2013 to 2015 and provided relevant data to investigating officer and also exhibited the same in his evidence. **Riaz Ahmed** {Proprietor of M/s Pak Corporation} appeared as **witness No.14** Ex.35. He has given the details of quotation given by him for construction work in FCS through Imran Afzal and deposed that he never carried out any construction work in FCS. He exhibited the relevant record in his evidence. **Mukesh Kumar** {Manager A-One Fish Meal} appeared as **witness No.15** Ex.36. He has given the details of purchasing trash-fish during the period of 3013 to 2015. He delivered relevant data to investigating officer and exhibited the same in his evidence. **Syed Akhtar Ali** {Manager (Coordination) FCS} appeared as **witness No.16** Ex.37. He deposed about preparation of daily landing sheet containing details of receiving fish in FCS and furnished relevant record to investigating officer, who seized the same under a memo prepared in his presence and also exhibited the same in his evidence. **Mazhar Ali Azhar** {Manager M.A. Proteins} appeared as **witness No.17** Ex.38. He has given the details in respect of purchase of trash-fish during the period of 2013 to 2015. He provided relevant data to investigating officer and also exhibited the same in his evidence. **Asif Iqbal** {Manager Inter Market International} appeared as **witness No.18** Ex.39. He has given the details in respect of purchase of trash-fish during the period of 2013 to 2016. He provided relevant data to investigating officer and also exhibited the same in his evidence. **Aijaz Ali** {Proprietor of Sahil Enterprises & Builders} appeared as **witness No.19** Ex.40. He deposed that his company never done any work in FCS. **Abdul Qadir** {Manager Operation Summit Bank Fish Harbour Branch} appeared as **witness No.20** Ex.41. He provided bank statement of FCS for the period of 2014-2015 and other relevant documents to investigating officer, who seized the

same under a memo prepared in his presence. He also exhibited the same in his evidence. **Tanzeel-ur-Rehman** {Manager Poultry Protein Products} appeared as **witness No.21** Ex.42. He provided relevant data with regard to purchase of trash-fish for the period of 2013-2015 to investigating officer and also exhibited the same in his evidence. **Tariq Kamal** {Assistant Market Officer FCS} appeared as **witness No.22** Ex.43. He was declared hostile and cross-examined Special Prosecutor and defence counsel. **Faheemuddin** {Forensic Handwriting Expert} appeared as **witness No.23** Ex.44. He verified the signatures of Syed Muhammad Rehan Abbas and issued report. **Abdul Latif** {Operation Manager NBP Fish Harbour Branch} appeared as **witness No.24** Ex.45. He provided relevant record relating to cheques of FCS account to investigating officer, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Syed Iqbal Ahmed** {Senior Auditor/Superintendent, Accountant General Office Sindh} appeared as **witness No.25** Ex.46. He has given the details relating to salaries drawn by Nisar Ahmed Morai from Health Department and furnished relevant documents to investigating officer, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Dr. Hafeez-ur-Rehman** {Medical Officer Health Department} appeared as **witness No.26** Ex.47. He provided relevant record relating to posting of Nisar Ahmed Morai as Medical Officer in Health Department, who seized the same under a memo prepared in his presence. He also exhibited the same in his evidence. **Irfan Ali** {Assistant Director NAB} appeared as **witness No.27** Ex.50. He verified whole investigation being completed by him and on completion thereof filed a reference in Court on the recommendation of the competent authority. All of them were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.51.

8. The appellants were examined under Section 342, Cr.P.C. at Ex.52, Ex.54, Ex.55, Ex.56 and Ex.58 respectively. All of them have denied the allegations imputed upon them by the prosecution, professed their innocence and stated their false implication by the witnesses being interested and inimical to them and to save the real culprits who actually were the beneficiaries of the scam. They opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor produce any witness in their defence. According to Nisar Morai, appellant No.1, all appointments were made by the Board of Directors {BoD} under Article 43(c) of FCS By-laws, 1969, which

cannot be termed as Government Service and the main consideration for the BoD was the welfare of the fishermen. All appointments were made on contract basis for which no written tests were required, however, before appointments the interviews were conducted. He further stated that all contracts were awarded after completing due procedure and record of each contract was placed before BoD and after approval of BoD the contracts were awarded. No violation of any rule or regulation was made while awarding contracts. It is also stated that FCS is an independent Organization, which worked for the welfare of the fishermen and is not getting any fund from Government. Sultan Qamar Siddiqui, appellant No.2 has stated that all contracts were awarded with the approval of BoD and the cheques were signed by him after following the process of verification and audit record. Haji Wali Muhammad, appellant No.3 has stated that awarding of contract and holding bidding process did not fall within his domain and it pertain to maintenance section. He denied to have prepared any minute sheets relating to the award of contract, which was the job of Secretary BoD. He further stated that landing report was signed by him on the basis of data furnished by Manager Market FCS. Imran Afzal, appellant No.4 has stated that he was appointed by Manager FCS as security guard and not as officer of special task force and his appointment was made on the recommendation of Director FCS on contract basis for one year only. He denied to have obtained any contract from FCS on furnishing forged documents. He further stated that investigating officer forced him to become a witness and on his refusal, the I.O. involved him in this false reference. Shaukat Hussain, appellant No.5 has denied to have rendered any help or aided and abetted Nisar Morai and Sultan Qamar Siddiqui in awarding fake contracts and being Manager Audit he had no concerned with the contracts and awarding contract is the job of Chairman or BoD.

