

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Criminal Appeal No.9/2017
(Iftikhar Ali Haideri vs. NAB)

and

Writ Petition No.157/2017
(Iftikhar Ali Haideri vs. NAB)

Appellant by: Mr. Muhammad Arshad Tabrez, Advocate.

Respondent by: Mr. Muhammad Adnan Tahir, Advocate
(Special Prosecutor, NAB).

Date of Hearing: 25.09.2017.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this criminal appeal the appellant has assailed the judgment dated 10.01.2017, passed in NAB Reference No.5/2016 by the judge Accountability Court No.1, Islamabad whereby under Section 9(a)(i) r/w Section 10 of the NAO, 1999, the appellant was convicted and sentenced to R.I. for one (01) year and six (06) months with fine of Rs.700,000/-.

2. Brief facts referred in the Reference No.5/2016 are that, complainant/Rana Abdul Qayyum, who is the owner of M/s Safa Gold Mall, lodged a complaint on 27.11.2015 alleging therein that appellant/Iftikhar Ali Haideri, Deputy Director Estate Management-II, CDA, Islamabad is demanding illegal gratification from him for waiving off the delay charges imposed by the CDA against the complainant in case of M/s Safa Gold Mall. The inquiry was authorized on 27.11.2015 which was subsequently converted into investigation on 04.01.2016. During the course of inquiry/investigation on 30.11.2015, raiding party comprising of Ms. Nisha Ishtiaq, Magistrate along with inquiry team of NAB officials conducted/supervised the raid whereby appellant/Iftikhar Ali Haideri was

taken in custody when he had demanded Rs.4,000,000/- from complainant for not cancelling the allotment of Plot No.5, M/s Safa Gold Mall, F-7 Markaz, Islamabad by the CDA. Rana Abdul Qayyum/complainant after lodging complaint with the NAB had been referred to Ms. Nisha Ishtiaq/Assistant Commissioner/Magistrate, who recorded the statement of complainant U/S 164 Cr.P.C. and prepared the list of prize bonds provided by the complainant which includes one hundred (100) prize bonds each of Rs.25,000/- and Rs.15,000/- denomination. All these prize bonds were tainted by the Magistrate which were to be given to appellant/Iftikhar Ali Haideri as illegal gratification in the Emperor's Table Restaurant, 4th Floor, Safa Gold Mall on 30.11.2015. It has also been referred in the NAB reference that appellant purchased furniture worth of Rs.442,800/- from M/s Index Furniture Pakistan Pvt. Ltd. situated at 4th Floor, Safa Gold Mall and the bill was paid by complainant. Later on, appellant claimed an amount of Rs.8,500,000/- from the complainant as illegal gratification, out of which Rs.4,000,000/- has been given to appellant in shape of prize bonds at the date of occurrence, whereupon appellant was red handedly caught by the raiding party in presence of the Magistrate, whereas appellant failed to give any plausible justification regarding the said bribery/illegal gratification. Accordingly, the subject reference was filed on 25.02.2016, whereafter the Investigation Officer concluded the investigation report with the following conclusion.

"It is concluded that the accused Iftikhar Ali Haideri has been arrested red handedly on 30th November 2015 in the presence of Learned Magistrate while receiving illegal gratification/bribe in the form of prize bonds amounting to Rs.4,000,000/- from complaint Rana Abdul Qayyum owner of Safa Gold Mall at Emperors Table Restaurant situated at 4th Floor of Safa Gold Mall F-7 Markaz, Islamabad. Moreover he has received furniture as illegal gratification/bribe from Rana Abdul Qayyum which has been recovered from his house No. 600 St. No.2, Shahzad Town, Islamabad. Hence, the allegations of demanding and taking of

illegal gratification u/s 9(i)(ii)(iv) & (vi) of NAO, 1999 have been proved against the accused Iftikhar Ali Haideri."

Consequently, the NAB authorities recommended reference U/S 16(c) r/w Section 18(g) & 24 of NAO, 1999 to be filed in the Accountability Court, Islamabad against appellant/accused Iftikhar Ali Haideri.

3. During the trial of the Reference No.5/2016, the NAB authorities have produced nine (09) witnesses including complainant/Rana Abdul Qayyum as PW-7, Ms. Nisha Ishtiaq, Assistant Commissioner (Potohar) Islamabad as PW-1, Muhammad Hamza Shafqaat, DG Land Estate, CDA as PW-2, Umair Qureshi, Finance Manager, Safa Gold Mall as PW-3, Ajab Khan, Showroom Outlet Manager as PW-4, Aqeel Ahmad, Customer Services & Manager Operation, UBL as PW-5, Ashfaq Ahmed, ASI as PW-6, Muhammad Asif Khan, Deputy A.D. NAB as PW-8, and Muhammad Ehsan Qadir, Investigation Officer as PW-9. Whereas, the allegedly received prize bonds are tendered as Exh.PW-1/2, photocopies of prize bonds as Exh.PW-7/2, application to DG NAB as Exh.PW-7/1, warrant of arrest of Iftikhar Ali Haideri/appellant as Exh.PW-9/2, statement of Rana Abdul Qayyum U/S 164 Cr.P.C. as Exh.PW-1/4, and photographs of the recovered items as Exh.PW-4/2-4. After recording of the evidence by the NAB Court, accused/appellant recorded his statement U/S 342 Cr.P.C. whereafter the Accountability Court convicted the appellant for one (01) year and six (06) months R.I. with fine of Rs.700,000/- through the impugned judgment.

4. Learned counsel for appellant contends that on one hand the learned Trial Court has disbelieved the prosecution evidence qua the charge under Section 9(a)(ii)(iv)&(vi) of NAO, 1999 yet on the other hand wrongly relied the same prosecution evidence qua the charge under Section 9(a)(i) of NAO, 1999 and punished the appellant under Section 10 of NAO, 1999; that prosecution miserable failed to prove the case beyond reasonable doubt;

that the case property was not shown to the prosecution witnesses during the trial and even the objections raised by appellant side regarding admissibility of documented evidence has not been taken into account as the Investigation Officer himself admitted that raid report is a photostat copy and he never saw or received the original copy of the raid report which was prepared on 01.12.2015 whereas statements of witnesses were not recorded in the premises of raid; that recovery memo of allegedly recovered bonds is not signed by the Investigation Officer, which is not admissible in evidence; that it was admitted that the list of bonds was neither prepared by the concerned Magistrate nor by the Investigation Officer, therefore, recovery has no significance in this regard; that there is material contradiction among the prosecution witnesses about the raid and recovery. Lastly, learned counsel for appellant argued that conclusion arrived by the learned Trial Court about prosecution evidence is based upon surmises and conjectures, therefore, appellant is entitled to be acquitted from the said charge.

5. Conversely, learned ADPG NAB contends that NAB authorities have proved the entire prosecution case in accordance with law whereby appellant was arrested during the raid while receiving illegal gratification worth of Rs.4,000,000/- in shape of prize bonds, which were tainted by Ms. Nisha Ishtiaq/Magistrate; that appellant has not only received the bribe of Rs.4,000,000/- but he has also received furniture worth of Rs.442,800/- from one of the store in M/s Safa Gold Mall, whereas the bill was paid by complainant/Rana Abdul Qayyum, which is also a part of the illegal gratification and same were recovered from the house of appellant; that complainant filed his complaint before the NAB authorities whereupon he was referred to the Magistrate for recording of his statement U/S 164 Cr.P.C. on the day of alleged raid whereby the prize bonds, which were to

be given to appellant as illegal gratification, were tainted by the Magistrate and a list of those prize bonds was prepared in this regard, whereas all those tainted prize bonds were recovered from appellant during the raid in presence of the Magistrate as well as NAB officials. Learned ADPG NAB further contended that NAB authorities also filed an appeal for enhancement of punishment as charges have been proved but the learned Trial Court awarded lesser sentence to the appellant.

6. Arguments heard, record perused.

7. From the perusal of record it has been observed that, PW-7/Rana Abdul Qayyum/complainant, who is owner of M/s Safa Gold Mall, Plot No.5, F-7 Markaz, Islamabad, lodged a complaint (Exh.PW-7/1) addressed to D.G. NAB, Rawalpindi with the allegation that the said plot was purchased by him in auction conducted on 31.12.2009 against total sale consideration of Rs.1,210,000,000/- (Rs.1.21 billion), whereas he had paid 25% of the sale consideration as earnest money to the CDA and later on paid 50% of the remaining sale consideration to the CDA. On 22.05.2012, the complainant paid 50% of the balance sale consideration and sought nine (09) month of time from the CDA authorities for balance sale consideration, whereas appellant/Iftikhar Ali Haideri time and again called complainant/Rana Abdul Qayyum with regard to claiming of illegal gratification of Rs.8,500,000. In essence, complainant alleged the incident in the following manner:

