

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Shamsuddin Abbasi

Criminal Accountability Appeal No.10 of 2021

Appellant Syed Naeem Akhtar son of Syed Tahzeeb Akhtar through Mr. Khawaja Shamsul Islam, Advocate a/w M/s Syed Amjad Ali Shah and Imran Taj, Advocates.

Respondent The State/National Accountability Bureau through Mr. Riaz Alam Khan, Special Prosecutor NAB.

Const. Petition No.D-1977 of 2021

Appellant Syed Naeem Akhtar son of Syed Tahzeeb Akhtar through Mr. Khawaja Shamsul Islam, Advocate a/w M/s Syed Amjad Ali Shah and Imran Taj, Advocates.

Respondent The State/National Accountability Bureau through Mr. Riaz Alam Khan, Special Prosecutor NAB.

Criminal Accountability Appeal No.14 of 2021

Appellant Iqbal Shafiq son of Shafiq uddin Khan through M/s Muhammad Salman Raza a/w Syed Nadeem-ul-Haq, Advocates.

Respondent The State through Mr. Riaz Alam Khan, Special Prosecutor NAB.

Const. Petition No.D-3119 of 2021

Appellant Iqbal Shafiq son of Shafiq uddin Khan through M/s Muhammad Salman Raza a/w Syed Nadeem-ul-Haq, Advocates.

Respondent The State through D.G. NAB through Mr. Riaz Alam Khan, Special Prosecutor NAB.

Dates of hearings 14.09.2021, 07.10.2021 and 14.10.2021

Date of judgment **18.11.2021**
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JUDGMENT

SHAMSUDDIN ABBASI, J:- Syed Naeem Akhtar and Iqbal Shafiq, appellants, alongwith two others namely, Muhammad Ajaib and Noor Muhammad were tried by learned Accountability Court No.II {Sindh}, at Karachi, in Reference No.12 of 2015. By a judgment dated 12.03.2021 the appellants and co-accused Noor Muhammad were convicted under Section 10 of National Accountability Ordinance, 1999 (NAO, 1999) for commission of offences of corruption and corrupt practices as defined in Section 9(a) of NAO, 1999, and sentenced to undergo rigorous imprisonment for five years, five years and eight years respectively. They were also ordered to pay a fine

of Rs.13,686,100/-, Rs.13,686,100/- and Rs.21,897,700/- respectively and to suffer a further period of three months, three months and six months simple imprisonment respectively in lieu of fine. In addition, the sentences of restriction/prohibition in terms of Section 15 of NAO, 1999 were also imposed on them, whereas accused Mohammad Ajaib was acquitted of the charge under Section 265-H{j} Cr.P.C. While concluding, the learned trial Court ordered concurrent running of sentences awarded to appellants Syed Naeem Akhtar and Iqbal Shafiq vide judgment dated 12.03.2021 in Reference No.11 of 2015 under Section 35{1}, Cr.P.C.

2. The facts giving rise to these appeals, briefly stated, are that an inquiry was initiated against Noor Muhammad, owner of M/s Noor Textile Mills {M/s NTM} and officials of Sales Tax Department into the allegation of sanctioning sales tax invoices, which was upgraded into investigation. The Collectorate of Sales Tax provided analysis sheet of three claims alongwith copy of audit report, conducted by Naeem Akbar, and supervised by the then Deputy Director namely, Raza, against M/s Usman Textile Mills {M/s UTM}, which also discussed the claim of M/s Noor Textile Mills {M/s NTM}, which site was basically a house of 80 square yards, owned by Ansari Family, residing since 1957. The NOC dated 26.02.2004 purportedly issued by owner of the said house namely, Mehmood-ul-Hassan for use of electricity connection was fake and fraudulently used to get registration number of sales tax whereas the owner of the said house died on 07.02.1988. M/s NTM was registered with the Sales Tax Department on 07.03.2004 vide Registration No.17-00-6200-073-37, which made purchases from M/s Nooni International, M/s Doha Impex and M/s Pasha Enterprises, registered on 21.04.2004, 13.04.2004 and 13.04.2004 respectively and submitted three claims T111104100583, T111204100601 and T110115100508, against which amounts were sanctioned in the Refund Payment Orders {RPOs} and cheques were issued on the same day overruling the objections. The investigation further revealed that M/s Nooni International was neither a garment supplier nor supplied garments to M/s NTM and its owner denied opening of bank account in Bolan Bank and Askari Commercial Bank. Same statements come from the owners of M/s Doha Impex and M/s Pasha Enterprises. It is, thus, established that accused Noor Muhammad, the owner of M/s NTM earned benefit of Sales Tax Refund amounting to Rs.49.27 million, credited in company's A/c No.49-01-010-0584-6, lying with Askari Commercial Bank, North Napier Road Branch, Karachi. He was facilitated by Iqbal Shafiq, appellant No.2, the then Deputy Superintendent, Sales Tax