9. The trial culminated in conviction and sentence of the appellants as stated in para-1 {supra}, hence necessitated the filing of listed appeals, which are being disposed of together through this single judgment.

10. It is jointly contented on behalf of the appellants that they are innocent and have falsely implicated in this case with malafide intention and ulterior motives as otherwise they have nothing to do with the alleged offence and have been made victim of the circumstances. It is next submitted that prosecution has failed to discharge its legal obligation of proving the guilt of the appellants as mandatory requirement of Section 14 of the NAO,

1999, and the appellants were not liable to prove their innocence. Per learned counsel, appellant Nisar Ahmed Morai earlier was arrested in a murder case, which is pending adjudication before a Court of competent jurisdiction since 1995 wherein co-accused have already been acquitted, which shows clear malafide on the part of prosecution. Per him, the reference has wrongly been filed against appellant Nisar Ahmed Morai, who was an officer in BPS-20 and Director General NAB was not competent to file a reference against officers of BPS-20 and above. The appellant acted in accordance with bye-laws of FCS and all appointments were approved and endorsed by the Board of Directors. He further submitted that such kind of offences cannot be committed without the active connivance of others, but here in this case only the appellant as Chairman FCS and Vice Chairman FCS have been made victim of the circumstances and none else from the Directors has been arrayed as accused, hence it is a clear case of pick and choose. Per learned counsel, the specimen signatures of appellant Imran Afzal were taken before a Magistrate, but the same were not sent to forensic test for matching with his signatures available on the documents allegedly seized during investigation, which shows clear malafide on the part of the investigating officer. It is jointly contended that all steps taken by the appellants were in accordance with law and they have not done any illegal and unwarranted act, which could saddle penal consequences on them. The case against the appellants lacked *mens rea* and in absence thereof no criminal liability could be penned down on them. The prosecution has failed to produce any iota of evidence against appellants to prove essential ingredients relating to offence of corruption and corrupt practices coupled with the intention to gain any benefit or favour for them or anyone else. The prosecution has failed to place on record any evidence against appellants relating to money trail or accumulation of assets beyond their known source of income. The witnesses being interested and inimical to the appellants have falsely deposed against the appellants as such their evidence is neither trustworthy nor confidence inspiring and the same has wrongly been relied by the learned trial Court. The witnesses did not ascribe any direct or indirect role to the appellants with regard to their involvement in the commission of alleged offence or receiving any amount directly from them. They were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellants. The learned trial Court while passing the impugned judgment has deviated from the settled principle of law that a slightest doubt is sufficient to grant acquittal to an accused. The

investigating officer has conducted dishonest investigation and let off real culprits involving the appellants in a case with which they have no nexus, hence it is a case of clear discrimination. He also did not send the disputed cheques to handwriting expert to check the veracity of second signatures under which appellants alleged to have converted the payees' A/c cheques into open cheques. The learned trial Court did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellants merely on assumptions and presumptions. The impugned judgment is devoid of reasoning without specifying the incriminating evidence against each appellant. The learned trial Court totally ignored the plea taken by the appellants in their defence. Per learned counsel, the appellants have not done any illegal act and in their Section 342, Cr.P.C. statements too they have denied the whole allegations leveled against them by the prosecution. The learned trial Court did not consider the pleas taken by the appellants in their Section 342, Cr.P.C. and recorded conviction ignoring the neutral appreciation of whole evidence. The prosecution has failed to place on record any strong evidence against the appellants which could justify their conviction for the offences charged with. Thus, the conviction and sentence awarded to the appellants is illegal and liable to be set-aside. Finally, the learned counsel for the appellants have submitted that the appellants did not derive any financial gain for personal benefit from the acts for which they were charged, tried and convicted, thus the conclusion drawn merits reversal.

11. Strongly opposing the contentions of the learned counsel for the appellants, the Special Prosecutor NAB has contended that the appellants were lawfully proceeded against under the enabling provisions of the Ordinance, which were strictly in accordance with the settled principles of the criminal justice system of providing the appellants with complete opportunity of defending them. The appellants in connivance with other accused maneuvered the whole scam for personal gain and caused a colossal loss to FCS through illegal appointments and awarding fake contracts. The prosecution in support of its case produced oral as well as documentary evidence, which was rightly relied upon by learned trial Court. Per him, the witnesses were subjected to lengthy and taxing cross-examination but nothing favourable to the appellants could come out from their mouth. The findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought

on record, to which no exception could be taken. The plea taken by the appellants in their defence has no nexus with the scam hence it does not carry weight vis-à-vis providing help to the defence. He, therefore, prayed for dismissal of appeals as being devoid of any merit.

12. We have given our anxious consideration to the submissions of learned counsel for the appellants and the learned Special Prosecutor NAB and gone through the entire material available on record with their able assistance.

