

IN THE HIGH COURT OF SINDH, KARACHI

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Criminal Accountability Appeal No. 13 / 2012

Appellants: Ghulam Muhammad Memon & Others,
Through M/s. Muhammad Ashraf Kazi,
Irshad Ahmed Jatoi, & Saleem Raza
Jakhar, Advocates.

Respondents The State & Another,
Through Dr. Raja Muhammad, Special
Prosecutor NAB.

Criminal Accountability Appeal No. 14 / 2012

Appellants: Muhammad Akber Zardari,
Through M/s. Muhammad Ashraf Kazi,
Irshad Ahmed Jatoi, & Saleem Raza
Jakhar, Advocates.

Respondents The State & Another,
Through Dr. Raja Muhammad, Special
Prosecutor NAB.

Criminal Accountability Appeal No. 18 of 2012

Appellant: The State / NAB,
Through Dr. Raja Muhammad, Special
Prosecutor NAB.

Respondents Muhammad Akber Zardari & Others,
Through M/s. Muhammad Ashraf Kazi,
Irshad Ahmed Jatoi, & Saleem Raza
Jakhar, Advocates.

Date of hearing: 14.09.2022

Date of Order: 14.09.2022.

JUDGEMENT

Muhammad Junaid Ghaffar, J: Through Criminal Accountability Appeals No. 13 & 14 of 2012, Appellants namely *Ghulam Muhammad Memon, Aziz-ur-Rehman Shaikh, Muhammad Ayaz Khan, Khadim Hussain and Muhammad Akber Zardari* have impugned Judgment dated 28.03.2012 passed by the Accountability Court No. II at Karachi in Reference No. 05 of 2005 (*The State v Muhammad Akbar Zardari & Others*) through which these Appellants have been convicted, whereas, NAB has filed Criminal Accountability Appeals No. 18 of 2012 seeking enhancement of sentence so awarded by the trial Court. Both set of Appeals were heard together and are being decided through this common judgment. The Appellants have been convicted in the following manner:-

“Point No. 3:- In view of the discussion in Point No. 1 & 2 the prosecution has established its case against the accused persons beyond reasonable doubts, therefore, the above named accused are liable to be punishable u/s 9 & 10 (1) of NAO, 1999. Hence, the accused Muhammad Akber Zardari and Abdul Rashid Sheikh are hereby convicted u/s 265-H(2) Cr.P.C. and awarded sentence for the charge u/s 9(a) & 10(c) of NAO, 1999 for five years Rigorous Imprisonment and fine of Rs. 3 Lakh each and in case of non-payment of fine both will suffer further Rigorous Imprisonment for six months while the accused Ghulam Muhammad Memon, Aziz-ur-Rehman, Muhammad Ayaz Khan and Khadim Hussain are awarded sentence for three years Rigorous Imprisonment and fine of Rs. 1,000,00/- each and in case of non-payment of fine they will suffer further Rigorous Imprisonment for three months. All the above named accused are present on bail except accused Muhammad Akber Zardari, their bail bonds stand canceled and sureties discharged. They be taken into custody and be sent to Jail to serve out their sentence according to law. Accused Muhammad Akber Zardari was present on first call and the time was fixed for announcement of judgment at 12:00 (Noon) but he is called absent. Issue perpetual warrants against him and his sentence shall start from the day of his arrest. All the accused are hereby given benefit u/s 382-B Cr.P.C.”

2. It appears that Reference No. 05 of 2005 was filed by the NAB Authorities wherein, the precise allegations against the Appellants was that they in connivance with each other made allotments of 549 plots / shops out of which 413 plots / shops were allegedly allotted against the policy notified by the Government of Sindh pursuant to Notification dated 04.09.1994. The other allegation was to the effect that two accused persons namely *Abdul Rasheed Sheikh* (now deceased) and co-accused *Mohammad Ayaz Khan* issued token challans of Rs. 10,000/- each to thirty employees of the Market Committee and by such conduct created a liability upon Market Committee Fund of new Sabzimandi for which they were not authorized.

3. Learned Counsel appearing on behalf of the Appellants have argued that this is a case wherein not less than 29 witnesses were examined; but none of them have given any evidence so as to implicate the Appellants; that no allotment was made in violation of any policy or Notification; that it is a case of no evidence; that there is no evidence to the effect that any money was paid to the Appellants by the allottees or they were involved in embezzlement of funds of the Market Committee; that one of the P.Ws. namely (Mir Muhammad Waseem Talpur) deposed that bribe was demanded through an agent; however, no person through whom the alleged bribe was demanded was examined; that no proper documents were produced in the evidence, hence, the impugned Judgment cannot be sustained. In support reliance has been placed on the cases reported as *The State and Others Vs. M. Idress Ghauri & Others* (2008 SCMR 1118) and *Muhammad Yousuf Vs. S. M. Ayub* (PLD 1973 SC 160).

