

JUDGMENT

MOHSIN AKHTAR KAYANI, J---Through this single judgment, I intended to decide the above mentioned criminal appeals whereby the appellants have assailed their conviction in case FIR No.5/2010, dated 12.11.2010, under sections 409/420/468/471/109/34, P.P.C. read with sections 5(2) 47, P.C.A. registered with P.S. FIA/SIU, Islamabad vide judgment dated 03.6.2016 passed by learned Special Judge (Central) Islamabad. Through the said judgment the appellants have been convicted and sentenced as under:--

Appellant Rao Shakeel Ahmed:--

Under section 408/34, P.P.C.

Imprisonment for six years and to pay fine of SR-5,264,200/- (PKR-147,397,600/-) or in default of payment of fine to further undergo for two years' S.I.

Under sections 420, 468 and 471, P.P.C.

Imprisonment for six years on each count and to pay fine of Rs.1,000,000/- on each count (i.e. total Rs.3,000,000/-) or in default of payment of fine to further undergo two years' S.I. on each count.

Under section 5(2) 47, P.C.A.

Imprisonment for six years and also to pay fine of Rs.1,000,000/- or in default of payment of fine to further undergo two years' S.I.

Appellant Syed Hamid Saeed Kazmi:--

Under section 409/34, P.P.C.

Imprisonment for six years and to pay fine of SR.5,264,200/- (PKR-147,397,600/-) or in default of payment of fine to further undergo for two years' S.I.

Under section 5(2) 47, P.C.A.

Imprisonment for a period of six years and to pay a fine of Rs.10,00,000/- or in default of payment of fine to further undergo for two years' S.I.

Appellant Aftab-ul-Islam Raja:-

Under section 409/34, P.P.C.

Imprisonment for a period of six years and to pay fine of SR-5,264,200/- (PKR-147,397,600/-) or in default of payment of fine to further undergo for two years' S.I.

Under section 5(2) 47, P.C.A.

Imprisonment for six years and to pay a fine of Rs.1,000,000/- or in default of payment of fine to further undergo for two years' S.I.

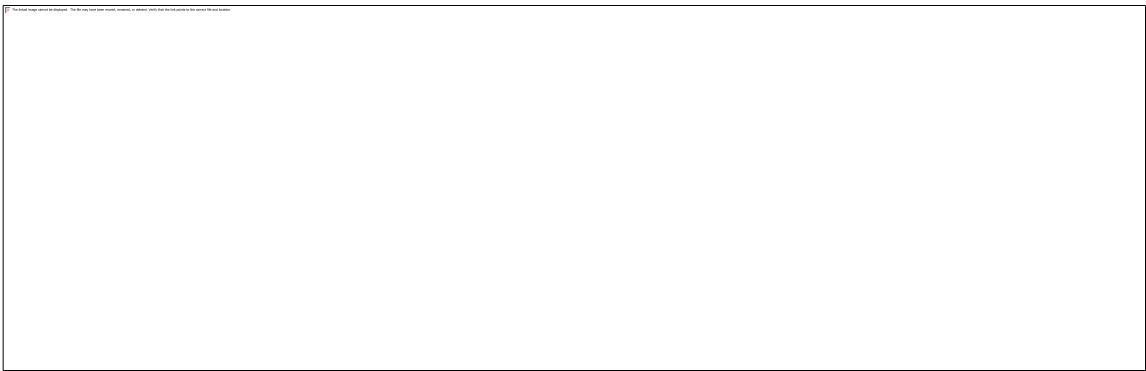
Appellants have been held entitled to the benefit of section 382(b), Cr.P.C.

2. Brief facts of the instant case are that Ch. Naimat Ali, Assistant Director, FIA (PW-51) registered criminal case FIR No.05/2010, dated 12.11.2010 under sections 409/420/468/471/109/34, P.P.C. read with section 5(2) 47, P.C.A. registered with P.S. FIA/SIU, Islamabad vide Exh.PW.51/A against the appellants under the orders of the competent authority. The contents of the FIR are reproduced as under:--

"After completion of preliminary inquiry No. E-25/10 conducted on the basis of inquiry

report of Review committee of Senate/National Assembly it revealed that Rao Shakeel Ahmed former DG/Hajj by misusing his official position and with the active connivance of Ahmed Shafee and others had acquired 87 buildings in Saudi Arabia for residence of Pilgrimages for the Hajj Season 2010 on exorbitant rates in violation of instruction issued by the Cabinet Division and Minister of Religious Affairs for their personal gains. Accused Rao Shakeel Ahmed had also paid advance rent of three buildings upto 30-50% of the total rent to the owners/agents of hired buildings against the previous practice of 15% advance payment besides other violation of Govt. instructions to award undue benefit to the building owners/agents etc. Thus they caused huge wrongful loss to the public exchequer and corresponding wrongful gains to themselves. Prima facie these facts constitute commission of offences under sections 409, 109, 34, 3, 4, P.P.C. read with 5(2) 47, P.C.A. The Secretary M/o Interior (competent Authority) has accorded permission of case. Hence, the case is accordingly registered against Rao Shakeel Ahmed, Ahmed Shafee and others."

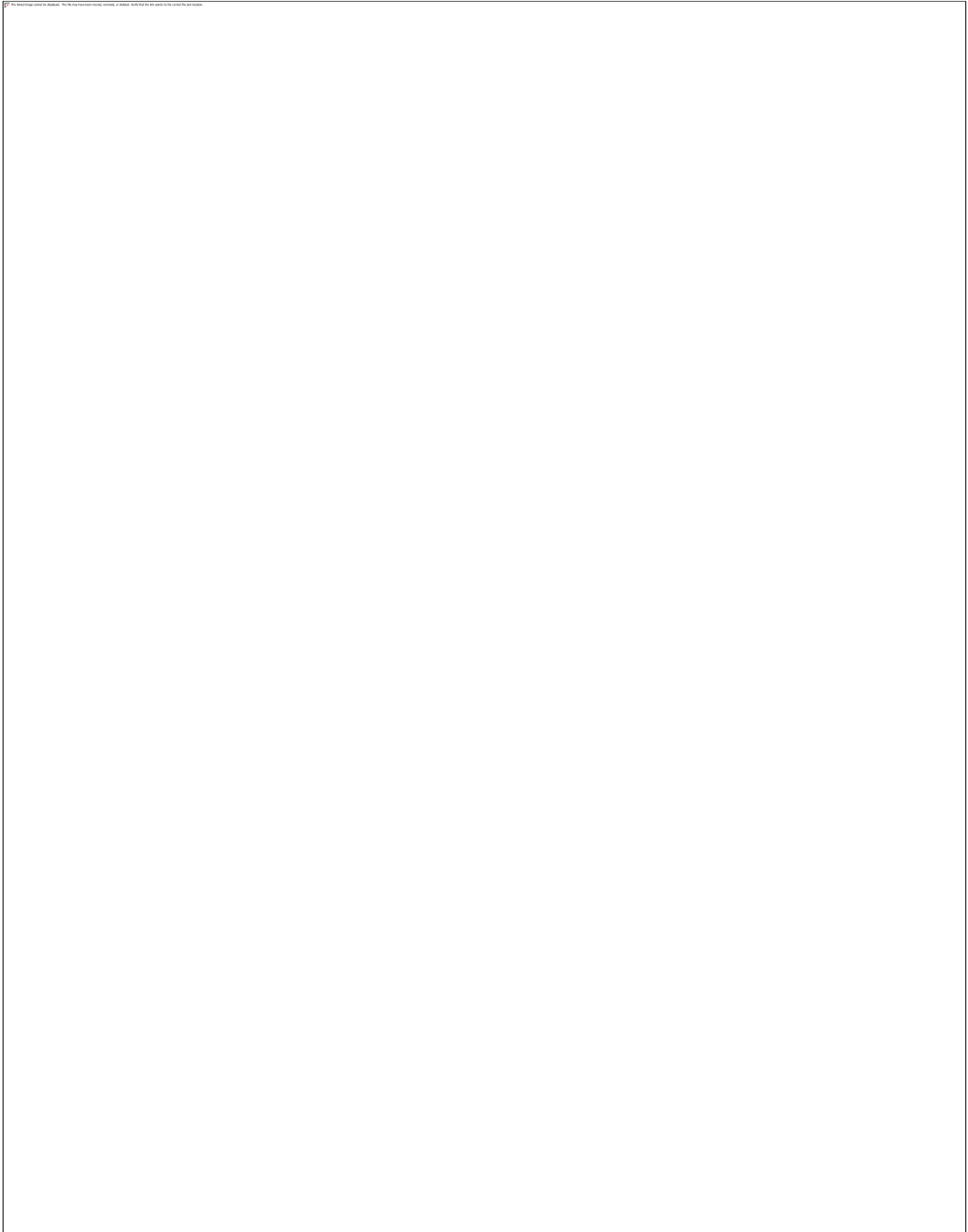
3. As per contents referred above, the inquiry report of Review Committee of Senate/National Assembly has been made basis for registration of the instant criminal case whereby the cabinet took the decision in which a Committee was constituted to look after the affairs of Hajj 2010 comprising of five members (1) Mollana Muhammad Qasim (MNA), Chairman Standing Committee for Religious Affairs (National Assembly) (Leader), (2) Syed Muhammad Saleh Shah, Senator, Chairman Standing Committee for Religious Affairs (Senate) (Member), (3) Pirzada Syed Imran Ahmed Shah (MNA), Member Standing Committee for Religious Affairs (National Assembly) (Member), (4) Bilal Yasin (MNA) (Member), (5) Dr. Khalid Mehmood Soomro, Senator, Member Standing Committee for Religious Affairs (Senate) (Member) visited Makkah Mukarma and prepared their report Exh.PA dated 01.09.2010 which is reproduced as under:-











After the submission of Exh.PA, all three appellants were charged in the said case whereby the FIA authorities submitted Challan under section 173, Cr.P.C. before the learned Special Judge Central, Rawalpindi whereby the learned Judge framed the following charges:--

"I, Muhammad Khalid Shabbir, Special Judge Central, Rawalpindi, do hereby charge you Shakeel Ahmad Rao, Aftab-ul-Islam Raja and Syed Hamid Saeed Kazmi accused as under:--

Firstly, (i) you accused Shakeel Ahmad Rao, former DG/Hajj and Aftab-ul-Islam Raja, JS (Hajj) misused your official position and hired '87' buildings in Makkah Mukarrma and in Madina Munawara Saudi Arabia for Hajj pilgrims for the Hajj season 2010 with the capacity of 29493 Hajj pilgrims on exorbitant rates of average rent SR.3492.09 per person.

(ii) four buildings (out of 87 hired buildings) No.4009, one building of four towers registration Nos.4012, 4013, 4014, 4015, a building namely Shirkat Almasart and a building Waqf Albasri were at a distance of 2000 meters in violation of the terms and conditions of Hajj Policy 2010 and guidelines of Ministry of Religious Affairs.

Secondly, '60' out of total '87' buildings were hired from Mustajirs/wakeels/agents. From the comparison of difference of rent between the agreements among the building owners with Mustajirs/agents and its subsequent agreement with Pakistan Hajj Mission, SR.1,83,27,320/- (Pak Rs.403179040) were paid extra which indicates the magnitude of the loss caused to the State exchequer and corresponding gain by the accused persons. Most of the hired buildings were substandard and were hired in violation of the prescribed Hajj Policy, and the parameters laid down by the Hajj Ministry and the Cabinet Division. From the comparison of the difference of rent, between the agreements among the building owners with Mustajirs/Agents and its subsequent agreement with Pakistan Hajj Mission, SR 1,87,26,320/- (Pak Rs.403179040/-) were paid extra which indicates the magnitude of the loss caused to the State exchequer and the corresponding gain by the accused persons.

Thirdly, you accused Shakeel Ahmed Rao also paid 50% advance amounting to SR.25,47,000 and SR.39,60,000 to Mustajir of buildings namely Nukhaba 1 and 11 against the previous practice of 15% advance without approval of the ministry and thereby violated the conditions of Hajj Policy 2010. As per new Tasreeh 2010, buildings had the capacity of 2525 persons whereas payment was made for 3615 persons. Thus an amount of SR 39,24,000 (Pak Rs.90,252,000/-) was paid in excess on account of over booked capacity of 1090 persons and thus causing loss to public ex-chequer and corresponding wrongful gain to agents/themselves.

Fourthly, the buildings were not handed over to Pakistan Hajj Mission and the whole amount is recoverable from Mustajir. Building Burjjal haram was hired @ SR 3600 per person by you accused Shakeel Ahmad Rao and Aftab-ul-Islam, JS (Hajj) having capacity of 2505 persons. An amount of SR 27,05,400/- (Pak Rs.62,22,4200/-) was issued to Mustajir but possession of the buildings was not taken which amount is recoverable from Mustajir and loss to public ex-chequer.

Fifthly, you Shakeel Ahmad Rao former DG Hajj and Aftab-ul-Islam JS Hajj/accused issued second installment cheques of '8' out of 87 buildings against which rent were got reduced from SR 3600 to SR 3400 for three buildings Nos.2001, 2002 and 2003 for SR.3450 to SR 3200 for two buildings Nos.4011 and 5004 from SR. 3500 to SR 3455 for one building with registration Nos.4012, 4013, 4014 and 4015 from SR 3400 to SR 2400 for one building No.6031 and SR 3500 to SR 1900 from one building No. 8011. These buildings were hired on high rates which have been rehired by Sultan Ali Shah, acting DG Hajj on reduced rent after negotiation with building owners. Thus given relief to Hujjaj to the tune of SR 3023475. Minutes of meeting of 87 hired buildings contain signatures of accused Shakeel Ahmad Rao, former DG Hajj as chairman Hiring committee and Aftab-ul-Islam JS (Hajj) as member of Hiring Committee.

Sixthly, on the direction of accused Hamid Saeed Kazmi Former Minister for Religious Affairs, co-accused Ahmed fait (since P.O) was illegally appointed by Shakeel Ahmad Rao accused as 'Building Supervisor' with mala fide intention on voluntary basis. He was involved in the receipt of kick-backs from the building owners/Mustajirs and also used to threat and pressurize the concerned staff of Pakistan Hajj Mission Makkah for recommending hiring of sub-standard buildings for Pakistani Hajj pilgrims. In this way buildings for Hajj pilgrims were acquired on exorbitant rates and huge amounts were illegally received by the accused persons as kickbacks.

Seventhly, you Shakeel Ahmed Rao accused sent SR 234000: (Pak Rs.51,48,000/-) to your family members in Pakistan through different employees of Pakistan Hajj Mission during your one year stay in Saudi Arabia. This amount was beyond your known sources of income and was part of ill gotten money. You accused could not account for unusual increase in your bank accounts. You also awarded contract for the provision of accommodation in Medina Munawwara for Pakistan Hajj pilgrims to three out of 22 groups of your choice who applied for the same. Your act was in violation of the relevant rules/policy and was also not in the interest of Pakistani Hajj Mission as a number of groups of Medina Munawwara, later on, offered lesser rates SR 450/- per pilgrim against the given

rate of SR 500/-. This all was done by you for personal gains with ulterior motives.

Eighthly, in the year 2009 Govt. Hajj scheme, buildings for 80000 pilgrims were booked but you accused Minister Syed Hamid Saeed Kazmi by abusing your official position withheld 7098 seats for hardship cases without approval of the Cabinet and did not include them in the balloting and deprived these persons from Hajj although their dues were already deposited with the Hajj ministry. Later on only 3563 withheld seats could be utilized by you accused for persons of your choice. Resultantly eleven buildings which had already been hired remained vacant and huge loss of SR.90,54,625/- (Pak RS.199201750/-) was caused to the Government exchequer and '200' persons who performed sponsored free Hajj by MOI stayed in the hired buildings without payment.

Ninthly, you Shakeel Ahmed Rao sent a bill of SR 593,550/- and SR 80,000/- for accommodation charges of the aforesaid '1200' persons for Makkah Mukarama and Medina Munawara respectively to Ministry of Religious Affairs for recovery from the Ministry of Interior.

Tenthly, bank accounts of you accused Syed Hamid Saeed Kazmi have been examined and bank record have been taken into possession but you could not account for it. Illegal gratification in cash was brought back through illegal channel and hidden in tangible and benami investment. The un-usual increase found in the movable/immovable property of the accused during 2009-2010, for which you failed to explain the legitimate sources of income and thus found disproportionate to your legitimate sources of income.

Thus you all the three accused in connivance with each and co-accused Ahmad Faiz (since P.O.) have committed offences under sections 109/420/467/468/471/109/34/3, 4, P.P.C. read with section 5(2) 47, PCA which is within the cognizance of this Court."