"آج سے ایک ہفتہ قبل بروز جمعہ مورخہ 15-11-20 کو ڈپٹی ڈائریکٹر اسٹیٹ سی ڈی اے چوہدری افتخار علی حیدری نے اپنے دفتر کے نمبر سے مجھے کال کی اور تقریباً 6، 7 منٹ بات کی جس میں اس نے مجھ سے 85 لاکھ روپے کا مطالبہ کیا اور میں نے اس سے ایک ہفتے کا وقت مانگ لیا اس سے دو ماہ قبل چوہدری افتخار علی حیدری نے مجھ سے مبلغ 33 لاکھ کا چیک بنام وکار ہمراہ 7 لاکھ روپے کیش میرے اکاؤنٹ میں مٹا دیا۔ اس کے آفس سے وصول کئے اور تقریباً ایک ماہ قبل افتخار حیدری صفا گولڈ آیا اور انڈیکس فرنیچر پاکستان سے مبلغ 6 لاکھ کا فرنیچر خریدا اس کا بل بھی افتخار حیدری نے مجھے ادا کرنے کیلئے کہا جو کہ میں نے ادا کر دیا بروز جمعہ مورخہ 15-11-22 کو رانا عباس کاشیبل اسلام آباد پولیس کے نمبر سے مجھے دھمکی آمیز 3 میسجز موصول ہوئے جس میں مجھے کہا کہ آپ نے جو سی ڈی اے کو جو رقم ادا کرتی ہے اس کو 45 کروڑ سے بڑھا کر 55 کروڑ کر دیا

جائے گا جس میں سے آپ کو 30 کروڑ فی الفور ادا کرنے ہوں گے اور عدم ادائیگی کی صورت میں آپ کا پلاٹ مورخہ 15-24-11 بروز منگل کو کینسل کر دیا جائے گا پھر میں نے میجر افتخار حیدری کو فارورڈ کئے اور ان کی حقیقت دریافت کی تو اس نے فوراً کال کرنے کو کہا میرے کال کرنے پر اس نے ان میجر کی نہ صرف تصدیق کی بلکہ مجھے مزید دھمکیاں دیں اور رشوت کی رقم مبلغ -/8500000 کا جلدی انتظام کرنے کو کہا آپ سے التجا ہے کہ ملزمان کو کیفر کردار تک پہنچایا جائے اور مجھے انصاف مہیا کیا جائے مجھے اپنی ساری زندگی کی کمائی کو پاکستان واپس لانے کی اتنی بڑی سزا نہ دی جائے۔"

8. After receiving the above referred complaint dated 27.11.2015 by D.G. NAB, Rawalpindi, an inquiry was started whereby complainant was referred to District Magistrate for recording of his statement U/S 164 Cr.P.C. whereas the same recorded by PW-1/Ms. Nisha Ishtiaq/Magistrate on 30.11.2015, referred as Exh.PW-1/4. The prize bonds, which were of Rs.25,000/- and Rs.15,000/- denominations and hundred in numbers each, were received and tainted by the Magistrate which were meant to be given as illegal gratification to appellant. Accordingly, a list of all those prize bonds was prepared by the office of Assistant Commissioner (Potohar), Sub Division, ICT, Islamabad. Whereafter, NAB authorities secured a warrant of arrest of appellant (Exh.PW-9/2) on 27.11.2015 but appellant was arrested in a raid conducted by PW-1/Ms. Nisha Ishtiaq, Assistant Commissioner/Magistrate in presence of NAB officials at M/s Safa Gold Mall when appellant had received the tainted prize bonds from PW-7/Rana Abdul Qayyum/complainant.

9. The learned Accountability Court after receiving the reference, framed the charge vide order dated 21.04.2016, which is reproduced hereunder:

"You accused demanded from Complainant illegal gratification for waiving off the delay charges imposed by CDA on the complainant in the case of Safa Gold Mall. A deal was made between you accused and complainant, according to which, the complainant was to pay Rs.4 million on non-cancelling the allotment of Plot No.5 (Safa Gold Mall), F-7 Markaz, Islamabad by CDA and a cheque was provided as guarantee, complainant whereas was also to provide Rs.85,00,000/- in order to resolving his issue regarding remaining premium and waiving off delayed charges and discount

of 7% of the plot of Safa Gold Mall in CDA, Estate Management-II. Total amount of the deal was Rs.1,25,00,000/-. On 10-80-2015, you accused demanded cash against the cheque of Rs.4 million. The complainant paid Rs.7,00,000/- as cash and another cheque of Rs.33,00,000/- was handed over to you. You also purchased furniture of Rs.4,42,800/- on 12-10-2015 from M/s Index Furniture Pakistan Pvt. Ltd. situated at 4th Floor, Safa Gold Mall, Islamabad and you asked the complainant to pay the bill of said furniture, and it was paid by the complainant. In the month of November, you accused illegally pressurized and threatened the complainant to pay Rs.85,00,000/- for which complainant approached NAB Rawalpindi and submitted complaint. For taking action against you, First Class Magistrate was got appointed by Deputy Commissioner Islamabad to arrest you red-handedly. In that regard, ADC(G), Islamabad deputed Ms. Nisha Ishtiaq, Learned Magistrate to conduct/supervise the raid. Learned Magistrate was informed by the NAB team and the complainant about the deal and place of its occurrence. Statement of complainant u/s 164 Cr.P.C. was also recorded by the Magistrate. A list of prize bonds of denomination of Rs.25,000/- each which were hundred in number and of denomination of Rs.15,000/- each which were hundred in number was prepared. Those prize bonds were tinted by the Magistrate. The complainant and you accused met at Emperor's Table Restaurant at 4th floor of Safa Gold Mall for handling over of illegal gratification in the shape of prize bonds amounting to Rs.40,00,000/- (already tinted) as a first installment of Rs.85,00,000/-. You were caught red-handed while receiving, accepting and pocketing those prize bonds as bribe. And the NAB team raided and arrested you accused in the presence of learned Magistrate. Thereby, you accused committed an offence of accepting & obtaining illegal gratification, misused your authority to obtain pecuniary advantage for yourself in shape of valuable things/money, corruption & corrupt practices as defined u/s 9(a)(i)(ii)(iv)(vi) of NAO, 1999 punishable u/s 10 of NAO, 1999 and schedule thereto and within my cognizance."

10. In furtherance of the charge, the prosecution has produced nine (09) witnesses whereby Rana Abdul Qayyum/complainant appeared in the Court as PW-7 and recorded his statement to the fact that he is owner of M/s Safa Gold Mall, for which he had purchased a plot in Jinnah Super, F-7 Markaz from CDA on 31.12.2009 at the rate of Rs.321,000/square yard whereas the total area of plot is 3777.78 square yards. He paid 25% of sale consideration to the CDA in the first month of purchase and made an offer to CDA that he was ready to deposit 50% of remaining amount. The offer

was considered by the CDA Board and it was decided that if PW-7/complainant deposited an amount of Rs.454 million within 30 days then he would be granted with 7% discount whereas it was also offered to PW-7/complainant that if he could deposit additional amount of Rs.454 million within nine (09) months, he would be granted with additional 3.5% discount. PW-7 contended that, against the said offer, appellant/Iftikhar Ali Haideri, officer of the CDA, asked him to go on back foot and pay the amount in three installments, i.e. Rs.15 crore each, accordingly PW-7/complainant handed over an affidavit to appellant/Iftikhar Ali Haideri with the bearing that he would clear all amount in the year 2012 and as per the settlement with CDA, PW-7/complainant gave a pay order of Rs.22,73,00,000/- to the CDA, whereupon appellant/Iftikhar Ali Haideri told him that he has given the amount with delay of three days, therefore, discount offered to him would not be accorded to, consequently, appellant/Iftikhar Ali Haideri suggested to PW-7/complainant to file an application with the contention that the letter of CDA has been received by him in Saudi Arabia with delay. The said application was forwarded to Law Department, CDA for legal opinion which was accepted in his favour, whereafter appellant/Iftikhar Ali Haideri issued a letter to PW-7/complainant with the instruction to deposit Rs.22,96,48,000/- within 7 days but PW-7/complainant had not deposited the same and filed a civil suit in the Islamabad High Court, Islamabad. Whereafter, PW-7/complainant met PW-2/Hamza Shafqat, who was senior officer to the appellant whereupon it was settled with him that he will take care of the petty problems and PW-7 should pay the amount. Accordingly, PW-7/complainant prepared two pay orders amounting to Rs.9,62,80,000/- and when he went to the office of PW-2/Hamza Shafqat, he was not available whereupon on telephonic call to PW-2/Hamza Shafqat, it was

recommended to him that to meet appellant/Iftikhar Ali Haideri for handing over of the pay orders, though appellant/Iftikhar Ali Haideri refused to receive the same whereas on the instructions of PW-2/Hamza Shafqat, the pay orders were received by appellant/Iftikhar Ali Haideri, who handed over receipts to PW-7/complainant. PW-7/complainant further contended that appellant/Iftikhar Ali Haideri came to his plaza and demanded Rs.85,00,000/- together with the previous dispute of Rs.40,00,000/-, or else he would cancel the allotment of plot. Whereupon, PW-7/complainant took one week of time for payment of Rs.85,00,000/- with the reason that he had already deposited the amount. It was further contended by PW-7/complainant that he had received threatening messages from one of the friend of appellant, namely Rana Abbas, who told him that his plot would be cancelled on Tuesday. PW-7/complainant forwarded the said messages to appellant/Iftikhar Ali Haideri, who also supported the said messages and threatened PW-7/complainant that plot would be cancelled. Whereafter, at about 7 or 8 pm on Friday, appellant/Iftikhar Ali Haideri went to PW-7/complainant's house and demanded Rs.85,00,000/- on which he further claimed one week of time. Before end of the week, PW-7/complainant went to the office of NAB and filed an application (Exh.PW-7/1) duly signed by him. Whereupon, PW-9/Ehsan Qadir/Investigation Officer told him to arrange the amount and the same was done accordingly in shape of prize bonds worth of Rs.40,00,000/-. PW-7/complainant stated that he had seen the original prize bonds in the Court, photocopies of which are attached with the instant reference and referred as Exh.PW-7/2 from pages 51 to 250 (200 in number).