Department, who processed the refund claims T111104100583 of Rs.30,451,400 and T111204100601 of Rs.10,484,167/- without verifying their genuineness and admissibility and proof of payments under Section 73 of the Sales Tax Act, 1990. Noorullah Samejo, who is shown as accused No.3 in the reference, also failed to discharge his duties as processing officer of claim No.T-11015100508 of Rs.8,338,745 and did not call for proof of payment despite of objection of STARR system. Syed Naeem Akhtar, who is appellant No.1, processed the refund claims for approval without verifying their genuineness and admissibility and issued PROs in favour of M/s NTM without any proof of payment as mandated by Section 73 of the Act. Muhammad Ajaib, who is shown accused No.5, opened the accounts of the claimant and its alleged suppliers as Account Opening Officer of Askari Commercial Bank, North Napier Road Branch, Karachi, while Imtiaz Ahmed Dev, who is shown as accused No.6, in his capacity as Additional Collector, Sales Tax Department sanctioned refund claims without verification. Thus, the accused person in connivance with each other have caused a colossal loss of Rs.49.27 million to national exchequer towards Sales Tax Refund through fake invoices, which constitute an offence of corruption and corrupt practices as envisaged under Section 9{a} of NAO, 1999 punishable under Section 10 of the Ordinance and scheduled thereto.

3. The learned Accountability Court, on taking cognizance of the matter, charged the appellants and four others namely, Noor Muhammad, Noorullah Samejo, Muhammad Ajaib and Imtiaz Ahmed Dev for the offences of corruption and corrupt practices as defined in Section 9{a} punishable under Section 10{a} of the Ordinance, who pleaded not guilty and claimed a trial.

4. Worth to mention here that during pendency of trial accused Noorullah Samejo, the then Deputy Superintendent, Sales Tax Department, expired and proceedings against him were abetted vide order dated 17.08.2016 while proceedings against accused Imtiaz Ahmed Dev, the then Additional Collector, Sales Tax Department, were quashed by this Court in C.P. No.D1925 of 2017 vide order dated 12.09.2017.

5. At trial, the prosecution has examined as many as fourteen witnesses. The gist of evidence, adduced by the prosecution in support of its case, is as under:-

