IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR &
MR. JUSTICE ZULFIQAR AHMED KHAN

CR. ACCOUNTABILITY APPEAL NO.33/2001

Abdul Sattar Dero ..... Appellant

Versus

The State ..... Respondent

AND

Mrs. Zahida Sattar	Cr. Revision Application No.95/2001
Tufail Ahmed Chandio	Cr. Revision Application No.96/2001
Mst. Tehmina	Cr. Revision Application No.97/2001
Roshan Ali Dero	Cr. Revision Application No.98/2001
Hakim Khatoon	Cr. Revision Application No.99/2001
Fawad Dero	Cr. Revision Application No.100/2001
Mrs. Fouzia Anwar	Cr. Revision Application No.101/2001
Fahad Dero	Cr. Revision Application No.102/2001
Ashraf Ali	Cr. Revision Application No.103/2001
Muhammad Akram	Cr. Revision Application No.104/2001
Abdul Hameed Dero	Cr. Revision Application No.105/2001
.....	..... Applicants

Versus

The State ..... Respondent

Date of hearing : 27.11.2017.

Date of judgment : 27.11.2017.

Appearance:
M/s. Shahab Sarki and Mushtaque Hussain Qazi, advocates alongwith appellant.
Mr. Abid S. Zuberi alongwith Mr. Abdul Mubin Lakho & Syed Khurram Nizam, advocates for applicants in Cr. Revision Applications.
Mr. Munsif Jan, Special Prosecutor, NAB.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Through instant appeal, appellant has assailed judgment dated 23rd June 2001, passed by Accountability Court No.IV, Karachi in Reference No.15/2000, thereby convicting the appellant for the offence u/s 9(a)(v) of N.A.B. Ordinance 1999 and awarding sentence to undergo R.I. for 7 years and to pay a fine of Rs.10 crores, in default thereof to further undergo S.I. for 2 years; entire movable and immovable properties as mentioned in the judgment and quoted in para-2 thereof were forfeited to Government of Pakistan; further appellant was disqualified for seeking or from being elected, appointed, nominated as a member or representative of any public office or any statutory or local authority of the Government and from granting any financial facilities in form of loan from any bank or financial institutions controlled by government, for a period of ten years. Appellant *however* was held entitled for the benefit of section 382(b) Cr.P.C.

2. Briefly stated, relevant facts are that NAB authorities filed a reference against appellant that he joined PQA in 1975 as Assistant Executive Engineer in BS-17, promoted as Executive Engineer on 21.06.1977 in BS-18, and then as Project Director Gwadar Fish Harbour Project in BS-19 in the year 1985, and then to BS-20 in 1988. Till December 1985 he was residing in a rented house in Block No.6, P.E.C.H.S., Karachi; in January 1986 he shifted to bungalow No.53/II, 15th Street, Khayaban-e-Mujahid, DHA,

Karachi, admeasuring 1000 sq. yards, in the name of his wife. Appellant in his declaration of assets from 1994, only disclosed one house D.S. No.B/83 at Kumbar Ali Khan, Larkana, at relevant time valued at Rs.50,000/- and cash prize bonds worth Rs.50,000/-; in 1995 he declared a huge sum of Rs.28,21,250/- as prize money from prize bonds during 02.10.1995 to 28.12.1995, declared purchase of plot in Gulshan-e-Qasim valued at Rs.16,800/-, in year ending 31.12.1996 he showed to have been purchased plot No.100/I&II, Phase VI, 2000 sq. yards in DHA, Karachi for Rs.17,30,000/- retaining a balance of Rs.11,75,516/- in year 1997 he further added a sum of Rs.35,00,000/- as money received against winning of prize bonds and disclosed to have purchased 98.35 acres agricultural land in Larkana for Rs.8,67,947/-, declaration of assets for 1998 showed to have purchased tractors and equipment etc retaining cash of Rs.21,69,113/- in shape of prize bonds. That wining prize bonds were presumably purchased by appellant from market to convert his ill-gotten black money. During a period of five years he willfully and with criminal intention concealed details of assets, movable and immovable held by his family members; during such period he accumulated movable and immovable properties including cash, agricultural land in the names of his dependents, mother, brothers and relatives, detail of property which he has accumulated in the name of his wife, children, mother, brothers and other closed relatives is as under:-

1	House No.53/II, 15th Street, Khayaban-e-Mujahid, Phase-V, DHA, Karachi,	Mrs.Zahida Dero w/o Abdul Sattar Dero
2	126 acres of agricultural land. Survey	Mrs. Zahida Dero

	No.200-3, 200-4, 208-3, 2098-1+4, 222-1+4, 223-1+04, 224, 200-1-4, 197-3-4, 198-3-4, 221-1-04, 212-1-04, 219-1-2, 220-1-2 at Deh Gheaki Tehsil Tando Allah Yar, District Hyderabad.	w/o Abdul Sattar Dero
3	140.26 acres of agricultural land. Survey No.183-1+04,185-1-2-4, 186-1-2, 196-1-4, 22-5A to D, 22-4, 23-3A to D, 23-4A to D, 24-1A to D, 24-3A to D, 24-4, 4A, 25-1-2, 25-3-, 25-4.26-1 to 3, 42-1, 42-3, 42-4A to D, 42-2, 43-1, 43-2A to D, 43-3A to D, 43-4A, B,C, 44-1A to D, 44-2A to D at Deh Gheaki Tehsil Tando Allah Yar District Hyderabad.	Fahad Dero s/o Abdul Sattar Dero
4	Dairy/cattle farm Survey No.56-4, Deh Visarki, Tando Allah Yar District Hyderabad.	-do-
5	Computerized weigh bridge at Fahad and Fawad Fruit Farm, Survey No.56/1, Deh Visarki Tando Allah Yar District Hyderabad.	-do-
6	Four Aatta Chakies hand mill with electric motors, survey No.56/1, Deh Allah Yar District Hyderabad.	-do-
7	Livestock consisting of 141 buffaloes plus 80 cows plus 2 bullocks plus 1 He-bullock, Survey No.56/4, Deh Visarki, Tnado Allah Yar, District Hyderabad.	-do-
8	129.50 acres of agricultural land. Survey No.160-7-10, 161-4-5-6, 162-1-2-3, 163-2-3-,164-3-4, 221-4, 45-1A to D. 45-2A, B,C, 45-3, 45-4A, A to D, 46-5, 49-4A, 65-1, 56-4, 83-1 to 16, 84-1 to 4, 84-6- to 10, 85-1 to 5, 86-1A, 86-1-2, 87-2, 87-1A to D, 87-5A, B, 87-6A, B,C, at Deh Ghaeki Tehsil Tando Allah Yar, District Hyderabad.	Fawad Dero s/o Abdul Sattar Dero
9	Shopping Centre consisting of 26 shops Survey No.56-1, Deh Visarki, Tancio Allah Yar, District Hyderabad.	-do-
10	198.28 acres of agricultural land, survey No.53-I, 123-1 to 5, 53-4 85-1-2, 86-1 to 4, 87-1 to 4, 94-4, 122-1 to 3, 142-1-2, 54-1-2,	Fouzia Anwar d/o Abdul Sattar Dero

	93-1 to 4, 124-3-4, 140-1-2, 141-1-2, 149-1-2, 125-2 to 4, 135-1, 91-1 to 4, 124-1-2, 85-3-4, 92-1 to 4, 84-A, 85-A, 83. At Deh Ghaeki Tehsil Tando Allahyar District Hyderabad	
11	House No.114/II, 31st Street, Phase VI, DHA, Karachi.	Mst. Hakim Khatoon w/o Ghulam Haider Dero
12	Agricultural land, 27, 39 acres at Deh Gheak, Tehsil Tando Allah Yar. Survey No.141-3-4, 142-7-8. 143-12, 163-1, 164-1-2 and 175.01 acres agricultural land at Deh Viskari, Tehsil Tando Allah Yar District	-do-
13	Cattle farm sheds at Tando Adam Road Survey No.56-4, Deh Visarki, Tando Allah Yar, District Hyderabad	Abdul Hameed Dero
14	Godowns Tando Adam Road, Survey No.58/1, Deh Vesarki, Tando Allah Yar District Hyderabad	-do-
15	Homes and dome type hut, Tando Adam Road, Survey No.56-1, Deh Vesarki, Tando Allah Yar, District Hyderabad	-do-
16	Tractor Shed, Guard Room, Meter Room and small godown/store, Tando Adam Road, Survey No 56/1, Deh Visarki, Tando Allah Yar, District Hyderabad.	-do-
17	Building structure without slab/roof Survey No.56-1, Deh Visarki, Tando Allah Yar, District Hyderabad	-do-
18	Residential Bungalow double story, survey No.56-1, Deh Visarki, Tando Allah Yar, District Hyderabad	-do-
19	24.04 acres of agricultural land at Deh Lund, Tapu Longai, Tehsil and District Larkana, Survey No.206, 180, 198, 181-1, 181-2, 181-3, 181-4, 181-5	-do-
20	170.04 acres of land at Tehsil Tando Allah Yar, District Hyderabad, Survey No.160-7-10, 161-4-5-6, 162-1-2-3, 163-2-3, 164-3-4, 183-1-4, 84-1-4, 185-1-2-4, 185-1-2-4. 186-1-2, 196-1-	-do-