13. What we understand from the record is that Reference No.02 of 2018 was filed pursuant to an inquiry followed by an investigation, nominating thirteen accused persons, who all belong to Fishermen Cooperative Society {FCS} holding different positions except accused No.6 namely, Imran Afzal, who is said to be a contractor/private person. During pendency of the reference, accused No.5, namely, Shahid Hussain, the then Manager Finance FCS, expired and proceedings against him were abetted vide order dated 08.11.2018 whereas accused No.8 and 12 namely, Amjad Iqbal Warraich and Zulfiqar Ali, the then Assistant Managers Market entered into plea bargain with NAB and in consequence whereof they were convicted and awarded sentence in terms of Section 15 of NAO, 1999. The reference disclosed that Nisar Ahmed Morai, appellant No.1, was appointed as Director in FCS vide Sindh Government Notification dated 31.12.2013 and then elected as Chairman FCS on 09.01.2014 in the meeting held by the Board of Directors. Before his appointment in FCS, the said appellant was holding the post of Medical Officer {BS-18} in Health Department, Govt. of Sindh and despite his appointment as Director FCS he was continuously drawing salary of his earlier post till May 2015 in addition to the salary of his post as Director FCS. It is also the case of the prosecution that during his tenure of posting as Chairman FCS, the appellant No.1 filled 343 different posts without following the prescribed procedure and Recruitment Rules while Sultan Qamar Siddiqui, who is appellant No.2, accommodated his two in-laws and one friend through illegal appointments. In addition to 343 illegal appointments, Nisar Ahmed Morai, also appointed eight legal consultants against retainer-ship fee of Rs.100,000/- per month, 14 advisors and one coordinator against a monthly salary of Rs.35,000/- each. He also created posts of Special Task Force and Security Guards and appointed five Special Task Force Officers and 30 Security Guards. The appellants No.1 and 2 in connivance with Haji

Wali Muhammad {Manager FCS}, Imran Afzal {Contractor}, Shaukat Hussain {Manager Audit FCS} and Shahid Hussain {now deceased} awarded contracts in millions of rupees to non-existent fake companies in violation of the prescribed rules and regulations, payments whereof were paid through open cheques. The three appellants namely, Nisar Morai, Sultan Qamar Siddiqui and Haji Wali Muhammad used Imran Afzal as their front man in the entire scam. They embezzled the funds of trash-fish in connivance with accused Riaz Ahmed {Manager Market FCS}, Amjad Iqbal Warraich {Assistant Manager Market FCS}, Gul Munir Shaikh {Assistant Manager Market FCS}, Abubakar Mariwala {Assistant Manager} and Zulfiqar Ali {Assistant Manager Market FCS} in the shape of commission and caused a colossal loss to FCS.

14. Insofar as the first contention of learned counsel for the appellants that the prosecution has not been able to discharge its duty of proving the guilt of the appellants and shifting onus on them as mandatory requirement of Section 14 of NAO, 1999. Suffice to observe that the prosecution has examined as many as 27 witnesses, who were subjected to lengthy cross-examination by the defence, but nothing favourable to the appellants could come out from their mouth. They were consistent on each and every aspect of the matter and did not contradict each other on material points. Nothing has been brought on record on behalf of the appellants that the prosecution witnesses had some grudge against them for their false implication in the commission of offence. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellants have failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. All the witnesses have supported the case of prosecution and exhibited relevant documents establishing involvement of the appellants in the commission of offences under which they were tried and convicted. Here we deem it appropriate to reproduce the points for determination, framed by the learned trial Court in the impugned judgment, which read as under:-

“{1} *Whether accused Nisar Ahmed Morai while serving as Medical Officer {BPS-18} in Health Department, Government of Sindh was appointed as Director FCS on 31.12.2013 and then elected as is' Chairman on 09.01.2014 where he worked upto June 2015 and he also drew salary as Medical Officer till May, 2015?*

- {2} Whether accused Nisar Ahmed Morai as Chairman FCS Sultan Qamar as Vice/Acting Chairman FCS and accused Abdul Saeed as Chairman FCS by misusing their authority made illegal appointments on various posts during their tenure in FCS without any advertisement or following the due process/procedure?*
- {3} Whether accused Nisar Ahmed Morai as Chairman FCS Sultan Qamar as Vice/Acting Chairman FCS and accused Abdul Saeed as Chairman FCS in collusion with the officials of FCS i.e. co-accused Haji Wali Muhammad Manager FCS, Riaz Ahmed Manager Market, Gul Munir and Abu Bakar, Assistant Managers Market FCS embezzled the funds of FCS by disposing of trash-fish through auction without gate-pass and thereby deprived the FCS of its' commission at the rate of 3.25%?*
- {4} Whether accused Nisar Ahmed Morai as Chairman FCS & Sultan Qamar as Vice/Acting Chairman FCS awarded fake contracts of Rs.22.35 million to accused Imran Afzal in the name of fake companies on the basis of fabricated documents and thereby caused loss to FCS?*
- {5} Whether the cheques in respect of the amount of illegal contracts awarded by Nisar Ahmed Morai as Chairman FCS and Sultan Qamar as Vice/Acting Chairman FCS were converted by them in collusion with accused Haji Wali Muhammad Manager FCS and Shaukat Hussain Manager Audit into open/ cash cheques which were received/encashed by accused Imran Afzal and absconding accused Abdul Manan from the concerned Banks?*
- {6} What offence, if any, the accused have committed?"*