Whereby the appellants pleaded not guilty, therefore, prosecution produced 56 witnesses along with a bulk of documentary evidence including Hajj Policy 2010 as Exh. PW-13/A1-32, details of buildings as Exh.PW-13/E1-28, agreements of buildings as Exh.PW-13/H1-339, property details and assets details of appellants, documents relating to 129 buildings hired by Acting DG Hajj and Secretary Ministry of Religious Affairs, comparative statements of buildings hired by Rao Shakeel Ahmed. The 56 PWs produced by the prosecution are relating to following heads:--

"Joint Charge with ten heads was framed against all accused persons, who were sent to face trial and all accused persons pleaded not guilty. Prosecution out of 86 prosecution witnesses produced 56 and gave-up 30 witnesses."

Allegation wise Prosecution witnesses:--

(a) Senate Review Committee:

- (i) PW-1, Abdur Rehman.
- (ii) PW-3, Pirzada Syed Imran Ali Shah, MNA.
- (iii) PW-4, Bilal Yasin, MNA.
- (iv) PW-21, Muhammad Saleh Shah.

(b) Appointment of Ahmed Faiz:

- (i) PW-2, Arshad Mehmood Bajwa,
- (ii) PW-19, Muhammad Iqbal Siddiqui,

(c) Difficulties of Hujjaj:

- (i) PW-5, Tayyab Hussain Qureshi.
- (ii) PW-6, Muhammad Ali Khan.
- (d) Illegal Benefits:
 - (I) Transfer of money (Rao Shakeel Ahmed)
 - (i) PW-9, Muhammad Mushtaq (Steno).
 - (ii) PW-10, Muhammad Aslam (Assistant/cashier).
 - (iii) PW-11, Muhammad Yasin (Driver).
 - (iv) PW-12, Abdur Rasheed (Naib Qasid)
 - (v) PW-38, Riaz Ahmed (Naib Qasid).
 - (vi) PW-39, Muhammad Saleem Akhter (Driver).
 - (vii) PW-42, Samiullah (Assistant Accounts Officers).
 - (II) Assets (Rao Shakeel Ahmed).
 - (i) PW-18, Muhammad Idrees Khan (Engr. FIA).
 - (ii) PW-22, Ch. Shakeel Ahmed (X.En).
 - (iii) PW-23, Azmat Javaid (Insp. FIA).
 - (iv) PW-24, Muhammad Sarwar (Insp. FIA).
- (e) Acquiring and utilizing of building in Saudi Arabia:
 - (i) PW-13, Muhammad Khursheed Anwar.
 - (ii) PW-14, Syed Sultan Ali Shah (Acting DG)
 - (iii) PW-15, Agha Sarwar Raza Qazalbash (Secretary MORA).
 - (iv) PW-28, Umer Ali Khan Sherazi (Ambassador).
 - (v) PW-36, Umer Farooq Khokhkar (D.D.Hajj).
 - (vi) PW-42, Muhammad Samiullah (Asstt. Accounts Officer).
 - (vii) PW-43, Muhammad Aslam (Room Attendant).
 - (viii) PW-45, Shakir Husain (Arabic Desk).
 - (ix) PW-48, Muhammad Farooq (Investor-Private person).
 - (x) PW-51, Naimat Ali (I.O.).
 - (xi) PW-52, Khalid Rasool (I.O.).

After conclusion of entire evidence, all the appellants recorded their statements under section 342, Cr.P.C. whereafter the learned trial Court has convicted the appellants through the impugned judgment dated 03.06.2016, hence, the appellants filed their respective appeals. However at present, Rao Shakeel Ahmed and Aftab-ul-Islam Raja are on bail and Syed Hamid Saeed Kazmi has not been granted bail by this Court.

4. Learned counsel for appellants (in Crl. Appeal No.117/2016 (Rao Shakeel Ahmad) and Crl. Appeal No.122/2016 (Aftab-ul-Islam Raja)] argued that the appellants have been convicted and sentenced under sections 409/34, 420, 468 and 471 read with section 5(2) 47, P.C.A. but there is no evidence on record to connect the appellants with the said offences; that the charge framed by the learned trial Court was joint in nature and there is no specific details of particular offence, hence, the conviction is illegal; that the learned trial Court while awarding the sentence to the appellants simultaneously proceeded under sections 409 and 420, P.P.C. which is illegal; that the documents produced by the prosecution were not proved in accordance with the Qanun-e-Shahadat Order, 1984, whereas the prosecution has failed to prove their proper custody, permission from the relevant authorities nor those documents are admissible under the law; that the investigation Officer filed Challan against five persons out of them one namely Ahmed Faiz was declared as P.O. who was arrested during the trial of present appellants and learned trial Court has not proceeded under single trial rather separated the trial of Ahmed Faiz and convicted him subsequently which is an illegal method adopted by the learned trial Court; that the appellant Rao Shakeel Ahmed was Ex-D.G. Hajj and he was not the Chairman of Hiring Committee nor even he was designated as Chairman of Hiring Committee by Government and his duty was to spot the buildings and then Hiring Committee in Pakistan has to finalize those buildings; that no recovery whatsoever was effected from the appellants during the investigation to connect them with the crime proceeds; that the prosecution has failed to prove the fraudulent intent and misappropriation of funds or receiving of illegal benefit while causing loss to national exchequer; that during the trial not a single witness has been produced by the prosecution who stated before the Court that 87 buildings for Hujjaj Karam were hired after receiving kickbacks by the appellants, even no Saudi official or owners/Mustajars of the buildings were produced before the learned trial Court to connect the appellants with any of the offence leveled in the FIR or in the charge; that the Investigation Officer has not collected any bank record from the Saudi Arabia regarding any crime proceed nor there is any evidence of misappropriation of funds; that appellant Aftab-ul-Islam Raja was just a signatory along with Rao Shakeel Ahmad, however he had no independent authority to decide the fate of any hired building.

5. Learned counsel for appellant (in Crl. Appeal No.119/2016 of Hamid Saeed Kazmi) argued that the conviction and sentence awarded by the learned trial Court is against the law and facts of case; that none out of the 56 PWs has uttered a single word against the appellant and even no evidence was recorded regarding the receipt of kickbacks or commission by the said appellant; that the prosecution has miserably failed to connect the appellant Syed Hamid Saeed Kazmi with the crime proceeds as alleged by the prosecution; that the appellant has no role in the hiring of buildings of Hujjaj Karam as the same was the act performed by the Hiring Committee which comprised of 07 members and the appellant had no role in the said committee; that the report of review committee brought on record as Exh.PA which furnished the very basis of registration of instant case, the same is completely silent qua the alleged offences; that according to the Rule 5(9)(b) of Rules of Business, 1973, the Secretary of Ministry was bound to execute the sanctioned Hajj policy and Minister of Religious Affairs had no concern with the implementation and execution of said policy; that the appellant has not been nominated in the FIR nor there is any direct evidence against the appellant to connect him with the alleged crime; that there is no evidence on record against the appellant for criminal breach of trust or receiving of any benefit of in terms of section 409, P.P.C. or in terms of section 5(2) 47, PCA; that the impugned judgment is based upon mis-reading and non-reading of material evidence available on record.

6. Conversely, learned SPP FIA along with Investigation Officer argued that the appellants Rao Shakeel Ahmad and Aftab-ul-Islam Raja were appointed in their official capacity at Saudi Arabia for Hajj Mission to perform their official duties which includes the hiring of buildings for Hujjaj Karam for Hajj Operations, 2010 under the supervision of Minister of Hajj/appellant Syed Hamid Saeed Kazmi; that all the appellants while misusing their official position have abused the process of hiring of buildings which is evident from the report Exh.PA, whereas appellants Rao Shakeel Ahmed Ex-D.G. Hajj and Aftab-ul-Islam Raja Joint Secretary/Member Hiring Committee for Hajj, 2010 are responsible for the hiring of buildings and while performing their official duties in Hajj Mission 2010, hired 87 buildings for 29,493 Hujjaj Karam whereas they were directed not to hire any building beyond two thousand meters from Haram Sharif, even they were directed to

confirm the status of buildings as any building should not be eight years old; that Parliamentary Committee visited Saudi Arabia and it has been observed by the then Committee of the Parliament that 59 buildings were obtained in violation of directions, even some of the buildings were beyond the prescribed distance of two thousand meters, some were old buildings and last few buildings were incomplete and there was no possibility that Pakistani Hujjaj would be able to utilize those buildings. Learned SPP further argued that both the appellants Rao Shakeel Ahmed and Aftab-ul-Islam Raja had obtained 87 buildings on higher rates i.e. SR 3500 to 3600 per Haji whereas buildings at reasonable rate were available at that time hence, they have caused loss to individuals; that the then Ex-DG Hajj Rao Shakeel Ahmad engaged private individual, namely, Ahmed Faiz who was illegally living in Saudi Arabia and was not entitled to perform any duty but he was engaged as front man of the DG Hajj who entered in all kinds of deals with the owners/Mustajars and Attorneys of buildings whereby received kickbacks in this regard; that Ahmed Faiz was appointed by the then Ex-DG Hajj (appellant) Rao Shakeel Ahmed even a recommendation was given for the issuance of official/gratis passport in his name; that two buildings Nukhba-I and Nukhba-II were hired at higher rates with 50% advance payment and the appellants have received kickbacks of SR 2,600,000/- even some of the black-listed agents and their buildings were hired through Ahmed Faiz co-accused as in this entire deal the appellants have received SR.500 to 1100 in each building in Makkah Mukarma and similarly they have received kickbacks of SR 50 to 100 as commission per Haji in Madina Munawwara. That after receiving the complaints submitted by the Parliamentary Committee, appellant Rao Shakeel Ahmed was removed and new Acting DG was appointed for hiring of buildings, who engaged 129 buildings which were comparatively economical than 87 buildings engaged by the previous committee of appellants and in comparison of these buildings it was observed that the appellants have caused a huge financial loss to the national exchequer while using their official position; that appellant Rao Shakeel Ahmed signed up different persons for sending cash amount which was received by him in Saudi Arabia as kickback to his family members and others; that appellants are living beyond their means and established different properties from kickbacks received by them during the said season of Hajj.

7. Learned SPP, FIA further argued that appellant Syed Hamid Saeed Kazmi was minister at the relevant time who was under obligation to implement the Hajj Policy, 2010 in letter and spirit but he by violating the directions issued by the cabinet allowed the appellants Ro Shakeel Ahmed and Aftab-ul-Islam Raja to continue with their illegal hiring of buildings against the exorbitant rates and even in violation of terms of the Hajj Policy, 2010 as well as guidelines; that appellant Syed Hamid Saeed Kazmi had visited Saudi Arabia prior to Hajj, 2010 and visited all those buildings in presence of Ahmed Faiz and co-appellants which is evident from the pictures, even Ahmed Faiz briefed Syed Hamid Saeed Kazmi whose passport was recommended by appellant Syed Hamid Saeed Kazmi; that Syed Hamid Saeed Kazmi has failed to prove the legitimate resources of his assets and amount which was received by him beyond his legal means and the same shall be considered as crime proceeds received as kickbacks in Saudi Arabia; that appellant Syed Hamid Saeed Kazmi has caused loss to the public exchaquer by not following due procedure under his command and due to his official position he has withheld 7098 seats for hardship cases as a result he deprived number of persons from performing of Hajj; that 11 buildings were already hired but they remained vacant and Government of Pakistan has suffered a loss of S.R. 9,054,625.

8. Arguments heard, record perused.

9. From the perusal of record it has been observed that Hiring Review Committee of Senate/National Assembly comprising of five members (1) Molana Muhammad Qasim, MNA, Chairman Standing Committee for Religious Affairs (National Assembly) (Leader), (2) Syed Muhammad Saleh Shah, Senator, Chairman Standing Committee for Religious Affairs (Senate) (Member), (3) Pirzada Syed Imran Ahmed Shah, MNA, Member Standing Committee for Religious Affairs (National Assembly) (Member), (4) Bilal Yasin, MNA (Member), (5) Dr. Khalid Mehmood Soomro, Senator, Member Standing Committee for Religious Affairs (Senate) (Member) submitted their report Exh.PA (1-21) dated 01.09.2010 whereby the said committee visited Saudi Arabia to overview the Hajj arrangements and during their visit it transpired that 87 buildings had already been hired for 29,493 Hujjaj Karaam under the guidelines referred by the Ministry. As per the report of the said committee there were specific directions in which every

building should have capacity of two thousand members/Hujjaj, building should not be situated beyond the distance of 2000 meters from Haram Sharif and engaged buildings should not be eight years old and all the buildings should be engaged in group form. While visiting the buildings, the Hiring Review Committee observed that few buildings were engaged beyond 2000 meters from Haram Sharif, 15 buildings were engaged which were more than eight years old and majority of the buildings were not engaged in cluster form in violation of direction of Government of Pakistan and even one building was engaged which was not completed at that time and the same was reflecting that the construction of the building will not be completed before Hajj. The committee further stated in the report that 79 buildings out of 87 buildings were engaged in violation of Cabinet as well as decision of Ministry of Religious Affairs even the advance amount of 50% was paid to the owners/Mustajars of buildings in violation of previous year's practice of 15% of advance rent and it has been observed by the committee that millions of riyals have been received as kickback and commission. The parliamentary committee also observed that the buildings which were engaged having the capacity were hired at the rate of S.R.3500/3600 per Haji, however the same were available at cheaper rates, hence, the committee has received kickbacks on per Haji basis. It has further been observed by the said committee that one person Ahmed Faiz acted as middle man who has received the commission, who is a deportee, who was living in Saudi Arabia without Aqama and he was arrested by the Saudi police but he was released on the intervention of Rao Shakeel Ahmed, the said person was appointed as Building Supervisor and that name of Ahmed Faiz was recommended for official/gratis passport. Two buildings Nukhba-I and Nukhba-II were engaged against advance rent of 50% and DG Hajj while performing his official duties received kickbacks. The Hiring Review Committee of parliament has given certain recommendations in which it has been recommended that DG Hajj should be immediately removed from his position and his agent Ahmed Faiz may also be deported from Saudi Arabia to Pakistan and the entire matter should be thrashed out through inquiry. The committee also recommended that all the buildings which are engaged in Makkah Mukarma and Madina Munawwara be cancelled and the amount be recovered and if the said amount would not be recovered then same be recovered from DG Hajj. On the basis of said report Exh.PA, criminal case FIR No.05/2010, dated 12.11.2010, under sections 409/420/468/471/109/34, P.P.C. read with section 5(2) 47, P.C.A., P.S. (FIA/SIU, Islamabad was registered by Ch. Naimat Ali, Assistant Director, FIA (PW-51) as Exh.PW-51/A, whereby investigation was started.

10. After the registration of criminal case, three FIA officers investigated the matter and submitted the Challan before the learned trial Court against the appellants on different intervals of time.

11. The prosecution has produced total 56 witnesses to prove the case against the appellants whereas the learned trial Court framed 10 charges against the appellants and out of those charges the appellants Rao Shakeel Ahmed and Aftab-ul-Islam Raja were charged in eight charges and Syed Hamid Saeed Kazmi appellant was charged against three allegations only, as referred in the order dated 30.05.2012 passed by learned Special Judge (Central), Rawalpindi whereby all the appellants pleaded not guilty and prosecution produced 56 witnesses to prove their case. In order to discuss the allegations, it is necessary to review the Hajj Policy document available on record as Exh.PW-13/A1-32 dated 14.05.2010 whereby the clause-XVIII relates to the instant case whereas Annexure-A of the said policy gives the details of hiring of buildings under Clause-5 which is reproduced as under:-

"5. HIRING OF BUILDINGS

(A) There being acute shortage of buildings in the vicinity of Haram Sharif due to continuous demolition of buildings in Makkah Mukarramah, following conditions for hiring of accommodation for Hajj Pilgrims for Hajj-2010 will be observed subject to minor adjustments to be made by Ministry of Religious Affairs on account of distance of buildings:-

- i. The maximum rent in Makkah Mukarramah shall be SR.3600 per pilgrim upto 2000 meters;

- ii. The determination of rent in Makkah Mukarramah will be based on quality of building and distance from Haram;
- iii. 55-60% of accommodation shall be hired in Markazia in Medina Munawwarah;
- iv. Accommodation in Medina Munawwarah shall be hired @ SR.500/- per pilgrim per cycle to be paid on actual occupancy basis.