4. On the other hand, learned Special Prosecutor NAB has contended that it is a white collar crime and evidence has to be appreciated keeping in view this fact; hence, the trial Court has rightly convicted the Appellants, whereas, it is the case of NAB that lesser punishment has been awarded, and except the quantum of punishment the judgment is fully supported. He has prayed for dismissal of the Appeal of the accused persons with a prayer for enhancement of punishment relatable to the gravity of the offence.

5. We have heard the Appellants Counsel as well as learned Special Prosecutor NAB and perused the record. It appears that earlier, these Appeals were heard and decided by a learned Division Bench of this Court vide Judgment dated 02.07.2012, whereby, these Appeals were allowed and the conviction and sentence was set-aside; however, NAB Authorities impugned the same before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its order dated 13.08.2014 was pleased to set aside the said Judgment on the concession of the Appellants Counsel to the effect that evidence was not discussed in detail and matter was remanded to this Court for a decision afresh.

6. From perusal of the record it reflects that initially a case was registered by the Anti Corruption Department and subsequently it was transferred to NAB. The precise allegation as levelled in the Reference (including a Supplementary Reference) is that the Appellants while working in the Market Committee, New Sabzi Mandi, Karachi, in their respective official positions in connivance with each other made allotments of 549 plots / shops in the year 2004 and out of those allotments 413 were found to have been allotted against the policy as laid down in Notification dated 4.9.1994 issued by The Agriculture and Wildlife Department, Government of Sindh and decisions of Standing Committee held on 13.3.2002. It was further stated in the Reference that pursuant to such act of the Appellants and the evidence collected it is established that they in connivance with each other, misused their authority to benefit themselves and persons who were not entitled to allotment and willfully failed to exercise authority to prevent the grant of benefit which they could have prevented resulting a loss of Rs.1,73,68,591/- to state exchequer; hence, they committed the offence of corruption and corrupt practices as defined in clauses (iv) (vi) & (xii) of Section 9(a) of the NAB Ordinance, 1999. The prosecution led its evidence through 29 witnesses including the Investigation Officer. The learned trial Court while convicting the

Appellants in its Judgment has though taken pains to reproduce the entire evidence; however, in the operative part of the Judgment in respect of Point No. 1 (*Whether the above named accused persons being holder of public office were involved in illegal allotments of 413 plots / shops to unauthorized allottees of New Subzi Mandi in the category of KMC Trader, Growers and New Comers and created loss to the tune of Rs. 17 Millions to the Government during the period from June, 2004 to September, 2004?*), it has been observed that prosecution witnesses namely P.W.1 Syed Saeed-ul-Hassan, P.W.2 Ghulam Nabi, P.W.6 Hakim Ali, P.W.16 Sheikh Muhammad Ayub and P.W.25 Mir Muhammad Waseem Talpur and finally the I.O. have fully implicated the accused persons in the commission of offence and their evidence is confidence inspiring. To have a better understanding we would like to refer to the evidence of these PW's one by one. P.W.1 Syed Saeed-ul-Hassan has deposed in his evidence as follows:-

"I joined market committee, Hyderabad in the year 1963 and in the year 2005 I transferred to Karachi as Secretary market committee. The present case was registered before my posting as Secretary, market committee, Karachi. In the year 2006 the NAB had called the records and documents from the committee with regard to the allotments of the flats/shops and those files were about 500 in numbers and were supplied to the NAB for the inquiry. The files were pertains in three categories namely Growers, New Comers, KMC Tenants. I remember that memo of files were prepared by the I.O. The particulars of the cases were not taken from us by the inquiry officer of Anticorruption but my statement was recorded by the NAB. I know that P.W. Ghulam Nabi Chakrani was administrator of the market committee, Karachi whereas I was working as Secretary market committee. On the notice of the court I have appeared. I do not know regarding the facts of the case."

Cross; NIL

Since the above witness apparently never implicated any of the Appellants rather the witness has stated that, "*I do not know regarding the facts of the case*" none of the Counsel for the Appellants / accused even cross-examined this witness.