6. **Raza**, is the Additional Collector, Port Qasim, who appeared as **witness No.1** Ex.18. He assigned audit of M/s NTM to Naeem Akbar, who conducted audit in his supervision and submitted a report. **Naeem Akbar**, Auditor Inland Revenue, appeared as **witness No.2** Ex.19. He conducted audit of three refund claims of M/s UTM pertaining to November, 2004, December 2004 and January 2005 and submitted his report. **Abul Hassan Ansari**, appeared as **witness No.3** Ex.20. He denied to have any connection with Noor Muhammad and also denied to have let out his premises to him. **Abbas Wali Muhammad**, the then Manager Operation, Askari Commercial Bank, North Napier Branch, Karachi, appeared as **witness No.4** Ex.22. He deposed about account opened by accused Noor Muhammad, Proprietor of M/s NTM, which was processed by Muhammad Ajaib, Account Opening Officer of the Branch. **Iqbal Abdullah**, Manager J.S. Bank, appeared as **witness No.5** Ex.23. He deposed about opening of account by Noor Muhammad, Proprietor of M/s NTM in Askari Bank, Napier Road Branch, Karachi, which was processed by Muhammad Ajaib, Account Opening Officer of the Branch. **Muhammad Nasir**, Regional Manager, Lenovo Company, appeared as **witness No.6** Ex.24. He denied to have any relation with M/s Doha Impex and also denied his ownership in respect of the said company. He also denied to have any relation connection with M/s NTM. **Rizwan Anwar Ahmed**, an employee of printing press, appeared as **witness No.7** Ex.25. He denied to be the owner of M/s Pasha Enterprises and also denied to have a bank account at Bolan Bank. He also denied to have any connection with M/s NTM. **Muhammad Junaid**, appeared as **witness No.8** Ex.26. He denied to have any relation with M/s Noon International and also denied to have supplied any raw material to M/s NTM. **Saqib Hussain**, Incharge General Banking Askari Bank Cloth Market Branch, appeared as **witness No.9** Ex.27. He provided relevant documents pertaining to accounts of M/s UTM and M/s NTM to investigating officer, who took custody of the same. **Syed Tanveer Ahmed**, Member Technical, Custom Appellate Tribunal, Karachi, appeared as **witness No.10** Ex.29. He was confronted with two files pertaining to refund claim of M/s NTM for the year 2005 and he denied to have processed these files. **Muhammad Ashfaq**, audit officer, appeared as **witness No.11** Ex.30. He provided four files of M/s NTM to investigating officer, who took custody of the same under a seizure memo prepared in his presence. **Muhammad Sajid**, Deputy Director, Regional Office NAB, Karachi, appeared as **witness No.12** Ex.32. He was authorized investigation relating to M/s UTM and M/s NTM. **Saeed**

Ahmed, Deputy Director NAB appeared as **witness No.13** Ex.33. He recorded the statements of witnesses and thereafter the investigation was entrusted to Masood Ahmed. **Masood Ahmed**, Additional Director NAB, appeared as **witness No.14** Ex.34. He verified whole investigation concluded 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.35.

7. Appellants Syed Naeem Akhtar and Iqbal Shafiq were examined under Section 342, Cr.P.C. at Ex.37 and Ex.38 respectively. They have denied the allegations imputed upon them by the prosecution, professed their innocence and stated their false implication in this case. They opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor produce any witness in their defence.

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

9. 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 Iqbal Shafiq was not the sanctioning authority of refund claims and no incriminating evidence has been brought on record to substantiate that such claims were either placed before him or approved by him. It is submitted 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*/criminal intent and no proper exercise was conducted in the light of guidelines highlighted by the Hon'ble Superior Court and the mandatory commands of law before filing of reference and in absence thereof the NAB was not competent to initiate inquiry and file a reference. The impugned judgment is bad in law and facts and based on assumptions and presumptions without producing any

valid and cogent evidence. 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 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. 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 involved the appellants in a case with which they have no nexus. Per learned counsel, appellants Syed Naeem Akhtar denied his signatures on the documents and made a request for forensic examination of his signatures, but no action was taken either by NAB or by the learned trial Court. Thus, it is a clear case of violation of Article 10-A of the Constitution of Pakistan, 1973. 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.

10. 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 each other maneuvered the whole scam for personal gain and caused a colossal loss to national exchequer through illegal means. 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.

11. 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.

12. What we understand from the record is that accused Noor Muhammad, Proprietor of M/s Noor Textile Mills {M/s NTM} filed three bogus refund claims for the months of November 2004, December 2004 and January 2005 under Section 10 of the Sales Tax Act, 1990, for Rs.30,451,400/-, Rs.10,482,167/- and Rs.8,338,745/- {totaling Rs.49.27 million} through fake invoices of three suppliers namely, M/s Nooni International, M/s Doha Impex and M/s Pasha Enterprises, who denied their ownership in respect of three companies and also denied to have supplied any raw material to M/s NTM. The said claims were sanctioned on 25.05.2005 vide Refund Payment Orders # 31519, 31515 and 31518 respectively. The said refunds were issued by Syed Naeem Akhtar, appellant No.1, in his capacity as Deputy Collector, Sales Tax Department. He also processed the same for approval of Additional Collector, Sales Tax Department without verifying genuineness and admissibility of such claims and signed three RPOs without scrutiny while Iqbal Shafiq, appellant No.2,