While discussing the above points, the learned trial Court recorded its findings and concluded as under:-

"In view of findings on the foregoing points and the discussion thereon, it is concluded as follows:-

- 1) As the dual office allegedly held by accused Nisar Ahmed Morai it stands established that while serving as Medical Officer {BPS-18} in Health Deptt. Govt. of Sindh, he was nominated as Director FCS in terms of Article 32(c) of the FCS Bye-laws and later elected its' Chairman. For the reasons elaborated above, no exception could be taken against his nomination as Director or become Chairman of FCS where he did not receive any remuneration or honorarium. In any case, if it was against any service laws/rules it was for the Health Department to have initiated action against the accused but his nomination as Director or being*

Chairman in FCS in itself does not seem actionable by NAB in the presence Reference.

- 2) *That out of 343 illegal appointments alleged by the prosecution against accused Nisar Ahmed Morai, the misuse of authority defined in Section 9(a)(vi) of the NAO, 1999 in respect of only 143 direct appointments and 22 confirmation of them besides confirmation of 50 others in FCS is proved against him without following due procedure and in deviation of the Recruitment Rules while for the reasons stated above the allegation of illegal appointments against accused Abdul Saeed Khan and Sultan Qamar has not been legally proved. Consequently, only accused Nisar Ahmed Morai is hereby convicted on the said charge under Section 10 of the NAO, 1999 and sentenced to imprisonment for 4{four} years and to pay fine of Rs.5,00,000/- {five lacs} and in case of its' default to undergo imprisonment for 5{five} months more while accused Abdul Saeed Khan and Sultan Qamar are acquitted from the said charge.*
- 3) *With regard to the allegation of embezzlement of funds of trash-fish through its' auction/sale without gate-pass by accused i.e. Nisar Ahmed Morai, Sultan Qamar, and Abdul Saeed Khan in connivance with and abetment of Riaz Ahmed, Gul Munir and Abu Bakar, the prosecution has failed to prove its satisfactorily and thus all the above named accused are acquitted of the said charge.*
- 4) *The allegation of misuse of authority by accused Nisar Ahmed Morai and Sultan Qamar by awarding fake contracts worth Rs.5.54,26,7000/- to bogus Companies without adopting the procedure and publishing tenders on the basis of fabricated documents in connivance with and abetment of accused Imran Afzal, Haji Wali Muhammad and Shaukat Hussain and to deviation of the financial rules conversion of the payees' cheques to open/cash cheques defined under 9(a)&(xii) of NAO, 1999 is also proved against all of them. Resultantly all the said accused i.e. Nisar Ahmed Morai, Sultan Qamar, Imran Afzal, Haji Wali Muhammad and Shaukat Hussain are hereby convicted under Section 10 of the NAO, 1999 and each of them is sentenced to imprisonment for period of 7{seven} years and to pay fine of Rs.10 million each and in case of non-payment of it to undergo further imprisonment for 2{two} years each while accused Abdul Manan who has absconded away and is declared proclaimed offender is convicted U/S 33-A of NAO, 1999 and sentenced to imprisonment for 3{three} years.*

However, both the sentences of imprisonment awarded to accused Nisar Ahmed Morai shall run concurrently. The benefit of Section 382-B, Cr.P.C. is also extended to all the convicted accused i.e. Nisar

Ahmed Morai, Sultan Qamar, Imran Afzal and Shaukat Hussain and the period of their detention during trial of the present case/Reference shall be deducted from the above sentence while accused Haji Wali Muhammad being on bail, his bail bond is cancelled. He is ordered to be taken in custody and sent to jail to serve-out the sentence. Accused Abdul Saeed Khan, Riaz Ahmed, Gul Munir and Abu Bakar having been acquitted are directed to be released forthwith if not required in any other custody.”

15. Since learned trial Court has acquitted co-accused Abdul Saeed Khan and appellant Sultan Qamar Siddiqui from the charge of illegal appointments in FCS as well as co-accused Abdul Saeed Khan, Riaz Ahmed, Gul Munir, Abubakar & appellants Sultan Qamar Siddiqui and Nisar Ahmed Morai from the charge of embezzlement of funds of FCS by disposing of trash-fish through auction without gate-pass and impugning order of their acquittal the NAB has filed Criminal Accountability Acquittal Appeal No.08 of 2021 on these two counts, which is pending adjudication before this Court, therefore, we would consciously refrain from embarking any observation in respect thereto, lest it prejudice the case of either side.