7. The second witness P.W.2 Ghulam Nabi has deposed in the following manner:-

"In the year 2005 I was posted as Administrator in market committee, Karachi and accused were not working in those days in the market committee. The record of the committee was already taken by the NAB authorities before my posting at Karachi as an administrator. I know that record pertains to the allotment of plots which were situated at New Sabzi Mandi, Super Highway, Karachi. I know that about 400 persons were allotted the plots and such list of allotment was already taken by the NAB alongwith original files of allotment. I know that in pursuance of advertisement published in the year 1996 regarding allotments of plots in new sabzi mandi, Karachi and that list was also taken by the NAB before my posting **since I was not in possession of the record, therefore, I am unable to deposed the facts of such alleged allotment.** I know that under the directions of Chief Secretary-Sindh a committee was constituted and on the recommendation of the committee, the list of proposed allottees was supplied to us and subsequently plots were allotted to them, I know that the committee had scrutinized the files and some request of allotment were rejected and other were accepted by the committee. Prior to my posting accused Akber Ali Zardari remained as administrator of the

committee whereas accused Abdul Rashid was Secretary. I do not know the name of person who was Incharge of the allotment cell. I was examined by the 1.0. of the NAB during the investigation. I know accused who are present in the court.”

From perusal of his deposition, it appears that he has clearly stated that he is not in possession of the record; therefore, he is unable to depose the facts of such allotment. Again, learned Counsel for accused / Appellants chose not to cross-examine him as the witness has stated nothing against them.

8. P.W.6 Hakim Ali has deposed as follows:-

“In the year 2006 I was posted as Inspector of market committee, Karachi and in those days Mr. Abdul Rashid Shaikh was the Secretary, who is accused in this case, I had applied for the allotment of shop from the quota of the employees of the market committee, subsequently challan was issued to me for the sum of Rs. 10,000/- which was deposited by me in the Al Habib Bank Ltd. Gulshan-e-Iqbal branch. Karachi. After two and three days the challan of remaining amount of Rs. 22400/ issued to me and such amount was also deposited by me in the bank. I have not allotted the shop till todate, as applied by me. I produce the photocopy of my NIC and copy of original challan of amounting to Rs. 10,000/ at Ex No.29/1 to 29/2. I remember that Mr. Ayaz Khan was our accounts officer. I was examined by the NAB authorities during the investigation. Accused Ayaz and Abdul Rashid present in the court are the same.”

Cross examination to Mr. Hassan Ali
Advocate for accused Abdul Rashid.

I worked in the market committee since 1974. I remember that Muhammad Bux was Deputy Director of agriculture department-Sindh. It is correct to suggest that quota of employees of market committee was also settled in the period of Muhammad Bux, Deputy Director. It is correct to suggest that demand by the employees of market committee was made before the allotment of the shops with the request for keeping quota for the employees. I know that copy of demand was also sent to our high officers. I had also applied for the allotment of the shop from the quota of the employees.

Again the evidence of this witness does not implicate any of the appellants / accused and therefore, he was also not cross-examined.

9. The next witness discussed by the trial Court is P.W.16 Sheikh Muhammad Ayub who has stated as follows:-

“I use to run a shop of vegetables in Bolton market, new naam road, Karachi after the partition of India. Afterwards we had shifted on the back of old sabzi mandi, Karachi. In the year 1981 we had established an association for Karachi onion potatoes. We are wholesaler of the potatoes and onion. In the year 2000 we had shifted from old sabzi mandi to new sabzi mandi, established at super highway, Karachi. When I have shifted in new sabbzi mandi, new shops bearing No. 101 to 104 were allotted to me by the market committee which file numbers are 1028, 1029, 1030 and 1031. I produce the allotment order file No. 1028 to 1031 and possession order. (Original seen and return) whereas photocopy kept on record at Ex. No. 40/1 to 40/2 At the time of allotment accused Akber Zardari was the administrative of market committee whereas accused Sheikh Abdul Rasheed was the secretary of the market committee. I do not remember the name of accounts officer of the market committee. I also produce the challan of charges of utility bills amounting to Rs 49120/-. (original seen and return) whereas photocopy kept on record at Ex. No. 40/3. I also produce the challan of charge form of action plot amounting to Rs 44000/- issued by the market committee in my name original seen and return, whereas photocopy kept on record at Ex. No. 40/4. The covered action platform were

allotted to me and its area was 8645 sq. feet bearing No. 37,38,85,86. The full payment towards covered action platform and utility charges were paid by me and subsequently the allotment order was issued. Accused Akber Zardari, Aziz Rehman, Khadim Hussain, Muhammad Ayaz, Ghulam Muhammad and Abdul Rasheed present in the court are known to me. During the investigation the NAB had examine me. Still the possession of allotted covered action platform have not been delivered to me by the market committee. I produce the photocopy of NIC at Ex. 40/5

Cross examination to Mr. Hassan Ali
Advocate for accused Abdul Rashid

It is correct to suggest that accused Akber Zardari and Abdul Rasheed have not been committed any irregularities or illegalities during the allotment process.