posted as Deputy Superintendent, Sales Tax Department processed the said claims treating the same as genuine and admissible overruling the objection raised by STARR system. Accused Noorullah Samejo {now deceased} also failed to discharge his duties as processing officer of claim No.T-11015100508 of Rs.8,338,745/- without calling proof of payment and objection raised by STARR system. It is further the case of the prosecution that accused Noor Muhammad, owner of M/s NTM formed a company in the name and style "M/s Noor Textile Mills {M/s NTM}", a non-existent manufacturing unit of textile goods and garment products, having its site at House No.3, measuring 80 square yards, situated at Street No.63, 4-C, Landhi No.6, Karachi, alleged to be acquired on rent, NOC whereof was alleged to be issued by Mehmood-ul-Hassan, who denied to have let out the said premises to anyone. The NOC was managed for use of electricity and fraudulently used for getting registration number of sales tax. It is also the case of the prosecution that owner of the said house died on 07.02.1988 whereas M/s NTM was registered with the Sales Tax Department on 07.03.2004 vide Registration No.17-00-6200-073-37. The purchases were shown to be made from three suppliers namely, M/s Noon International, M/s Doha Impex and M/s Pasha Enterprises against which three refund claims were submitted by M/s NTM for which amounts were sanctioned in the Refund Payment Orders {RPOs} and cheques were issued on the same day overruling the objection of STARR system. It is, thus, clear that accused Noor Muhammad in connivance with appellants and other officials of Sales Tax Department earned benefit of Sales Tax Refund amounting to Rs.49.27 million, which was credited into A/c No.49-01-010-0584-6, lying with Askari Commercial Bank, North Napier Road Branch, Karachi, which was processed by accused Muhammad Ajaib, the then Accounts Officer of Askari Commercial Bank, North Napier Road Branch, Karachi, as Account Opening Officer. Thus, the accused persons in connivance with each other have caused a colossal loss of Rs.49.27 million to the national exchequer.

13. To substantiate its case, the prosecution has examined as many as fourteen witnesses, who furnished all accounts relating to the offence and exhibited relevant documents in their respective evidence establishing the guilt of the appellants. They 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 appellants to falsely implicate them in the commission of offence with which they have been charged. 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 the prosecution and produced relevant documents establishing involvement of the appellants in the commission of alleged offence. The prosecution, thus, discharged its duty of proving the guilt of the appellants shifting onus on the appellants to disprove the prosecution case and prove their innocence through valid and cogent evidence, which is lacking in this case. Thus, the plea taken by the appellants that prosecution has failed 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 is misconceived. Here we deem it appropriate to review the evidence brought on record by the parties.

14. The manufacturing unit of M/s NTM is shown to be installed at House No.3, Street No.63, 4-C, Landhi No.6, Karachi, alleged to be acquired on rent from Abul Hassan Ansari, who appeared as witness No.3 Ex.20. He categorically denied to have given the said premises on rent to anyone and stated that the premises is a residential house and he alongwith his family is residing therein since 1957 and he never received any letter from any department of Government till date. Worth to mention here that owner of the said house died on 07.02.1988 whereas M/s NTM was registered with the Sales Tax Department on 07.03.2004. It is, thus, made clear that NOC alleged to be issued by the father of PW.3 Abul Hassan Ansari was a fake and fabricated on the basis of which accused Noor Muhammad got registered his company with the Sales Tax Department vide Registration No.17-00-6200-073-37 whereupon NTN Certificate No.1869675-9 was issued to M/s NTM on 28.02.2004. Muhammad Ashfaq, who was audit officer in Inland Revenue, appeared as witness No.11 Ex.31. He produced the said NTN Certificate alongwith claim files, which disclosed the name of accused Noor Muhammad, who obtained sales tax refund to the tune of Rs.49.27 million as business individual of M/s NTM through fake and flying invoices of three fake companies.