16. On the point of holding dual office, the prosecution has examined Syed Iqbal Ahmed {Senior Auditor/ Superintendent, Accountant General Sindh}, who appeared as witness No.25 Ex.46 and exhibited relevant record relating to salaries drawn by Nisar Morai, appellant No.1, during the period from 2010 to 2015. He has been supported by Dr. Hafeez-ur-Rehman {Senior Medical Officer, Health Department, Government of Sindh}, who appeared as witness No.26 Ex.47 and deposed in the same line as that of PW.25. On the other hand, the appellant No.1 while recording his Section 342, Cr.P.C. statement took stance that on 31.12.2013 Government of Sindh in terms of Article 32(c) of the Bye-laws of Fishermen Cooperative Society {FCS}, 1969 appointed him as Director FCS, which was an honorary position and not a Government Service and he never drew any salary from FCS. This plea, on the face of it, seems to be correct as prosecution has not produced any proof of drawing salary as Chairman FCS. The prosecution has also not disputed that prior to appointment of appellant No.1 as Director FCS, many other Government Officers were appointed as Director FCS in terms of Article 32(c) of FCS Bye-laws, which contemplated nomination of eight Directors by the Government of Sindh. Thus, the findings of the learned trial Court on the point in hand are just and proper and call for no interference.

17. As to the point of illegal appointments by Nisar Ahmed Morai, appellant No.1, in FCS is concerned, the prosecution has examined Faisal as PW.3, Muhammad Abid Arifeen as PW.4, Abdul Manan as PW.5, Anwar Hussain Umeri as PW.6 and Irfan Ali {investigating officer} as PW.27. All of them except I.O. are the officers/officials of FCS, who produced relevant documents in their evidence, which established that certain posts in different cadres were filled through illegal appointments without publication and conducting written tests and interviews. Anwar Hussain Umeri, who is Manager {Admin} FCS appeared as PW.6. He produced appointment orders/letters coupled with the relevant documents and deposed that all appointments were made without following the proper procedure such as publication and preparation of merit list. He further deposed that there were 69 regular employees, 113 persons on contract basis, 104 memoranda and 51 others, who remained continuously absent from their duties. Faisal, who is Supervisor Admin Department, FCS appeared as PW.3. He has produced relevant record in respect of appointments, postings, additional charges, joining report, up-gradation etc. In his cross-examination, he admitted that there was no post of Manager Task Force in FCS. It has also come on record that 143 initial appointments and 22 confirmation cases were made under the orders and signatures of Nisar Morai, appellant No.1, who was not delegated any power by the Board of Directors {BoD} to make any appointment and all appointments and confirmations were made in violation of Fishermen's Co-Op; Society Ltd Karachi Recruitment Rules, 1964. The witnesses in their respective depositions have supported the case of the prosecution and exhibited relevant documents, which established certain violations while making appointments in FCS. The contention that appellant Nisar Ahmed Morai did not commit any illegality in appointments because according to Fishermen's Co-Op; Society Ltd Karachi Recruitment Rules, 1964, Board of Directors {BoD} holds power for appointment, which delegated its power to appellant Nisar Morai {Chairman FCS} and all appointments were endorsed by Board of Directors. This contention, on the face of it, seems to be incorrect. The Fishermen's Co-Op; Society Ltd Karachi Recruitment Rules, 1964 provides method for appointment and its Rule 5 states that:-

Rule 5. *Direct appointment shall be made by selection in the following manner:-*

<u>Status of the post</u>	<u>Appointing Authority</u>
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{i} Class I & II

Board of Directors

{ii} Class III excluding LDCs Executive Committee

*{iii} Class IV & LDC and Manager
equivalent posts*

Besides, Rules 6, 7 and 9 also provide guidelines regarding eligibility and maximum qualification/experience as well as age limit for each post. Here in this case 143 initial appointments and 22 confirmation cases were made by the orders and signatures of Nisar Morai, appellant No.1, who was not delegated any power by the Board of Directors {BoD} to make appointment and all appointments and confirmations were made in violation of Fishermen's Co-Op; Society Ltd Karachi Recruitment Rules, 1964. Thus, we are of the humble view that the learned trial Court has rightly appreciated the evidence on record and recorded conviction against appellant Nisar Ahmed Morai acting upon the material available with the learned trial Court. Here we are not touching the findings with regard to acquittal of accused Abdul Saeed Khan and Sultan Qamar Siddiqui on this point because of pendency of acquittal appeal before this Court, which will be decided on its own merits.

18. As to the accusation of embezzlement of funds in trash-fish through commission, since not proved the learned trial Court acquitted all the accused persons of the charge. As noted above the NAB has challenged the order of acquittal in appeal, which is pending adjudication before this Court, therefore, we are not touching this aspect of the matter. However, prima facie, we have not found any convincing evidence on this point to disagree with the findings of the learned trial Court.

19. On the point of awarding fake contracts and receiving money through open cheques, the prosecution has produced Abdul Ghaffar {PW.7}, Proprietor of Venus Enterprises, Haji Abdul Rab {PW.8}, Recovery Officer FCS, Muhammad Rehan Abbas {PW.9}, who is Building Contractor, Riaz Ahmed {PW.14}, Proprietor of M/s Pak Corporation, Aijaz Ali {PW.19}, who is Proprietor of Sahil Enterprises and Builders, Abdul Qadir {PW.20}, who is Manger Operation Summit Bank, Faheemuddin {PW.23}, who is Forensic Handwriting Expert, Abdul Latif {PW.24}, who is Operating Manager NBP, Fish Barbour Branch, and Irfan Ali, investigating officer {PW.27}. A keen look at their evidence reveals that 71 contracts of different work worth Rs.4,54,26,700/- were awarded to fake companies on the basis of forged documents during the period of 2014-2015. Record also reflects that most of the contracts were given to M/s Bright Associates, M/s Pak Corporation and