11. On 30th of the month, PW-7/complainant went to the office of NAB at about 9:30am whereby NAB officials took him to D.C. Office and produced before PW-1/Nisha Ishtiaq/Magistrate, who recorded the

statement of PW-7/complainant U/S 164 Cr.P.C. after ousting the NAB officials from courtroom and on the instructions of PW-1/Nisha Ishtiaq/Magistrate, PW-7/complainant given 200 bonds comprising of hundred bonds of denomination of Rs.15,000/- and Rs.25,000/- each, which were got marked with pen by PW-1/Nisha Ishtiaq/Magistrate. Thereafter, PW-7/complainant, PW-1/Nisha Ishtiaq/Magistrate, and NAB officials reached to Emperor's Table Restaurant situated at 4th Floor in M/s Safa Gold Mall. Appellant/Iftikhar Ali Haideri reached at the said agreed place after 20/25 minutes and met with PW-7/complainant, whereupon PW-7/complainant started negotiation and bargaining with appellant/Iftikhar Ali Haideri to decrease the demand from Rs.85,00,000/- to Rs.80,00,000/-, out of which PW-7/complainant would pay 50% of the amount instantly while the remaining amount would be paid after issuance of letter. Accordingly, PW-7/complainant handed over prize bonds worth of Rs.40,00,000/- to appellant/Iftikhar Ali Haideri who put the same in the inside pocket of his coat and directed PW-7/complainant to arrange the remaining amount of Rs.40,00,000/-. PW-7/complainant stated that said negotiations were heard by PW-1/Nisha Ishtiaq/Magistrate as she was seated at the back of appellant/Iftikhar Ali Haideri and she has also seen the entire episode. Whereafter, PW-7/complainant went to washroom to ease himself and while coming back he signaled PW-1/Nisha Ishtiaq/Magistrate about the episode, on which NAB officials, who were also sitting in the same restaurant at about 8-10 feet, caught hold of appellant/Iftikhar Ali Haideri from his hands and recovered two bundles of prize bonds, cash of Rs.60,000/-, copy of CNIC, and membership card, accordingly, recovery memo was prepared and signed by him as Exh.PW-7/3 as well as PW-1/Nisha Ishtiaq/Magistrate, who remained present and observed the proceedings.

12. PW-7 further explained regarding previous dispute of amount of Rs.40,00,000/- that he had issued post dated cheque of Rs.40,00,000/- in the name of Waqar to appellant/Iftikhar Ali Haideri, however the said cheque was returned whereby he was given Rs.700,000/- in cash and another cheque of Rs.33,00,000/- was issued in the name of Rana Afzal Abbas whereas during the last visit at Emperor's Table Restaurant when PW-7/complainant was handing over prize bonds to appellant/Iftikhar Ali Haideri, PW-7/complainant was told to clear the cheque of Rs.33,00,000/- given as guarantee. PW-7 further contended that appellant/Iftikhar Ali Haideri also visited M/s Index Furniture showroom, which is situated at 4th Floor of M/s Safa Gold Mall, and selected five items including a relaxing chair and three sofa set whereas appellant/Iftikhar Ali Haideri requested PW-7/complainant to get those items delivered at his home whereafter M/s Index Furniture handed over the bill of those items to PW-7 whereby PW-7/complainant requested the owners of M/s Index Furniture to adjust the bill in the monthly rent of shop and accordingly the items were delivered to appellant/Iftikhar Ali Haideri's house by PW-4/Ajab Khan/Showroom Outlet Manager. PW-7 further stated that he was called by the Investigation Officer on 21.01.2016 to provide any documentary evidence whereby PW-7/complainant handed over him two cheques of Rs.40,00,000/- and Rs.33,00,000/- which were issued in the name of Waqar and Rana Fazal Abbas respectively, and the same were referred as Exh.PW-7/4 and Exh.PW-7/5, respectively.

13. PW-7/complainant was cross examined by appellant/Iftikhar Ali Haideri whereby he acknowledged that construction of M/s Safa Gold Mall was started in 2011 and the map was got approved by the CDA (Building Control Section and Planning). PW-7/complainant further conceded that he had seen the letter dated 22.06.2011 (Exh.PW-7/D-1) written by Waqar Ali

Khan, Director EM-II regarding payment of Rs.454,750,207/- as balance premium whereas the said amount was again demanded through another letter dated 14.07.2011 (Exh.PW-7/D-2) by Waqar Ali Khan. It was further acknowledged by PW-7/complainant that M/s Safa Gold Mall, which consists of three basements, ground floor, eight upper storey, and has total of 150 shops, got completed in the year 2013 whereas majority of the shops are rented out. PW-7/complainant admitted before the Court that completion certificate has not been issued by the CDA, however he has denied the fact that Building Control Section CDA put objections on his application regarding completion certificate. PW-7/complainant also acknowledged that M/s Safa Gold Mall was got sealed by CDA on the ground of non-payment of premium whereupon he filed a civil suit against the sealing, however the same was dismissed by the Civil Court, on which he filed an appeal which was also dismissed, whereafter he filed a revision petition before the Islamabad High Court, Islamabad where he was granted stay order subject to deposit of Rs.229,648,884/- with CDA and submission of security of remaining amount. Whereas, PW-7/complainant was also directed to vacate the parking area and place where upon generator was installed within three days, whereby the said order was complied with by him. PW-7/complainant further admitted that he had received a notice from Shafi Muhammad, Deputy Director BCS-I with the note that he has occupied the building of M/s Safa Gold Mall without having occupancy certificate of the building, whereas PW-7/complainant challenged the letter dated 23.08.2013 issued by Rohail Aziz, Deputy Director EP-II, CDA whereby detailed break up of Rs.454,794,906/- was demanded.

14. PW-7/complainant further acknowledged that an inquiry in respect of said plot is pending in NAB since 2013 and by the time of registration of inquiry, he was in jail but later on released on 26.03.2014. PW-

7/complainant further admitted that he had also deposited approximately Rs.13,34,00,000/- with NAB authorities as voluntary return amount, however the said amount was returned to him on the direction of Islamabad High Court, Islamabad which was later on deposited in the CDA. PW-7/complainant further acknowledged that he had submitted an affidavit (Exh.CW-1/D-3) with his own sweet will that he would deposit the outstanding amount of Rs.45,00,00,000/- with CDA and the amount was to be cleared from 15.06.2012 to 15.12.2012. PW-7/complainant further admitted before the Court that he had only filed an application to D.G. NAB, Rawalpindi (Exh.PW-7/1) but not any other application to Chairman NAB in respect of the present case and he had not appeared before Zahir Shah, the then D.G. NAB, Rawalpindi. PW-7/complainant also conceded that he was not aware of the warrant of arrest of appellant/Iftikhar Ali Haideri issued on 27.11.2015 which was handed over to the Investigation Officer. He further acknowledged that Gul Anwar is also an Investigation Officer of the NAB who is working with PW-9/Ehsan Qadir in this case, however he acknowledged that he met PW-9/Ehsan Qadir on 30.11.2015, who took him to his higher officer, Mohsin, who asked him certain questions but did not record his statement. Whereafter, PW-9/Ehsan Qadir and Gul Anwar took PW-7/complainant to Magistrate at about 11am and recorded his statement before the Magistrate whereas PW-9/Ehsan Qadir and Gul Anwar remained outside of the courtroom. PW-7/complainant further acknowledged that he owns and runs Emperor's Table Restaurant and by the time he reached there, PW-9/Ehsan Qadir and Gul Anwar along with other staff were already present there whereas only one member of NAB, namely Asif, was inside the Emperor's Table Restaurant while rest of them were patrolling the door. PW-7/complainant further conceded that appellant/Iftikhar Ali Haideri came to restaurant at about 5/6 passed to

5pm and joined him at the table whereas soup was served thereon by restaurant staff. PW-7/complainant also conceded that he had not asked PW-9/Ehsan Qadir and Gul Anwar to arrest appellant/Iftikhar Ali Haideri. He also acknowledged that he had not put the prize bonds on the table though the same were in his pocket and later on handed over it to appellant/Iftikhar Ali Haideri. PW-7/complainant further conceded that PW-1/Nisha Ishtiaq/Magistrate had not arrested the appellant on receiving the bonds and neither she had recorded PW-7/complainant's statement nor of the appellant/Iftikhar Ali Haideri whereas she remained at the spot for about an hour and not written anything in his presence, even PW-9/Ehsan Qadir and Gul Anwar had not recorded any statement of appellant/Iftikhar Ali Haideri at the Emperor's Table Restaurant. PW-7/complainant also acknowledged that seizure memo dated 30.11.2015 (Exh.PW-7/3) was signed by him at the restaurant though he has not put the date under his signature. PW-7/complainant also conceded that PW-9/Ehsan Qadir and Gul Anwar along with PW-1/Nisha Ishtiaq/Magistrate and appellant/Iftikhar Ali Haideri left together the restaurant at about 6pm.