	4, 221-4, 177-3, 203-1-2, 203-3-A-4, 204-1-2-3, 206-1-2-3, 207-1-4, 208-A-2-4, 201-1-4, 202-1-4	
21	Plot No.14, Survey No.RS-239, Tehsil Tando Allah Yar, District Hyderabad.	-do-
22	Plot No.82/A, 9 Ward A, Tehsil Tando Allah Yar District Hyderabad.	-do-
23	Residential bungalow, Survey No.82-A/9, Tando Allah Yar District Hyderabad	-do-
24	99.32 acres of agricultural land. Survey No.168-4, 175-1-2, 176-1-04, 177-1-2-4, 178-1-04, 205, 100-1 to 4, 101-1-CD 137-1 to 4, 138-4, 152-1A, 152-2 at Deh Veskari Tappo Nasarpur, Tehsil Tando Allah Yar District Hyderabad	Roshan Ali Dero s/o Ghulam Haider Dero
25	116.11.5 acres of agricultural land survey No.180-2-3, 181-1-04, 182-1-04, 199-1- 4, 166-2-3, 168-1-2-3, 189-2-3, 180-1-4, 167-4-3-35, at Deh Gheaki Tehsil Tando Allah Yar District Hyderabad	Mrs. Tehmina Chandi, sister in law of Abdul Sattar Dero
26	75.35 acres of agricultural land, survey No.210-2+04, 221-1-2-3, 179-1 to 4, 197-1-2, 198-1-2, 140-2-3, 141-1-2, 141-4, 146-1, 146-3, 146-4, at Tehsil Tando Allah Yar District Hyderabad	Tufail Chandio, husband of Tehmina Chandio, bother in law of Abdul Sattar Dero

It is alleged that appellant was found in ownership, possession, domain and control by himself, his dependents, relations and *benami* over movable and immovable properties for which he could not reasonably account for and he, being holder of public office, committed offence of corruption and corrupt practices as defined and punishable under relevant provisions of NAB Ordinance, 1999.

3. Such charge against the appellant was framed to which he (appellant) pleaded not guilty. Accordingly, prosecution in order to prove its case examined 20 witnesses.

4. Worth to add here that captioned Criminal Revision Applications were filed by applicants claiming to be the owners of the properties which were ordered to be forfeited by impugned judgment. In their Applications they have stated that applicants were neither accused nor witnesses in subject NAB Reference; that the property/properties of the applicants was/were illegally included in the Reference, applicants filed suit No.877/2000 in this Court for declaration and injunction in respect of those properties, during pendency of Suit, the Chairman, NAB passed order for freezing the properties and an application for rejection of suit was also filed by NAB in that suit which application was rejected vide order dated 15.09.2000; applicants also filed CP No.1235/2000 impugning the order of freezing the properties, that petition was dismissed as order of Chairman NAB was not confirmed by trial Court within 30 days thereof; NAB filed HCA No.281/2000 against order dated 15.09.2000 which was allowed vide order dated 26.01.2001 and suits were dismissed, it was held that ownership of subject properties were to be decided by trial Court; that order was challenged in CPLA NO.84/2001 (CA No.328/2001), leave was granted; that applicants also filed CP No.1894/2000 challenging various orders of trial Court passed on application filed u/s 12 of NAB Ordinance by NAB in respect of order of freezing the properties, that petition was dismissed in view of order passed in aforesaid HCA. That NAB also filed application u/s 12 of the Ordinance, before trial Court, proclamation

was issued inviting objections, and Objections were filed by applicants asserting their ownership as well challenging jurisdiction. It is the case of the applicants that properties exclusively belong to them and just because applicant(s) are related to appellant, those properties cannot be said to be in possession, domain or control of appellant hence same were wrongly included in the reference.

5. On closing of the prosecution side, the appellant was examined under section 342 Cr.PC who while denying prosecution allegations claimed to have concealed nothing and produced documentary evidence as well examined 19 witnesses as defence witnesses.

6. On conclusion of the trial, the learned trial Court recorded the impugned judgment in terms as stated above which to extent of conviction to appellant and forfeiture of properties in his name to Government was assailed through instant appeal while applicants in revision petition(s) challenged forfeiture of their *properties* to Government which were held as *benami.*

7. Assailing the legality and validity of judgment *impugned,* the learned counsel for the appellant contended that prosecution failed to prove the charge against the appellant; never deliberated to verify the allegations rather *blindly* submitted the reference against the appellant wherein involved the *independent* properties of others who *though* were related to appellant but were never *dependant.* The prosecution though produced documents of *ownership* but never established that same were consequences of corruption or corrupt practice. The claims and documents produced by appellant, by

himself as well through defence witnesses, were never appreciated properly. He also pleaded that appellant was also inquired and tried on false charge of *similar* nature but same failed which *fact* was never appreciated by learned trial Court. He also referred to number of contradiction (s) as well *flaws* in evidence and lasted while saying that it was never a case of conviction as wrongly concluded by learned trial Court. He has relied upon PLD 2011 SC 114, 2002 PLD SC 408, PLD 2001 Karachi 256, 2014 SCMR 985, 2016 YLR 75, 2016 PCrLJ 1343, 2015 CLC 696, 2010 SCMR 713, 2009 SCMR 124, PLD 2004 Lahore 155, 2016 PCrLJ 300 and 2009 SCMR 790.

8. The counsel representing the applicants in Revision Petitions vehemently argued that forfeiture of the *independent* properties of the applicants was / is entirely illegal. He insisted that there had been *malafide* on part of the investigating agency as while including *independent* properties the applicants (*recorded owners)* were never provided any opportunity nor were noticed. The applicants earned such right but again the learned trial court judge failed in discussing / appreciating the claims and *title* of the applicants while ordering forfeiture of such *independent* properties. It was also added that the trial Court (NAB Court) was never competent to make any determination with regard to status of an *independent* properties to be *benami* or otherwise because same falls within exclusive domain of the Civil Courts. Having said, learned counsel for applicants prayed for setting aside the impugned judgment and acceptance of the revision petitions.

9. Learned Special Prosecutor, NAB supported the impugned judgment while contending that same is reasonable, just and in accordance with law.

10. We have heard the respective parties and have also gone through the available material / record with *valuable* assistance of the respective learned counsel(s) for parties as well learned Special Prosecutor, NAB.

11. At the very outset, it would be appropriate to *directly* refer the charge, framed against the appellant, which reads as:-

> *"I, Muhammad Jawaid Alam, Judge, Accountability court No.IV, Sindh Karachi, do hereby charge you:-*
>
> **Abdul Sattar Dero son of Ghulam Haider Dero** as under:-
>
> That, you being public servant, in the year 1994 declared in the declaration of your assets, only one House No.D.S.B/783 Kumber Ali Khan, Larkana, Sindh and cash and prize bonds worth of Rs.50,000/- but in the subsequent years upto 31.12.1998 you added movable, immovable and agricultural properties in your declaration forms:-
>
> a) Plot in Gulshan-e-Qasim value of Rs.16,800/-
>
> b) Plot No.100/I&II measuring 2000 Sq.yards in Defence Housing Authority, Karachi of value of Rs.17,30,000/-
>
> c) Prize bonds of Rs.35,00,000/- ending 31.12.1997
>
> d) Agricultural land at Larkana measuring 98.35 acres;
>
> e) Tractors and equipments etc.
>
> above properties as declared by you have been quite disproportionate to your known sources and have been

obtained through corruption and corrupt practices by using your official position and could not have been acquired through legal means.

That further you being public servant by using corrupt practices and corruption also accumulated movable, immovable and agricultural properties worth Rs.204.830 Million which you obtained by misusing your official position in your name and in the names of your spouses, dependents, and other relatives and Benamidar and thereby you have owned, possessed, domain movable, immovable and agricultural properties disproportionate to you (*your)* sources of income and means and have been obtained by you by corruption and dishonest sources and not declared the same in your wealth statements:-

i) Agricultural land 1012 acres in Tando Allahyar, Sindh of Rs.151.8 million.

ii) Total value of infrastructure, Buildings, Dairy Farm/Cattle Farm structures, Shopping Centre, Weigh bridge and Atta Chakkies etc of value of Rs.131.373 Million

iii) Livestock including Buffaloes, Bullock, Cows and He-buffaloes plus value of machineries of Atta Chakkies and weighbridge of value of Rs.23.157 Million

iv) Agri-machines including 6 Tractors with Trollies, Plough, Saw-machine and Pickup etc... of value of Rs.1.5 Million

v) Single storied bungalow No.114/II, Street No.31, Phase-6, D.H.A. Karachi of value of Rs.5 Million

vi) Bungalow No.53/II, 15th Street, Khayaban-e-Mujahid, D.H.A Karachi in the name of Mrs. Zahida Dero of value of Rs.10 Million

and thereby you have committed an offence of corruption and corrupt practices as defined u/s 9 of National Accountability Ordinance, 1999 punishable under section 10 of National Accountability Ordinance, 1999 within the cognizance of this court.