15. A bare perusal of the record reveals that accused Noor Muhammad was the mastermind of the whole scam, who formed a company in the name and style "M/s Noor Textile Mills" showing its manufacturing unit at House

No.3, Street No.63, 4-C, Landhi No.6, Karachi, alleged to be acquired on rent from PW.3 Abul Hassan Ansari, who denied to have rented out the said premises to anyone. Record also reflects that accused Noor Muhammad being registered as business individual of M/s NTM approached Sales Tax Department seeking registration of a unit in the name of M/s Noor Textile Mills, which was registered without verification of site. The entire scam was exposed in the year 2007 when Director General, Inspection & Internal Audit {Custom, Federal Excise & Sales Tax}, Islamabad, conveyed directions to Chairman, CBR and Member Audit to conduct audit of several units including M/s UTM and M/s NTM. The audit was conducted by Naeem Akbar, Auditor Inland Revenue, who appeared as witness No.2 Ex.19, under the supervision of Mr. Raza, Additional Collector, Port Qasim, who appeared as witness No.1 Ex.18. The audit report has been placed at Ex.19/1, which shows that Rs.49.27 million were claimed by M/s NTM towards sales tax refund through fake invoices of three suppliers namely, M/s Noon International, M/s Doha Impex and M/s Pasha Enterprises, which were paid inadmissibly. The audit report further reveals that appellants being holders of public office misused their authority through illegal process of three sales tax refund claims ignoring the objection raised by STARR system and relevant law. Muhammad Junaid appeared as witness No.8 Ex.26. He categorically denied to be the proprietor of M/s Noon International and also denied to have supplied any raw material to M/s NTM. He also denied to have a bank account in Bolan Bank and categorically deposed that he is engaged in the business of real estate. Muhammad Nasir appeared as witness No.6 Ex.24. He too denied to be the owner of M/s Doha Impex and also denied to have any nexus with M/s NTM and never supplied any raw material to it. He is doing job in IML Group and prior to that he was doing job in Ufone company and earlier to that was working as computer operator. Rizwan Anwar Ahmed appeared as witness No.7 Ex.25. He denied to have any concern with M/s Pasha Enterprises and also denied to have a bank account at Bolan Bank. He further denied to have supplied any raw material to M/s NTM. He is working in a printing press for the last about seventeen years.

16. To have a refund claim, the claimant is required to submit valid sales tax invoices arising out of supplies. The wisdom behind a valid sales tax invoice is to ascertain the genuineness and admissibility of the refund claim pertaining to purchases. Therefore, the Officer Incharge Refund, in view of report generated by the Sales Tax Automated Repository Revenue {STARR} System is under obligation to issue refund in those claims which have

properly been validated by the aforesaid system and to refuse refund which is invalidated thereto. Each refund claim is required to be processed under the relevant procedure specified by the Federal Board of Revenue under Section 10 of the Sales Tax Act, 1990. A mechanism for filing of refund claim with the department under the provisions of Sales Tax Act, 1990, has been devised under which every claim is processed and scrutinized in the light of the said procedure/system. Accordingly, on the specific objection raised by STARR, the Officer Incharge Refund is under obligation to act in accordance with the analysis report duly generated by the computer system indicating the admissible and inadmissible amount of refund out of the refund claimed and to decline the claim under objection. Under Refund Rules, 2002, the Officer-in-charge refund shall satisfy himself about the genuineness and admissibility of the refund claim on the basis of the said report, recommendations and supportive documents and then reject the claim if found inadmissible. Undoubtedly, refund sanctioning authority is empowered to reject a refund claim, which remains unverified due to STARR's objection. In fact, while sanctioning a refund claim, the refund sanctioning authority exercises the executive powers conferred by him under the statute and he is, thus, under obligation to follow the prescribed rules for sanctioning the refund claim. It is, however, abundantly clear upon the deep appreciation of the facts of the instant case that some basic verifications were required to be done by the department from different quarters but the same have not been carried out. It is, thus, established that refund claims were obtained by Noor Muhammad on the basis of forged and flying invoices of three fake companies, in connivance with appellants 1 and 3 and other officials of Sales Tax Department in violation of Section 73 of the Sales Tax Act, 1990 and other applicable laws. Sales Tax Refund Rules, 2002 provides a complete mechanism to be adopted by the processing officer while entertaining a refund claim. The definition of processing officer is provided in rule 2{1}(h), which says:-

“Processing Officer” means an auditor or a Senior Auditor, Deputy Superintendent or Superintendent authorized to process and scrutinize a refund claim”.