15. PW-7 acknowledged that he is facing a case in FIA and he remained in judicial lockup along with eight other accused in that case whereas he entered into scheme with the officials of EOBI and it was alleged that PW-7/complainant in connivance with other co-accused managed to sell a plaza worth of Rs.626 million on Rs.1002 million.

16. PW-7 also acknowledged that CDA had been demanding an amount Rs.45,00,00,000/- from him since 2012 whereas CDA had been sending notices for recovery of the said amount, however he had paid the entire amount in two installments as by paying 50% of the amount in 2012 and remaining 50% in 2016. He also acknowledged that he has not alleged anything against PW-2/Hamza Shafqat in his statement. PW-

7/complainant also conceded that he had not produced the cheque of Rs.33,00,000/- in the name of Waqar before the NAB and the statement (Exh.PW-1/4) was entirely written by PW-1/Nisha Ishtiaq/Magistrate by her own hands. He also acknowledged that he had received a letter dated 22.08.2016 issued by Rana Farhan, Deputy Director-I, CDA, Islamabad with the observation that an amount of Rs.397,204,762/- is outstanding, which is referred as Exh.PW-7/D-6.

17. The other important witness produced by the prosecution is PW-1/Nisha Ishtiaq/Assistant Commissioner Potohar, ICT, who remained Magistrate in the raid conducted for arrest of appellant/Iftikhar Ali Haideri. PW-1/Nisha Ishtiaq/Magistrate stated that on 30.11.2015, she was duty Magistrate whereby she had received an application from NAB officials which was marked by ADCG, Islamabad with the contention to offer magisterial cover to trap a raid. PW-1/Nisha Ishtiaq/Magistrate further stated that the NAB officials were also accompanied by PW-7/complainant whereby she recorded the statement of PW-7/complainant U/S 164 Cr.P.C., who also produced 200 prize bonds, consisted of 100 each of denomination of Rs.15,000/- and Rs.25,000/-, which were tainted by PW-1/Nisha Ishtiaq/Magistrate, and accordingly she asked the NAB officials to prepare the list of prize bonds produced by PW-7/complainant, which is attached with the record. PW-1/Nisha Ishtiaq/Magistrate further stated that she proceeded to Emperor's Table Restaurant situated in M/s Safa Gold Mall whereby NAB officials besetted her at a table next to PW-7/complainant's one and she was briefed by the NAB officials that you should inform them on the completion of conversation and transaction which is going to happen between PW-7/complainant and appellant/Iftikhar Ali Haideri. She further stated that after some time appellant/Iftikhar Ali Haideri came and sit next to

PW-7/complainant whereby conversation was started though she does not remember the exact conversation occurred between them. However, she stated that they were talking about money, whereby PW-7/complainant was saying that, "*yar mein day dunga*", whereas appellant/Iftikhar Ali Haideri was saying that, "*fikar na kar yar*". PW-1/Nisha Ishtiaq/Magistrate further stated that the transaction was made as PW-7/complainant handed over the prize bonds to appellant/Iftikhar Ali Haideri whereby she sent an SMS to NAB officials who then came inside the restaurant and approached appellant/Iftikhar Ali Haideri. The NAB officials conducted personal search of appellant/Iftikhar Ali Haideri and recovered tainted prize bonds from his right pocket of shirt along with other items from his possession, accordingly a seizure memo was prepared in presence of PW-1/Nisha Ishtiaq/Magistrate which was signed by her as Exh.PW-1/1.

She further stated that she had checked the prize bonds recovered from appellant/Iftikhar Ali Haideri and confirmed that those were same bonds she tainted in her office, whereby she signed the list of bonds which bears her signature as Exh.PW-1/2, whereafter she prepared raid report Exh.PW-1/3. PW-1/Nisha Ishtiaq/Magistrate further acknowledged that she also recorded statement of PW-7/complainant U/S 164 Cr.P.C. which was sent to the Court and referred as Exh.PW-1/4.

18. PW-1/Nisha Ishtiaq/Magistrate was cross examined by appellant/Iftikhar Ali Haideri whereby she acknowledged that Investigation Officer had shown arrest warrant of appellant/Iftikhar Ali Haideri which was issued on 27.11.2015 by D.G. NAB, Zahir Shah whereas she never asked PW-9/Ehsan Qadir/Investigation Officer to arrest appellant/Iftikhar Ali Haideri on the basis of arrest warrant. PW-1/Nisha Ishtiaq/Magistrate further conceded that the questionnaires started from portion A to A (Exh.PW-1/4) and rest of the questionnaire was prepared by

her Naib Court, a police employee, while it is not the job of a Naib Court to prepare the same. She also acknowledged that list of prize bonds is computer generated and not prepared by her. PW-1/Nisha Ishtiaq/Magistrate stated that she reached at the Emperor's Table Restaurant of M/s Safa Gold Mall, which is not restricted/prohibited and open for general public whereas he had noticed any private guards on the entry gate of M/s Safa Gold Mall. PW-1/Nisha Ishtiaq/Magistrate further admitted that the raid report (Exh.PW-1/3) is a computer generated one and prepared by her in her office on 01.12.2015 though date on the report is with pen, whereby the report was handed over to Investigation Officer on the same day, i.e. 01.12.2015. She also acknowledged that there is no mention in raid report of the fact that she heard the conversation occurred between PW-7/complainant and appellant/Iftikhar Ali Haideri. PW-1/Nisha Ishtiaq/Magistrate further conceded that statement of PW-7/complainant recorded U/S 164 Cr.P.C. was sealed in an envelope on the same day when it was recorded i.e. 30.11.2015, however she does not remember if copy of the same was dispatched to the Court on the same day or not. She also acknowledged that neither she, nor the Investigation Officer ousted the restaurant staff while conducting raid and the restaurant staff was inside at the time of raid, however she had not asked any member of the staff to join the raid proceedings as she left the restaurant after 10/15 minutes of raid as seizure memo was being prepared. PW-1/Nisha Ishtiaq/Magistrate further admitted that by the time she was leaving the restaurant, appellant/Iftikhar Ali Haideri was there and neither she talked to appellant/Iftikhar Ali Haideri nor recorded his version and even she had not obtained signature of appellant/Iftikhar Ali Haideri on any paper. She further acknowledged that she is aware of the High Court Rules and Orders prescribed instructions for conducting a raid under the supervision of

Magistrate whereas she also acknowledged that version of the accused should be recorded after a raid, however she claimed that she had prepared the raid report (Exh.PW-1/3) faithfully and correctly. PW-1/Nisha Ishtiaq/Magistrate also acknowledged that the original bonds which were seized at the time of raid were not shown to her in the Court.

19. Muhammad Asif Khan, Dy. A.D. NAB has been produced by prosecution as PW-8, who is the recovery witness, stated that he was present in the Emperor's Table Restaurant situated in M/s Safa Gold Mall where PW-7/complainant and appellant/Iftikhar Ali Haideri met whereby PW-7/complainant handed over a white color of shopping bag to appellant/Iftikhar Ali Haideri which he placed inside his coat's pocket. Whereafter, PW-7/complainant went to washroom to ease himself and when he came out he signaled PW-1/Nisha Ishtiaq/Magistrate whereupon senior officers entered in the Emperor's Table Restaurant whereby they conducted personal search of appellant/Iftikhar Ali Haideri and got recovered prize bonds worth of Rs.40,00,000/- as well as purse with Rs.60,000/-, accordingly seizure memo was prepared by Investigation Officer which he signed as Exh.PW-8/1. PW-8/Muhammad Asif Khan further stated that after fulfilling codal formalities, he went to P.S. Shahzad Town and associated police officials with him whereupon they went to appellant/Iftikhar Ali Haideri's house, i.e. House No.600, street No.2, Shahzad Town and got recovered articles which were already exhibited as Exh.PW-6/1 and seen by him when the same were produced before the Court at Serial No.1 to 5 and exhibited as Exh.PW-6/A-1 and Exh.PW-8/D.

20. During the course of cross-examination, PW-8/Muhammad Asif Khan acknowledged that Mohsin Ali Khan was the then Deputy Director of Intelligence of Security Wing in the regional office of NAB, who at the time of raid was not in uniform whereas other NAB officials, 3/4 in numbers,

were in uniform at that time and were appointed by PW-8/Muhammad Asif Khan to remain in corridor at the back side of the Emperor's Table Restaurant whereas two other NAB officials in plain clothes were patrolling at the door of Emperor's Table Restaurant. PW-8/Muhammad Asif Khan further admitted that PW-7/complainant reached in the restaurant after 30/35 minutes after his arrival though he had no conversation with PW-7/complainant whereas Mohsin Ali Khan along with Investigation Officer reached at about 03:35pm to 03:40pm and PW-1/Nisha Ishtiaq/Magistrate reached about 4pm. PW-8/Muhammad Asif Khan also acknowledged that appellant/Iftikhar Ali Haideri reached to the restaurant at about 5pm. PW-8 further stated that he was aware that arrest warrant of appellant/Iftikhar Ali Haideri was issued but neither he arrested him nor he asked Mohsin Ali Khan or other NAB officials to arrest appellant/Iftikhar Ali Haideri on reaching the Emperor's Table Restaurant. PW-8 also acknowledged that things handed over by PW-7/complainant to appellant/Iftikhar Ali Haideri were wrapped in white color shopping bag and that was not shown to him in the Court at the time of evidence and even the prize bonds were not shown to him which were taken into possession and articles recovered through seizure memo were also not shown to him. PW-8/Muhammad Asif Khan also conceded that neither he gone to the office of PW-1/Nisha Ishtiaq/Magistrate nor she had showed the prize bonds allegedly produced by PW-7/complainant whereas he had also not seen PW-1/Nisha Ishtiaq/Magistrate tainted the prize bonds and nor he is able to confirm in whose handwriting the seizure memo Exh.PW-8/1 was prepared at the Emperor's Table Restaurant in which prize bonds numbers were not noted whereas no other document in his presence was prepared except the said seizure memo by the Investigation Officer. PW-8/Muhammad Asif Khan further confirmed that PW-1/Nisha