Cross examination to Mr. Ilyas Memon
Advocate for accused Aziz Rehman, Khadim Hussain,
Muhammad Ayaz and Ghulam Muhammad

In the year 1999 four shops were allotted to me by the market committee It is incorrect to suggest that the possession of the shops were also handed over to me by the market committee. It is correct to suggest that one Ghulam Qadir Brigadier, who was chairman of the sub-committee constituted by the Sindh Government, had shifted us from the old sabzi mandi to new sabzi mandi. It is correct to suggest that in old sabzi mandi I owned a plot, where shops were built. It is correct to suggest that I was not tenant of KMC but such plot was owned by me.”

10. From perusal of the above evidence, it clearly reflects that this witness has rather supported the case of two accused namely Akbar Zardari and Abdul Rasheed by stating that they have not committed any irregularities or illegalities during the allotment process. We are unable to understand as to why when this witness was supporting the Appellants, was not declared as a hostile witness.

11. Thereafter, the next witness relied upon by the learned trial Court in its impugned judgment is P.W.25 Mir Muhammad Waseem Talpur. He has deposed as follows:-

“In the year 1994 there was announcement on behalf of market committee that some shops are being allotted to Zamindars, I also applied for one of the Shop in New Subzi Mandi Super Highway, Karachi and a shop was allotted to me. However, market committee disclosed that I have been allotted computerized number bearing C-3/102 in the New Subzi Mandi, Karachi and the market committee issued me allotment letter of above said Shop but the Market Committee did not hand over the possession of the said shop on the pretext that there is a unlawful possession of some persons and as soon as it will be vacated then will be hand over to you. Thereafter I myself approached to the unlawful authorized person whose name was Muhammad Salim Haji Siraj who disclosed me that this shop has been allotted to him by the market committer, so I informed this fact to the market committee and met one Ghulam Muhammad Memon who was the In-charge of allotment of shops who replied me that it is a matter between market committee and the unlawful occupant holder and I was asked to wait and thereafter, lastly market committee offered me to get another shop situated on the back side of the committee but I refused. After some time one agent of the market committee approached to me for the allotment of shop and the agent of the market committee asked me to pay Rs.200000/- as bribe and then the shop will be allotted to you. However market committee settled the matter through agent in the some of Rs. 100000/- and I also asked to the agent that I can not pay entire amount of Rs. 100000/- and I will pay in installments and thereafter as a first installment I brought Rs 20000/ for the purpose of payment on 30-09-2004 and reached at the office of the market committee at about 3:30 pm. But at that time the gate of the market committee was closed and some people were gathered and I came to know that

Anti Corruption has raided the office of the market committee and one DSP Nizamuddin is present in the office for the hearing of complaints of people and I met with the DSP Nizamuddin and I narrated all the facts to the DSP Sahib and I also narrated the facts about demanding of the bribe from the office of the market committee and said bribe was demanding by the Ghulam Muhammad and Sheikh Rashid. I also shown Rs.20000/- to the DSP Nizamuddin which were available with me and DSP Sahib noted the numbers of the notes of Rs.20000/- in my presence and also kept Rs.20000: with him and issued the receipt to me and thereafter he directed me to appear in the office of the Anti Corruption for the purpose of statement and thereafter I went to the office of the Anti Corruption where my statement was recorded and thereafter Rs.20000/ was restored to me through court and I was informed to Assistant Director, Shehada Imtiaz that I am also the witness in the NAB case. I identified the accused Ghulam Muhammad Memon as agent disclosed me that he has to pay the bribe to Ghulam Muhammad Memon. I produce the photo copy of the Provisional Allotment Order as Ex-53/1. I also produce the photocopy of the receipt of currency notes as Ex- 53/2.

Cross examination to Mr. Nisar Ahmed Tarar

Advocate for accused Akber Zardari.