Rules 5 and 6 describe a procedure for refund of sales tax claim requiring the processing officer to carry out necessary examination and scrutiny in order to ascertain a bonafide or otherwise of the refund claim under the law. He shall also check the accuracy of declarations and calculations etc. on the sales tax return involving the amount of refund claimed and satisfy himself as to the

genuineness and admissibility of refundable amount and send the original copy of the sanction order to the treasury officer for issuance of a cheque to the claimant. It is noteworthy that under "STARR" system relevant officers have been assigned personal IDs and passwords so as to avoid entrance of anyone else in the system. Here in this case the claimant company and its suppliers were non-existent and despite objection and red alert shown by the STARR system, the entire process was completed and payments were made on the basis of bogus invoices of three fake companies. This led us to an irresistible conclusion that appellants in their official capacity have failed to discharge their duties honestly, diligently and in a careful manner rather they became instrumental and got themselves involved in corruption and corrupt practices by misusing their authority, knowingly and purposely. They aided and abetted accused Noor Muhammad in obtaining sales tax refund claims to the tune of Rs.49.27 million on the basis of forged and flying invoices of three fake companies. The another intriguing aspect of the matter is that all payments have been made in cash and not through banking instruments, which is a clear violation of Section 73 of Sales Tax Act, 1990, which says if the amount against supplies is exceeding Rs.50,000/-, the purchasing company would have to make payment through cross-cheque. This fact, thus, rendered the claims inadmissible in view of Section 73 of the Act.

17. The prosecution has also claimed that accused Noor Muhammad got opened A/c No.49-01-010-0584-6 with Askari Commercial Bank, North Napier Road Branch, Karachi, showing himself to be the sole proprietor of M/s Noor Textile Mills {NTM}. He filed an application addressing the Manager of the Bank for opening bank account in the name of M/s NTM coupled with a declaration of proprietorship declaring himself to be the sole proprietor of M/s NTM. Abbas Wali Muhammad, who is Manager Operation, Askari Commercial Bank, North Napier Branch, Karachi, appeared as witness No.4 Ex.22. He categorically deposed that accused Noor Muhammad came to the branch for opening a bank account, which was processed by Muhammad Ajaib, Account Opening Officer of the Bank. He has been supported by Iqbal Abdullah, Branch Manager, who appeared as witness No.5 Ex.23, who has deposed in the same line as that of PW.4.

18. The appellants though denied the commission of offence in their Section 342, Cr.P.C. statements but failed to produce any material to disprove the prosecution case. Even otherwise, they have not appeared on

Oath under Section 340{2}, Cr.P.C. and failed to 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, therefore, they avoided to appear and depose on Oath under Section 340{2}, Cr.P.C. 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. which is lacking in the instant case. In the circumstances, since the specific defence plea had not been taken by the appellants either at trial or while recording their Section 342, Cr.P.C. 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, then 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.

19. The learned counsel for appellant Syed Naeem Akhtar has pointed out that bank statement of M/s NTM shows transmission of money in its bank account in shape of foreign currency, which supports the version of M/s NTM that it indulged in the business of import and export in garments and on the basis of documents produced in support of its claim substantiate its case as just and in accordance with law and such a claim cannot be rejected only on the ground of wrong address mentioned in the registration documents. The learned Special Prosecutor NAB submits that in order to promote textile export the Government gives subsidy in tax. In the case in hand the claims pertain to November 2004, December 2004 and January 2005 and the bank statement corroborates the trade of M/s NTM for only three months and after obtaining refund only a sum of Rs.4,519/- remains. This fact supports the version of the prosecution with regard to fake claims. No doubt bank transaction shows receiving of amount in the account of M/s NTM, but this amount relates to purchase of exported goods from open market. This fact, thus, disentitled M/s NTM to claim sales tax refund more particularly when they were not real manufacturing garments and Government has announced subsidy only to the manufacturers.