M/s Sahil Enterprises, whose owners appeared as witnesses and denied to have applied for any contract in FCS and carried out any work. The documents placed on record also reflect that out of 71 contracts, 47 were approved by Nisar Morai, appellant No.1, and 24 by Sultan Qamar Siddiqui, appellant No.2 and most of the contracts were awarded to Imran Afzal {Contractor}, who at the same time was also in service of FCS, on the basis of forged documents. It has also come in evidence that note sheets of said contracts were prepared, out of which 41 were signed by Nisar Ahmed Morai, 50 by Sultan Qamar Siddiqui, 63 by Haji Wali Muhammad, appellant No.3 and 39 by Shaukat Hussain, appellant No.5. Here we are not convinced with the submission of learned counsel for appellant Sultan Qamar Siddiqui that the cheques that were signed by him pertain to salaries of the staff. The note sheets available at pages 2199, 2215, 2229, 2245, 2259, 2263, 2283, 2303, 2369, 2407 and 2451 of part-3 of the Paper Book, bear signatures of the appellant as Vice Chairman FCS whereby he has approved the payments through cheques. It has also come on record that all payments against works were made through process of cash forwarding memo and payment vouchers out of which 64 cash forwarding memos and 71 payment vouchers were signed by Haji Wali Muhammad, appellant No.3 and 54 by Shaukat Hussain, appellant No.5. Abdul Ghaffar, owner of Venus Enterprises appeared as PW.7, Muhammad Rehan Abbas, owner of Bright Associates appeared as PW.9, Riaz Ahmed, Proprietor of M/s Pak Corporation appeared as PW.14, Aijaz Ali, Proprietor of M/s Sahil Enterprises and Builders appeared as PW.19. All of them in their respective depositions have categorically stated that they neither applied for any contract nor carried out any work in FCS. PW.14 Riaz Ahmed has further deposed that in the year 2016 Imran Afzal, appellant No.4, who is residing in the same locality, came to him and told about some construction work in FCS and requested him to give a quotation whereupon he give him estimate of Rs.60,000/- and thereafter he went away and after a month again came and disclosed that the required work has been done by other person, but gave him a cheque of Rs.54,000/- or Rs.55,000/-, drawn in his name, and requested to get it encashed and give him the cheques amount back for payment to the relevant person. Faheemuddin, is Forensic Handwriting Expert, Forensic Division, Sindh, Karachi, who appeared as PW.23. He alongwith Mr. Imtiaz Ali, Forensic Expert, examined the signatures of Syed Muhammad Rehan Abbas, Proprietor of M/s Bright Associates} appearing on three cheques with his admitted signatures and found that the same were not matched with his routine signatures and issued their report. He has exhibited

such report alongwith annexures, which is part of the record of this case. As to the allegation of payments through open cheques, the prosecution has examined Abdul Qadir, Manager Operation Summit Bank, who appeared as PW.20, Abdul Latif, Operation Manager, NBP, Fish Harbour Branch and Irfan Ali, investigating officer, who appeared as PW.27. All of them have supported the case of the prosecution and deposed that payments against contracts were made through process of cash forwarding memo and payment vouchers. From the evidence and documents brought on record, it is, thus, established that appellants in connivance with each other awarded fake contracts to Imran Afzal, who was neither owner of any of the companies nor had an experience of construction work and obtained all contracts on furnishing forged documents, causing a colossal loss to FCS. The learned trial Court has rightly appreciated the evidence brought on record and convicted the appellants holding that the prosecution has successfully proved the charge of misuse of authority by awarding fake contracts to bogus companies without adopting the proper procedure and publishing tenders on the basis of fabricated documents in connivance with each other.

20. As to the contention of the learned counsel for the appellants that the action of NAB was discriminatory as it had only singled out the Chairman and Vice Chairman FCS in the reference without arraying any of the Directors of FCS. This contention, on the face of it, seems to be legally incorrect. It is a well settled principle of criminal jurisprudence that challenging prosecution on the ground of discrimination cannot be a complete valid defence to absolve an accused from criminal liability arising from his actions or inactions. Any person charged for an offence is answerable for his own acts or omissions and has to defend himself in a trial for the offence with which he has been charged.

21. Insofar as the contention of the learned counsel for the appellants challenging the reference on the ground that there was no criminal intent/*mens rea* on the part of appellants is concerned, suffice to observe that Sub-section (b) of Section 18 of the Ordinance deals with the initiation of a reference by NAB, which reads as under:-

"Cognizance of Offences:-

{b} A reference under this Ordinance shall be initiated by the National Accountability Bureau on

- {i} a reference received from the appropriate Government; or
- {ii} receipt of a complaint; or
- {iii} its own accord."