(B) COMMITTEES

In order to ensure transparency and qualitative hiring of buildings a new mechanism is being introduced which would contain an in-built system of check and balances:-

I) HIRING COMMITTEE

a. The Hiring Committee in Saudi Arabia would comprise the following:--

- i. Director General Hajj, Jeddah Chairman
- ii. Joint Secretary (Hajj) Member

Any other person conversant with Makkah/ Madina nominated by MORA Member

- iii. Director Hajj, Jeddah Member
- iv. Deputy Director Hajj Member

Madina Munawwarah (for Madina only)

- v. Representative of the Pakistan Member
Ambassador in Saudi Arabia.
- vi. Assistant Accounts Officer Jeddah Convener

b. in order to strengthen the Hiring Committee in Makkah and Madinah at least one officer of the Ministry and one (Pak based) ex-officio nominee shall be placed by Ministry of Religious Affairs on the panel of Hiring Committee;

c. Ministry of Religious Affairs shall nominate ex-officio representative, to impart guidance to the committee, purely in advisory capacity.

d. As a pre-condition, the said nominee shall be selected for the prime reason that he is familiar/conversant with the buildings, distance, reasonability of rent etc. in Makkah and Madina;

e. The decision of the majority shall prevail.

f. Any difference of opinion shall be referred to the Ministry of Religious Affairs whose decision would be binding.

g. On completion of the hiring process both in Makkah and Madina, the joint Secretary (Hajj) who is a nominee of Ministry of Religious Affairs, shall submit a comprehensive report to the Ministry of Religious Affairs about the quality of buildings, reasonability of rent, distance and above all the snags (if any) which have surfaced during the hiring process.

(II) HIRING REVIEW COMMITTEE

There shall be a Hiring Review Committee comprising of the following:--

- i. Minister for Religious Affairs Chairman
 - ii. Minister of State for Religious Affairs Vice-Chairman
 - iii. Chairman, Senate Standing Committee for Religious Affairs Member
 - iv. Chairman, National Assembly Standing Committee for Religious Affairs Member
 - v. One Member of the Senate Member
 - vi. One Member of the National Assembly Member
 - vii. Director General Hajj, Jeddah Convener
 - viii. Director Hajj, Jeddah Secretary
- (a) At least two (2) and maximum three (3) members of the above Committee shall visit Saudi Arabia for not more than two times (during the hiring season) on need basis.
- (b) The said committee shall submit its report commenting on the reasonability and standard of buildings so hired, to the Prime Minister.
- (c) No authority other than the Hiring Review Committee shall be authorized to generate any report being addressed to the President, Prime Minister or anybody or organ of the State about the hired buildings in KSA (except sub-para B(1)(g) above).
- (d) The expenditure in respect of members mentioned at S. No(s) 3 to 6 shall be borne by the respective Secretariats."

From the above referred details of Hajj Policy, it has been assumed that two committees have been constituted, first committee comprising of Chairman and Members appointed for the purpose of hiring of buildings and second is called Hiring Review Committee comprising of Minister as well as Members of the Parliament.

12. Besides the Hajj Policy, 2010, Exh.PW-13/A1-32 was issued by Cabinet Secretariat, Government of Pakistan on 14.05.2010, another document which plays a key role in the entire process of the hiring of buildings, called as Policy Guidelines Exh.PW-13/B1-32 dated 04.02.2010, due to the fact that Hajj Policy, 2010 was not issued prior to May 2010 wherein Hajj Mission was under obligation to engage the buildings on first-come first-serve basis as other countries are also in process of hiring of the buildings, therefore, it has been observed that a strong competition was going on in Madina Munawwara and Makkah Mukarrama for hiring of buildings for Hujjaj. Ministry of Religious Affairs, Government of Pakistan issued a policy document dated 04.02.2010 referred as Exh.PW-13/B1-32 which was issued in response to the letter of appellant Rao Shakeel Ahmed DG Hajj, Jeddah regarding late hiring of buildings for Hajj, 2010 to hire suitable buildings whereby the Ministry of Religious Affairs constituted a Spotting Committee in Saudi Arabia who spotted and located the buildings and recommended them for hiring to the Hiring Committee in Pakistan who would check the suitability of buildings for hiring or otherwise in accordance with parameters laid down for that purpose, however, documents reveal certain conditions to be followed and policy provides the details of the Spotting Committee as well as Hiring Committee, which are as under:--

"2. The following conditions for hiring of accommodation for Hajj pilgrims for Hajj 2010 should be observed strictly before the buildings are hired:--

- i. The maximum rent in Makkah Mukarramah shall be SR.3600 per pilgrim upto 1500 meters and SR.3200 upto 2000 meters;
- ii. The determination of rent in Makkah Mukarramah may be based on quality of

building and distance from Haram;

iii. The buildings rated in category-A & B by Khuddam-ul-Hujjaj in Hajj-2009 may be hired on priority basis. The buildings rated in category C, D and E by Khuddam-ul-Hajjaj in Hajj-2009 may not be hired;

iv. Accommodation in Markazia in Madina Munawwarah shall be hired at SR.500 per pilgrim per cycle, to be paid on actual occupancy basis, however, the rent charged for first and second cycles which is usually low should be borne in mind before the negotiations are made.

v. Cluster accommodation should be arranged invariable in old Mina for all Hujjaj under Govt. Hajj Scheme having facility of sofa-cum-bed with break-fast/light refreshment against payment of Compulsory Hajj Dues (CHD) SR. 1588/- per persons,'

vi. Hiring may be done by observing codal formalities on first come first served basis after floating an advertisement in the local press. Moreover, the basic principle of one flight, one Maktab and one building should be ensured;

vii. The previous hiring committee in Makkah shall now perform the role of locating and spotting the buildings in the light of guide-lines to follow.

viii. The spotting committee shall recommend suitable buildings to the hiring committee even while having 2/3rd strength of its total constitution. This is important as at times some members are not available at the required time and in that case the essential task of the committee to recommend the buildings impetuously should not suffer.

ix. The Sporting Committee in Saudi Arabia may comprise of the following:-

- a) Director General Hajj, Jeddah. Chairman
- b) Director Hajj Jeddah. Member.
- c) Deputy Director Hajj Member (for Madina only)
Madina Munawwarah,
- (d) Representative of the Pakistan. Member
Ambassador in Saudi Arabia.
- e) Any prominent Overseas Pakistani. Member
In KSA (to be nominated by MORA),
- f) Assistant Accounts Officer Jeddah. Convener.

3. The Spotting Committee shall explore possibilities to hire buildings in Makkah for the entire year and rent be paid accordingly instead of rent being paid for the Hajj season only.

4. While spotting buildings, the spotting committee shall primarily keep the following guidelines and parameters into consideration and the Hiring Committee in Pakistan shall evaluate the suitability of these buildings on the basis of these parameters:--

- ☐ The age of buildings being hired should not be more than 6-7 years.
- ☐ Hiring of "shuggas" should be avoided.
- ☐ In case of high rise buildings, the facility of lifts should be adequate and in conformity with the capacity.

- ☐ Bathroom pressure should be maximum 8 persons per bath.
- ☐ The total number of buildings for the entire Hujjaj should not exceed 200.
- ☐ The total capacity of each building so hired should be minimum 200 Hujjaj per building.
- ☐ The buildings should be hired on the main road (with no ascents) instead of small streets at the back.
- ☐ All basic facilities/Amenities like Laundry, AC, fridge, kitchen should, be available in these buildings.
- ☐ Four times a day, shuttle facility should be negotiated with the owners of the buildings for the Hujjaj staying at a distance of 1501 meters to 2000 meters.
- ☐ Hiring of buildings should be made in such a manner that atleast 5000 Hujjaj stay banded in the same area/vicinity, thus giving a village like effect. In this way Monitoring conducted by the teams would be easy and effective.
- ☐ Provision of drinking water and Aab-e-Zam Zam should be ensured in these buildings.
- ☐ The buildings and rooms should be presentable with particular focus on cleanliness.
- ☐ The buildings located on roads which are jammed due to heavy traffic and pedestrians during the Hajj season should be avoided.
- ☐ The building so recommended should have the provision to house the monitoring teams and dispensaries.
- ☐ These buildings should be in near vicinity of Markets, Restaurants and basic needs shops.

5. The detail of buildings so spotted by the spotting committee shall indicate information as per format devised (copy enclosed) for the purpose by MORA (in the light of guidelines). Moreover, the visual detail of buildings should be videoed and sent electronically containing photographs both still and video of buildings, with particular focus on the elevation, interior and surroundings.

6. The said information would be subjected to scrutiny by a panel constituted for the purpose in Pakistan and final approval shall be granted by the said panel for hiring or otherwise within three days of the receipt of the communication. The decision about hiring or otherwise of the building can be taken by at least 2/3rd of the total strength of the Committee.

7. This committee hereinafter referred to as Hiring Committee shall comprise of the following:-

- a) Secretary, MORA Chairman
- b) Joint Secretary (Hajj) Member
- c) Joint Secretary (Admn.) Member
- d) DS (HP) Member
- e) DS (HA) Member
- f) Vice President

NESPAK Islamabad or his nominee. Member

g) Chief Architect

(Architect Division NESPAK Islamabad) or his nominee. Member

h) Nominee of Pakistan Engineering Council, IBD Member

i) Chairman Pakistan Hajj Organizers Federation. Member

j) President Islamabad Chamber of Commerce and Industry or his nominee
Member

k) A.O. (H-II) Member

l) SO (HP-I) Convener

8. It would be pertinent to add here that verification of the particulars/details of the buildings as recommended by the spotting committee shall be physically inspected/verified by JS (Hajj) along with one member fully conversant with the geography of Makkah/Mina for which they shall make periodical visits to Saudi Arabia (as and when required by the Committee) and ascertain the suitability of such buildings both in terms of distance, quality and reasonability of rent:

9. There shall be a Hiring Review Committee comprising of the following:-

1. Minister for Religious Affairs Chairman

2. Minister of State for Religious Affairs Vice Chairman

3. Chairman, Senate Standing Committee For Religious Affairs Member

4. Chairman, National Assembly Standing Committee for Religious Affairs
Member

5. Director Hajj, Makkah Convener

The said Committee shall visit Saudi Arabia for maximum two times on needs basis and submit its report containing the suitability of buildings or otherwise to the Prime Minister. The expenditures in respect of members mentioned at 3 and 4 shall be borne by respective Secretariats.

10. Negotiations shall be made directly with the owners of the buildings and any contact with unauthorized dealers should be strictly avoided as this illegal practice gives a bad name to the Mission and secondly tends to inflate the rent of the building which obviously contains commission of the intermeddler.

11. The prime objective of hiring buildings at the juncture is no doubt advantageous in as much as Rent would be at its lowest level and other Muslim countries may not be in the Market.

12. The competent authority has therefore desired that the process of hiring of buildings in Makkah Mukarramah and Madinah Munawwarah and Makatib in old Mina may be initiated forthwith and strictly in the light of instructions/guidelines as contained in the foregoing lines. We expect that your first installment of proposed buildings would start pouring in within a week's time without fail."

The above referred policy document prior to the Hajj Policy, 2010 is a key document which has been used by the prosecution to built up the entire case and from the referred terms and conditions

of the guidelines given above, it is clearly understandable that the rates or buildings in Makkah Mukarrama, distance, conditions of the buildings and facilities of buildings have been categorized however, the laid down procedure provides three sets of committees including a Spotting Committee, Hiring Committee and Hiring Review Committee by Members of Parliament.

13. The prosecution opened his case before this Court through the learned SPP, that the said guidelines have been violated and they have not been followed in letter and spirit. I have asked learned SPP/FIA to provide procedure as to how the Hiring Committee proceeded in the matter while hiring any building, he stated that a Spotting Committee initially spots the building which is recommended to the Hiring Committee in Pakistan and Hiring Committee while sitting in Pakistan approves the hiring of any building whereby this Court is surprised to see that the entire case has been built up against the appellants in backdrop of violation of terms and conditions of Hajj Policy, 2010 which was referred by the prosecution as Exh.PW.13/A1-32 dated 14.05.2010 which was implemented in June 2010 and prior to the promulgation of said Hajj Policy the competent authority of Ministry of Religious Affairs issued a letter dated 04.02.2010 which means that Secretary Ministry of Religious Affairs was well conversant with the process and procedure while sitting in Pakistan, being the Chairman of the Hiring Committee, who has been produced by the prosecution as PW-15, therefore, in order to overview the prosecution case, I have to attend the evidence of PW-13 Muhammad Khursheed Anwar Shah, Dy. Secretary Hajj Policy (from the year 2006 to 2011) and the said witness, on the direction of FIA, has submitted the following record in Court:-

Exh.PW-13/A1-32	Hajj Policy 2010 dated 14.05.2010
Exh.PW13/B1-32	Policy Guidelines dated 04.02.2010
Exh.PW-13/C1-2	Notification dated 03.09.2009 of Transfer and Posting of Rao Shakeel Ahmad as Director General Hajj, Jeddah, Saudi Arabia and Notification dated 29.09.2010 Transfer of Rao Shakeel Ahmad to Establishment Division
Exh.PW-13/D1-5	Copies of Advertisement of Hiring of Accommodation along with Urdu News and Arabic News (Dated 05.05.2010)
Exh.PW-13/E1-28	Details of 556 Buildings (Makkah Mukarmma) offered in response to advertisement by different persons
Exh.PW-13/F1-13	List of 87 buildings Hired by Rao Shakeel Ahmad as DG Hajj in Makkah Mukarma along with details of distance, capacity, etc.
Exh.PW-13/G1-10	Minutes of Meeting of Hiring of Buildings by Rao Shakeel Ahmad in Makkah Mukarma
Exh.PW-13/H1-339	Copies of Agreements of Buildings hired in Makkah Mukarma by DG Hajj Rao Shakeel Ahmad and cheques issued by him
Exh.PW-13/J1-3	Brief regarding Nukhba-I, II and Burjul Haram given by Samiullah Assistant Accounts Officer along with Arabic documents
Exh.PW-13/K1-6	List of 129 buildings hired by Acting DG Hajj Syed Sultan Ali Shah
Exh.PW-13/L1-9	Comparative Statement (Rent wise) of hired buildings by former DG Hajj Rao Shakeel Ahmad and acting DG Hajj Syed Sultan Ali Shah with photocopies of cheques issue for second installment of 8 buildings
Exh.PW-13/M	Comparative statement of buildings hired through owners/Mustajars/agents by former DG Hajj Rao Shakeel Ahmad with buildings hired through acting DG Hajj in same category

Exh.PW-13/N	Advertisement for hiring of buildings in Madina Munawwara
Exh.PW-13/P	Statement of offers received for accommodation for Hajj 2010 Madina Munawwara
Exh.PW-13/Q1-20	Photocopies of agreements signed by Rao Shakeel Ahmad former DG Hajj with three accommodation groups for Madina Munawwara namely Messrs Arab Resort Area Company, Messrs Manazli Company and Messrs Manzil Al-Mukhtair Trading Establishment @ 500 S.R. per Haj Pilgrim
Exh.PW-13/R1-3	Photocopy of letter of Account Transfer Details issued by Bank Al-Jazirah (Dated 21.09.2010)
Exh.PW-13/S1-2	Special Offer dated 09.06.2010 by Messrs Saeed Makkey Hotel Group and Al-Tawan Group

All the above referred documents when produced by PW-13 before the learned trial Court, objection was raised regarding admissibility of the documents tendered in the evidence as all these documents referred above play a key role in the entire trial. I have gone through each and every detail of the documents received in the trial. Majority of the documents are in Arabic language, some are produced along with translation and majority of the documents are photocopies or manually prepared computer generated lists, therefore, it is necessary to discuss the status of these documents. I have also gone through the objections raised by the learned counsel during the trial regarding the admissibility of documents but it has been observed from the record of learned trial court that all these objections regarding admissibility of the documents have not been decided though at the time of production of documents, objections were raised, however, the Court, regarding objections, observed:--

"Order: The objections will be decided at the time of final judgment"

Whereas, I have gone through the judgment of learned trial Court and I could not see any findings in this regard therefore, it is necessary to discuss the status of these documents at the very first instance.

14. The record tendered by the prosecution in the learned trial Court comprising of following kind of documents:--

- i. Copies of agreements for hiring of buildings in Makkah Mukarama and Madina Munawwara of 87 buildings referred in Arabic and English.
- ii. Arabic documents, reports, translations.
- iii. Bank record of Enjaz Bank Saudi Arabia, bank deposit slips.
- iv. Correspondence between Saudi Government and officials with Pakistani authorities.
- v. Copies of cheques/banking instruments.
- vi. Computerized generated lists of 87 buildings, 129 buildings, comparative list of buildings comprising of details with rates.
- vii. Computer forensic report prepared on the basis of data and flash drive and one CD referred as EX.PW8/A1-93 which includes forensic analysis of Hajj, 2010 arrangements and documentations of Hajj, 2010.