20. Coming to the contention of learned counsel for the appellants challenging the reference on the ground that there was no criminal intent/*mens rea* on the part of appellants and the reference has been filed without completing proper exercise in the light of the guidelines

highlighted by the Hon'ble Superior Court. 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."

21. 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 record which manifests that the entire scam was exposed in the year 2007 when Director General, Inspection & Internal Audit {Custom, Federal Excise & Sales Tax}, Islamabad, conveyed directions to Chairman, CBR and Member Audit to conduct audit of several units including M/s UTM and M/s NTM whereupon an audit was conducted and based on such audit an inquiry was initiated followed by an investigation wherein it was found that appellants being holders of public office have misused their official authority and caused a colossal loss to national exchequer in the head of sales tax refund claims. 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 competency of NAB for filing of a reference is misconceived. The prosecution has been able to place on record ocular account supported by the documentary evidence, which substantiate criminal intent of the appellants as well as *mens rea*.

22. As to the acquittal of co-accused Muhammad Ajaib is concerned, we have observed that the learned trial Court acquitted him on the ground that he being Account Opening Officer did not commit any discrepancy or inconsistency while opening account of Noor Muhammad, purported owner of M/s NTM, and the witnesses Abbas Wali Muhammad and Iqbal Abdullah, who were posted in the same branch, did not utter a single word

as to his involvement in the commission of offence charged with whereas there is much more evidence establishing involvement of the appellants in the commission of offence. Even otherwise, investigating officer did not state his connivance with co-convict Noor Muhammad in the commission of offence. He just opened the account to have a business in the interest of bank. The learned trial Court after scrutinizing the entire material available on record acquitted accused Muhammad Ajaib of the charge and found the appellants and co-accused Noor Muhammad guilty of the offence as such acquittal of co-accused Muhammad Ajaib is not helpful to the appellants.

23. As to the contention that there is no evidence that appellants had not drawn any personal gain or caused any financial loss to the national exchequer. We have minutely assessed the entire record, which reflects that the appellants in their official capacity have aided and abetted main accused Noor Muhammad by processing and forwarded three fake refund claims for approval in violation of Section 73 of the Sales Tax Act, 1990 causing a colossal loss to the national exchequers. 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]"

24. 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 the national exchequer. 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 found the appellants guilty of the offence with which they have been charged.

25. 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 its case against the appellants beyond shadow of reasonable doubt. Learned counsel for the appellants has 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, hence calls for no interference by this Court. In view thereof, the conviction and sentence awarded to the appellants through impugned judgment dated 12.03.2021 warrants no interference. Consequently, the appeals listed above are dismissed as being devoid of any merit.

26. In sequel to above, the C.P. No.D-1977 and C.P. No.D-3119 of 2021, seeking post arrest bail, are dismissed as having become infructuous.

27. 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. Such a conduct would undermine the confidence of general public in the rule of law and good, fair and effective administration of justice. We, therefore, direct the Chairman, NAB to look into the matter of failure of investigating officer in discharge his duties freeing those officials/officers of FBR, who got themselves involved in registration of fake companies and initiated process of refund claims on bogus invoices of fake companies. If he is found responsible for charges of unfair and dishonest investigation shall be dealt with strictly in accordance with law. The Chairman FBR on his part shall also look into the matter against officials/officers responsible for facilitating accused Noor Muhammad in registering of fake companies and obtaining sales tax refund on the basis of forged invoices. A copy of this judgment shall be communicated to Chairman, National Accountability Bureau, and Chairman Federal Board of Revenue {FBR},

Islamabad, for information and immediate compliance under intimation to this Court.

JUDGE

JUDGE

NAK/PA