And I hereby direct that you be tried by this court on the aforesaid charge.

Sd/-

(Muhammad Jawaid Alam)
Judge,
Accountability Court No.IV, Sindh Karachi
Dated 8.4.2000."

12. *Prima facie,* the case of NAB authorities against the appellant has been of *two* folds i.e :-

> "he, being public servant, in the year 1994 declared in his declaration of assets only one House No.D.S.B/783 Kumber Ali Khan, Larkana, Sindh and cash and prize bonds worth of Rs.50,000/- but **in the subsequent years upto 31.12.1998** he added movable, immovable and agricultural properties in his declaration forms which *allegedly* obtained through corruption and corrupt practices by using official position

AND that:

> "he, being public servant, by using corrupt practices and corruption also accumulated movable, immovable and agricultural properties worth Rs.204.830 Million by misusing his official position in his name and in the names of his spouses, dependents, and other relatives and Benamidar which were disproportionate to his sources of income and means which he obtained by corruption and dishonest sources and not declared the same in his wealth statements"

13. Before discussing the *first* part of the charge, we would not hesitate in saying that in such like matters *normally* the status of the accused to be a *public servant* is never a matter of dispute nor such *status* alone is sufficient for prosecution of one under any law which *otherwise* provides some privileges to a *public servant* hence in all laws relating to *corruption* and *corrupt practice* by a public servant, it is requirement of law to have some *substantial* material before recording an FIR or seeking approval of a *reference* which includes material establishing misuse of authority; greasing palm or possessing properties in his name or his *dependants* which *prima*

facie appear to be disproportionate to known sources of such public servant. Thus, now we can safely say that it is not the status of one as **'public servant'** but misuse of his *position* for gaining benefit for himself or benefiting others which would allow concerned agencies to inquire into / investigate and ask for trial of such a **public servant.**

14. Now, would revert to merits of the case and will take first part of the charge *first. First* part of the charge was with regard to *abnormal* disclosure of *properties* by the appellant / accused in his **'declaration of assets'.** At this juncture, we would not hesitate in saying that a *disclosure* of assets in **'declaration of assets'** by an *employee* itself cannot be an *offence* because it is by now a settled principle of law that "mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence". Reference may well be made to the case of *Ghani-ur-Rehman v. NAB* (PLD 2011 SC 1144). For this charge, though the prosecution had alleged such *increase* to be a consequence of corruption and corrupt practices by using official position *however* no such evidence was brought onto the record to substantiate such material part of the allegation. In absence thereof, the prosecution cannot claim to have proved the charge against the accused. Reference may be made to the case of *Anwar Badshah v. Chairman, National Accountability Court* (2013 P.Cr.L.J. 1607) wherein it is held as:-

> "31. .... But, the prosecution had not produced any evidence worth its name before the learned trial court to establish any misuse of his authority by the appellant so as to develop and establish any nexus between misuse of

> his authority and amassing of wealth or accumulation of asserts by him. In the complete absence of any evidence brought on the record by the prosecution in the above mentioned regard it could not be held by the learned Court below that the Charge, as framed against the appellant, stood established by the prosecution."

Be that as it may, since it is a matter of record that the appellant / accused did disclose the properties in his **'declaration of assets'** which was required by a public servant hence such a public servant would always be required to submit a **'satisfactory explanation'** but not a '**proof beyond shadow of doubt'** for acquiring such properties/ assets. A *satisfactory* explanation would not require proof beyond shadow of doubt which *normally* the prosecution must in a *criminal charge* but be taken as *sufficient* if it stands well on balance of *probabilities.* Reliance is placed on the case of *Khalid Aziz v. The State* (2011 SCMR 136) wherein it is held as:-

> "11. .... While interpreting section 14 (c) of the Ordinance, it has been observed in the case of Hakim Ali Zardari supra, as under:-
>
> > "As regards the burden of proof, the normal rule of law is that an accused is presumed to be innocent until his guilt is proved, established and the onus of establishing the guilt is always on the prosecution..... **The onus upon the accused is not as strict as the initial onus on the prosecution which has first to establish the disproportion between the properties held by accused and the known source of his income**. But wherefrom the facts the disproportion was not satisfactorily explained by the accused it could not be said that excessive burden was thrown on him to explain the disproportion. A reference is invited to Rameswar Prasad Upadhya v. State of Bihar (AIR 1971 SC 2474). **Thus, the nature and extent of the burden cast on the accused is that he is not bound to prove his innocence beyond any reasonable doubt, therefore, while examining the explanation of the accused the above principle is required to be kept in view and if the accused is able to explain the**

circumstances to the satisfaction of the Court then that will be enough to discharge the burden."

At this place, it would be material to refer the para-65 of the *impugned* judgment which reads as:-

> "65. The above figures would show that **in the year 1982 the accused was holding agriculture land worth Rs.300,000/-, household to Rs.50,000/-, tractor valued to Rs.50,000**/- and his wife assets valued to Rs.10,62,000/- **but no wealth statement has been filed for the properties / assets**. The accused as per his own evidence started filing wealth statements from the year 1992-93 and his wife Mst. Zahida Dero from 1996-07. Further, the accused in his statement under Section 265-f(5) Cr.PC. filed **all the relevant and irrelevant documents but neither filed any documents pertaining to the purchase of land 25 acres as mentioned in the declaration of assets 1982 nor pertaining to sale of the said land as mentioned in the declaration of assets 1984**. Another ***important discrepancy*** is that in the declaration form 1994 which is admitted document the value of prize bonds and cash has been declared Rs.50,000/- while in the declaration of assets filed by the accused in 1984 it have been sown Rs.350,000/- and in subsequent years shown Rs.50,000/-."

From above, it is quite clear that at one hand the learned trial court judge believed the **'declaration of assets'** so furnished by the appellant / accused in the year 1982 whereby he was owning and possessing :-

25 acres agri--cultural land	In Larkana	Valuing Rs.300,000/-	Purchased in 1974 (11.5.1974)
One house	In Larkana	Valuing Rs.50,000.	Transferred from Govt. on 29.6.74
One Tractor	In Larkana	Valuing Rs.50,000	purchased in 1974

It is worth to add here that as per PW-7 Muhammad Perwaiz Shaikh, Manager Establishment PQA (Ex.13) it was the *first* year from when the **declaration of assets of the employees were started to maintain** and the appellant / accused at such *first* opportunity dared to disclose his said ***assets*** ; such ***assets*** were repeated for year 1983 and it was claimed in year 1984 as:

One house	In Larkana	Valuing Rs.50,000/-	Purchased in 1974
Cash/Prize bonds	Larkana/Kar	Rs.350,000/-	by sale of agriculture land
One Tractor	In Larkana	Valuing Rs.50,000	--

The cash / prize bonds, valuing Rs.350,000/- were claimed against sale of agricultural land which admittedly not claimed in **declaration of assets** of such year i.e 1984. At this juncture, it is needless to add that payment or non-payment of the **wealth tax** alone would by itself will not affect the explanation nor would let one to draw any adverse inference against the appellant because same is *actionable* by quarter concerned. Reference may well be made to the case of *Khalid Aziz* supra wherein it is held as:

> "11. ..... The question as to whether these amounts are not mentioned in the Income Tax Department or that the resolution was not filed with the Registrar, Cooperative society is by itself will not affect the explanation or draw any adverse inference against the appellant as the **appropriation action can be taken under the Income Tax Laws or by the Registrar, Cooperative Societies Act (sic) against the Firm under the relevant provisions of law, if such laws are violated**. ...."

Therefore, the learned trial court judge was not justified in drawing an *adverse* inference against the appellant with reference to non-submission of **wealth tax** for such properties. It may well be added that since the object and purpose of a ***'charge'*** is always, as defined in the case of S.A.K. Rehmani v. State (2005 SCMR 364) i.e:-

> "20. ..... We are conscious of the fact that where a person is convicted of an offence and the Appellate Court is of the view that he has been misled in his defence by the absence of a charge or by an error in the charge, appropriate action can be taken including remand of the case with direction for making suitable amendment in the charge..... It is to be noted that **"the whole object of framing a charge is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offences with which the accused is convicted is not brought out in the charge, then the charge is defective**. .... In other words it can be said that "the main object of framing of charge is to ensure that the accused had sufficient notice of the nature of accusation with which he was charged and secondly to make the Court concerned conscious regarding the real points in issue **so that evidence could be confined to such points**.""

The learned trial court judge never appreciated that for *first* part of the charge the appellant was to explain disclosure of increase in **declaration of assets** during a period commencing from 1994 to 1998. While dealing with such *part* of the charge, the learned trial court judge even failed in appreciating the specific charge / allegation by prosecution as well admission of the PW-20 which is:

> **"I did not obtain the declaration of assets from 1975 to 1994 as in that period he was not in PQA**. Again says that he was in PQA from 1975 to 1994."