Ishtiaq/Magistrate left the Emperor's Table Restaurant along with him and others at about 5.40pm whereas PW-1/Nisha Ishtiaq/Magistrate neither recorded statement of any person nor prepared any document in the restaurant. PW-8/Muhammad Asif Khan also conceded that his statement was not recorded in handwriting like seizure memo in the Emperor's Table Restaurant by Mohsin Ali Khan or by other Investigation Officer and his statement was recorded in the NAB office. He also acknowledged that PW-1/Nisha Ishtiaq/Magistrate neither recorded the statement of appellant/Iftikhar Ali Haideri nor took the articles mentioned in seizure memo Exh.PW-8/1. It was also acknowledged by PW-8/Muhammad Asif Khan that in his statement U/S 161 Cr.P.C. not a single word regarding the fact of hearing conversation of PW-7/complainant and appellant/Iftikhar Ali Haideri has been mentioned. PW-8/Muhammad Asif Khan lastly conceded before the Court that no respectable of the area of Shahzad Town was called by the Investigation Officer for joining of the recovery proceedings.

21. The prosecution has produced PW-9/Muhammad Ehsan Qadir, who is the Investigation Officer of Reference No.5/2016, stated that he received a complainant dated 27.11.2015 forwarded by D.G. NAB which was filed by PW-7/complainant wherein it was alleged that appellant/Iftikhar Ali Haideri demanded illegal gratification amounting to Rs.85,00,000/- for giving illegal benefit to owner of M/s Safa Gold Mall. He further stated that it was also alleged in complaint that appellant/Iftikhar Ali Haideri had already received a cheque amounting to Rs.40,00,000/- as a guarantee, however he returned the same back to PW-7/complainant subsequently and received Rs.700,000/- in cash and another cheque of Rs.33,00,000/- from him. PW-9/Ehsan Qadir further stated that it was also alleged in the complaint that appellant/Iftikhar Ali Haideri selected some furniture worth

of Rs.600,000/- from M/s Index Furniture Pakistan whereas the bill was paid by PW-7/complainant. PW-9/Ehsan Qadir further stated that D.G. NAB (R) authorized an inquiry vide letter dated 27.11.2015 (Exh.PW-9/1) whereas arrest warrant of appellant/Iftikhar Ali Haideri was issued which is referred as Exh.PW-9/2, however both these documents are under objection. He further stated that on 30.11.2015 he submitted an application to ADCG for appointment of Magistrate for conducting a raid whereby PW-1/Nisha Ishtiaq/Magistrate was appointed for the said purpose. PW-9/Ehsan Qadir then moved an application to PW-1/Nisha Ishtiaq/Magistrate for recording the statement of PW-7/complainant U/S 164 Cr.P.C., whereby PW-1/Nisha Ishtiaq/Magistrate recorded the statement of PW-7/complainant and tainted the prize bonds produced by PW-7/complainant.

22. PW-9/Ehsan Qadir further stated that he along with PW-8/Asif Khan reached to Emperor's Table Restaurant in M/s Safa Gold Mall where PW-7/complainant also met them whereas PW-1/Nisha Ishtiaq/Magistrate also sat on a table in front of PW-7/complainant and in the meanwhile appellant/Iftikhar Ali Haideri also came and sat opposite to PW-7/complainant. After some discussion, PW-7/complainant pulled out prize bonds from his pocket and handed over to appellant/Iftikhar Ali Haideri which he placed inside of his coat. PW-9/Ehsan Qadir further stated that he was present in another shop at the same floor and he had seen PW-7/complainant and appellant/Iftikhar Ali Haideri talking to each other and passing the money, whereby he received a message from PW-1/Nisha Ishtiaq/Magistrate to come inside the restaurant, whereupon he came inside and arrested appellant/Iftikhar Ali Haideri. After the arrest, PW-9/Ehsan Qadir conducted personal search of appellant and got recovered prize bonds from his pocket which were shown to PW-1/Nisha

Ishtiaq/Magistrate whereas some other articles i.e. membership cards etc. were also recovered, accordingly a seizure memo Exh.PW-9/3 was prepared. However, objection has been raised on the said seizure memo as it is not signed by PW-9/Ehsan Qadir. He further stated that details of prize bonds were also annexed to seizure memo already exhibited as Exh.PW-1/2, whereas objection was raised again by the defence counsel at this stage. PW-9/Ehsan Qadir secured the physical remand of appellant/Iftikhar Ali Haideri. He also associated PW-4/Ajab Khan to provide bill of furniture and to identify the furniture whereby original bill dated 12.10.2015 as well as pictures, accordingly seizure memo dated 10.12.2015 was prepared which is referred as Exh.PW-9/4.

23. PW-9/Ehsan Qadir further stated that he also obtained search warrant and went to P.S. Shahzad Town he was accompanied by PW-6/Ashfaq Ahmad/ASI on direction of S.H.O., who searched appellant/Iftikhar Ali Haideri's house, i.e. House No.600, Street No.2, Shahzad Town, Islamabad and got recovered three sofa sets, swing chair as well as reclining chair whereby seizure memo was prepared. PW-9/Ehsan Qadir also stated that the recovered sofa sets/chairs were matching with the pictures handed over to him by PW-4/Ajab Khan whereas the same were also positively identified by PW-4/Ajab Khan. PW-9/Ehsan Qadir further stated that he again called PW-4/Ajab Khan on 20.01.2016 and collected deposit slip of rent already referred as Exh.PW-4/6 and prepared a seizure memo Exh.PW-9/5 whereas he also prepared another seizure memo of sale report, printout of emails of Finance Department of M/s Safa Gold Mall and printout of emails from M/s Index Furniture Pakistan, which were already exhibited as Exh.PW-4/8 to Exh.PW-4/14. PW-9/Ehsan Qadir further stated that on 21.01.2016, PW-7/complainant came to his office and handed over cheque of Rs.40,00,000/-, which was in the name of

Waqar Ahmed, is already exhibited as Exh.PW-7/4 and taken into possession vide seizure memo Exh.PW-9/8. He also called Manager Operations UBL, F-7 Branch, Islamabad in connection with the account of M/s Safa Gold Mall where rent is being deposited whereby it was reflected that an amount of Rs.4,84,091/- after deducting the prize of furniture was credited in the account of M/s Safa Gold Mall. PW-9/Ehsan Qadir further stated that he had completed the investigation authorized to him vide authorization letter dated 04.01.2016 (Exh.PW-9/9) and submitted the report.

24. During the course of cross-examination, PW-9/Ehsan Qadir acknowledged that no document was signed by Chairman NAB and he is not a witness in the Reference. He also acknowledged that there is no endorsement by the name of Zahir Shah, D.G. NAB on the written complaint (Exh.PW-7/1) and the designation is not written thereon. PW-9/Ehsan Qadir also acknowledged that proceedings of R.B.M is not annexed with the Reference and arrest warrant of appellant/Iftikhar Ali Haideri was issued on 27.11.2015 and handed to him by D.G. NAB in his office, however he had not tried to arrest appellant/Iftikhar Ali Haideri from 27.11.2015 till 30.11.2015 before reaching to the Emperor's Table Restaurant. PW-9/Ehsan Qadir further conceded that CDA is the controlling authority of the property and PW-7/complainant is owner of M/s Safa Gold Mall, whereas the same was opened and shopkeepers were running their businesses, however an inquiry relating to affairs of M/s Safa Gold Mall is pending in the NAB since 2014 whereas he was the inquiry officer of that matter. PW-9/Ehsan Qadir further acknowledged that the above referred inquiry was against the PW-7/complainant and CDA officials whereas CDA took therein stance that more than Rs.45,00,00,000/- were outstanding against PW-7/complainant for not depositing premium

and late charges for non-deposit of payment. PW-9/Ehsan Qadir also conceded that PW-7/complainant had not showed him any completion certificate for occupancy of the M/s Safa Gold Mall.

25. PW-9/Ehsan Qadir further confirmed that NAB has not received Rs.13,00,00,000/- from PW-7/complainant under Voluntary Return in the inquiry of M/s Safa Gold Mall whereas he issued call-up notice to PW-7/complainant for collection of evidence. PW-9/Ehsan Qadir also acknowledged that CDA had sealed M/s Safa Gold Mall in the year 2016, whereupon PW-7/complainant approached the Hon'ble Islamabad High Court whereby order was issued in his favour to deposit Rs.22,00,00,000/- for interim relief of de-sealing and to provide security for remaining amount of Rs.23,00,00,000/- in the Court, whereby M/s Safa Gold Mall was de-sealed. PW-9/Ehsan Qadir also acknowledged that he had seen the letter dated 12.08.2015 written by Shafi Muhammad Marwat which enumerates violation of building and zoning regulations in respect of Plot No.5, M/s Safa Gold Mall, Sector F-7, Islamabad.