22. The above provision clearly provides three different modes to initiate a reference against an accused. Clause (ii) (supra) is so worded to encompass a complaint filed by any person accusing any person of committing corruption to be the basis for NAB to initiate a reference under the Ordinance. We have gone through the reference which clearly manifests that NAB initiated inquiry into the matter on a source of information with regard to misuse of authority, embezzlements of funds and illegal appointments against Chairman and Vice Chairman FCS and pursuant to such inquiry the investigation was followed wherein it was found that appellants being holders of public office have misused their official authority and caused a colossal loss to FCS. In view of this background of the matter, the offence falls within the purview of a complaint as provided under clause {ii} of Sub-section {b} of Section 18 of the Ordinance. Thus, the stance taken by the learned counsel for the appellants challenging the entire reference on the touchstone of this alleged jurisdictional defect in initiating a reference against the appellants is misconceived. The prosecution has been able to place on record sufficient evidence in shape of ocular evidence supported by the documentary evidence, which substantiate criminal intent of the appellants as well as *mens rea*.

23. As to the plea that the witnesses are interested and inimical to the appellants have deposed against them for favouring the prosecution is not borne out from the record. The witnesses being independent and private persons have specifically involved the appellants in the commission of offence for which they have been tried and convicted. Mere saying that they have falsely been implicated in this case without specifying any enmity, ill-will of personal grudge is not sufficient to prove their innocence particularly in view of the fact that the prosecution witnesses were consistent and their evidence could not be shattered in cross-examination. As against their evidence, the appellants neither appeared on Oath under Section 340{2}, Cr.P.C. nor produce any witness in their defence. Even they did not speak a single word as to why the witnesses have deposed against them, which may give rise to a presumption that the plea taken by them in their defence was

not a gospel truth. We are also conscious of the fact that law requires that if accused had a defence plea the same should be put to the witnesses in cross-examination and then to put forward while recording statement under Section 342, Cr.P.C. statement, which is lacking in the case in hand. In the circumstances, since the specific defence plea has not been taken by the appellants either at trial or while recording their Section 342, Cr.P.C. statements, the learned trial Court has rightly discarded the same to be of untrustworthy. If both the versions, one put forward by the appellants and the other put forward by the prosecution, are considered in a juxtaposition, the version of the prosecution seems to be more plausible and convincing and near to truth while the version of the appellants seems to be doubtful.

24. The learned counsel for appellant Nisar Ahmed Morai has also claimed that Director General NAB was not competent to file reference against officers of BPS-18 and above. We have minutely examined the evidence of investigating officer, who has produced S.R.O. dated 30.10.2015 {Ex.50/4-1}, available at page 4083 of part-5 of the Paper Book, whereby Chairman NAB has delegated his all powers to Director General NAB, except arrest of grade 20, and also to file a reference. Relevant parts of the said S.R.O. read as under:-

Sr. No.	Section	Nature of Power/function	Officers of NAB authorized	Extend to delegation
4.	Section 18{e}	All powers except arrest of grade-20	1. DG Operations NAB HQ. 2. DGs Regional NABs	Any person other than businessmen, politicians, contractors, government servants, employees of bank, employees of Development Finance Institution {DFIs} and employee of financial institution, whose annual income is less than Rs.Five million {if confirmed from legal sources}
5.	Section 18{g}	To file a reference before an Accountability Court	-do-	-do-

The investigating officer has also produced a letter dated 03.11.2015, available at page 4095 of part-5 of the Paper Book, addressed to Director General All Regional NABs, circulating information of such delegation of powers, duly signed by Chairman NAB. Thus, the stance taken by the

learned counsel for the appellants challenging the entire reference is misconceived.

25. The appellants have also claimed that they have not drawn any personal gain and never caused any financial loss to FCS. This contention, on the face of it, seems to be misconceived. We have minutely assessed the entire record, which reflects that the appellants in their official capacity have failed to discharge their duties honestly, diligently and in a carefully manner rather they become instrumental and got themselves involved in corruption and corrupt practices and misused their authority through illegal appointments and awarding fake contracts to non-existent fake companies causing a colossal loss to FCS, knowingly and purposely. They aided and abetted each other for personal gain. It is an undisputed fact that National Accountability Ordinance, 1999, is a special law, which provides a mechanism to eliminate the abuse of powers or authority and to deal with the people who have not performed their duties in accordance with minimum required standards to protect the assets of State or Organization, which is a sacred trust under their command and control as the same amounts to corruption and corrupt practices and misuse of powers. Even otherwise the offence of corruption or corrupt practices as provided in clause {vi} of subsection (a) of Section 9 of the Ordinance includes even an attempt to misuse authority so as to gain any benefit to any other person and it need not necessarily result in any personal gain to the accused. The said provision reads as under:-

"9. Corruption and Corrupt Practices:---"(a)(vi) [If he] misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempt to render to do so, for willfully fails to exercise his authority to prevent grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority]"

26. The learned trial Court after scrutinizing the material available on record convicted the appellants on the ground that they being holders of public office misused their authority and caused huge loss to FCS through illegal appointments and awarding fake contracts. There is no denial to the fact that the learned trial Court had taken into account all the aspects of the matter as well as the submissions raised by the learned counsel for the appellants minutely and concluded that accusations with regard to illegal

appointments against appellant No.1 Nisar Morai and awarding fake contracts against all appellants stand proved.