For, this it was claimed by the appellant to be an outcome of *prize money* against **prize bonds** which he had been showing in his **'declaration of assets'** which claim, being probable and possible, was requiring ***acceptance*** if appreciated on balance of probabilities which insists **'more likely than not'.** Claim of earning *prize money* on prize bonds is, no doubt, **'more likely than not'** hence cannot be *legally* straight away rejected on mere presumption. Let's see against this claim of appellant, *declared* in an official document of year 1982, what the investigating officer said. Here, it would be proper to refer the relevant portion of the cross-examination of PW-20 Muhammad Akbar Baloch, Assistant Director, FIA Crime Circle-I Karachi which is:-

> **"It is correct that about this prize money declaration has been filed in the Income tax department**. I cannot say as to whether these prize money was verified by the Income tax department and found correct. It is incorrect to say that I have falsely stated about the prize money and actually this was verified by the Income tax department. **It is correct that in my report Ex.27/12 it is stated that, for the declaration year ending on 31.12.1995 the accused added a huge sum of Rs.28,21,250/- as prize money of prize bonds w.e.f. 2.10.1995 to 28.12.1995** which were presumably purchased from the market to cover his ill gotten black money. **I have no oral or documentary evidence for the above presumption.**

The said witness, admittedly, had no proof to support his presumption, introduced at trial stage. However, we would not hesitate that even in matters of corruption the well established principles of Criminal Administration of Justice that **"if there are two possibilities, one favourable to accused, has to be taken"** and **"suspicion howsoever grave or strong, can never be a proper substitute for proof beyond reasonable doubt'.** Reference may be

made to the case of *Muhammad Jamshaid & another v. State & Others* (2016 SCMR 1019) wherein it is held as:

> "3. .... It is trite that suspicion howsoever grave or strong can never be a proper substitute for proof beyond reasonable doubt required in a criminal case."

Needless to add that if prosecution alleges otherwise it must possess some substance to prove *otherwise* which admittedly prosecution never had. Even otherwise, a reference to admissions made by the very PW-11 (Obedullah Malik, Assistant Commissioner Income Tax), shall make it clear that *tilt* was in favour of the appellant but was not properly appreciated and even discussed i.e:-

> "It is correct that the assessment of wealth tax has been assessed u/s 16(3) of Wealth Tax Act after proper verification and obtaining necessary documents. From the record I say that in reconciliation statements **for the period 1994-95 to 1998-99 there is no any discrepancy**. In every return the house at Larkana has been declared and we assessed its value as per market value and collector's able. In the statement this house has been declared value to Rs.50,000/- in all the year. **We accepted the value of agricultural land 98.75 acres on its value as declared. We also accepted the declaration value of agricultural equipment**. For the purpose of assessment and tax, the exempted allowances has not been taken into account. **It is correct that the assessment year 1996-97 the prizes money on prize bonds worth Rs.30,50,000/- was earned on which income tax of Rs.2,28,750/- has been deducted**. The prize bonds have been accepted. It is incorrect that in the assessment year 1997-98 the prize worth Rs.35 lac has been shown which has been accepted. **I see and produce photocopy of assessment u/s 143(b) in respect of prize money of Rs.30,50,000/- at ex.17/16 and ex.17/17f in two leaves**. In assessment year 1997-98 profit on PLS A/C Rs.76,014/- has been declared which has been accepted."

It is also a matter of record that in this *para-65* of impugned judgment the learned trial Court judge admitted production of documents by appellant while saying as **'relevant and irrelevant'** but did not discuss the same which *otherwise* was always the requirement of law and administration of justice hence such approach *legally* cannot be stamped. Not only had this, but the learned trial court judge himself used the word **'discrepancies'** in said para of the *impugned* judgment. A **'discrepancy'** would never be sufficient as a **'proof'** particularly when the PW-20 himself admitted as:

> **"I have no oral or documentary evidence for the above presumption. I had no oral or documentary evidence regarding allegation of obtaining ill gotten black money as no government servant leaves any evidence on it."**

Thus, in view of what has been discussed above we are of the clear view that the *first* part of the charge was never established against the appellant and explanation so furnished by the appellant/accused, being standing well on balance of probabilities, was/is worth accepting as **'satisfactory'**.

15. Now, while taking the *second* part of the charge which revolves around amassing properties by the appellant / accused in name of his *dependants* and *benamidars* by misuse of his position, we would first attend the objection raised by counsel for the applicants that the trial Court (NAB Court) has no jurisdiction to attend a question of *benami* status of a property. A reference to case of *Razia Begum v. NAB & Others* (PLD 2017 SC 665) would be sufficient to satisfy such objection wherein such question was categorically attended and responded as:-

> "13. We are not impressed by the argument of the learned counsel for the petitioner that the Accountability Court had no jurisdiction to record a finding that the property was not owned by the petitioner. **We are in no manner of doubt that under the NAO the Accountability Court has the exclusive jurisdiction to decide all questions arising out of a charge of corrupt and illegal practices** specially so where properties acquired by misappropriated or corruption based funds are surrendered pursuant to a VRA under section 25 of the NAO. We also find that reliance of the learned counsel on *Zahida Sattar's* case *ibid* is misplaced. The said judgment has been rendered in a different set of facts and circumstances and is of no help to the case of petitioner. The Accountability Court as well as the High Court were, therefore, justified and had valid grounds for coming to the conclusion that the property was owned by Haris Afzal and was transferred by him in favour of his real aunt in order to hoodwink and defraud the Bank."

Thus, it can *now* safely be said that all questions relating to properties, if prosecution brings some material to establish *prima facie* falling of the same within scope and definition of 9(a)(v) of Ordinance *however* this would require.

Since this provision revolves around the *terms* **'benamidar'** therefore, it would also be proper to add that the ordinary meaning of the word ***'benamidar'*** is that holder of title is *in fact* not the actual owner but merely holding title for some one else. The laws, relating to transfer of property, legally do not recognize such status of **'benamidar'** but accepts the holder of the title of property as ***actual owner.*** In the case of Halima v. Muhammad Kassam (1999 MLD 2934), it has been held that burden to prove is on the real owner, because, prima facie, ***the person in whose favour the document or instrument of title has been registered would be regarded as the owner'.***

Needless to add that *normally* such title always has some *hidden* motive which may not necessarily be falling within meaning of *criminal act* but whenever this *term* is used with reference to laws, relating to corruption or corrupt practice, it shall mean nothing else but that it is an attempt to give a *colour* to consequence of a *gain* in consequence of misuse of position / authority therefore, term **'benamidar'** would require two ingredients to be satisfied i.e title holder is *ostensible* and that he (ostensible owner) holds or is in possession or custody of a property for the benefit and enjoyment of the accused. Reference may be made to the case of *Ahmed Riaz Shaikh v. State* (2009 PLD SC 202) wherein it is held as:-

> "9. So far as Civil Petition Nos.2379 and 2380 of 2005 and concerned, there are no direct allegation of corruption or corrupt practices against petitioners namely, Miss Uzma Beg and Mrs. Shahina Riaz Sheikh but they are only alleged to be benamidars of the principal accused / appellant Ahmed Riaz Sheikh. **The word "benamidars" means any person who ostensibly holds or is in possession or custody of any property of an accused on his behalf for the benefit and enjoyment of the accused**....."

Here, it is also material to clarify that in cases of dispute between ostensible owner and *actual* owner, the challenger would require to prove two *elements* i.e first element is that there must be an agreement express or implied between the ostensible owner and the purchaser for purchase of the property in the name of ostensible owner for the benefit of the person who has to make payment of the consideration and second element required to be proved is that transaction was actually entered between the real purchaser and seller to which ostensible owner was not party. (*Ghlam Rasool v*

Nusrat Rasool (PLD 2008 SC 146). Since, in such *transaction,* it is always the actual owner who remains dealing with all affairs of transactions while the ostensible owner allows himself to be dressed up as title holder *formally* therefore, following four ingredients matter in determining such dispute between ostensible owner and actual owner, which are:-

(i) Source of consideration;

(ii) From whose custody the original title deed and other documents come in evidence;

(iii) Who is in possession of the suit property; and

(iv) Motive of Benami transaction;

(Chuttal Khan Chachar v Mst. Shahida Rani & another, 2009 CLC 324).