The above referred documents if put in parameters referred in Articles 72, 73, 74, 75, 78, 79 and 80 of the Qanun-e-Shahadat Order, 1984, whereby the, basic mode to prove the documents under

the Qanun-e-Shahadat Order, 1984 are as under:--

- i. By calling a person who signed or wrote the document.
- ii. By calling a person in whose presence the document was signed or written.
- iii. By calling a hand writing expert.
- iv. By calling a person acquainted with the hand writing of person by whom the document is placed to be signed or written.
- v. By comparing in Court the signature or writing with some admitted signatures or writing.
- vi. By proof of admission by the person, who is alleged to have signed or written the document that he signed or wrote it.

These basic requirements have to be considered by the Court while admitting document even the concept of primary and secondary evidence is a key factor while deciding the admissibility of the document but in present case the documents which referred in Arabic language are photocopies which are not admissible by any stretch of imagination as they are in foreign language and no translation has been provided with majority of the documents, even some of the documents in Arabic also contain English version along with the Arabic text but law remains the same in terms of Article 73 of the Qanun-e-Shahadat Order, 1984, primary evidence means original document which has been produced for the inspection of the Court whereas Exh.PW13/H1-339 called as agreements of buildings are photocopies along with its annexure, which are in Arabic and copies of the cheques, all these documents on which prosecution has put reliance, are without the legitimate translation, therefore, the contents could not be read in totality, even each and every agreement executed between the Consulate General of Islamic Republic of Pakistan Hajj Mission and landlord/lessor for buildings, if seen, it reveals that the English portion does not fulfill the criteria required under the law whereas content of one of the agreement has been produced as under:--

"WHEREAS the First Party is in possession of the building located at_____ (building name) made up of G + _____ floor, _____ rooms and bears a valid Tasreeh No._____ dated/ 14 H. (Copy attached) having accommodation capacity according to Tasreeh/Tamteer for_____ number of Pilgrims. The Tamteer of the building was carried out on. Which is signed by both the parties, and is to be read as integral part of this agreement. The second Party agrees to hire the building at a total rent of SR._____; @ per person rent of SR_____; subject to further deduction in case the building as hired does not accommodate to the pre-agreed capacity of Pilgrims, for accommodating its Pilgrims for the current Hajj seasons, which commences from 15/10/1431 H. and ceases with the ending of the Hajj season on 20/01/1431 H. In case the number of Hujjaj is less than Tasreeh on measurement, then lesser number will be accommodated, while in case the number exceeds the Tasreeh on measurement, the agreement is restricted to the number of Hujjaj mentioned in Tasreeh for the year 1431 and the same number will be accommodated, and paid.

Building name _____ location _____ holds_____ Number of Pilgrims. Rent for the current Hajj 1431 H. /2009 G. season is SR._____ only, which is inclusive of services. Both the parties have read, undertake and agree to all of the above terms and conditions of this contract and carry out all of their objections and affix their signature as below.

THE SECOND PARTY **THE FIRST PARTY."**

The above referred contents of English version of one of the agreements has been compared with each and every contract referred by the prosecution and surprisingly all agreements are in same manner, its English versions have not been filed even the documents could not be read for its

content purposes details are only provided in Arabic whereas, no official translation duly prescribed under the law has been provided before the learned trial Court nor any person acquainted with such kind of knowledge has been produced before the Court, who can confirm the details of the agreement.

15. In view of above, I am of the considered view that prosecution is under legal duty to prove the contents of documents in accordance with the principles of the Qanun-e-Shahadat Order, 1984 wherein it is necessary to submit the primary documents on record but only photocopies have been tendered in evidence by PW-13 and objection was raised during the trial which was not decided. As far as law is concerned, a document could not be exhibited and admitted on record unless same has not been proved through a primary mode or through a secondary mode, in case the primary evidence is not available but Investigation Officers have not taken any pain to look into the matter with this legal angle rather they are not aware of the scheme of Qanun-e-Shahadat Order, 1984 even no secondary evidence has been tendered whereas Article 74 provides the concept of certified copies which are comparable with original but no such effort has been made by the prosecution. It has been observed from record that majority of the documents are prepared from a copy of original record retained by some Saudi person/owner/Mustajir in Saudi Arabia which have been given to the Investigation Officer and they are not admissible as no effort was made to prove the correct copy by evidence as no one has stated before the Court nor sworn to of its being a true copy. Even for the sake of arguments, if we consider copy of lease agreement to be tendered in evidence, it is necessary to produce the author or signatory of the document whereas not a single owner/Mustajir, landlord or attorney of the buildings has been produced in evidence to prove the rates, details, capacity, nature, construction and distance of the buildings, all the required informations which are part of the agreements are blank except they were filled in Arabic text on the Arabic side. The prosecution has not produced 87 landlords of the buildings to prove the agreements on record, similarly 129 agreements of those buildings which were hired subsequent to report referred as Exh.PA of the parliamentary committee after removal of appellants Rao Shakeel Ahmed and Aftab-ul-Islam from their position, have also not been proved accordingly. All those documents referred as agreements in this case are inadmissible and could not be seen as part of evidence.

16. PW-13, Muhammad Khurshid Anwar Shah, who remained posted as Deputy Secretary Hajj Policy from 2006 to 2011 has produced number of documents referred above, whereas the law on this subject is clear as any document which is not original or primary could not be tendered in evidence and even without the author or the witnesses, contents of the same could not be proved as admissible. Reliance is placed upon 2005 PCr.LJ 882 [Quetta] Nazeer Ahmad Barach v. The State and another) wherein it is held that:--

"The documents produced in evidence by the prosecution except the report of the Handwriting Expert, and specimen signatures of the petitioner; unless admitted in writing before the trial Court by the petitioner within the meaning of Article 76(c) of Qanun-e-Shahadat Order, 1984 would not dispense with the requirement of the formal proof of the documents by primary evidence as provided by Articles 72 and 73 of the Order. Secondary evidence can be admitted only on one or more conditions laid down in Article 76 of Qanun-e-Shahadat Order having been satisfied by the party tendering such evidence and; secondary evidence cannot be admitted of the contents of document without the non-production of the original having first been accounted for as required by the above-mentioned Article. The reception of secondary evidence without objection by the party against whom it is intended or required to be used in evidence cannot ordinarily object to the admission of the such evidence at any subsequent stage, subject to provision of Article 162 of Qanun-e-Shahadat Order.

Perusal of the record of the case reveals that the documents tendered by the prosecution were received in evidence improperly without the production of their originals and the conditions pre-requisite for permitting secondary evidence were also wanting and mere consent or omission to object to the reception of inadmissible evidence cannot be treated as a valid and legal piece of evidence because such departure of the rule appears to have a substantial effect on the decision of the courts below, which if excluded might have resulted

in varying the decision, in view of the facts and circumstances of the case, and thus; the judgments impugned herein cannot sustain and; therefore, the other contentions of the parties' counsel are not attended to. The case-law cited by the petitioner's learned counsel are not relevant because of wrong reference."

Similarly it is also held in 1999 PCr.LJ 1955 (Alam Zaib v. The State) that:--

"It appears that despite clear directions original identification parade memo was not produced before the trial Court and the case was decided on the basis of the evidence already available on record. It may be observed here that in order to prove a document a particular mode has to be adopted under the law. Reference in this regard, may be made to Articles 73 to 76 of the Qanun-e-Shahadat Order, 1984 wherein it has been clearly provided that except in the cases covered by the Article 76 of the Qanun-e-Shahadat Order, 1984 all documents must be proved by primary evidence. Needless to point out that Article 73 of the Qanun-e-Shahadat Order, provides that primary evidence means document itself produced for the inspection of the Court. Thus, to my mind the learned Trial Court was not justified to take on record photo copy of the document in question and that too, without making a comparison with the original. Such causal approach is not appreciable.

Likewise, in the case 2004 PCr.LJ 371 (Muhammad Arshad Naseem v. The State) it has been held that:--

"8. We have given our anxious consideration to the respective contentions of the learned counsel for the parties and have also perused the available record with their assistance. Admittedly, the application wherein, the allegation regarding Zina was leveled against the complainant was not exhibited, at the trial whereas, legally, the person relying on a document is under obligation to prove the same. Article 72 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as "the Order") lays down that contents of documents may be proved either by primary or by secondary evidence whereas, Article 73 of "the Order" provides that 'primary evidence' means the document itself produced for inspection of the Court and it is the requirement of Article 75 of "the Order" that the document must be proved except in the cases in which secondary evidence may be given.

Having regard to the above provisions, it may be noted here that though documents not formally admitted in evidence and available on Court's record or elsewhere even, may, for the purpose of elucidation of certain facts, be looked into yet, the same, by no stretch of imagination, can be termed or regarded as "evidence" unless proved and exhibited, at the trial, in accordance with law. Further, since documents do not prove themselves and truth of the contents of the documents cannot be proved by merely producing the same for inspection of the Court within the purview of Article 2(c)(ii) of the Qanun-e-Shahadat Order, 1984, therefore, the document upon which is party places its reliance must, at first, be placed before the Court and then be got proved by calling a witness/witnesses. In this view, we are fortified by the following reported judgments:--

(i) Abdul Qayyum v. Muhammad Rafique 2001 SCMR 1651; (ii) Muhammad Azam v. Muhammad Iqbal and another PLD 1984 SC 192; (iii) Fazal Muhammad v. Mst. Chohara and others 1992 SCMR 2182; (iv) Bishwanath v. Sachhidananad AIR 1971 SC 1949; (v) Om Prakash v. Unit Trust of India and others AIR 1983 Bom. 1; and (vi) Rajwati Devi v. Joint Director Consolidation, Government of Bihar, Patna and others AIR 1989 Patna 66.

Thus, the application in question, a Photostat copy whereof only as per record, was produced before the Magistrate at inquiry stage could not have formed basis for conviction of the appellant."

Similar view has also been taken in 2015 YLR 2214 (Balochistan) (The State v. Muhammad Kaleem Bhatti) wherein it is held that:--

"9. It appears that at the trial, a noval procedure was adopted by the trial Judge. The

documentary evidence from the side of the defence i.e. Ex.D/1 to Ex.D/69 had been taken on record, either during the suggestion to the prosecution witnesses, or during the statement of the respondent under section 342, Cr.P.C. The documents Ex.D/1 to Ex.D/69 are photocopies and without adhering to the provision of Article 76 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred as to "the Order, 1984), the said documents were taken on record. The alleged documentary evidence pertain to the official record of DCO/DC Office, Quetta, but it had not been authenticated by calling the representative of the concerned department. Moreover, while bringing the aforesaid documentary evidence on record, no opportunity of cross-examination was provided to the prosecution to challenge the authenticity of the said documents which is in clear violation of Article 78 of the Order, 1984. The contents of the documents are required to be proved through primary and secondary evidence, as provided under Article 72 of the Order, 1984. The contents of the documents can be provided through the secondary evidence, if the conditions mentioned under Article 76 of the Order, 1984 are available. Reference in this context can be placed to the judgments reported in 2005 SCMR 152 and 2009 PCr.LJ 619. The production of the documents and proof of documents are two different subjects. Documents could be produced in evidence subject to proof as required under Article 78 of the Order, 1984, which reads as under:--

"78. Proof signature and handwriting of person alleged to have signed or written document produced.--If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting."

10. The aforesaid provision provides that document can be proved by calling such person, in whose presence same were written and by proof of admission by the person who was alleged to have signed or written documents in question.

11. Besides, Article 75 of the Order, 1984 provides proof of documents by primary evidence while Article 76 of the Order, 1984 provides that secondary evidence might be given, if existence or contents of a document was not available. Secondary evidence cannot be admitted in evidence except on completion of condition laid down in Article 76 of the Order, 1984, as held in 2005 PCr.LJ 882."

In view of the above referred authoritative judgments of different higher Courts, it can safely be concluded that entire record produced by the prosecution has not been tendered in accordance with Qanun-e-Shahadat Order, 1984, all those documents which were tendered in evidence and admitted as exhibits for the purposes of conviction are not admitted in accordance with law, therefore, my view is as follows:--

- a) The documents produced by the prosecution during the course of trial in order to prove the accusation have improperly been admitted in evidence for want of original documents which were not produced in evidence.
- b) No reliance for the purposes of conviction can be placed on photostat copies of the documents, on the basis of which appellants were convicted and found guilty as the same are not admissible as not validly tendered in evidence.
- c) The documents whose contents have not been proved by way of its author, executor and witnesses of contents and executions, are not admissible.
- d) Foreign documents without legal translation and attestation from High Commission, Embassy of Saudi Arabia and Ministry of Foreign Affairs, are not admissible.

Therefore, entire documentary evidence is inadmissible and cannot be relied upon for the purpose of conviction.

16(sic.) As far as other documents are concerned, the same contain official correspondence of

Government authorities of Pakistan whereas, officials have not been produced who had signed the documents or who are custodians of those records in their official capacity. The precise allegations against Rao Sahkeel Ahmed and Aftab-ul-Islam Raja are regarding hiring of 87 buildings for Hujjaj for Hajj 2010 which are as under:-

- 1) Acquiring of 87 buildings against exorbitant rates,
- 2) Misuse of authority,
- 3) Loss caused to public exchequer,
- 4) Benefit to the owners of the buildings, and
- 5) Personal gain.

The prosecution in order to prove the above referred charges has initially produced four witnesses to substantiate the case i.e. PW-1 Abdul Rahman put appearance on behalf of Maulana Muhammad Qasim, Chairman, Standing Committee, Religious Affairs, National Assembly Secretariat, Islamabad who has confirmed the signatures of Maulana Muhammad Qasim. PW-3 Pirzada Syed Imran Ali Shah (MNA) (member of Standing Committee on Religious Affairs and Member of Review Committee Islamabad) while appearing as witness stated before the Court that he along with Maulana Muhammad Qasim (MNA) Chairman, Syed Muhammad Saleh Shah (Senator), Dr. Khalid Mehmood Soomro (Senator) and Bilal Yaseen (MNA) visited Saudi Arabia with regard to inspection of Hajj arrangements for Hajj 2010. He further stated that prior to inspection by Review Committee, 87 buildings had already been hired by the committee headed by Ex-DG Hajj Rao Shakeel Ahmed appellant and majority of the buildings were not hired in accordance with the direction, especially the distance of 2000 meters from Haram Sharif and rates of each building. The said witness has also referred precise statement of the allegations including hiring of two buildings Nukhba-I and Nukhba-II which were engaged on the basis of 50% advance rent in violation of previous practices of 15% advance rent. PW-3 further alleged in his statement that S.R. 2,600,000/- were given as commissions to Ahmed Faiz, Building Supervisor, appointed by DG Hajj. During the course of cross-examination PW-3 admitted that all the payments were made through crossed cheques to the concerned owners and DG Hajj and Finance Officer had authority to sign the cheques. He also admitted before the Court that ministry of Hajj had affixed the ceiling of a Haji for residence @ 3400/3500 Saudi Riyals, the said witness is credible to justify his report Exh.PA but he admits before the Court that he does not reveal the names of the owners of the buildings on whose statements he prepared the report even the said witness has not summoned Ahmed Faiz nor inspected the official file. PW-3 has not stated a single word against appellant Syed Hamid Saeed Kazmi and Aftab ul Islam in his report Exh.PA.

17. The other related witness of this transaction is PW-4 Bilal Yasin (MNA) Member Hiring Review, Committee, who almost stated the same facts but in addition to above referred evidence of PW-3, he stated that first building which was inspected by them was under construction and DG Hajj Rao Shakeel Ahmed appellant told him that a bond was executed by the owner of the building that the same be got completed before the arrival of Hujjaj. PW-4 also admitted before the Court that he is not aware of the details of owners of 87 buildings nor provided any particulars of the buildings mentioned in Para-11 of the report neither he can disclose the information and whereabouts of those people who had disclosed these informations to him. He is even not aware of the writer/author of the report Exh.PA. He also admitted before the Court that not a single word has been stated against Syed Hamid Saeed Kazmi appellant. The fourth witness regarding the said report is PW-21 Muhammad Saleh Shah (Senator) who while appearing before the Court stated that he was member of Hiring Review Committee and he identifies his signatures on Exh.PA as Exh.PA/1. He admitted before the Court that committee has not recorded statement of witnesses prior to completion of inquiry report Exh.PA even no statement of any owner or Mustajir of the building available in Saudi Arabia was recorded by them, he only stated that the entire inquiry was made orally/verbally and he does not remember the name of all those persons who were associated during the course of inquiry, however he admitted before the Court that no complaint was made against appellants Aftab-ul-Islam Raja and Syed Hamid Saeed Kazmi.