I am matric pass. It is in my knowledge that persons who received the bribe and person who pay the bribe both are juhanumi I went to the office of the Anti Corruption on 11-10-2004 for statement. It is incorrect to suggest that on 11-10-2004 my statement was not recorded. It is a fact that the statement shown to me is not dated 11-10-2004. It is a fact that statement shown to me is signed by me and also thumb impressed by me Voluntarily he stated that statement was recorded at the spot on 30-09 2004 by the DSP Nizamuddin. It is incorrect to suggest the DSP Nizamuddin did not record my statement 30-09-2004. It is a fact that no officer of the NAB authorities recorded my statement.

Cross examination to Mr. Ilyas Memon

Advocate for accused Aziz Rehman, Khadim Hussain, Muhammad Ayaz and Ghulam Muhammad.

It is a fact that accused Ghulam Muhammad Memon not demanded briber directly from me.

Cross examination to Mr. Hassan Ali

Advocate for accused Abdul Rashid,

At present I have no shop in the new Subzi Mandi. I did not make any complaint to the higher authorities of the market committee. It is incorrect to suggest that I have not made any compliant as I was no compliant against market committee. (It is a fact that I have not disclosed the name of the agent to DSP Nizamuddin. ***It is a fact that accused person did not demand bribe from me, however, they demanded through agent.*** It is incorrect to suggest that no agent demanded bribe on behalf of the official of market committee.”

12. From perusal of the above deposition and the cross examination, it appears that this is a witness through whom it was alleged that one of the accused now deceased Ghulam Muhammad and Abdul Rasheed Shaikh had demanded bribe through some agent, whereas, he never disclosed the name of his agent in his deposition nor any effort was made by the Prosecution to summon the agent to lead any evidence to support the stance of this witness. Nothing has been produced to corroborate this allegation of demand of bribe by this set of Appellants. It further appears that in his deposition he has not stated that he had given bribe to the present Appellants or anyone else; rather, he had brought an amount of

Rs. 20,000/- which was allegedly to be paid as bribe; but before it could be given as bribe, it was given to one DSP Nizamuddin who had already conducted a raid on the office of the Market Committee and was preparing a seizure and inventory. This nowhere establishes any thing, what to talk of giving bribe to any of the Appellants. We are at a loss to understand as to how this could be an evidence which supports the stance of prosecution that bribe was given. Further in his cross-examination he has admitted that, "accused Ghulam Muhammad Memon never demanded any bribe directly from him". He further stated that accused persons never demanded bribe from him; however, they allegedly it was demanded through some agent who was never examined. His entire evidence in support of this allegation is hearsay and cannot be relied upon in any manner.

13. Finally the I.O. of the case examined as P.W.29 (Shahzada Imtiaz Ahmed) who produced various documents as exhibits in his evidence. He was extensively cross examined by the learned Counsel for the Appellants. It would be advantageous to refer to the relevant portion of his examination in chief and the cross examination which is as follows:-

".....During the entire investigation I found that total 549 allotments were made out of which 413 found illegal allotments made by accused Muhammad Akber Zardari and others in violation of prescribed criteria set by the standing committee and Agricultural Department which resultant loss to the tune of 17 million to the state exchequer. During the investigation accused Akber Zardari and others were given opportunity for justification of illegal allotment and in support of their innocence but they could not produce any evidence. The investigation against 6 accused Muhammad Akber, Abdul Rashid Sheikh, Aziz Rehman Sheikh, Khadim Hussain, Ghulam Muhammad and Muhammad Ayaz, was conducted, however, all the accused are present in court except Ghulam Muhammad Accused Ghulam Muhammad has been exempted from appearance for today only."

Cross examination to Syed Hassan Ali
Advocate for accused Abdul Rashid.

It is correct that I have not sent the illegal allotments to the agricultural department for its verification or its authenticity. The records which have produced remain in my custody from the date of its seizure.

It is a fact that Ex I.O. Sultan Ahmed Panhanwar has not mentioned the name of accused Abdul Rashid in his statement recorded u/s 161 Cr.P.C.

Recalled and Re-sworn today i.e. 21.11.2011
Cross Examination to Mr. Nisar Ahmed Tarar, Advocate.
For accused Muhammad Akber Zardari.

I do not know there were how many members of market committee in the year 2004.

It is a fact that I have not recorded the statements of all the members including growers, traders of the market.

It is correct that according to my investigation accused Akber Zardari made some allotments legally.

Voluntarily states that there was no eligibility criteria framed for allotments of plots and shops to the category of new comers. As per Ex. 58/23 at page 105 minutes of the standing committee 13th March, 2002 no criteria for allotments to new comers was framed.