We, *however,* have no hesitation in saying that such *criterion* would not be applicable when it comes to determination of term ***'benamidar'*** with reference to criminal matters relating to corruption or corrupt practice because in such matter (s) the actual owner and ostensible owner will always be on one *page.* Guidance is taken from the case of Zahida Sattar v. Federation of Pakistan (PLD 2002 SC 408) wherein while attending the petition of one of the applicants of instant revision petition (s), it was held as:

> "12. …. If it had been a dispute between the real owner and the ostensible owners who were alleged to be the benamidars arising from denial of latter's right for former, certainly it would have been a dispute of civil nature and only the Civil Court could take cognizance of the same under section 9 C.P.C which provides that a Civil court shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature except the suits of which their cognizance is either expressly or impliedly barred. In a case where accused, holder of public office is being tried for accumulation of wealth acquired by him by illegal and corrupt practices by misusing his official capacity in the name of his

> spouses and other relatives, the dispute is not of a civil nature between two private parties, for there is no dispute between the accused i.e. the alleged real owner and his other relatives spouses i.e ostensible owners / alleged benamidars regarding title qua properties in question inter *se* which could be decided as a dispute of civil nature by the Civil Court."

Therefore, following the *dicta,* laid down in case of *Ahmed Riaz Shaikh* supra, we would conclude that in such like matter (s) the prosecution would *least* be required, in discharge of its *initial burden,* to establish:

i) nexus or relation between *benamidar* with accused it *however* would not be required when such *benamidar* falls within meaning of dependants.

> (*This is to give strength to presumption that such benamidar holds / possesses property for accused [public servant]).*

ii) the *benamidar* had no known sources to have such properties;

> *(This is to give strength to presumption that consideration was* in fact *paid / arranged by accused (public servant) because otherwise a related / dependant even is not precluded from holding / possessing properties in his / her name through his / her legal sources)*

The above *criterion*, is guided from the below referred cases wherein it stood made categorically clear that *i) initial burden is upon prosecution and ii) mere possession of a property by an accused or his* dependant *is not an offence but failure to account for that*:-

Ghani-ur-Rehman v. NAB (PLD 2011 SC 1144):

> '6. The law now stands settled that in order to prove commission of an offence under section 9(a)(v) of the National Accountability Ordinance, 1999 **it has to be proved by the prosecution as to what were the known sources of income of the accused person at the relevant time and that the resources or property of the accused person were disproportionate to his**

known sources of income and it is after such proof has been led and the necessary details have been provided by the prosecution that the onus shifts to the accused person to account for such resources or property because **mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence.** In the case in hand the appellant's sources of income had never been brought on the record by the prosecution and had never been quantified by it at any stage of this case and , therefore , it was not possible for the learned trial court to conclude or to hold that the appellant or his dependants or so-called *benamidars* owned or possessed assets or pecuniary resources disproportionate to the appellant's income. **It is unfortunate that the investigating officer of this case as well those responsible for prosecution of this case before the learned trial court had, probably on account of their sheer incompetence, utterly failed to do the needful in this regard and it is regrettable that even the learned trial court as well the learned appellate court had completely failed to advert to this critical aspect of the present case."**

Wahid Bakhsh Baloch v. State (2014 SCMR 985):

"10. In terms of the afore-referred charging provision, the initial burden is on the prosecution to prove that the accused was guilty of any of the offences for which he was being charged."

Muhammad Hashim Babar v. The State & another (2010 SCMR 1697), Rel. P-1704:

It is pertinent to mention here that in order to prove the case is the duty and obligation of the prosecution to prove the ingredients of offence which are as follows:-

i) It must establish that the accused was holder of a public office.

ii) The nature and extent of the pecuniary resources of property which were found in his possession.

iii) It must be proved as to what were his known sources of income.

> iv) It must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income;
>
> The aforesaid ingredients are proved then the offence as defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or property. It is also settled proposition of law that mere possession of any pecuniary resources or property is by itself not an offence, ***but failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable*** and constitutes offence meaning thereby that ***if an accused* cannot *explain***, presumption under section 14 (c) of the Ordinance that accused is guilty of corruption and corrupt practice is required to be drawn. .... The explanation of sources with regard to the amount mentioned hereinabove is not furnished by the petitioner as is evident from the finding of guilt recorded by the courts below reproduced hereinabove. **It is also settled principle of law that the initial burden of proof is on the prosecution to establish the possession of properties by an accused disproportionate to is known sources of income to prove the charge of corruption and corrupt practices under NAB Ordinance, 1999 and once this burden is satisfactorily discharged, onus is shifted to the accused to prove the contrary and give satisfactory account of holding the properties and in case of his failure, Court may raise the presumption of guilt."**

The latest view of the Apex Court, held in the case of *Imran Ahmed Khan Niazi v. Mian Muhammad Nawaz Sharif* (PLD 2017 SC 265), also affirms the said criterion wherein it is held as:-

> "105. ..... It is again an uncontroverted fact that at the time of taking over possession of the said properties all the children of respondent No.1 **were non-earning students and his wife was a household lady with no independent sources of income of their own and , thus, they were dependents of respondent No.1 at that time**. ***No other claimant to those assets has surfaced anywhere ever since***. ..."

Having said so, now we will examine the second part of the charge on said *touchstone.* In the instant matter the properties of as many as Nine (09) persons have been involved in the *second* part of the charge who are :-

S.No.	**Name of the person**	**Relationship with the appellant**
01	Mrs. Zahida Dero	---- Wife ---
02	Fahad Dero	---- Son ---
03	Fawad Dero	--- Son ---
04	Fouzia Anwar	---daughter--
05	Mst. Hakim Khatoon	-- mother --
06	Abdul Hameed Dero	-- brother --
07	Roshan Ali Dero	-- brother --
08	Mrs. Tehmina Chandio	-- sister-in-law--
09	Tufail Chandio	-- brother-in-law--

The word ***'dependant'*** was discussed and interpreted in the case of *Muhammad Hayat v. State* (PLD 2002 Pesh. 118) as:-

> "81. If we take into account the Dictionary meaning the word dependant. It simply means that a person who is financially "dependant" on someone and **who requires financial support from a person upon whom he depends for maintenance**."

Thus, a *spouses*, having independent sources of income, would also not fall within meaning of **'dependant'** therefore, it was / is always obligatory duty of the prosecution to *first* bring some material to bring a claimed *benamidar* within meaning of **'dependant'** *first.* In absence whereof, it would never be justified to prosecute one merely for reason that he is *related* with a public servant.

16. Now, let's see what the prosecution did in discharge of such initial burden which requires prosecution not only to *prima facie* establish status of one as dependant but that he holds property for benefit and enjoyment of accused. The position would become quite obvious from certain admission (s), made by the witnesses of prosecution itself, which are:-

PW-1 Taj Muhammad, Mukhtiarkar, Tando Allayar.

> "It is not in my knowledge that **any amount was paid to Abdul Hameed Dero by Abdul Sattar Dero to purchase the land.**
>
> It is not in my knowledge if Roshan is double M.A. in Economic and Political Science. I do not know about his present profession. **It is not in my knowledge if he is big officer in Port Qasim Authority.** It is not in my knowledge **if Roshan Ali was running other business**. It is not in my knowledge **if any money was given to Roshan Ali by Abdul Sattar Dero for the purchase of land**, Vol. says that all such transaction was prior to my posting as Mukhtiarkar. **It is not in my knowledge if Roshan Ali himself is a big Zamidar and have other sources of income.**
>
> I came to know from my personal inquiry that **Tufail Ahmed is relative of Abdul Sattar Dero** ... **It is not in my knowledge that Tufail Ahmed himself was a business man**. It is not in my knowledge that **any amount was given to Tufail Ahmed by Abdul Sattar Dero to purchase the land**.
>
> I never met Mst. Tehmina. According to record I came to know that Tehmina is wife of Tufail Ahmed. It is not in my knowledge that **any amount was given to Tehmina by Sattar Dero to purchase the land**.
>
> It is not in my knowledge if in the name of Hakim Khatoon there was other agricultural land **about 20/30 years ago**. It is not in my knowledge that **any amount was given to Hakim Khatoon by Abdul Sattar Dero to purchase the land**.
>
> According to my inquiries from locality, I came to know that Mst. Fouzia Anwar is daughter of Abdul Sattar Dero... I do not know whether she is educated or not. **It is not in my knowledge whether Fouzia Anwar is dependent of Abdul Sattar Dero**. It is not in my

knowledge **whether Abdul Sattar Dero gave any amount to Fouzia Anwar to purchase the land**.

It is correct to say that the land showing in the name of Abdul Hameed s/o Ghulam Haider in Ex.6/4 as 98.07 acres is not correct as some land **had already been sold out by him at that time**.

The land in the name of Fawwad as shown in Ex.6/4 and Ex.6/18 acquired by gift, It is not in my knowledge that any land has been acquired through purchase. It is correct that the said land measuring 129 acres as shown in Ex.6/4 has been acquired through gift. It is correct that the said land as shown in Ex.6/4 has not been **purchased in the name of Abdul Sattar Dero**. It is correct that the land as shown in Ex.6/4 in the name of Fahad measuring 140 acres has been acquired in his name through gift not by purchase. According to record, the **said land 140 acres has not been purchased in the name of Fahad**. It is not in my knowledge whether the land shown in the names of **Fawwad and Fahad had ever been purchased by Abdul Sattar Dero**. **According to record this land has been purchased by Mst. Zahida**. I have only produced the record and **it is not in my knowledge as to whether these properties have been purchased through the finance of Abdul Sattar Dero or not**.