18. The above referred discussion clearly demonstrates the status of those four witnesses who have been produced by the prosecution in order to prove the contents of Exh.PA, which is the basic source of instant criminal case, are not tenable in the eyes of law and they have failed to prove anything against the appellants. I am of the considered view that two MNAs and two Senators of the Hiring Committee who visited Saudi Arabia during Hajj season in 2010, were not able to collect the information which is required to prove the instant criminal case. From the bare perusal of Exh.PA it can safely be assumed that 87 buildings were not hired in accordance with the guidelines or parameters of Hajj Policy, 2010 but the fact remains the same that all these buildings were hired prior to Hajj Policy, 2010 but the question raised before this Court is whether Exh.PA is an admissible document under the law to be treated as source document for the prosecution of appellants. In my humble view the author of Exh.PA has not recorded any witness nor received any document to substantiate the allegations referred in Exh.PA, therefore, the statement of all these four witnesses PW-1, PW-3, PW-4 and PW-21 can merely be considered as story of journey to Saudi Arabia and nothing more, whereas prosecution is under legal obligation to prove those allegations through confidence inspiring evidence against the appellants, even the author of Exh.PA has not been produced, therefore, it could not be appreciated in terms of the Qanun-e-Shahadat Order, 1984, when the author of a document has not been produced and even the persons who have signed the report have not admitted before the Court that they ever recorded statement of any of the witness or received any document during the course of their inquiry, Exh.PA, therefore the document Exh.PA has no legal worth in the eyes of law except to move the hierarchy of investigation agency, therefore, I will not consider Exh.PA as admissible in evidence unless the contents of the same have been corroborated by its author/signatories but at this stage entire report Exh.PA bears no legal meaning.

Acquiring and utilization of buildings in Saudi Arabia

19. As per charges framed by learned trial Court, the principal allegation against Rao Shakeel Ahmad appellant and Aftab-ul-Islam Raja, who are former D.G. Hajj and Joint Secretary Hajj Ministry of Religious Affairs, respectively, being Civil Servants, and public officials, is that they have hired 87 buildings in violation of Hajj Policy 2010, some of the buildings were not completed at the time of hiring and in majority of the cases they have paid advance amount contrary to previous practices, most of the hired buildings were substandard and when the hired buildings have been compared with the subsequent agreements of 129 buildings, it revealed that millions of Saudi Riyal have been paid in extra which caused a huge loss to State exchequer.

20. I have gone through each and every charge whereby charges Nos. 1 to 5, 7 and 9 are directly related to both these public officials, however the allegations, in strict sense, relate to violation of hiring guidelines and Hajj Policy. The prosecution, in order to prove these allegations, has produced 11 witnesses appeared as PW-13 Muhammad Khurshid Ahmad, PW-14 Syed Sultan Ali Shah (acting DG), PW-15 Agha Sarwar Raza Qazilbash (Secretary), PW-28 Umar Ali Khan Sherazi (Ambassador), PW-36 Umar Farooq Khokhar (D.D. Hajj), PW-42 Muhammad Samiullah (Assistant Accounts Officer), PW-43 Muhammad Aslam (Room Attendant), PW-45 Shakir Hussain (Arabic Desk), PW-48 Muhammad Farooq (Investor-Private Person) PW-51 Naimat Ali (Investigation Officer) and PW-52 Khalid Rasool (Investigation Officer). The star witness in this case is PW-15 Agha Sarwar Raza Qazilbash who remained posted as Secretary Religious Affairs from 07.03.2009 till 20.12.2010 in Ministry of Religious Affairs, Government of Pakistan. He initially prepared the draft of Hajj Policy, 2010, allocation of Hajj quota for the Hajj group organizers, and advised the government in respect of hiring of the buildings for Hujjaj Karaam. He stated in his evidence that accused Rao Shakeel Ahmad, D.G. Hajj in Jeddah, was given a task to hire buildings for 75,000 Hujjaj Karaam and during the said process Hiring Review Committee, approved by the cabinet, was sent to Saudi Arabia for inspection purposes whereby the said committee was responsible to inspect the quality and quantity of the buildings and to confirm as to whether the buildings were hired in accordance with the policy laid down by the government. PW-15 further stated before the Court that the parameters approved by the cabinet for 2010 Hajj include the maximum ceiling per Haji to be fixed as SR-3600/- and distance of each building to be 2,000 meters from Haram Shareef. He further stated before the Court that Hiring Review Committee was comprising of Moulana Qasim (MNA), Senator Saleh Shah, Bilal Yasin (MNA),

Pirzada Syed Imran Shah (MNA) and Dr. Khalid Soomro (Senator), who have submitted their report Exh.PA whereby he initiated the summary to the Prime Minister of Pakistan to recall D.G. Hajj, Rao Shakeel Ahmad from Saudi Arabia.

21. PW-15, Agha Sarwar Raza Qazilbash further stated before the Court that Rao Shakeel Ahmad procured the accommodation for 29,000 Hujjaj Karaam but capacity of 23,000 Hujjaj Karaam was approved by Moassassa, South Asia, and the remaining 52,000 Hujjaj Karaam were not accommodated, therefore, he left Pakistan to oversee the hiring of buildings and visited Saudi Arabia on 29 and 30 September 2010, but other members of review committee failed to reach Saudi Arabia whereby Syed Sultan Ali Shah, Director Hajj Camp, was required to act as D.G. Hajj at Jeddah and Mr. Zaidi, Director Hajj Camp Lahore, was also deputed in the said team headed by him and after taking oath from the newly hired officials for hiring of buildings, published an advertisement in local newspaper, PW-15 further stated before the Court that four (4) buildings namely Nukhba-I, Nukhba-II Burj-ul-Harram and 4-Towers Building owned by Mr. Hussain Bihari and whose Mustajjar was Faiz-ul-Harsi, were situated within the radius of 1500 meters from Harram Shareef whereas Muhammad Farooq was the agent of these buildings and he contacted the agent for handing over of possession of these buildings but the agent has refused to hand over the Possession of buildings on the ground that extra advance money to be paid in capacity of accommodation, as a result of said dispute, possession could not be taken over whereas the advance of 6.2 million Saudi Riyal was already paid by Rao Shakeel Ahmad, Ex-D.G. Hajj, which was 50% of the principal amount whereas the Saudi Government has fixed the rules of 30% Advance at the time of hiring of building and 30% at the time of arrival of Hujjaj Karaam but the said practice had been violated in this case by Rao Shakeel Ahmed, accused. PW-15 further stated before the Court that they have recovered 5.2 million Saudi Riyal from Muhammad Farooq (agent) and remaining 1.3 million Saudi Riyal was to be recovered till his departure from Saudi Arabia.

22. PW-15 also stated before the Court that Rao Shakeel Ahmed accused, against the building Burj-ul-Harram, has paid 3.4 million Saudi Riyal in advance which is 10% and due to the said reason he could not get possession of the building. 4-Towers Building was under construction, Rao Shakeel Ahmad and his committee has hired the buildings @ 3,500 Saudi Riyal per Haji and due to negotiations of PW.15 the rates were reduced from 3,500 to 3,300 Saudi Riyal per Haji. He further stated that after his negotiations, the transport issue was also resolved after payment of 65 Saudi Riyal per Haji and he hired 129 buildings with the help of his committee and he negotiated on 11 buildings and due to reduction in rates, saved eight crore rupees. During the course of cross-examination he admitted before the Court that advance of 7 out of 11 buildings was not paid by Rao Shakeel Ahmad and the Mustajjar handed over a cheque as guarantee of 5 million Saudi Riyal to Hajj Mission if he failed to complete the construction within stipulated period, resultantly Hajj Mission would be able to get 5 million Saudi Riyal as fine against the under construction building, he also admitted before the Court that 112 out of 129 buildings hired by PW-15 were beyond the limits of 3,000 meters from Harram Shareef, hence, it has been concluded that 2nd committee has also violated Hajj Policy and they are also liable for legal action but no such action has been taken against them by the FIA authorities.

23. From the perusal of evidence referred above it has been proved that the buildings were hired in two phases, initially appellant Rao Shakeel Ahmad hired 87 buildings and during the second phase 129 buildings were hired by PW-15 but the most important factor comes on record that Acting D.G. Hajj under the supervision of PW-15 (Secretary, Ministry of Religious Affairs) has not followed the Hajj Policy 2010 in letter and spirit, he on the other hand conceded before the Court that 112 buildings hired by him were beyond the distance of 3,000 meters from Harram Pak. In addition, PW-15 failed to utter even a single word through which any comparison can be made or any saving can be proved. He himself admitted the violations of Hajj Policy but volunteered that he has got permission from Ministry of Religious Affairs for relaxation to hire any building beyond 3,000 meters of distance from Harram Shareef, however he could not produce any such document on record, even otherwise the Hajj Policy was framed by the cabinet, therefore, Ministry of Religious Affairs has no role to give any permission for the rectification of Hajj Policy under the Rules of Business, 1973.

24. PW-14 Syed Sultan Ali Shah, who was appointed as Acting DG Hajj at Jeddah remained in Saudi Arabia after the removal of Rao Shakeel Ahmad appellant, he was sent to Jeddah before start of Hajj operations. He stated before the Court that he was appointed as acting DG Hajj along with Assistant Accounts Officer for hiring of the buildings for remaining 50,000 Hujjaj Karaam under the supervision of PW-15 Agha Sarwar Raza Qazilbash, he stated before the Court that he along with other members hired the buildings along with transport facility at minimum rate whereby the rent was assessed at the rate of Saudi Riyal 2,250/- per person comparatively low to the previous committee's rate of Saudi Riyal 3,493/- per person. He further stated before the Court that 11 buildings were already hired by the previous D.G. Hajj, Rao Shakeel Ahmad and PW-14 consulted with owners/Mustajars and saved Saudi Riyal 325,000/- by reducing the high rates. During the course of cross-examination he admitted before the Court that the buildings he hired are beyond 2,000 meters from Haram Pak and no buildings, at that time, were available within 2000 meters range. He further admitted before the Court that four buildings hired by the previous Hiring Committee were not handed over to the pilgrims as the owners/Mustajars refused to deliver the possession and in this regard legal proceedings are pending in Saudi Arabia. He further admitted before the Court that other Hujjaj Karaam were settled in buildings of Phase-1 and Samiullah PW -42 was the signatory of the agreements of Phase-1. He also admits before the Court that he issued crossed-cheques to the owners/Mustajars and he and PW-15 could not become the signatory of any of the lease agreement due to the fact that both were on Hajj Visa. He also admitted before the Court that Samiullah PW-42 was a member of Hiring Committee as Secretary but he has not been arrayed as accused in this case. The evidence of PW-14 being a star witness is relevant to entire controversy, the said witness has given certain reasons which are apparent on record through which one can understand the situation in Makkah Mukarima but the fact remains the same that PW 14 is not a signatory of any document, hence, his testimony has been considered as hearsay, especially when he admitted before the Court that he was on Hajj Visa along with PW-15 the Secretary Agha Sarwar Raza Qazilbash. Even both these witnesses have not signed any document nor produced any documentary evidence through which one can assume their presence to verify the facts narrated by them. The difference of rent, savings of Saudi Riyals and comparison of buildings could not be assumed on the basis of statement of PW-14 and PW-15 as they have not produced any documentary proof nor even prosecution has produced any respondent witness in this regard.

25. The other star witness referred by the prosecution is PW-36 Mr. Umar Farooq Khokhar, Deputy Director Hajj Madina Munawwara, who assumed the charge on 28.05.2010 and remained posted in Madina Munawwara during the Hajj 2010. He stated before the Court that prior to assumption of his charge, the hiring process was already initiated whereby different groups had submitted their applications and he also stated that majority of the groups were not registered with Moassassa. He has produced a letter Exh.PW-36/A and confirmed his signature. He stated before the Court that Rao Shakeel Ahmad told him that Arq Group was providing 100% buildings in central area (Markizia), and Manazli Group was providing 50% of buildings in the Markizia, and their performance is A-Plus however he admitted before the Court that the rates of rent were not discussed. He stated before the Court that minutes of the Hiring Committee Exh.PW-36/B has been signed by him on 02.06.2010 and he produced documents Exh.PW-36/C1-37. During the course of cross-examination he admitted before the Court that Saudi Riyal 500/- rate was fixed per head in the advertisement. He also admitted before the Court that he did not make any complaint in writing to the high ups, however he has been confronted with the statement as to whether he referred any oral complaint but the said fact has not been recorded in his statement, confronted as Exh.PW-36/DA. He further admits before the Court that he did not make any complaint to Secretary Ministry of Religious Affairs regarding the hiring process, however he admitted that the buildings of the Arq. Group are situated adjacent to Masjid-e-Nabvi and all the Hujjaj Karaam are accommodated by this group in Markizia and in last, he admitted that the ceiling for Madina Munawwara was fixed @ S.R. 500 per Haji in Hajj Policy 2010. In view of above answers in the statement of witness, it could safely be concluded that the said witness has not alleged any illegality on the part of appellants, even the terms of Hajj Policy have been complied as stated by the said witness.

26. PW-42, Muhammad Samiullah, Assistant Accounts Officer (AAO) appointed in the

Directorate General of Jeddah, who issued cheques after the recommendation of Hiring Committee comprising of Aftab-ul-Islam Raja and Rao Shakeel Ahmad appellants, he sent the cheques to PW-45 Mr. Shakir (Arabic Desk) for onward delivery to the owners/Mustajars of the buildings. He stated before the Court that agreements of three buildings namely Nukhba-I, Nukhba-II and Burj-ul-Haram were cancelled at the instructions of PW-14 Syed Sultan Ali Shah acting DG Hajj, whereby the payment of Saudi Riyal 10,114,200/- was made. Amount of S.R.520,000/- was returned and the remaining amount was outstanding. He further stated before the Court that one building with 4-Towers was hired by the Joint Hiring Committee during the tenure of Rao Shakeel Ahmad appellant @S.R.3500/- per Haji for capacity of 5,000 Hujjaj Karaam, whereby the same building was hired by the acting DG Hajj, PW-14 and Secretary Ministry of Religious Affairs PW-15 @ S.R.3455/- per Haji. He also admitted before the Court that Saudi government, Ministry of Religious Affairs Saudia directed the Mustajars of these buildings to return the amount to Government of Pakistan, whereby the owners/Mustajars of Nukhba-I and Nukhba-II returned the amount of S.R. 52,00,000/- out of S.R. 65,07,000/-. The owners/Mustajars, despite admitting in their undertakings to payback the remaining amount, have not returned the same till now. He further stated before the Court that Rao Shakeel Ahmad appellant sent cheque in Aljazira Bank for encashment in order to send the amount to Pakistan through Riaz Ahmad (Cashier), Abdul Rashid (Messenger), Muhammad Aslam (Cashier) and Yasin (Driver). The amount was sent through Enjaz Bank in Pakistan, whereby Riaz Ahmad (Messenger) sent S.R.62,000/-, Abdul Rashid (Messenger) sent S.R. 88,000/- plus S.R. 10,000/-, Muhammad Aslam (Cashier) S.R. 10,000/- and Yasin (Driver) sent S.R. 6,000/- and the total amount sent to Pakistan was S.R. 1,76,000/-. He further stated before the Court that Muhammad Mushtaq (Steno-typist) informed him that S.R.25,000/- was also sent by Rao Shakeel Ahmad to his relatives in Pakistan. The witness has also produced the receipt Mark-PW-1.2/1-10 which was already placed on record and same has no evidentiary value in the eyes of law. He further admitted before the Court that acting DG Hajj PW-14 and Director Hajj were on seasonal Hajj Visa and they were not eligible for aqama hence they could not sign any document, whereas PW-42 is the only authority in Makkah and Jeddah having aqama, therefore, he signed the agreements as acting DG Hajj. He admitted before the Court that owners/Mustajars have given their undertakings for the process of registration, 10 hired buildings were beyond the limits of 2,000 meters from Haram Pak. He also stated before the Court that buildings Nos.4012 to 4015 were in tower shape and the same were under construction, however, those were completed prior to arrival of Hujjaj Karaam and 5,500 Hujjaj Karaam were accommodated in these buildings. He further stated that 53 out of 81 buildings were having the capacity of less than 200 Hujjaj Karaam and the said buildings are not in accordance with the guidelines of Hajj Policy 2010. He further stated that the appellants have paid the amount of more than 30% to the owners/Mustajars of the 11 buildings in contravention of the guidelines and rules whereas 50% payment was made to owners/Mustajars of Nukhba-I and Nukhba-II while the owner/Mustajar of Burj-ul-Haram was approximately paid 30%, all these practices are inconsistent with Hajj Policy 2010. PW-42 has handed over a letter (Exh.PW-42/A/1-17) comprising of all these details to the FIA, whereas the appellants have raised objection on the submission of the said documents. However, trial Court has not decided the same and left it undecided. In order to decide the veracity of Exh.PW-42/A1-17, I have gone through each and every document in detail whereas during the examination of all these documents it has been revealed that the entire record is as follows:-

- i. Copy of personal file of Mr. Ahmad Fiaz and Muhammad Shafi
- ii. Letter regarding compulsory due
- iii. Letter regarding total 212 hired buildings along with its rent and accommodation charges at Makkah Mukarma by ex-DG Hajj
- iv. Delegation visit for Hajj 2009
- v. Letter by ADG regarding application by Al-Amir Bangar bin Khalid
- vi. Ministry letter dated 03.11.2010 regarding application by Al-Amir Bangar bin Khalid

- vii. Correspondence of ministry for hiring of accommodation for Hajj 2010
- viii. Copy of personal file of ex-DG
- ix. Copies relating to hiring of transport for Hujjaj Karaam (127 pages)
- x. Files relating to hiring of 212 buildings at Makkah Mukarma
- xi. Copy of personal file of Mr. Muhammad Usman Najdi, Legal Consultant.