27. In view of the analysis and combined study of the entire evidence by way of reappraisal, with such care and caution, we are of the considered view that the prosecution has successfully proved the charges of illegal appointments against Nisar Ahmed Morai, appellant No.1, and awarding fake contracts to non-existent companies against Nisar Ahmed Morai, Sultan Qamar Siddiqui, Haji Wali Muhammad, Imran Afzal and Shaukat Hussain, appellants 1 to 5, beyond shadow of reasonable doubt. Learned counsels for the appellants have failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence and documents brought on record. It is, however, noted that the learned trial Court while convicting appellant Nisar Ahmed Morai under Section 10 of NAO, 1999, for offence punishable under Section 9(a)(vi) of NAO, 1999 on the charges of illegal appointments in FCS sentenced him to four years imprisonment with fine, but convicted appellants including Nisar Ahmed Morai under Section 10 of NAO, 1999, for offence punishable under Section 9(a)(vi)(xii) of NAO, 1999 on the charges of awarding fake contracts to bogus companies to suffer sentence of seven years imprisonment each with fine. We have noticed that both the offences under which the accused have been convicted provide same punishment despite that the learned trial Court has awarded two different terms of sentence for four years and seven years without assigning any reason, which in our view is not justified. The principle of safe administration of justice and the law itself demand that every finding must be justified through valid reasons. In the case in hand, different sentences have been awarded although the offences are punishable under the same provision of law prescribing the same punishment for both without assigning valid reasons. Therefore, while taking advantage of principle of similarity and equality, we, keeping in view the proposition that when there are two probabilities, as are in this case, i.e. one to enhance the sentence of four years to seven years or to reduce the sentence of seven years to four years in respect of the offences punishable under the same provision of law, are adopting the one favouring the accused. We, therefore, alter the sentence of seven years each, awarded to appellants for offence under Section 9(a)(vi)(xii) of NAO, 1999, and reduce it to four years each.

The amount of fine and the sentences awarded in lieu thereof shall remain intact. With this modification only, the Criminal Accountability Appeals 03, 04, 05, 06 and 07 of 2021 are dismissed.

28. Insofar as the appeal filed by NAB, seeking enhancement of sentence, is concerned, suffice to observe that the conviction and sentence recorded by the learned trial Court against appellants through impugned judgment is just and proper and no case for enhancement of sentence is made out. The Criminal Accountability Appeal No.12 of 2021 is, therefore, dismissed as being devoid of any merit in view of our foregoing discussion. The petition which impugns order dated 25.01.2021, passed by the learned trial Court, dismissing application of NAB under Section 94 read with Section 540, Cr.P.C. whereby a request was made to call for inquiry report from the office of Registrar, Cooperative Societies, Sindh, relating to illegal appointments in FCS and make it part of the record. Suffice to say that learned trial Court while dismissing the application has observed that such details were already available on record. It is also noteworthy that such an application was moved when the trial was at fag-end, the prosecution adduced its' all evidence, appellants were examined under Section 342, Cr.P.C. and arguments from both sides were heard. No doubt the powers under Section 540, Cr.P.C. can be exercised at any stage, but in cases where the trial is at fag-end, the prosecution cannot be allowed to fill-up the lacunas. Even otherwise, the documents which the prosecution wanted to place on record were already produced in evidence and part of the record of the case as observed by the learned trial Court, hence no prejudice would be caused to prosecution. In the circumstances, we are of the view that the impugned order is just and proper and calls for no interference. In view thereof, the Const. Petition No.D-2483 of 2021 is accordingly dismissed.

29. Before parting with this judgment, we deem it appropriate to highlight the wrong doings of investigating officer, who is an important character and under obligation to investigate the matter, honestly, fairly and justly, so as to bring on surface the truth. It is the bounden duty of the Investigation Officer not only to build-up the case with such evidence enabling the Court to record conviction by all means, but also to dig out the truth to light to reach a just and fair decision. Meaning thereby that the purpose of investigation is to collect all relevant evidence pertaining to allegation of crime and to dig out the truth enabling and facilitating the Court to administer justice and to bring the real culprits to book, however, it appears from the record that

investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that besides appellants the other signatories of payment vouchers, cheque forwarding memos and note sheets neither cited as witness nor arrayed as accused in the reference. These documents are available at pages 2229 {Manager Maintenance}, 2241, 2245, 2255 {Muhammad Shahid/Medical Officer}, 2285 {Dr. Dawood Otho/ CMO}, 2299, 2321 {Manager Maintenance}, 2369, 2379 {Incharge Maintenance}, 2407, 2425, 2437, 2451. The appellants have also called into question the malafide of the investigating officer for not citing those persons as witness or accused. We, therefore, direct the high-ups of NAB authorities to take notice of what is happening in the Investigation Agency and how by way of dishonest investigation the favorites have been accommodated destroying the case of the prosecution. Thus, there should a mechanism of check and balance so that just, fair and impartial investigation is conducted within the framework as required by law without fear and favour from any corner and without nepotism and favouritism. A copy of this judgment shall be communicated to the Chairman, National Accountability Bureau, Islamabad, for information and initiating an inquiry against investigating officer and those who signed summaries, note sheets and other relevant documents through which the process of payments was initiated and cheques were issued and if they are found involved in the scam, they shall be dealt with strictly in accordance with law.

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