Out of area shown in Ex.6/15 175.1 acres, 85 acres 14 ghuntas **had already been gifted in the year 1989 in the name of Fahad Dero** as shown in Ex.6/18. **Now the land remains 64.25 acres in Deh Vesarki in the name of Mst. Hakim Khatoon**. I only relied on the report of Tepedar and did not check the records myself.

I do not know as to **whether Abdul Hameed obtained any amount for purchase of construction of this plot from Abdul Sattar Dero**. The plot of land as shown in Ex.6/21 was purchased on 09.01.1990 on sale consideration of Rs.25,000/-.

I did not call any of the 9 Khatedars mentioned in Ex.6/4 to inquire about their relationship with Abdul Sattar Dero, accused, who was General Manager of Port Qasim Authority.

I cannot say that who is the owner of weigh bridge. I do not know who is running the said weigh bridge. I did not see the said weigh bridges myself. **When I had visited the same, Hameed Dero and Mohammad Ashraf were in the offices.**

When I visited the said plot I did not see Abdul Sattar Dero there.

PW-2 Muneer Hussain, Director, Bukhari Scales:

"In this deal neither Abdul Sattar Dero contacted me nor approached. I did not see Abdul Sattar Dero at the time of installation of weighing bridge.... The quotation has been addressed to Dee International Tando Allahyar **with the attention to Abdul Hameed Dero. ..**The weigh bridge has been installed and **supplied to Dee International not to Abdul Hameed Dero**..

PW-4 Suresh Mal, Executive Engineer, Pak PWD, Hyderabad.

I did not make inquiry myself regarding the relationship of 13 persons named in the letter ex.10/1f. .. **It would be correct to say that the 3 sub inspectors of FIA had brought this letter in the office whose names I have given above.** .. It is correct that regarding articles shopping centre, residential bungalow as mentioned as items No.1 to 9 in the report **I have no personal knowledge**. ... **I have no knowledge as to whether the properties mentioned in the reports have concerned with Abdul Sattar Dero.**

PW-19 Khaliq-uz-Zaman Khan, Assistant Director, FIA

"I do not know about the relationship of Tufail Chandio with Abdul Sattar Dero **as I did not examine any person regarding relationship**. I included the names of Tufail Ahmed Chandio, Tehmina W/0 Tufail Ahmed, Ghulam let i Hader Dero, Hakum In my letter Khatoon, Roshan Ali and Hameed Dero in my letter Ex.26/10 as information was received to me that these' persons were **holding the assets and properties illegally acquired by Abdul Sattar Dero"**

It is correct that whatever information I had collected I have produced today besides I have not collected any information/evidence. **I cannot say anything about the assets mentioned in Ex.26/1 at para-6 as I did not make any inquiry about it, except writing the letters to the concerned authorities**.

I did not compare the assets mentioned in Ex.26/1 with his declaration forms as it was to be done by the I.O. **I did not inquire about the allegations mentioned in para-7 of the letter of Dy. Chairman, NAB Ex,26/1**. I did not make inquiry regarding the contents of paras-8 & 9 of the letter of Dy.Chairman, NAB and in respect' of

the content; of para-10 I wrote letters to the concerned authorities regarding hidden assets of Abdul Sattar Dero. I wrote only letters regarding the contents of para-10 and **not collected any evidence except the replies from different authorities** which I have already produced

PW-20 Muhammad Akbar Baloch, Assistant Director, FIA Crime Circle-1, Karachi.

"**I did not record the statements of those persons in whose names the properties are mentioned in the Ex.27/12 nor I gave them any notice**.

"The properties which have been mentioned in my report Ex.27/12 are under the control of accused Abdul Sattar Dero. **I have no oral and documentary evidence that these properties are under the control of the accused.**

"It is not correct to say that revenue, taxes and other taxes of these properties are being paid by their owners in which names the properties are entered, but step brother of Abdul Sattar Dero namely Abdul Hameed Dero is paying the same. **I have no authority letter in the name of Abdul Hameed Dero from Abdul Sattar Dero for payment of such taxes and looking after the said properties**. I have no documentary evidence that Abdul Hameed Dero is step brother of Abdul Sattar Dero. **It is correct that in these houses the same persons are living in whose names the properties are entered**."

"It is also incorrect that value as shown is incorrect. The Bungalow shown at serial No.5 page-8 of Ex.27/12 is in the name of mother of Abdul Sattar Dero. **I have no evidence that the owner of this bungalow is mother of Abdul Sattar Dero whose name is Hakim Khatoon**

"I do not remember as to when this plot was purchased. I cannot say if the said plot was purchased in 1982. I do not know if this house had already been constructed in 1984. **I do not know whether Mst. Hakim Khatoon herself is living in this house.** I do not know if all taxes are paid by Mst. Hakim Zadi. **I have not produced any documentary or oral evidence regarding benami properties as mentioned in my report as belonging to Abdul Sattar Dero.**

From above admissions, it is quite clear and obvious that the *investigating officers* for reasons best known to them did not make

any effort for establishing the basic ingredient, necessary in such like matters, so as to establish a *little* more than mere relationship of appellant/accused with *titleholders* to prove *benami* status of properties owned, possessed and controlled by such persons of the appellant. It is unfortunate that the investigating officer of this case as well those responsible for prosecution of this case before the learned trial court had, probably on account of their sheer incompetence, utterly failed to do the needful in this regard hence completely failed to advert to this critical aspect of the present case although in such like cases the investigating officer as well Court (s) are always required to consider aforesaid established *criterion* by keeping in view the following settled *propositions* i.e:

i) *initial burden is upon prosecution;*

ii) *mere relationship of one with public servant is not an offence nor would prohibit him from acquiring properties in his name;*

iii) *mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence;*

iv) *a fair and proper opportunity must be provided to accused as well claimed benamidar to explain his claim and position about such property;*

v) *prosecution of one should not be based on presumption(s) alone but must be based on some evidence* least *circumstances which after scaling on balance of probabilities require examination thereof by a Court;*

The *failure* on part of the prosecution would be sufficient to hold that prosecution didn't discharge initial *burden* hence there would be no room for penalizing one merely on his being *related* with a public

servant particularly when same results in taking away guaranteed protection provided by Articles 23 and 24 of the Constitution. Reference may well be made to the case of *Pir Mazharul Haq & others v. The State through Chief Ehtesab Commissioner* (PLD 2005 SC 63) wherein it is held as:-

> "31. It would be a misconception of law that every accused who faced trial in the Accountability Court or against whom a reference has been sent the 'presumption as envisaged in section 14 of the NAB Ordinance , 1999" would start running against him. **Where the prosecution has failed to discharge the onus of 'proof' by adducing cogent, concrete and forthright evidence the presumption of guilt would not after against him and thus the question of conviction would have not arisen."**

The relationship of a major / adult **'brother'** or **'sister (*married)',** if *prima facie* residing and earning livelihood independently, would not necessarily bring them within meaning of **'dependant'** unless otherwise established, therefore, failure on part of the prosecution to bring nothing on record except 'relationship' was always fatal particularly when their independent claim (s) and evidence in shape of *oral* as well *documents* were never seriously controverted.

Be that as it may, we, *however,* would examine case (s) of such persons in view of the guidelines, provided by Apex Court in the case of *Imran Ahmed Khan Niazi v. Mian Muhammad Nawaz Sharif* (PLD 2017 SC 265) that:-

> "107. ... ...This change of approach in cases of corruption and corrupt practices is not just confined to Pakistan but there is also some international arbitral and common law authority available now showing that when it comes to establishing corruption and corrupt practices in civil proceedings the standard of proof required is ***the balance of probabilities and understanding of a prudent man*** and **not beyond reasonable doubt** and

> that such an issue can even be clinched on the basis of circumstantial evidence. ....."
>
> 110. Similar conclusions can be drawn from the jurisprudence of this International Court of Justice which in the case of *Corfu Channel* (ICJ Rep. 1949 at page 18) laid down the rule that, where an allegation in particularly difficult to prove, the party which is trying to prove the allegation at issue
>
> "should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion."
>
> 111. Even in the English law it was incisively observed by the Appellate Committee of the House of Lords in the case of *Secretary of State for the Home Department v. Rehman* (2001) UKHL.47, (2002) 1 ALL ER 122 that:
>
> "**The civil standard of proof always means more likely than not**. The only higher degree of probability required by the law is the criminal standard. ..... some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park **was more likely than not to have been a lioness** than **to be satisfied to the same standard of probability that it was an Alsatian (dog).** ..... cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not."