It has been observed from the perusal of above mentioned documents that all these documents have been received and considered by the trial Court in violation of Qanun-e-Shahadat Order, 1984, on the following reasons:-

- a) All those documents are photocopies
- b) Majority of the documents are in Arabic and not translated from any official translator
- c) Documents have not been attested in accordance with the provisions of Qanun-e-Shahadat Order, 1984
- d) Majority of the documents are from foreign jurisdiction which were not attested, verified through Saudi Government or Ministry of Foreign Affairs rather in order to fulfill the requirement, one stamp of green colour of Consulate General of Pakistan in Jeddah was embossed on each document, which is not in accordance with law.
- e) Official record keeper or author of documents have not been produced and no witness has been produced who can verify the contents of any documents of the hired buildings especially the owners/Mustajars of the buildings or their witnesses of agreements have not been produced to prove the contents and execution of the documents.
- f) PW-42 admits that the original record of Exh.PW-42/A/1-70 is not available in the Court and there is no certificate on record through which it can be stated that the record is copy of the original.

In a nutshell, all the documents tendered by the PW-42 are inadmissible and could not be taken into consideration for any purposes as these documents not qualify the test of primary as well as secondary evidence under Qanun-e-Shahadat Order, 1984.

27. PW-42 was cross-examined by the appellant whereby he admitted that it is not his job to measure the distance in between Haram Pak and the hired buildings nor he has any concern regarding the capacity and quality of the buildings. He even did not measure the distance between Haram Pak and the buildings. He also admitted before the Court that at the time of execution of contract of lease, a minimum 30% has to be paid or otherwise a bank guarantee of the amount in local bank of Saudi Arabia has to be furnished in favour of owners/Mustajars and the bank guarantee can only be issued against a hard cash. He also admitted before the Court that during the period of posting of Rao Shakeel Ahmad no bank guarantee for remaining amount was given to the owners by the Government of Pakistan and PW-42 is the co-signatory of Directorate Account with appellant Rao Shakeel Ahmad and all the cheques issued by the Hiring Committee were crossed-cheques and the amount given through crossed-cheques was transferred into the account of account holders/owners/Mustajars. PW-42 has also admitted before the Court that Rao Shakeel Ahmad has transferred the amount through Enjaz Bank in Pakistan which includes the salary, allowances and transfer grant of Rao Shakeel Ahmad, he further stated that the appellant has obtained loan of S.R.100,000/- from Aljazira Bank.

28. PW-42 has also admitted before the Court that owner Faaiz Ahmad Alharsi has given an undertaking to Hajj Mission that if he failed to complete the construction of hired buildings he would pay S.R. five million as fine and buildings Nos.4012 to 4015 were hired at the rate of

S.R.3,450/- per Haji without transport facility by the new Hiring Committee whereas the same buildings were hired by accused/appellant Rao Shakeel Ahmad at S.R.3,500/- per Haji with transport facility for 5,000 Hajis.

29. During the course of cross-examination PW-42 further admitted before the Court that owners/Mustajars of Nukhba-I and Nukhb-II have issued undertakings Exh.PW-42/DA which were signed by PW-42 and the matter regarding Burjul Haram building was also taken up with Saudi Government whereby the Saudi Government has decided that owner/Mustajar of Burjul Haram was bound to repay the entire amount to the Hajj Mission. He further admitted before the Court that appellant Rao Shakeel Ahmad had made correspondence with Government of Pakistan in respect of guidelines regarding hiring of buildings which were only instructions and guidelines.

30. Keeping in view the testimony of PW-42, I am of the view that this star witness has not uttered anything against the appellants rather the documentary evidence submitted by him has been declared inadmissible, however he has acknowledged the nature of his job which does not include the verification of buildings, quality, quantity and distance of the buildings from Harram Pak, therefore, his entire testimony is irrelevant/hearsay evidence which could not be verified through any independent source.

31. PW-45 Shakir Hussain, Messenger Arabic Desk has also been produced by the prosecution, who was working as Messenger in the Hajj Mission Makkah Mukarma for 6 years, and was appointed with Khudamul Hujjaj in Makkah Mukarma and Madina Munawwara, but later on he was posted at Arabic Desk and his official duty relates to correspondence in between Hujjaj Karaam, Mualmin Makatib and Moassassa South Asia. He stated before the Court that he was not summoned to perform his duty in the process of hiring of buildings but only to deliver the cheques to the owners/Mustajars and he stops the delivery of the cheques if any deficiency is observed in the papers. He has produced Exh.PW-45/1-9, a list of hired buildings at Makkah Mukarma which has no evidentiary value in the eyes of law and the same does not qualify the criteria discussed above in context of Qanun-e-Shahadat Order 1984, however he stated the same details regarding Nukhba-I, Nukhba-II and Burjul Haram and almost stated the same details of rate of hired buildings per Haji i.e., S.R.3600/-, however during the course of cross-examination he admitted that the record was not available on the basis of which he has prepared the list. He admitted before the Court that all the cheques issued in the names of owners/Mustajars, were only payable to payee and he has not witnessed any agreement nor has any duty or role in the process of hiring of buildings and stated that the case for recovery of amount paid to the owners of Burjul Haram was filed in the Court of Governor, Saudi Arabia and the same is pending. In view of above referred statement, the status of PW-45 is just as of a Messenger who cannot extend any benefit to the prosecution, as he is not a witness of any event by virtue of his official position, he is just a delivery man conveying the cheques to the owners concerned which were encashed through their banks.

32. PW-48 Muhammad Farooq, Investor/private person was produced by the prosecution, who is running a hotel business in Saudi Arabia, he has given his details regarding hiring of different buildings by the appellants and also provided the details of Ahmad Faiz accused, whereby he, on the basis of some statements made by Ahmad Faiz, has leveled certain allegations against the appellants in which he stated before the Court that he has to pay an amount to highups including Allama Hamid Saeed Kazmi, Minister for Religious Affairs of Pakistan, Rao Shakeel Ahmad DG Hajj and Aftab-ul-Islam Raja accused, however, he stated before the Court that he refused to work with Ahmad Faiz and submitted details in his affidavit Exh.PW-48/A against Ahmad Faiz which was actually in style of a complaint and available-on record but the status of the said affidavit has not been decided by the trial Court although an objection was raised by the appellants that the said affidavit is not admissible in terms of Article 140 of Qanun-e-Shahadat Order, 1984, however, during the course of cross examination he admitted before the Court that he has no license to deal with the Hajj Mission for leasing out of buildings in Hajj 2010, he was not a marginal witness of any agreement nor he was party to any agreement, neither he has any relationship with Nukhba-I and Nukhba-II and all of the payments made by the Hajj Mission was through crossed cheques in the name of owners/Mustajars and he has no proof against Ahmad Faiz and he is not aware that Umar Ibrahim Hakmi, the owner of the building, has given an undertaking to the Hajj Mission for

return of entire amount of S.R.650,000/-. The status of PW-48 is of a private person, who has no relationship with the entire case and who is not a witness to any occurrence, event or document nor he has any relationship with the owners/Mustajars of the buildings, despite the fact that he himself was working as a businessman in Saudi Arabia for the last 22 years but could not succeed to get the buildings required by the Hajj Mission and in this context he has recorded his statement rather submitted affidavit Exh.PW-48/A, which has no evidentiary value in the eyes of law, therefore, his testimony is hereby discarded having no effect in this case.

33. Similarly, prosecution has produced Muhammad Aslam PW-43, Room Attendant, of the Pakistan Hajj Mission, who was working with Rao Shakeel Ahmad appellant, stated before the Court that it was his duty to measure the distance of hired buildings and during the said process Ahmad Faiz remained with him as representative of Syed Hamid Saeed Kazmi, Minister for Hajj. He further stated that appellant Rao Shakeel Ahmad directed him to measure the buildings in presence of Ahmad Faiz and no measurement was made regarding 43 out of 87 buildings. He has submitted the list Exh. PW-43/A/1-6 which has a similar status as of document and was prepared through computer data which in fact is a printout and the same was not verified and confirmed through any documentary evidence through which the details could be verified in any manner, therefore, the statement and evidence of PW-43 is discarded having no effect in the instant case.

34. In last, PW-51 Ch. Naimat Ali, Investigation Officer, was produced by the prosecution who stated the details of entire case before the Court, however, he has admitted the following facts that:-

- i. He did not visit Saudi Arabia in connection to investigation of this case.
- ii. All the recovery memos were prepared by him in Islamabad after receiving the documents from Ministry of Religious Affairs.
- iii. He did not receive any document from Hiring Review Committee of parliament while receiving the report Exh.PA nor he recorded any witness of Exh.PA.
- iv. Hajj Policy for the year 2010 was approved by the cabinet on 10.05.2010 and same was announced on 02/03.06.2010.
- v. Decision of the majority of Hiring Committee has to prevail regarding selection of buildings as per Hajj Policy 2010.
- vi. Hiring Review Committee was consisting of eight members who did not visit Saudi Arabia except 4 personnel.
- vii. He did not know as to when Hajj Policy 2010 was communicated to Hajj Mission in Saudi Arabia.
- viii. Exh.PW-13/D/1-32 dated 04.02.2010 contains the guidelines provided by Ministry of Religious Affairs to DG Hajj whereby DG Hajj was Chairman of Spotting Committee who can only select, inspect and determine the rent of the buildings.
- ix. As per policy, final approval regarding hiring of buildings can only be given by the panel constituted in Pakistan.
- x. The minimum capacity of each building was relaxed due to scarcity of buildings in vicinity of Haram Pak.
- xi. As per Hajj Policy 2010, maximum rent for accommodation in Makkah Mukarma was S.R. 3600/- per Haji and maximum distance was 2000 meters.

PW-51 relied upon the statement of Agha Sarwar Raza Qazilbash, Syed Sultan Ali Shah and Syed Khurshid Hassan Shah, Deputy Secretary, to form his opinion regarding the buildings hired at exorbitant rates. He admits that the procedure for hiring of buildings in Makkah Mukarma and

Madina Munawwara is different and it was settled that rate of 8 days cycle per Haji in Madina Munawwara is S.R. 500/- as referred in the advertisement. The offer for hiring of buildings from Manazil Company, Messrs Arq Group and Messrs Manazli al-Mukhtara in Madina Munawwara were directly submitted to Secretary Ministry of Hajj, Islamabad. He cannot enlighten the original document Exh.PA, not prepared the recovery memo of letter Exh.PA nor provided the information regarding the translated documents of 556 bidders for buildings in Makkah Mukarma. Furthermore, he has not investigated the matter regarding preparation of list as he has not visited Saudi Arabia, he is not aware of the original documents of Exh.PW-13/E/1-28, list of 87 buildings hired by Rao Shakeel Ahmad, he cannot understand the Arabic language whereas English portion Exh. PW-13/H1 is incomplete with blank columns, he admits that Exh.PW-13/H/102, 103, 104, 105, 109, 110, 111, 112, 116, 117, 119, 120, 121, 127, 128, 129, 167, 168, 169, 170, 173, 174, 178, 181, 182, 185, 186, 190, 191, 192, 196, 199, 200, 206, 207, 209, 210, 270, 277, 278, 279, 280, 281, 284, 285, 287, 290, 291, 293, 294, 295, 299, 300 and 303 are the documents in Arabic language and the same have not been translated and that he cannot interpret the contents of the documents as he does not know the Arabic language. He does not know the status of Sharai Wakeel and what is meant by Sharai Wakeel. He formed his opinion mentioned in the interim investigation report dated 03.01.2011 and on the basis of photocopies provided by Ministry of Religious Affairs which were prepared and signed in Saudi Arabia.

35. Adding more to the preceding position, he does not join all those individuals who are authors of the documents which are collected by him during the investigation. He admits that his information is not first hand. He admitted that there was nothing in the inquiry report of Abdul Jaleel Khan AD against Syed Hamid Saeed Kazmi appellant, nor a single word in the Hiring Review Committee Exh.PA, neither Syed Hamid Saeed Kazmi was nominated in the FIR with any role. No forged document is available on record which can be attributed to Syed Hamid Saeed Kazmi. He further admitted that Syed Hamid Saeed Kazmi has not misappropriated any amount, no official or private passport was issued to Ahmad Faiz on the recommendation of Syed Hamid Saeed Kazmi appellant. The recommendations for issuance of passport to Ahmad Faiz by the Minister were canceled/withdrawn vide dated 03.09.2010 by the DG Hajj Jeddah with the approval of Syed Hamid Saeed Kazmi appellant. There was no specific order of Syed Hamid Saeed Kazmi for appointment of Ahmad Faiz as Building Supervisor. He has also admitted before the Court that it is correctly recorded in the report under section 173, Cr.P.C. dated 18.01.2012 that no evidence is available regarding criminal proceeds to connect it with income or assets of Syed Hamid Saeed Kazmi appellant nor there is any evidence available on record regarding receipt of bribe/kickbacks by Syed Hamid Saeed Kazmi.

36. The above referred evidence/statement of PW-13 PW-14, PW-15, PW-28, PW-36, PW-42, PW-43, PW-45, PW-48, and PW-51 has brought me to an irresistible conclusion that the prosecution has miserably failed to discharge the onus for hiring, acquiring and utilization of buildings in Saudi Arabia on exorbitant rates, receiving of kickbacks or any violation of law, rather the element of mismanagement is apparent from record even it is also established from record that guidelines for hiring of buildings issued by Ministry of Religious Affairs and Hajj Policy 2010 conveyed on 2nd or 3rd June, 2010, have been violated but the fact remains the same that there are three committees constituted for the purpose of hiring of buildings which include a Spotting Committee, Hiring Committee and Hiring Review Committee but surprisingly all the three committees have not performed their duties in accordance with the terms of Hajj Policy 2010 rather the Hiring Committee which has been discussed in the initial portion of the judgment confers that the members of Hiring Committee under Hajj Policy 2010 are only sitting in Islamabad, Pakistan, wherefrom they can give their approval without having real inspection of the buildings even otherwise the technical members of the committee i.e. the engineers, who were required for the purposes of inspection, capacity, distance and rates have never been sent to Saudi Arabia for the said function and Secretary Ministry of Religious Affairs PW-15, who was the head of the Hiring Committee, has not implemented the terms and conditions of Hajj Policy 2010 as prescribed by the Rules of Business, 1973. In essence, the entire mechanism evolved by the Hajj Policy 2010 has been jeopardized, especially 87 buildings were hired on the recommendations and the consent of Ministry of Religious Affairs and on the basis of guidelines issued in February 2010, hence, it can safely be concluded that both the documents i.e. Guidelines for Hiring of Buildings 2010 and

Hajj Policy 2010, have not been applied by the head of the Ministry under the law and the decision of the cabinet can only be implemented by the Secretary under the Rules of Business, 1973, even the Secretary has not verified the contents on the basis of any technical evaluation before the Court rather based his point of view and opinion on the basis of hearsay evidence and testimonies, therefore, the charges of hiring of buildings in violation of any Hajj Policy or the guidelines, have not been substantiated even the entire documentary evidence collected by the prosecution is not admissible by any stretch of imagination and in last, the Investigation Officer admitted that they could not collect any evidence through which they can prove the alleged crime rather they have collected the documents while sitting in Pakistan without confirmation of authors, witnesses, executants and translators of the documents, which just proves their incompetency and lack of knowledge of Qanun-e-Shahadat Order, 1984.