26. PW-9/Ehsan Qadir acknowledged that the list of the prize bonds does not bear his signature and his signature does not appear on seizure memo Exh.PW-9/3. He also conceded that list of prize bonds prepared by PW-1/Nisha Ishtiaq/Magistrate in her own office, the list of prize bonds attached with the Reference, and the list of prize bonds attached with statement U/S 164 Cr.P.C. are one and the same. He further acknowledged that during the comparison of list of prize bonds, a bond bearing No.A565301 of Rs.25,000/- does not figure any bearing in the list of prize bonds annexed in the Reference. He also conceded that same is the position in respect of numbers of bonds available at pages from 152-251 of the Reference, where not a single number of list attached with the Reference is same. He further acknowledged that eight prize bonds of denomination of

Rs.15,000/- each are not mentioned in the list. PW-9/Ehsan Qadir further conceded that he moved an application before PW-1/Nisha Ishtiaq/Magistrate for obtaining a copy of raid report within a week after raid, whereby a copy of raid report was provided to him by stenographer of PW-1/Nisha Ishtiaq/Magistrate whereas he had not seen the original raid report till the time of recording of evidence and the same is also not annexed with the Reference, rather just a photocopy is annexed. He also acknowledged that raid was conducted on 30.11.2015 while report is of 01.12.2015. PW-9/Ehsan Qadir further acknowledged that he neither recorded the statement of PW-1/Nisha Ishtiaq/Magistrate nor annexed the statement of appellant/Iftikhar Ali Haideri.

27. PW-9/Ehsan Qadir also conceded that PW-1/ Nisha Ishtiaq/Magistrate has not recorded any statement of him, appellant/Iftikhar Ali Haideri, PW-7/complainant, and PW-8/Muhammad Asif in the M/s Safa Gold Mall at the time of raid. He also acknowledged that he has not recorded the statement of PW-1/Nisha Ishtiaq/Magistrate regarding hearing of conversation between PW-7/complainant and appellant/Iftikhar Ali Haideri whereas same is the position with the statement of PW-8/Muhammad Asif. He had also not mentioned in seizure memo any shopping bag wherein things were wrapped, which was handed over to appellant/Iftikhar Ali Haideri in M/s Safa Gold Mall during the raid proceedings. PW-9/Ehsan Qadir also acknowledged that at the time of raid three/four persons of Emperor's Table Restaurant's staff were present though he neither recorded statement of any of them nor asked them to join investigation. He also admitted that he was not present in the restaurant at that time but he was all alone in M/s Index Furniture Pakistan, which is adjacent to the Emperor's Table Restaurant, whereas PW-8/Muhammad Asif was sitting inside the restaurant during the raid proceedings.

PW-9/Ehsan Qadir further conceded that he neither prepared any site plan at the place of recovery nor recorded statement of PW-1/Nisha Ishtiaq/Magistrate in respect of seizure memo dated 30.11.2015 though he only prepared recovery memo dated 30.11.2015 in the restaurant. He also conceded that he has gone through the NAO, 1999 whereby Sections 408, 409 & 547 PPC were not mentioned in section 9(a)(i) to (x) of NAO, 1999. PW-9/Ehsan Qadir also acknowledged that he has not mentioned any list of bonds allegedly recovered by him in the report U/S 173 Cr.P.C. He also acknowledged that PW-7/complainant nominated appellant/Iftikhar Ali Haideri together with Rana Abbas, who was not traceable and not associated in the investigation, whereas PW-7/complainant in his statement U/S 164 Cr.P.C. blamed another Director of CDA, namely Aslam, but he has also not been associated in the investigation. PW-9/Ehsan Qadir further conceded that he had not taken into possession any receipt or sale inventory regarding selling of furniture worth of Rs.6,00,000/- to appellant/Iftikhar Ali Haideri. He also admitted that he had not joined any elder of locality of appellant/Iftikhar Ali Haideri's house during the search of his house in Shahzad Town.

28. PW-9/Ehsan Qadir further acknowledged that there are SOPs for day-to-day working in NAB and financial limitation of cases for taking cognizance by NAB whereas the present financial limit is Rs.100 million, the said SOP was prepared by NAB on the direction of Hon'ble Supreme Court of Pakistan in the year 2016. PW-9/Ehsan Qadir submitted an SOP of 2015 wherein it has been mentioned that an amount of Rs.100 million is required to take cognizance against public servants whether serving or retired, bankers, businessmen and, contractors. He further acknowledged that he had not tried to arrest appellant/Iftikhar Ali Haideri in pursuance of arrest warrant dated 27.11.2015 rather he planned a program for catching

appellant/Iftikhar Ali Haideri red handed, whereby PW-7/complainant arranged the amount for raid and called appellant/Iftikhar Ali Haideri in the M/s Safa Gold Mall. PW-9/Ehsan Qadir further admitted that neither there is any mention of Mohsin Ali Khan, Deputy Director (Intelligence and Surveillance) in any document attached with the Reference and report U/S 173 Cr.P.C. nor he signed any document in the Reference. PW-9/Ehsan Qadir also acknowledged that PW-4/Ajab Khan is an employee of M/s Index Furniture Pakistan, Muhammad Usman Ali PW is an employee of M/s Safa Gold Mall. He also acknowledged that outstanding amount of Rs.45,00,00,000/- against M/s Safa Gold Mall was calculated by Finance Wing of CDA whereas appellant/Iftikhar Ali Haideri was Deputy Director in Estate Wing of CDA. PW-9/Ehsan Qadir also acknowledged that he had seen the document dated 30.07.2013 where amount of Rs.45,47,94,906/- was against M/s Safa Gold Mall, which also bears a note of Chairman CDA for further proceedings. He also acknowledged that appellant/Iftikhar Ali Haideri could neither waive or make the recovery in installments or decrease the amount recoverable from M/s Safa Gold Mall.

29. The NAB authorities have produced Ashfaq Ahmad/ASI as PW-6, who stated before the Court that on 14.12.2015 he was posted at P.S. Shahzad Town, Islamabad as duty officer when PW-9/Ehsan Qadir, Investigation Officer of this case, came to P.S. Shahzad Town with regard to search of appellant/Iftikhar Ali Haideri's house, whereby on search of the house, sofa set etc. as mentioned in the recovery memo Exh.PW-6/1 were recovered and taken into possession by Investigation Officer, which bears his signatures along with signatures of Irshad Ahmed and PW-8/Muhammad Asif, whereas he identified the swing chair (Exh.PW-6/1) while rest of the items were not taken into possession in his presence. During the course of cross-examination, PW-6/Ashfaq Ahmad admitted

that appellant/Iftikhar Ali Haideri was neither present at the time of recovery of items nor he was brought to police station whereas his statement U/S 161 Cr.P.C. was not recorded on spot and none of the elders of locality have joined the search and recovery proceedings of the house from where alleged recovery was effected and he is not aware of the house number and not witnessed the loading of articles.

30. PW-5/Aqeel Ahmad, Customer Services Manager Operation UBL appeared before the Court and stated that he signed the statement of M/s Safa Gold Mall for the month of November, referred as Exh.PW-4/1, the same was taken into possession by Investigation Officer on 23.02.2016 which bears his signature as Exh.PW-4/2. During the course of cross-examination PW-5/Aqeel Ahmad conceded that the account statement is a copy and not original whereas account statement does not reflect who is operating the account.

31. The NAB authorities further produced Ajab Khan, Showroom Outlet Manager, M/s Index Furniture Pakistan as PW-4, who stated before the Court that on 10.12.2013, Investigation Officer of this case asked him to produce original invoice and photos of furniture whereby he also confirmed that appellant/Iftikhar Ali Haideri came to M/s Index Furniture Pakistan on 12.10.2015 and selected furniture, whereupon he generated an invoice for him, however appellant/Iftikhar Ali Haideri said that payment would be made by owner of M/s Safa Gold Mall i.e. Rana Abdul Qayyum, PW-7/complainant. Whereafter, PW-4/Ajab Khan received an email from finance office of PW-7/Rana Abdul Qayyum/complainant wherein it was instructed that the bill would be adjusted in the monthly rent of showroom, accordingly the amount was adjusted and furniture was delivered at House No.600, Street No.2, Shahzad Town, Islamabad. PW-4/Ajab Khan further stated that that he had seen the original invoice, photographs of sofa set,

swing chair, and sofa (three in number), which are referred as Exh.PW-4/1 to 4, and taken into possession in presence of Muhammad Usman Ali and Gul Anwar by the Investigation Officer through seizure memo which bears his signature Exh.PW-4/5. He further stated that on 16.12.2015 Investigation Officer of the case got identified the furniture which was recovered from appellant/Iftikhar Ali Haideri's whereas on 20.11.2016 PW-4/Ajab Khan provided original deposit Receipt dated 16.11.2015 of Rs.4,84,091/-, same is Exh.PW-4/6, which was taken into possession in presence of witnesses which bears his signature as Exh.PW-4/7. Investigation Officer had also taken into possession printouts of report for the month of September, October, and November, 2015, same are referred as Exh.PW-4/8 to 10 and signed by him, along with a printout of email of October 12 at 5:06 p.m. (Exh.PW-4/11), and a printout of email sent by M/s Index Furniture Pakistan to M/s Safa Gold Mall (Exh.PW-4/12). PW-4/Ajab Khan also produced deposit receipt received by him which is referred as Exh.PW-4/13, and printout of rent payment of October 2015 signed by him is referred as Exh.PW-4/14. All these documents have been taken in possession by the Investigation Officer vide seizure memo Exh.PW-4/15

32. During the course of cross-examination PW-4/Ajab Khan acknowledged that receipt Exh.PW-4/6 and Exh.PW-4/13 are same and not signed by him whereas any furniture item sold by M/s Index Furniture Pakistan is entered into sale report which is generated through computer by him. He also conceded that M/s Index Furniture Pakistan do not prepare furniture and they do not put any seal or mark on the furniture in M/s Safa Gold Mall. He further acknowledged that printouts of Exh.PW-4/2, Exh.PW-4/3, and Exh.PW-4/5 were not taken by him and those were shown to him in NAB office whereas he had no idea from where those photographs/printouts were prepared. He further acknowledged that he

has not sent the emails referred as Exh.PW-4/11 and Exh.PW-4/12 whereas the former email contains details regarding selling of furniture to Rana Abdul Qayyum, owner of M/s Safa Gold Mall, whereby he identified the same furniture in NAB office on 16.12.2015.