Thus, these persons were *only* required to submit an explanation ***which is more likely than not***. Here, we would also refer to operative part of para-80 of the judgment *impugned* in portion (s). The first portion is:

> *"80. .... The prosecution has established through sufficient evidence that* **the above persons have acquired the properties as indicated in para-2 of this judgment and the said persons have also admitted that the said properties are in their names**. *Therefore, the burden is now shift upon the said persons to prove that they have acquired the said properties from their*

> *known sources of income.* **The Objectors in their claims have put up their all resources from which they have purchased the said properties**. It is crystal clear that none of the above named persons had any asset or property in their names before joining of the accused Abdul Sattar Dero in Government Service. **Mst. Zahida Dero is his wife, Fawwad Dero and Fahad Dero are his minor sons and Mst. Hakim Khatoon is his real mother.** None of them, was holding any property in their names when Abdul Sattar Dero was inducted in the Government service, so also his brothers Abdul Hameed Dero, Liaquat Ali, Roshan Ali, Moula Bux, Tufail Ahmed Chandio and Mrs. Tehmina Chandio and daughter of the accused Mst. Fouzia Anwar.*"*

Such approach was never in *line* with the meaning of the term *benamidar* so defined in the case of *Ahmed Riaz Shaikh v. State* (2009 PLD SC 202) *supra* because such position was never a matter of *dispute* but the prosecution was required to establish which the prosecution never *did,* as already discussed above. Thus, merely one's relation of one with a public servant would not *necessarily* bring him under an obligation to make an explanation.

Further, the learned trial Court judge himself sketched a *line* between these nine (09) persons while addressing **'Mst. Zahida Dero (wife), Fawwad Dero (son), Fahad Dero (son) and Mst. Hakim Khatoon (real mother)** from that of **brothers, Tufail Chandio (brother-in-law), Mst. Tehmina (sister-in-law), Fouzia (daughter).**

17. Let's *first* examine the explanation (s) of such set of applicants (objectors) on scale of balance of probabilities while putting the claim of the prosecution in *juxta-position.*

Prosecution claimed all these four persons as *dependants* and having no *independent* sources	Mst. Zahida had claimed to be owning poultry Farm in year 1976 and had produced *Ijazatnama,* issued by Deputy Commission East (Ex.91/1) and claimed

	loans during year 1976 to 1987 and had produced documents in respect of loans (Ex.91/2) and continued with her claim of being an *active* and *independent* working women and had produced number of document(s). To prove her *independent* status, she not only produced documents, including *officials,* as well examined private persons in support. Worth to remember here that appellant / convict Abdul Sattar joined Port Qasim Authority in the year 1975. There had never been a *serious* or *reasonable* rebuttal to such claim(s) of Mst. Zahida Dero to be of having *independent* status of having *independent* sources and business except that she and these three persons were / are related to appellant Abdul Sattar Dero which alone *in law* is not a *sin*. The claim and document (s), so produced by the Mst. Zahida Dero to substantiate her status as *working* women were never challenged as ***false*** which even were shown to be having roots of year ***1976***. The claim of establishing of **Dera Ice Factory** and **Dera Enterprises** in year ***1979*** **e**ven was not challenged which have been claimed as *root sources* by Mst. Zahida, Fawwad, Fahad as well Mst. Hakim Khatoon. Claim of Mst. Hakim Khatoon to have inherited property in year 1974 was also not challenged. These persons explained details of *increase* and widening of the business(es) with reference to documentary evidences showing their independent status(es). The advocate who

	remained dealing with *income* tax affairs of such persons as well Charter Accountant were examined who placed on record the material (s) in proof of *independent* business activities of these persons. They also *examined* those dealing with such business activities *even.*

The *balance of probabilities* does not require a *proof* beyond reasonable doubt but be taken as sufficient circumstances, so placed on record, tilt the scale towards a *claim* then same has to be believed. Thus, above comparison was always tilting the scale in favour of the claimed fact of the applicants. It is also worth to add here that in case of *Khalid Aziz* supra not only the *failure* of prosecution in discharging *initial* burden was appreciated while acquitting but *explanation* (*not proof beyond doubt),* so furnished by accused, was given weight while holding as:-

> "11. In the present case, the prosecution has ***simply produced*** the Declaration of Assets for the years 1995-2000 filed by the appellant before the department, which shows that the ***appellant owned various properties and was earning income therefrom***. The prosecution has not led any evidence to show about the amount received by the appellant from is salary, allowances etc during the period of his service i.e 1969 to the relevant time. Thus, ***the prosecution did not produce the required evidence to prove that the amount alleged or final amount determined by the High Court was disproportionate to the known sources of income***, as such, the prosecution has failed to prove the main ingredient of the offence, ***hence, the burden was not shifted upon the appellant to furnish explanation as provided under section 14(c) of the Ordinance***. However, in spite of that the ***appellant explained his position by giving details of each and every transaction in the accounts of his wife and produced the relevant evidence in the shape of the statements of his wife (D.W.3), his father-in-law (D.W 2), Ishfaq Ahmed, Chartered Accountant (D.W.1) and Haji Maqsood Ahmed, Advocate (D.W.4) along with***

> ***documentary evidence***. They have fully supported the stand taken by the appellant with the documentary evidence."

The other set of persons i.e *brothers,* brother-in-law, married sister and married *daughter* do not squarely fall within meaning of *direct* dependants therefore, claims and explanations, so furnished by them were required to be examined keeping such fact in view but this was not done hence, *prima facie,* the learned trial Court judge though brought *independent* claims on chest of *judgment* impugned but did not reason for not accepting the same. Besides, all these persons categorically claimed the properties of their *own* and brought considerable material in support of their claim which included *official* documents *even.* The sister-in-law, brother-in-law and married daughter did claim to have acquired been backed by their own family heads while claiming them to be *agriculturists* which claim was never seriously challenged by the prosecution.

As regard the *gifts,* we would also not hesitate in saying that **'gift'** normally is made in favour of a *loved* one therefore, gift transactions among the blood relations is not a *strange* phenomena rather appears to be close to reasons and logics. The ***gift*** is also made for or in name of the family adjustment as was claimed by some of the *objectors / applicants* hence documentations of declaration of *gift* regarding cash amount was also not *improbable* as has been held by the learned trial Court Judge. Thus, the learned trial Court judge also failed in examining the moot issue by putting prosecution claim and explanations of applicants in *juxta-position.* Here, it is also worth to add that the learned trial court *judge* himself

admitted that the **'gifts'** had been among the *family* which *itself* would not give rise to any wrong presumption because *normally* people prefer doing this for settlement of properties without being burdened with ***costs.*** It *however* may be mentioned that **'gift'** is a legal and recognized course for transfer of property hence public servant cannot be deprived of such right unless such *gift* is shown to be falling within meaning of Section 9(a)(i) of Ordinance which reads as:-

> *"if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration,* **as a motive or reward** *such as is specified in section 161 of the Pakistan Penal Code (Act XLV of 1860) for doing or for-bearing to do* **any official act**, *or for showing or for-bearing to show,* **in the exercise of his official functions,** *favour or dis-favour to any person, or for rendering or attempting to render any service or dis-service to any person; or*

It is a matter of record that it was never alleged *even* by prosecution that such *gifts* among family were either a motive/reward or for doing any favour or dis-favour to any body. Therefore, mere **gifts** among family in name of family adjustment or *true* love were never sufficient to draw any adverse inference against the appellant or towards legality thereof.

Be that as it may be, let's have a reference to para-82 of the judgment *impugned* which reads as:-

> *"82. The most important factor which I have considered that all the above said Objectors have claimed in their objections that they are holding the properties and had sources prior to induction of the accused in the Government service and Mst. Zahida Dero has been holding wealth since her marriage with the accused but she started to file her wealth tax for the assessment year 1996-96. Abdul Sattar Dero claiming to have acquired the properties before 1982 but he started to file his wealth tax return from the year 1994-95. Fahad Dero and Fawad Dero started to file wealth tax return from the year 1994-*

> *95, but the other* **Objectors have not filed any wealth tax and wealth tax record have** *been called in this reference and produced either from the prosecution side or the defence side. One Chartered Accountant has been examined regarding the income of Dera Ice Factory, Dera Enterprises and M/s Superlative Feeds & Allied Products but his evidence is that in 1997 Mst. Zahida Dero asked him to prepare balance sheet and profit loss account of these firms* **which were established in the year 1979 and 1983** *and he prepared the same on the* basis of documents supplied by Mst. Zahida Dero but **no any income or wealth statement has ever been filed in respect of these firms**.*"*

The establishment of the *firms* in year 1979 and 1983 appears to have been accepted by the learned trial Court judge but surprisingly all such claims, documents and evidences of applicants (objectors) as well that of their witnesses were not *even* found worth discussing merely for reasons of non-filing of **wealth tax record** although non-payment of wealth tax alone would never be sufficient to hold a *property* as **'benami'** so was observed in the case of *Khalid Aziz* supra (2011 SCMR 136). Besides, the learned trial Court judge also not appreciated that the witnesses so examined by the prosecution themselves admitted in this regard as:-

PW-8 Muhammad Khalid, Inspector Income Tax:-

> "**I do not know whether any notice was issued to Mrs. Zahida Dero for not submission of wealth tax returns for the period 1993-94, 1994-1995 & 1995-96**. .. The assessment of Wealth tax was made by the Assistant Commissioners not by me. **I did not conduct any proceedings of assessments.** .. **In the year 1999-2000 the agricultural land has been declared by Mrs. Zahida Dero measuring 126 acres but the value was not given it has been assessed at Rs. 20,16,000/-. The value of agricultural land has been assessed as Per P.U.I**.