Illegal Benefits

37. The other major charges against, appellants are transfer of money and accumulation of illegal assets, however in order to prove these charges, prosecution has produced the following witnesses:-

- i. Transfer of money (Rao Shakeel Ahmad).

PW-9, Muhammad Mushtaq (Steno)

PW-10, Muhammad Aslam (Assistant/Cashier)

PW-11, Muhammad Yasin (Driver)

PW-12, Abdur Rasheed (Naib Qasid)

PW-38, Riaz Ahmad (Naib Qasid)

PW-39, Muhammad Saleem Akhtar (Driver)

PW-42, Samiullah (Assistant Accounts Officer)

- ii. Assets (Rao Shakeel Ahmad)

PW-18, Muhammad Idrees Khan (Engr. FIA)

PW-22, Ch. Shakeel Ahmed (X.En)

PW-23, Azmat Javaid (Insp. FIA)

PW-24, Muhammad Sarwar (Insp. FIA)

The first portion of illegal benefits is related to Rao Shakeel Ahmad as referred by the prosecution through the witnesses whereby the charge of transfer of Money has been substantiated. In order to verify the said charge prosecution has produced PW-9 Muhammad Mushtaq (Stenographer) Ministry of Religious Affairs, who was posted during the Hajj Mission from 2008 to 2012 and stated before the Court that Rao Shakeel Ahmad DG Hajj appellant, had delivered S.R.5,000/- to his wife Mrs. Rukhsana Aleem in Pakistan via Enjaz Bank through him in May 2010, S.R.10,000/- in June 2010 and S.R.10,000/- for the third time, hence, total S.R.25,000/- were sent to Mrs. Rukhsana Aleem. He has also submitted his affidavit Exh.P.9/A which is under objection whereby he has not referred the details of the amounts in affidavit when the same was confronted to him. He also admits that the name of Mrs. Rukhsana Aleem was not referred in Exh.PW-9/DA. He has also admitted before the Court that his statement of transmitting S.R.25,000/- handed over by appellant Rao Shakeel Ahmad was incorrect rather the same was handed over by PW-42 Samiullah, Assistant Accounts Officer. Similarly, the prosecution has produced PW-10 Muhammad Aslam, Assistant Incharge/Cashier, posted in Hajj Mission during 2008 to 2011 whereby he stated that he received a cheque along with S.R.10,000/- to send the same to Pakistan

through Enjaz Bank and the same amount was deposited in bank through a receipt which was handed over to Samiullah and has also submitted an affidavit Exh.P.10/A, however he admitted before the Court that the amount was given by PW-42 Samiullah Assistant Accounts Officer. PW-11 Muhammad. Yasin (Driver), has sent S.R.6,000/- to Mrs. Rukhsana Aleem, wife of appellant Rao Shakeel Ahmad, on the instructions of PW-42 Samiullah through a banking channel of Enjaz Bank. PW-12 Abdul Rasheed, Naib Qasid, stated that he sent S.R.98,000/- through Enjaz Bank which was given to him by Samiullah Assistant Accounts Officer, and produced these receipts marked as Mark-P12/1-10, he admitted before the Court that during the course of cross-examination that amount was given to him by PW-42 Samiullah and the said amount was transmitted to Pakistan in installments on different dates spreading over periods in months. PW-38 Riaz Ahmad, Naib Qasid stated before the Court that PW-42 Samiullah had given him cash on behalf of DG Hajj Rao Shakeel Ahmad for sending the same to Lahore through Enjaz Bank in Pakistan and the total amount was S.R.62,000/-. Similarly, PW-39 Muhammad Saleem Akhtar, Driver, has stated before the Court that he deposited S.R.33,000/- in the account of Rao Shakeel Ahmad and the same was given by Rao Shakeel Ahmad appellant, and all these details have been confirmed through testimony of PW-42 Samiullah Assistant Accounts Officer, who has given the details in his testimony whereby he stated that S.R.176,000/- were sent to Pakistan through above mentioned witnesses on behalf of Rao Shakeel Ahmad, however he stated that DG Hajj Rao Shakeel Ahmad has sent the cheque in Aljazira Bank for encashment and then amount was sent to Pakistan through the above mentioned PWs. Hence, it has been proved on record that appellant Rao Shakeel Ahmad, in the first instance, has encashed the amount from his account in Saudi Arabia and then the same was delivered to his wife and other relatives with the help of PW-9, PW-10, PW-11, PW-12, PW-38 and PW-30 through PW-42 Samiullah Assistant Accounts Officer, there is nothing on record on the basis of which it can be even presumed that the said amount was illegal gratification obtained by Rao Shakeel Ahmad or the same was crime proceeds, hence, no offence had been committed as not a single witness ever stated before the Court regarding any crime process, illegal gratification, kickbacks and commission or any cash favour was received and delivered to Pakistan to the relatives of Rao Shakeel Ahmad appellant, even otherwise the perks and privileges, salary and traveling grants received by the appellant in his salary account in Saudi Arabia, justifies the entire transactions and he has only sent amount through banking channel as proved by the prosecution, hence, no adverse inference could be drawn against the appellant rather prosecution proves that amount of S.R. 176,000/- was sent to Pakistan through a banking channel and presumption goes in favour of Rao Shakeel Ahmad appellant that the amount is legitimate and the same was sent to his wife and other family members with justified reason. The above discussion proves that the appellant Rao Shakeel Ahmad has not obtained any illegal benefit by way of transfer of money from Saudi Arabia to Pakistan and this charge has not been proved against the appellant. Similarly, the prosecution has not produced a single witness through which they can justify similar kind of charges against Aftab-ul-Islam Raja appellant and even not a single witness alleged that he has transferred any amount through banking channel or he ever received any kickbacks, commissions, illegal gratification or favour in cash from any of the owners/Mustajars, therefore, no charge has been proved against the second appellant, Aftab-ul-Islam Raja, regarding legal, benefit.

Acquiring of Assets through Illegal Means

38. The allegation of acquiring illegal asset through illegal means has also been leveled against Rao Shakeel Ahmad appellant by the prosecution whereby they have produced PW-18 Muhammad Idrees Khan (Engr. FIA) who sent PW-23 Azmat Javaid, Inspector, who got prepared a report from XEN Pak PWD Lahore but the said report Exh.PW-18/A was not allowed to be exhibited by the subsequent order of the Court as PW-18 is not the author of the report therefore, the report could not be exhibited in his statement and the same was rightly turned down by the trial Court. PW-22 Ch. Shakeel Ahmad (XEN Pak PWD Lahore) has assessed the building Raj Event Concern situated at Gaju Matta, Lahore opposite Ibrahim Masjid while accompanying PW-23 Azmat Saeed and has submitted his report Exh.PW-22/A, whereby the property was valued at Rs.576,77,750/-. He admitted during the course of cross-examination that he has not associated any property dealer nor referred the year of construction of the said buildings neither procured the site plan approved by the metropolitan and merely inspected the building from outside and resultantly on the information

provided by overseer prepared the report.

39. The prosecution has also produced PW-43 Azmat Javaid, Inspector FIA, who has prepared the report Exh.PW-43/A, visited the building Raj Event and stated before the Court that building is comprising of lawns and constructed area and the roofs were of concrete and one shed of Izhar Company was available on site. Muhammad Sarwar, Inspector, FIA Commercial Bank Circle, was produced in the Court as PW-24 who has provided the account details of M/s. Raj Event Concern Exh.PW-24/A, and issued notice Exh.PW-24/B which is under objection. He admitted before the Court that he has not investigated the transactions of the account or the history of the property. The above referred four witnesses did not prove anything against the appellant Rao Shakeel Ahmad rather they have not investigated any of the allegations against the appellants.

40. The prosecution, besides PW-51, has also submitted the evidence of other Investigation Officer, who appeared as PW-52, Khalid Rasool, who is under obligation to prove the case of prosecution against the appellants, however he was cross-examined at length whereby he has narrated the entire story before the Court and submitted the details of the recovered documents and submitted a challan dated 03.05.2011 and supplementary challan 18.01.2012 whereby he, in his challan, found all three appellants as guilty, however during the course of cross-examination, PW-52 has admitted following facts that:--

- i. I cannot read or understand Exh.PW-13/D-4.
- ii. I can read Exh.PW-13/H-102 to 104 but cannot understand the said documents.
- iii. I cannot understand from documents Exh.PW-13/H/102, 103, 104, 105, 109, 110, 111, 112, 116, 117, 119, 120, 121, 127, 128, 129, 167, 168, 169, 170, 173, 174, 178, 181, 182, 185, 186, 190, 191, 192, 196, 199, 200, 206, 207, 209, 210, 270, 277, 278, 279, 280, 281, 284, 285, 287, 290, 291, 293, 294, 295, 299, 300 and 303.
- iv. All documents are written and in Arabic language which he does not understand.
- v. He admits that 200 Hujjaj Karaam performed Hajj, free of cost as they were sent by Ministry of Interior, Government of Pakistan and the issue of non-payment of dues was taken up by Hon'ble Supreme Court of Pakistan through suo motu power.
- vi. A sum of S.R. 693,590/- was spent on boarding, transportation and food charges of 200 Hujjaj Karaam and Rao Shakeel Ahmad appellant wrote a letter dated 23.01.2010 to Ministry of Religious Affairs for recovery of S.R. 693,590/- from Ministry of Interior, Government of Pakistan.
- vii. The terms and conditions mentioned in the advertisement were in the knowledge of Ministry of Religious Affairs.
- viii. Amount equal to 50% of rent regarding buildings Nukhba-I and Nukhba-II was given as per approval and dispute regarding the same buildings arisen and Ministry of Hajj Saudi Arabia decided to cancel the agreement and directed the owners/Mustajars to return the amount to Pakistan Hajj Mission.
- ix. Government has suffered loss of S.R. 1,307,000/- which was to be returned by the owners/Mustajars while remaining amount was received by Pakistan High Commission and the matter of recovery of S.R. 1,307,000/- is still pending with Saudi Arabia government. I visited Saudi Arabia in connection with the investigation of this case.
- x. I had seen buildings Nukhba-I and Nukhba-II from outside and did not measure the distance of the buildings from Haram Pak.
- xi. Acting DG Hajj got the rent of said four buildings as S.R. 3,455/- per person against S.R. 3,500/- per person.

xii. Rao Shakeel Ahmad did not recommend or ask any official to issue official/gratis passport to Ahmad Faiz.

xiii. Rao Shakeel Ahmad terminated the services of Ahmad Riaz vide office order dated 30.08.2010.

xiv. The official/gratis passport was not issued to Ahmad Faiz because his services were terminated by Rao Shakeel Ahmad.

xv. No cheque was issued in favour of Ahmad Faiz.

xvi. I did not visit Raj Event Concern and did not collect revenue record pertaining to Raj Event Concern and during the investigation it comes into my knowledge that Raj Event Concern was jointly owned by father and uncle of Rao Shakeel Ahmad.

xvii. I did not collect any bank record from bank Aljazira.

xviii. I did not investigate the case with regard to transactions in the bank account of Rao Shakeel Ahmad.

xix. I did not take into possession the original copy of Exh.PA.

xx. No document or evidence was provided to me along with report Exh.PA.

xxi. 87 buildings were hired by committee headed by Rao Shakeel Ahmad out of which 6 buildings were de-hired.

xxii. 129 buildings were got hired by 2nd Hiring Committee headed by Syed Sultan Ali Shah Acting DG Hajj and Secretary Ministry of Religious Affairs Agha Sarwar Raza Qazilbash.

xxiii. I did not record statement of any owners/Mustajars of 120 buildings to corroborate the prosecution version.

xxiv. I did not compare the certified copies of the buildings record with the original record.

xxv. Aftab-ul-Islam Raja accused was not a signatory of cheques delivered to owners/Mustajars of the buildings of Phase-1. He was also not a signatory of lease agreement of above buildings of Phase-1.

xxvi. Name of Aftab-ul-Islam Raja accused is not mentioned in report Exh.PA as well as in FIR Exh.PW-1/A.

xxvii. It is correct that Aftab-ul-Islam Raja recorded note dated 11.05.2010 which is Exh.PW-52/D1 wherein he gave note that owner/Mustajar is bound and agreed to provide 1415 and 2200 beds in buildings of Phase-1 and Phase-2, respectively, according to Tasreeh, otherwise payment bill will be made according to old Tasreeh. No further action was taken against other persons whose names were mentioned in their statement regarding hiring of buildings despite of the fact that corruption charges were also leveled against them.

xxviii. I did not record statement of any owners/Mustajars of the hired buildings hired.

xxix. No direct word of accusation has been mentioned in report Exh.PA against Syed Hamid Saeed Kazmi by Hiring Committee.

xxx. Accused Syed Hamid Saeed Kazmi was not nominated in the FIR.

xxxi. As per record, the property measuring 344 Kanal agricultural land in Sadiqabad is a

gifted property in favour of Syed Hamid Saeed Kazmi, Syed Arshad Saeed Kazmi, Syed Mazhar Saeed Kazmi and Syed Rashid Saeed Kazmi.

xxxii. It is correct that statement of one Ehsan Rashid is part of record where he mentioned an amount of Rs. 11,85,000/- was transferred online in the account of Syed Hamid Saeed Kazmi maintained in MCB Nishtar Chowk Branch, Multan, and it also mentioned in statement that amount transferred on the direction of Ehsan Shahid's cousin which was for relief of flood effectees.

xxxiii. As per record no property was purchased by Syed Hamid Saeed Kazmi or his dependents during the year 2010 and the properties have no nexus with the subject matter of the FIR.

xxxiv. The parliamentarian have to submit their declaration of assets under the Representation of People Act, 1976 and they too can be dealt in accordance with law if any discrepancy is found.

xxv. It is correct that matter of renewal of passport of Ahmad Faiz was taken up with DG Passport on 28.07.2010 by Ministry of Religious Affairs and at that time he was Building Supervisor Hajj Mission in Jeddah, services of Ahmed Faiz as Building Supervisor were terminated on 31.08.2010 by DG Hajj Rao Shakeel Ahmad. The recommendations for issuance of passport to Ahmad Faiz were withdrawn on 01.09.2010 as he seized to be a Building Supervisor in Hajj Mission Jeddah.

41. Similarly, the prosecution has produced PW-54 Ghazanfar Abbas, Inspector FIA/SIU, Islamabad, who investigated the matter being member of investigation team and recorded statement of five witnesses and has given the evidence regarding British Pounds 13,348/- transferred from UK National Bank London, however he stated before the Court that during the course of cross-examination his opinion about the role of Rao Shakeel Ahmad was based upon the opinions already formulated by previous Investigation Officers in their previous reports and he has not collected any new evidence against Rao Shakeel Ahmad. He admitted before the Court that documents and recovery memos pertaining to the account of Syed Hamid Saeed Kazmi maintained in Faysal Bank, Bosan Road, Multan, dated 28.02.2011 amounting to British Pounds 13,348/- is not a part of judicial record. He admitted before the Court that there is not a single incriminating word against Syed Hamid Saeed Kazmi and he has not collected any evidence to connect the incomes/assets of Syed Hamid Saeed Kazmi with any criminal proceeds and this fact was recorded by previous Investigation Officers in their report under section 173, Cr.P.C. Hence, all the Investigation Officers have categorically admitted before the Court that there is nothing incriminating against the appellants rather they have not collected any incriminating material on the basis of which they could connect the appellants with the commission of offence referred in the charge framed by trial Court even there is no evidence of illegal assets, illegal benefits or even receiving of any kickbacks or commission as the Investigation Officers have not produced a single witness during their investigation through which they can even allege that any foreign national/Saudi national, owner/Mustajar of the buildings, even paid a single Saudi Riyal as kickback to the appellants. If for all intents and purposes it could be assumed only for the sake of arguments in favour of prosecution that any kickback/commission was received by the appellants, then why the prosecution could not recover the same, dig out the mode of receipt of kickbacks and channels through which these ill gotten amounts were transferred?

42. In a nutshell, the Investigation Officers have just wasted time, money and resources of Government of Pakistan and have not collected any substantial evidence to connect the appellants with the commission of offence.