33. The prosecution has produced PW-3/Umar Qureshi, Finance Manager, M/s Safa Gold Mall, who provided attested copies of certain documents, such as M/s Safa Gold Mall General Ledger dated 31.01.2016 (Exh.PW-3/2), printout of M/s Safa Gold Mall Cash Book Ledger as of August, 2015 (Exh.PW-3/3), printout of email from Finance Department of M/s Safa Gold Mall to the Accounts Department of M/s Index Furniture Pakistan dated 12.10.2015 (Exh.PW-3/4), bank account statement of M/s Safa Gold Mall of UBL, F-7/2 Branch, Islamabad showing payment of rent for the month of September, 2015 to October, 2015 (Mark PW-3/5), printout of email from M/s Index Furniture Pakistan to M/s Safa Gold Mall (Exh.PW-3/6), photocopy of printout of manual deposit slip of cheque (Mark PW-3/7), printout of rent calculation upto October, 2015 (Exh.PW-3/8), and Safa Gold Cash Payment Voucher (Exh.PW-3/9). All these documents are under objection as majority of them are computer generated and some of them are photocopies. During the course of cross-examination, PW-3/Umar Qureshi acknowledged that Rana Abdul Qayyum, owner of the M/s Safa Gold Mall, got restraining order against CDA for recovery of outstanding dues and he acknowledged that the record produced before the Investigation Officer, referred as Exh.PW-3/1, is computer generated and same is printout whereas he also acknowledged that entry can be deleted or added by the operator and a printout can be taken.

34. NAB authorities have produced PW-2/Hamza Shafqat, Deputy Secretary, Establishment Division, who was Deputy Director General Land Escape, CDA, stated that PW-7/Rana Abdul Qayyum/complaint visited his

office for 2/3 times regarding issue of pending amount of Rs.40,00,00,000/- against M/s Safa Gold Mall whereby PW-2/Hamza Shafqat advised him to pay some amount whereafter the matter will be considered by the authorities whereupon PW-7/complainant showed his willingness to pay Rs.10,00,00,000/-, which was deposited by him in One Window Capital Development Authority through pay order but appellant/Iftikhar Ali Haideri, Deputy Director Estate had not processed the case with the contention that the matter was pending before the Hon'ble Islamabad High Court, whereupon PW-2/Hamza Shafqat insisted again and instructed appellant/Iftikhar Ali Haideri to put the case but he remained reluctant with the same stance that matter is pending before Hon'ble Islamabad High Court, nonetheless, appellant/Iftikhar Ali Haideri was got arrested in the meanwhile. During the course of cross-examination, PW-2/Hamza Shafqat acknowledged that PW-7/complainant deposited an amount of Rs.100 million payable to CDA on 10.11.2015 in One Window Directorate CDA whereas PW-7/complainant challenged the recovery of outstanding amount against him in the Hon'ble Islamabad High Court whereby stay order was granted in favour of PW-7/complainant. PW-2/Hamza Shafqat further acknowledged that Finance Department determined the tax amount against the M/s Safa Gold Mall as of Rs.45,00,00,000/- whereupon Chairman CDA had also given a note for further proceedings for recovery of the said amount whereas the total outstanding amount against M/s Safa Gold Mall was calculated as Rs.454,794,906.2/- whereas a recovery of tax could not be increased or decreased by appellant/Iftikhar Ali Haideri and he can only send a notice to the owner of M/s Safa Gold Mall for deposit of amount while the said amount was due since 2010. He also conceded that CDA had not taken any coercive measure against the M/s Safa Gold Mall as he had already obtained a stay order from the Hon'ble Islamabad High

Court. PW-2/Hamza Shafqat further acknowledged that no written instruction was imparted to appellant/Iftikhar Ali Haideri that the case of M/s Safa Gold Mall be put up after the part payment of Rs.10,00,00,000/-.

35. From the perusal of above referred evidence, following discrepancies and points have been noted.

- (i.) Rana Abdul Qayyum, PW-7/complainant is owner of M/s Safa Gold Mall which was constructed on plot situated in F-7 Markaz,
- (ii.) The M/s Safa Gold Mall plot was sold on 31.12.2009 @ Rs.321,000/square yards.
- (iii.) M/s Safa Gold Mall is a defaulter of CDA.
- (iv.) PW-7/complainant/Rana Abdul Qayyum stated before the Court that appellant/Iftikhar Ali Haideri, Deputy Director, CDA asked him for illegal gratification of Rs.85,00,000/-.
- (v.) PW-7/complainant has filed an application Exh.PW-.7/1 to the NAB authorities regarding the illegal claim of appellant/Iftikhar Ali Haideri.
- (vi.) PW-7/complainant/Rana Abdul Qayyum recorded his statement under Section 164 Cr.P.C. before the PW-1/Nisha Ishtiaq/Magistrate and handed over 200 prize bonds out of which 100 were of Rs.15,000/- and 100 were of Rs.25,000/-, which were marked/tainted by the PW-1/Nisha Ishtiaq/Magistrate.
- (vii.) PW-7/complainant stated that the negotiation between him and appellant/Iftikhar Ali Haideri was heard by PW-1/Nisha Ishtiaq/Magistrate as she was sitting at the back of appellant/Iftikhar Ali Haideri and she has also seen the entire episode.

- (viii.) PW-7/complainant handed over the tainted bonds to appellant/Iftikhar Ali Haideri who placed the same into pocket inside of his coat.
- (ix.) PW-7/complainant stated that that two bundles of bonds were recovered from appellant/Iftikhar Ali Haideri in his presence whereas he handed over prize bonds and not bundle
- (x.) PW-7/complainant also said appellant/Iftikhar Ali Haideri selected furniture i.e. sofa set and relaxing chair from M/s Index Furniture Pakistan whereby he paid the amount by adjusting it in monthly rent of the M/s Index Furniture Pakistan situated in Safa Gold Mall.
- (xi.) The Emperor's Table Restaurant has staff of 10/12 members who were available in the restaurant at the time of arrest of appellant/Iftikhar Ali Haideri dated 30.11.2015 but they were not cited as witnesses.
- (xii.) PW-1/Nisha Ishtiaq/Magistrate has not recorded statement of PW-7/complainant on spot in Emperor's Table Restaurant nor recorded the statement of appellant/Iftikhar Ali Haideri and she did not write any paper neither recorded statement of PW-9/Ehsan Qadir and Gul Anwar in the Emperor's Table Restaurant at the time of recovery and arrest of appellant/Iftikhar Ali Haideri on 30.11.2015.
- (xiii.) PW-7/complainant signed the recovery memo dated 30.11.2015 Exh.PW-7/3.
- (xiv.) PW-1/Nisha Ishtiaq/Magistrate supervised the raid regarding recovery of prize bonds from the appellant/Iftikhar Ali Haideri on 30.11.2015 in the Emperor's Table Restaurant in M/s Safa Gold Mall.

- (xv.) PW-1/Nisha Ishtiaq/Magistrate prepared the list of the bonds produced by PW-7/complainant at the time of recording of statement U/S 164 Cr.P.C. in her office prior to raid and she does not remember the exact conversation between appellant/Iftikhar Ali Haideri and PW-7/complainant.
- (xvi.) PW-1/Nisha Ishtiaq/Magistrate only heard the saying, "پار میں دے دو" and "فکر نہ کر پار" said by PW-7/complainant and appellant/Iftikhar Ali Haideri, respectively.
- (xvii.) PW-1/Nisha Ishtiaq/Magistrate stated that during the personal search of appellant/Iftikhar Ali Haideri, tainted prize bonds were recovered from the right pocket of his shirt whereby she had checked the tainted bonds recovered from appellant/Iftikhar Ali Haideri, which were found same.
- (xviii.) List of the bonds is computer generated and not prepared by PW-1/Nisha Ishtiaq/Magistrate.
- (xix.) Raid report Exh.PW-1/3 is computer generated which was prepared on 01.12.2015 in the office of PW-1/Nisha Ishtiaq/Magistrate.
- (xx.) Exh.PW-1/3 Raid Report is silent qua the fact that PW-1/Nisha Ishtiaq/Magistrate heard the conversation between appellant/Iftikhar Ali Haideri and PW-7/complainant.
- (xxi.) Staff and waiters were present in the Emperor's Table Restaurant during the raid, but none of them was associated in investigation.
- (xxii.) PW-1/Nisha Ishtiaq/Magistrate conceded that she neither recorded the version of appellant/Iftikhar Ali Haideri nor obtained signature of appellant/Iftikhar Ali Haideri on any paper.