Voluntarily states that Administrator Market Committee has inherits powers under the market Act 1939 for the allotment of plots and shops being a competent authority.

It is correct to suggest that all the allotments in question have not been cancelled till to date.

It is a fact that I have not recorded the statement of members of committee, sub-committee and standing committee with regard to the allegation of allotments in violation of any policy, rule, instruction and notification.

It is correct to suggest that we have not made accused any allottee of the allotments in question in new Subzi mandi, Karachi.

It is correct to suggest that in the reference NAB authority alleged one Notification No. 5(158)/SO/(EXT)94 dated 4th September, 1994, which has been violated.

It is correct to suggest that paid challan of all the allotments of shops have been produced in court. It is correct to suggest that the Government of Sindh or Federal Government have made no complaint about the allegations contained in the FIR lodged by the anti corruption and in the reference filed by the NAB on the basis of investigation submitted by me. Voluntarily stated that the official of anti corruption establishment acted as complainant on behalf of the state. It is incorrect to suggest I have submitted misconceived statement to the competent authority to file the case.

Cross Examination to Mr. Ilyas Memon

Advocate for accused Aziz Rehman, Khadim Hussain, Muhammad Ayaz and Ghulam Muhammad

It is correct to suggest that accused Ghulam Muhammad Memon and Aziz-ur-Rehman were the Inspector in the market committee in the year 2004.

It is correct to suggest that Ghulam Muhammad and Aziz ur Rehman Khadim Hussain and Muhammad Ayaz have not issued any allotments order with their signatures.

It is correct to suggest that even there was no initial of the accused namely Ghulam Muhammad Memon and Aziz Rehman on the allotment orders.

14. From perusal of the evidence as reproduced hereinabove, it appears that the learned trial Court has miserably failed to appreciate it in its true perspective; and in fact the finding of the learned trial court that these witnesses have fully implicated the present Appellants does not seem to be correct; rather it appears that the learned trial Court was swayed by the allegations levelled against the Appellant and without due application of mind arrived at such a conclusion. Insofar as the argument of the Special Prosecutor NAB that this being a white collar crime; hence, the evidence has to be appreciated by keeping this aspect in mind is concerned, there is no cavil to this proposition; however, for that at least some justifiable and incriminating evidence has to be available which in the present case is completely lacking and therefore, we are not in

agreement with this argument that in a white collar crime a person can even be convicted without any incriminating evidence. Per settled law, the offence of corruption and corrupt practices within the meanings of section 9(a)(vi) of the Ordinance, is not an offence of strict liability, therefore, the use of authority without the object of illegal gain or pecuniary benefit or undue favour to any other person with some ulterior motive, may not be a deliberate act to constitute an offence. The mens rea for an offence under section 9(a)(vi) of the Ordinance, is found in two elements i.e. conscious misuse of authority and illegal gain or undue benefit and in absence of anyone of these basic components of crime, the misuse of authority is not culpable, therefore, the prosecution must establish mens rea and actus reus of the crime to establish the charge, as without proof of these elements of crime, mere misuse of authority, has no penal consequence¹. We may further observe that no independent evidence had been produced by the prosecution to prove that the alleged allotments were made in violation of the Policy notified vide Notification dated 4.9.1994 and the decision of standing committee constituted for such purpose and consequently was a result of corruption, dishonestly or illegal means or fraud on the part of the Appellants; or for that matter any authority vested in the Appellants was misused to get any personal benefit or favor for themselves or for any other persons.

15. In view of hereinabove facts and circumstances of this case, it appears that the prosecution has miserably failed to prove its case and to fully implicate the present Appellants, whereas, the evidence so led by the prosecution is not convincing and in the absence of proof beyond doubt, it would be unsafe to maintain the convictions; therefore, the impugned Judgment dated 28.03.2012 passed by Accountability Court No.II in Reference No. 05 of 2015 (*The State Vs. Muhammad Akbar Zardari & Others*) to the extent of the present Appellants is hereby set-aside; and they are acquitted from the charge under Section 9(a) (iv), (vi) & (xii) of the NAB Ordinance, and their conviction and sentence stands set-aside, whereas, the bail bonds of Rs. 50,000/- each furnished pursuant to the order of the Hon'ble Supreme Court dated 13.8.2014 stands discharged. Office to act accordingly. Insofar as Appeal No. 18 of 2012 filed by NAB is concerned, after setting aside of the impugned judgment, the same has become infructuous and is hereby dismissed.

¹ The State v M Idrees Ghauri (2008 SCMR 1118)

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J U D G E

Arshad/