43. After the conclusion of evidence all the appellants have recorded their statements under section 342, Cr.P.C. whereby they have denied the charges referred in the trial and gave detailed account of their version which has been corroborated from the evidence of I.O. The prosecution has not tendered a single document, got exhibited, lease agreement, approvals or violations referred by them in evidence against the appellants in their statements even the series of documents

starting from Exh.PA to list of 87 buildings have not been confronted, hence, it can safely be concluded that all those documents could not be taken into consideration in trial while convicting the appellants. Reliance is placed upon 2017 SCMR 148 titled as Qaddan and others v. The State wherein it was held that:-

"Statement of an accused recorded under S. 342, Cr.P.C.---Any piece of evidence not put to an accused person at the time of recording of his statement under S. 342, Cr.P.C. could not be considered against him".

Although the appellants have explained the reasons and factors which lead to an irresistible conclusion that the mandatory tools have not been framed by the government, only Hajj Policy 2010 was announced and approved, which was sent to Jeddah Hajj Mission in June 2010 whereas 87 buildings had already been hired on the basis of guidelines referred by Ministry of Religious Affairs. The key factors which are under consideration have been referred in the Hajj Policy 2010, are basically four factors in which the maximum rate per pilgrim is S.R.3600/- and buildings should be within the range of 2000 meters from Haram, Makkah and in Madina Munawwara 50% of the hired buildings should be in Markizia whereas the rate for any hired buildings for accommodation per pilgrim per cycle is S.R.500. The most astonishing factor which has not been considered by the Ministry of Religious Affairs is the role of the Hiring Committee which comprises of seven different persons including the appellants who are the Chairman and Member but Ministry of Religious Affairs and Secretary PW-15 have not agitated the matter as to why a proper committee has not been constituted or the composition of the committee is not in accordance with the Hajj Policy 2010 and Secretary being the Chairman has to look into the matter even the technical staff which are members of the Hiring Committee includes nominee of NESPAK, Chief Architect NESPAK and nominee of engineering council have not been referred as witnesses nor they ever proceeded to Makkah Mukarma or Madina Munawwara to give their technical findings regarding the status, quality, quantity, distance and rate of the those buildings which were hired by the committee. It is also visible from the record that the entire working for hiring of buildings has been managed and conducted contrary to procedure given in the Hajj Policy 2010 wherein the Spotting Committee has already performed its duties and the Hiring Committee in Pakistan has given the approvals and for the sake of arguments if it is assumed that the Hiring Committee headed by Secretary Ministry of Religious Affairs in Pakistan has not given any approval accordance with the procedure defined in the guidelines or in the Hajj Policy 2010 then it could not be possible to pay millions of Saudi Riyal as advance payment to the owners/Mustajars of buildings through crossed-cheques by the appellants in Saudi Arabia. The said fact is admitted on record that the amount paid in advance through crossed-cheque to the owners/Mustajars is the proof of the fact that the Hiring Committee in Pakistan has given the approval although the prosecution has not tendered any such evidence on record but the role of the Hiring Committee referred in the Hajj Policy 2010 has not been placed on record through any convincing mode, similarly, the Hiring Review Committee is comprising of members who have to visit Saudi Arabia and submit their report containing the suitability of the buildings or otherwise, the report Exh.PA was prepared and placed on record but the author of the document has not been called nor the members have substantiated their report through any witness or document, therefore, its value for the purposes of prosecution could not be assumed, except the document can only be looked into by the Prime Minister of Pakistan as referred in the Hajj Policy 2010.

44. In order to understand the working of cabinet and its members in terms of Rules of Business, 1973, we have to discuss the concept of rules with reference to the Hajj Policy 2010, which was approved in the cabinet meeting held on 12.05.2010 and conveyed to DG Hajj on 03.06.2010. As per Rule 5(5) of Rules of Business, 1973 which deals with the transaction of business, whereby the Minister shall be responsible for policy concerning for his division and Rule 5(9)(b) of Rules of Business, 1973 says that:--

"The Secretary shall duly execute the sanction policy and he is responsible for the careful observance of these rules and, where he considers that if there has been any material departure from it, either in his own or in any other division, he shall bring the matter to the notice of Minister in-charge and, if he thinks necessary, to the notice of the Prime Minister

or the cabinet".

The above referred provision of Rules of Business, 1973 clearly fix the responsibility upon the Secretary being head of the Ministry for efficient administration and discipline as well as due execution of the sanction policy but the entire record is silent regarding the conduct of Secretary even otherwise the Rules of Business, 1973 does not provide any penalty for violation of any policy decision although the Prime Minister of Pakistan or the head of the Ministry being the responsible officers have to take action in accordance with law, i.e., Government Servants (Efficiency and Discipline) Rules, 1973 against the concerned public servant for non-compliance of directions or orders of the Government of Pakistan as the same amounts to a misconduct on the part of civil servant.

45. I have gone through the evidence and documents tendered by the prosecution but could not find any mens rea to justify, the criminal intent for conviction rather it is a case of negligence on the part of Ministry of Religious Affairs, Secretary and officials of Hajj Mission which is only to be seen in the light of departmental action as the prosecution has failed to connect any of the appellant with the alleged crime.

46. The main allegations against the officials/appellants are criminal breach of trust, section 409, P.P.C. and misuse of official position in terms of section 5(2) 47, P.C.A. whereas under criminal breach of trust by a public servant, a criteria is laid down in which the ingredients of entrustment, dishonest misappropriation or conversion to his own use by the person in whom the confidence reposed, dishonest use or disposal of property in violation of any direction of law and dishonest misappropriation or conversion to his own use by the person in whom the confidence reposed, dishonest use or disposal of property in violation of any direction of law and dishonest use or disposal of property in violation of any legal contract are the key factors whereas I could not find any element of entrustment although the rent paid to the owners/Mustajars of the buildings in Saudi Riyal have been entrusted to Rao Shakeel Ahmad and the Assistant Accounts Officer of Hajj Mission Jeddah but the mechanism provided for the release of those payments imposes a restriction to pay the amount through crossed-cheques and the entire case reveals that the amount has only been paid through, crossed-cheques after execution of lease agreements with owners/Mustajars of the buildings. The offence could not be proved unless the later portion of the offence stands proved by way of independent evidence especially when the usage and conversion of the entrusted property by the accused person is not established beyond any shadow of doubt. The entire evidence of prosecution only justifies the loss of amount on the basis of comparison of 87 buildings with 129 buildings which were hired after the removal of DG Hajj Rao Shakeel Ahmad but in order to discharge the onus, the prosecution has not adduced any evidence of owners/Mustajars of the buildings who could allege that they have paid any amount as kickbacks or commission to the appellants. This shows that the ingredients of personal benefit from the entire misappropriation plays, a key role and the same is a missing link in the evidence. Although the prosecution has tried to connect the appellants being DG Hajj Rao Shakeel Ahmad and Aftab-ul-Islam Raja Ex-Joint Secretary, Ministry of Religious Affairs with criminal breach of trust and misuse of official position but I could not overlook the fact that cheques were issued to the owners/Mustajars who have not filed any such complaint even otherwise the dominions over the property by the public servant is dependent upon the approval of the Hiring Committee in Pakistan under Hajj Policy 2010 whereas the Secretary Ministry of Religious Affairs being the head of the Hiring Committee never agitated the matter before the relevant quarters. At the most it could be a case of error of opinion/negligence while hiring the buildings on higher rates but surprisingly the appellants have not crossed the limit fixed by the Government of Pakistan, i.e. the rent should not exceed S.R. 3600/- in Makkah Mukarma and S.R. 500/- in Madina Munawwara for each pilgrim while hiring the accommodation. This shows that the only dispute left is the distance of the buildings from Haram Pak. Although the prosecution has tendered huge number of record for comparison of 87 buildings with subsequently hired 129 buildings but surprisingly the documents have not been proved in accordance with the terms of Qanun-e-Shahadat Order, 1984 nor they were tendered in the legal manner even otherwise all those documents have no evidentiary value in the eyes of law, therefore, the rest of the case is only based upon the verbal statements of hearsay evidence by non-technical persons as not a single witness holds any technical qualification to

justify the comparison of buildings in form of its structure capacity, rate of rent, quality and distance from Haram Pak but the prosecution has not considered this aspect even only one Investigation Officer has visited the buildings in Saudi Arabia but he has not recorded statement of a single witness. Even the said I.O. could not substantiate the allegations of kickbacks or technical subject of the hired buildings. The ingredients of section 409, P.P.C. are lacking in the present case as the prosecution failed to prove all the elements specially the misappropriation or conversion to his own use or dishonest disposal of the property. Reliance in this regard is placed upon 2009 SCMR 517 (Abdul Rashid Nasir v. The State). Therefore, appellants are entitled to benefit of doubt.

47. It is also pertinent to mention here that nothing is available on record to show the intentional loss caused to the public exchequer or a wrongful gain by the appellants which is necessary to bring the case into the term mens rea, although some element of negligence is apparent but the same does not fulfill the requirements. Reliance in this aspect is placed upon 1996 MLD 2624 [Lahore] (Qazim Raza v. The State). The initial burden is upon the prosecution to prove the illegal benefit, illegal gratification or kickback against the public servants but in the instant case prosecution has produced almost ten witnesses through which the evidence of sending money to Pakistan by the public servants and evaluation of properties have been brought on record but the appellants have explained each and every transaction in their statements under section 342, Cr.P.C. which seems to be reasonable and appeal to a prudent mind, therefore, it has not been proved by the prosecution that any amount has been received as illegal gratification, kickback or crime proceeds, and the same cast a serious doubt in prosecution case. On the other hand, version of the accused persons seem to be strong on evaluation of the case of prosecution and defence version if put in juxtaposition, benefit of doubt emerges from record and same goes in the favour of appellants. Reliance in this regard is placed upon 2001 SCMR 41 (Rashid Ahmad v. The State).

48. In order to view the case of appellants in terms of section 5(2) 47, P.C.A. the word "criminal misconduct" has to be considered which has been used in the said law, whereas it can only be proved if any gratification, reward referred in section 161, P.P.C. or any consideration received by the appellants in their official capacity for themselves has been proved or appellants dishonestly or fraudulently misappropriated or converted for their own use, any property entrusted to them, then it amounts to a criminal misconduct, whereas it is necessary for prosecution to establish guilt of accused beyond any shadow of doubt but in the instant case the prosecution could not justify the illegal gratification or bribe in any manner which is the substantive ingredient of the said crime nor they have prepared any forged document, therefore, prosecution failed to prove the case to the extent of offence under section 5(2) 47, P.C.A. Reliance, keeping this fact in mind, is placed upon 1998 PCr.LJ 162 [Lahore] (Main Muhammad Nawaz Sharif v. Special Court and others).

49. In order to prove the charge of misuse of authority, at least two basic ingredients i.e., mens rea and actus rea of crime have to be necessarily established and in case, any of them if found missing, offence could not be constituted whereby mens rea in context to misuse of authority means, to act in disregard of law with conscious knowledge that act was being done without authority of law which resulted into illegal gain or undue benefit. Reliance is placed upon 2008 SCMR 1118 (The State and others v. Muhammad Idrees Ghouri).

50. The allegations against Syed Hamid Saeed Kazmi appellant are distinct in nature as he was the Minister for Religious Affairs at the relevant time and he being the member of the cabinet has approved the Hajj Policy 2010, although the buildings were hired prior to the said event by the official appellants in Saudi Arabia but prosecution has not uttered a single word against Syed Hamid Saeed Kazmi appellant to charge him with any misappropriation of funds, wrongful gain or misuse of authority while hiring the buildings or violation of any Hajj Policy terms and conditions, therefore, the charges have not been proved with reference to criminal breach of trust in terms of section 409, P.P.C., whereas the prosecution has tried to prove the illegal accumulation of certain assets although Syed Hamid Saeed Kazmi being accused in the case has given the explanation that in terms of section 42-A the Representation of People Act, 1976, he is bound to submit his annual statement of assets and liabilities belonging to him and of his spouse and dependents to the Election Commission of Pakistan and if the said statement of assets found to be

counterfeited in material particulars, he may be proceeded against under section 82 of Representation of People Act, 1976 for committing offence of corrupt practices, whereby he can be awarded punishment upto 3 years with fine but surprisingly the prosecution has not tendered any document from the Election Commission of Pakistan record from which it can be proved that Syed Hamid Saeed Kazmi has mis-declared or given any false statement if compared with the present assets even there is no direct evidence of criminal breach of trust and the misconduct referred against him. Even otherwise section 5(2) of 47, P.C.A. imposes certain conditions upon the public servant to furnish the details of his properties and liabilities whereby Syed Hamid Saeed Kazmi has given the details of each and every asset in his statement under section 342, Cr.P.C. and denied the allegations but fact remains the same as onus was upon the prosecution to prove that all the assets and properties owned and possessed by Syed Hamid Saeed Kazmi appellant, have been achieved and owned through illegal gratification and crime proceeds. The prosecution tried to prove their case that Syed Hamid Saeed Kazmi being Minister of the Ministry of Religious Affairs is responsible for the affairs of Ministry whereby a co-accused Ahmad Faiz was appointed on his recommendation although it was proved in evidence that Ahmad Faiz was removed prior to any action and even no passport has been issued to him. The Hajj Policy 2010 is the decision of the Government of Pakistan whereby elected representatives have been placed in-charge of departments of government and are not expected to carry with them a deep insight in the complexities of the administration, the duty of a bureaucrat is to appraise the elected representatives, the nicety of the administration and provide them correct guidelines and discharge of their functions in accordance with law as held in PLD 1995 Supreme Court 530 (Zahid Akhtar v. Government of Punjab), wherein it was held that it was the duty of Secretary concerned to have pointed out the Minister concerned to the extent of his authority. Guidelines mentioned in policy directives of the government and provisions of the Rules of Business, 1973 should be kept in view by all the concerned, therefore, the allegations against the Syed Hamid Saeed Kazmi have not been substantiated as he was not nominated in Exh.PA, the report of the parliamentary committee/Hiring Review Committee, in FIR or even for the purpose, the Investigation Officer has exonerated the appellant Syed Hamid Saeed Kazmi from all the charges as he has not brought any evidence against him in the instant matter.

51. In last, the prosecution has failed to tender any evidence against Syed Hamid Saeed Kazmi regarding withholding of 7098 seats for hardship cases without approval of the cabinet, the said allegation has never been discussed by any of the witness nor even any document has been produced to substantiate the said allegation. In addition to above, the prosecution has also alleged against Syed Hamid Saeed Kazmi that he caused loss to the government exchequer whereby 200 persons of Ministry of Interior were allowed to perform Hajj free of cost who stayed in the hired buildings. It has been observed from record that the charge Nos. 8 and 9 regarding 200 persons, who performed Hajj free of cost, have not been substantiated, especially when it is proved from record that the entire prosecution case has been set into motion when Rao Shakeel Ahmad claimed the amount/expenses of 200 persons from Ministry of Interior, who had enjoyed the Hajj Package in 2009 free of cost but the cost had not been paid to the Ministry of Religious Affairs. It has further been observed from evidence of PW-17 that Exh.PW-17/A was tendered in evidence in which 7098 seats were kept reserved for hardship cases and the said PW-17 admitted the fact in cross-examination that balloting was conducted for 57370 seats, hence, it can safely be concluded that it was the decision of Ministry of Religious Affairs to reserve those seats, therefore, the same could not be considered as an offence.

52. Therefore, the prosecution has failed to prove the entire case against all three appellants by cogent/confidence inspiring evidence rather the chain of evidence is missing which does not bring the guilt of the appellants to home. The benefit of doubt in the entire evidence goes to the appellants and charges have not been proved as the entire documentary evidence is inadmissible, no recovery of crime proceeds has been established by the Investigation Officers, no connection has been established through an independent evidence that appellants have received any kickback, commission or cash favour from any owners/Mustajars of the 87 buildings hired in Makkah Mukarma or in Madina Munawwara. The prosecution has also failed to establish that the properties and assets of the appellants have been acquired from illegal means or from any amount received from Saudi Arabia in this regard. There is no evidence available on record to prove that amount

transferred from Saudi Arabia to Pakistan was part of an illegal gratification, kickback or commission. In last, the entire case is based upon violation of Hajj Policy 2010 Exh.PW-13/A1-32 and Policy Guidelines Exh.PW-13/B1-32 which is not an offence under any law and the same does not fall within the definitions of sections 409, 420, 467, 468, 471, 109/34, P.P.C. read with section 5(2) 47, P.C.A. in any manner.

53. For all the reasons mentioned above, Crl. Appeal No. 119/16, Crl. appeal No. 117/16 and Crl. Appeal No. 122/16 are allowed. Resultantly, all the appellants are hereby acquitted from the above referred charges. Syed Hamid Saeed Kazmi appellant shall be released forthwith if not required in any other case and sureties submitted by the other two appellants (on bail) are hereby discharged.

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