PW-11 Obedullah Malik, Asstt. Commissioner Income Tax:-

It is correct that the assessment of wealth tax has been assessed u/s 16(3) of Wealth Tax Act after proper verification and obtaining necessary documents. From the record I say that in reconciliation statements for the period 1994-95 to 1998-99 there is no any discrepancy. In every return the house at Larkana has been declared and we assessed its value as per market value and collector's able. .... **We accepted the value of agricultural land 98.75 acres on its value as declared. We also accepted the declaration value of agricultural equipment. ...** It is correct that the **assessment year 1996-97 the prizes money on prize bonds worth Rs.30,50,000/- was earned on which income tax of Rs.2,28,750/- has been deducted. The prize bonds have been accepted. It is incorrect that in the assessment year 1997-98 the prize worth Rs.35 lac has been shown which has been accepted. I see and produce photocopy of assessment u/s 143(b) in respect of prize money of Rs.30,50,000/- at ex.17/16 and ex.17/17f in two leaves. In assessment year 1997-98 profit on PLS A/C Rs.76,014/- ha been declared which has been accepted."**

PW-13 Khuda Bux, Special Officer Income Tax:-

"I produce photocopy of assessment order in respect of income tax for assessment Year 1995-96 of Mst. Uzma Stitching Works, at Ex.19/22, it is same & correct. It is correct that in this assessment the source of income is given Uzma Stitching Work at Kumbar Ali Khan only which has been accepted. .. It is correct that u/s 62 of income Tax Ordinance, 1979 the assessment is after verification from the documents produced by the assessee U/s 62 the verification is also of the evidence and inquiries on the spot. In all the returns for all assessment years the income has been shown from stitching work. ... According to the record, Mst. Hakim Kbatoon is an income tax assesse but about Fouzia and Abdul Hameed it is not in the records whether they are income tax assesses or not. ....

PW-14 Abdul Wahid, Special Officer Income Tax Hyderabad:-

It is correct that all the wealth declared is verifiable. ....**The wealth mentioned in the reconciled wealth statement as per record has been proved on record**. **No asset has been given to Fawad by Abdul Sattar Dero.**

PW-18 Syed Ahmed Ali, Special Officer, Income Tax:-

> It is correct that a reconciled wealth statement of Fahad Dero was filed by Advocate of Assessee for the period **1.3.1989 to 30.6.1996**. I produce photocopy of this statement atEx.24/33, it bears my signatures also. **In this statement, the assessee explains his wealth. It is correct that this statement is considered by wealth tax officer for determination of wealth. It is correct that in the record nothing is available that the wealth explained in such statements was disputed.** It is correct that in these wealth statements/returns **no wealth has been given to Fahad by Abdul Sattar Dero.**

Thus, the learned trial court judge was not *legally* justified to disbelieve such an *explanations* which otherwise were accepted by the prosecution witnesses themselves. Not only this, but it is also a matter of record that DW-19 Ali Raza Khoja, Chartered Accountant (Ex.53) did stated in his evidence that:-

> "*On the basis of the documents and evidence produced, I prepared Profit and Loss Account for the period 1-1-1976 to 31-12-1976 and balance sheet as on 31.12.1976. I produce such report at Ex.53/1 and balance sheet at Ex.53/2. The profit for the year 1976 was Rs.9333/-.*
>
> *I produce Profit and Loss Account Statement and Balance Sheet for the year ending December 1978 at Ex.53/4.* **The profit for the year was Rs.255,880.**
>
> *I also produce Profit and Loss Account and Balance Sheet for the year ending 1979 at Ex.53/5. In this year the investment was Rs.1,50,000/- In Dera Ice Factory.*
>
> *I also prepared Wealth Statements of Mrs. Zahida Dero from the year 1977 to 1992. I produce 17 Statements at Ex.53/17. In this period Mrs. Zahida Dero was not liable to pay Wealth Tax & Income Tax. I also produce 4 Wealth reconciliation Statements from 1993 to 1996 in which she was liable to pay the Wealth Tax & Income Tax at Ez.53/18.*
>
> *On the basis of the documents Roshan Ali Dero was Partner of Mrs. Zahida Dero in Dera Ice Factory and Dera Enterprises besides in Superlative Feeds Private Limited.Roshan Ali & Zahida were the Directors. I also*

> *prepared the Wealth Statements of Roshan Ali Dero for the year 1975-1996.*
>
> *On the basis of the documents, I came to know that Hakim Khatoon was the Partner of Mrs. Zahhida Dero in Dera Ice Factory.*
>
> *I produce 9 Wealth reconciliation statement of Hakim Khatoon for the period 1988-1996 at Ex.53/21."*

Such documents were accepted by the quarter concerned which *too* after observing formalities and examination, as admitted in evidences of such persons, therefore, the learned trial court judge was not legally justified in disbelieving such claim merely with reference to non-payment of Wealth Tax. Further, it is also a matter of record that all these persons were independent dealing with their properties which is to be believed on count of failure of prosecution to discharge *initial burden* and these persons from very moment of grievance i.e involvement of their properties in the *reference* not only challenged by filing independent civil suits but have been *hotly* insisting such claims and even went upto Honourable Supreme Court.

18. There had also been another aspect which the learned trial court judge never appreciated though was seriously resisted by the appellant / convict that *initiation* of reference was based on *mala fide* of a contractor namely Abdul Sattar Mandokhail of M/s Techno International although the prosecution witnesses (*investigating officers)* did acknowledge such aspects in their evidences as:-

PW-19 Khaliq-uz-Zaman

> "It is correct that the inquiry in this matter started on the basis of letter received from Deputy Chairman, NAB dated 15.__.1999 duly supported by 4 enclosures i.e. **complaint of Abdul Mando Khail dated 1.11.99, copy of relevant contract, report' of PQA and record of**

> **Custom Intelligence**. Whether the said me. **I only conducted the inquiry as per orders of my Director and I did not verify the contents of the complaint of Mando Khail which was not received to me**. I did not make inquiry as per letter of Dy. Chairman, NAB **but only relating to the assets portion of Abdul Sattar Dero as per directions of my Directors**

PW-20 Muhammad Akbar Baloch

> I cannot say as to whether this reference was initiated on the complaint of any person. **I did not make inquiry about Sardar Abdul Sattar Mando Khail. I**t is not in my knowledge if Abdul Sattar Mando Khail has been disqualified in PQA. It is also not in my knowledge if the said Abdul Sattar Mandokhel caused damages to PQA. **I did not make inquiry about the allegations of receiving illegal gratification Rs.1.5 million from the contractor by the accused Abdul Sattar Dero in bulk supply of water**.

These *admissions* were also sufficient to indicate that the investigating authorities *did* not investigate the matter as per contents of the complaint rather *admittedly* confined investigation towards assets of appellant and for inclusion of applicants it is stated by the PW-19 Khaliquz-Zaman Khan, Assistant Director, FIA as:-

> **"**I do not know about the relationship of Tufail Chandio with Abdul Sattar Dero as I did not examine any person regarding relationship. I included the names of Tufail Ahmed Chandio, Tehmina W/0 Tufail Ahmed, Ghulam let i Hader Dero, Hakum In my letter Khatoon, Roshan Ali and Hameed Dero in my letter Ex.26/10 as information was received to me **that these persons were holding the assets and properties illegally acquired by Abdul Sattar Dero.** I included the same names in my letter Ex.26/14 and Ex.26/18 **on the similar information**. (Learned D.C. put the question to the witness as to from whom he received the information about the inclusion of the names of the persons in Ex.26/10, 26/14 & 26/18. The question disallowed as the name of informer cannot be asked from the witness as per Art. 8 of Qanun-e-Shahadat Order). **I did not conduct inquiry personally regarding relationship of those persons named in Ex.26/10, 26/14 & 26/18** except I wrote the letters as stated in my examination in chief."

Prima facie, diverting the complaint is against the order of *superior* authority was always indicative of the *mala fide* or some *hidden* motive hence was also favouring the scale to tilt in favour of the appellant and applicants particularly when it is also a matter of record that appellant Abdul Sattar Dero stood acquitted or discharged from *earlier* charges either during investigation or by the Court.

Thus, it can now be *safely* conclude that findings of the learned trial court judge cannot *legally* sustain on *two* counts which shall always be decisive in such like matters i.e ***'failure of prosecution to discharge initial burden to prove benami status by bringing a little more than mere relationship'*** and ***'tilting of scale in favour of applicants, when examined on balance of probabilities'.***

19. In view of above discussions, we are of the considered view that conviction of the appellant cannot sustain. Thus while considering the prosecution evidence insufficient and sketchy, this Appeal was allowed by order dated 27.11.2017 and listed Cr. Revision Applications were disposed of.

J U D G E

Imran/PA **J U D G E**