- (xxiii.) Original bonds which were allegedly recovered have not been shown in the Court to PW-1/Nisha Ishtiaq/Magistrate.
- (xxiv.) PW-8/Muhammad Asif Khan/Deputy Director NAB stated that PW-7/complainant handed over a white color shopping bag to appellant/Iftikhar Ali Haideri and he placed the same inside pocket of his coat.
- (xxv.) Mohsin Ali Khan and other seniors of NAB arrested appellant/Iftikhar Ali Haideri and recovered the shopping bag from right pocket of his shirt.
- (xxvi.) PW-8/Muhammad Asif Khan never entered inside the Emperor's Table Restaurant.
- (xxvii.) The white color shopping bag from which prize bonds were recovered has neither been produced in the Court nor even the originals prize bonds were shown to PW-8/Muhammad Asif which were taken in possession through seizure memo.
- (xxviii.) PW-8/Muhammad Asif Khan stated before the Court that PW-1/Nisha Ishtiaq/Magistrate has not shown prize bonds to him which were produced by PW-7/complainant.
- (xxix.) PW-8/Muhammad Asif Khan is not aware that in whose writing the seizure memo Exh.PW-7/3 was prepared.
- (xxx.) Bonds numbers were not noted in seizure memo Exh.PW-7/3.
- (xxxi.) PW-8/Muhammad Asif Khan statement was not recorded in the Emperor's Table Restaurant.
- (xxxii.) PW-1/Nisha Ishtiaq/Magistrate has neither recorded the statement of appellant/Iftikhar Ali Haideri nor has recorded the statement of PW-7/complainant.

- (xxxiii.) PW-8/Muhammad Asif Khan has not referred a single word in his statement U/S 161 Cr.P.C regarding conversation came about between PW-7/complainant and appellant/Iftikhar Ali Haideri.
- (xxxiv.) PW-8/Muhammad Asif Khan acknowledged that no respectable of the locality was called by police during the search of appellant/Iftikhar Ali Haideri's house in Shahzad Town, Islamabad.
- (xxxv.) Appellant has no authority to increase or decrease the amount against Safa Gold Mall.
- (xxxvi.) I.O did not record the statement of accused, complainant and Magistrate at the time of raid/recovery.
- (xxxvii.) Shopping bag was not produced in the Court.
- (xxxviii.) The recovery of furniture has not been proved in accordance with law.
- (xxxix.) Exh.PW4/2, Exh.PW4/3, Exh.P4/4 are photographs of the furniture which were taken in the showroom in order to prove the original furniture which is necessary to produce the same in original before the Court, therefore, photographs are no evidential value.
- (xl.) The factum of adjustment of rent by index furniture showroom against the price of furniture has not been substantiated in accordance with law as sale report Exh.PW-4/8, Exh.PW-4/10, emails Exh.PW-4/11, Exh.PW-4/12, Bank deposit slip Exh.PW-4/13, Exh.PW-4/14, General Ledger Exh.PW-3/2, Cash Book Ledger dated 10.08.2015 Exh.PW-3/3, Email Exh.PW-3/4, Email Exh.PW-3/6, Cash payment voucher Exh.PW-3/9 have not been proved in accordance with Qanun-Shahadat Order, 1984 as all these documents are private documents which could not be

linked with the appellant Iftikhar Ali Haideri, emails and cash ledgers are printed /downloaded documents which could only proved through their source material subject to certificate from their authors which has not been available on record.

36. The above referred discrepancies noted by this Court have to be seen in light of the law settled by different Courts, however the core question before this Court is to see as to whether the raid conducted by PW-1/Nisha Ishtiaq/Magistrate on the complaint of PW-7/complainant was in accordance with law and the requirements of raid to prove the guilt of appellant/Iftikhar Ali Haideri have substantially been proved or otherwise. In view of that, we have gone through the judgments rendered by the superior Courts which are cited as 1996 SCMR 181 (Muhammad Ashraf vs. The State), PLD 1992 SC 254 (Muhammad Aslam vs. The State), 1998 SCMR 586 (Malik Umar Hayat vs. The State), PLD 2004 SC 35 (Shahjahan vs. The State), 2008 YLR 1094 (Malik KB Awan vs. Rana Muhammad Irshad), 2005 P.Cr.LJ 325 (Muhammad Saleem Khan vs. The State), 2012 YLR 2792 Lahore (Abdul Majeed vs. The State), 1989 P.Cr.LJ 1382 Karachi (Sher Afzal vs. The State), 2001 P.Cr.LJ 2062 (Javed Ali Memon vs. The State), 2016 YLR Note 191 Rana Muhammad Tariq vs. The State), 2017 P.Cr.LJ 459 (The State vs. Khalid Rashid Kamboh), and 2013 MLD 907 Sindh (Anwar Ali vs. The State), whereby following principles have been observed:

- i. Conversation between complainant and accused is relevant to be heard by the raiding party.
- ii. Bribe money has to been seen while passing to the accused.
- iii. Independent witnesses available at the time of recovery and arrest have to be associated as witnesses.

- iv. If complainant being biased against the accused, his evidence needs independent corroboration.
- v. It is not necessary in raid (trap cases) to look for a direct evidence of criminal conversation between the accused and complainant provided that Magistrate who supervise the raid was satisfied that he had not been cheated neither by the complainant/decoy witness nor the accused.
- vi. The purpose of giving bribe money/illegal gratification has to be proved independently against which the accused was receiving the bribe.
- vii. Recovery has to be proved through direct evidence and confirmed by the raiding Magistrate.
- viii. Overhearing of the conversation of complainant and accused by the Magistrate is immaterial, neither the same is conditioned precedent to prove a raid case nor the same is the requirement of the law.
- ix. Requirements of Section 103 Cr.P.C. in recovery proceedings are mandatory other than by police witnesses if independent witnesses were available.
- x. Raiding Magistrate has to record the statement of the accused at the time of recovery in order to understand the issue as to whether the recovered/tainted notes or articles are required for any official purpose or job.
- xi. Mere recovery of currency notes in such cases by itself would not be taken as proof of demand / payment of bribe unless all precautionary measures were taken by the raiding party to exclude the possibility of any defence version and to exclude all possibilities of false implications.

- xii. Currency notes which were passed on to complainant, their serial numbers were noted, but without putting any initial or mark thereon; such notes could not be strictly termed to be tainted currency notes.
- xiii. Law required that immediately after the raid, statement of complainant and accused was to be recorded by the raiding Magistrate.
- xiv. Raiding Magistrate has to see that complainant or decoy witness has delivered the bribe money to the accused.
- xv. Site plan has to be prepared regarding the raid wherein each and every witness, Magistrate, accused, complainant/decoy witness has to be identified.
- xvi. Numbers of currency notes have to be mentioned in Mashirnama/recovery memo.
- xvii. Tainted money has to be shown to the recovery witnesses on spot after getting it recovered from the accused at the time of raid.
- xviii. Magistrate as well as police officials had to witness the transaction of delivery of illegal gratification which was accepted by the accused in trap proceedings.
- xix. Court was required to consider explanation offered by accused on the touchstone of preponderance of probability and not on the touchstone of proof beyond reasonable doubt, however before an accused was called upon to explain as to how the amount in question was found in his possession, foundational facts must be established by the prosecution in Trial.

- xx. Recovered tainted currency notes could have been at the most corroboratory in nature subject to condition that complainant has supported the prosecution case.
- xxi. Investigation Officer, if admitted the presence of private witnesses at the time of raid and arrest as well as recovery of the alleged tainted money, he has to comply with provisions of Section 103 Cr.P.C.
- xxii. Tainted money has to be marked and sealed after its alleged recovery by the raiding Magistrate
- xxiii. The accused person must have a capacity to fulfill the demand of complainant or in position to deliver the nature of work assigned to him and evidence should have been given to that effect that accused has completed the job against which he is receiving the illegal gratification.

37. The above referred principles given in case laws have to be seen in the light of available evidence, discrepancies noted by this Court in the entire trial as well as the foundational stone of the entire case i.e. the raid conducted on the fateful day by PW-1/Nisha Ishtiaq/Magistrate in presence of NAB officials to recover the illegal gratification/prize bonds from the appellant/Iftikhar Ali Haideri. We have gone through the entire evidence with the able assistance of learned counsel for the parties and we are of the view that PW-1/Nisha Ishtiaq/Magistrate, while recording the statement U/S 164 Cr.P.C. (Exh.PW-1/4), has recorded the following factors regarding the prize bonds:

"میرے سامنے 100 بونڈ نمبر A-565400-A565301، ہر بونڈ Rs.25000 کی مالیت کا اور 100 بونڈ (multiple no) جس میں ہر ایک ہی مالیت Mark-Rs15000 کے گئے ہیں۔

Certificate

سن کر درست تسلیم کیا۔

دستخط (عبدالقیوم)

Thumb impression

تصدیق کی جاتی ہے کہ مسی عبدالقیوم ولد حاجی معاذ احمد نے بیان ہذا اپنی مرضی سے قلم بند کرایا ہے جو کچھ مذکورہ نے بیان کیا ہے حرف بہ حرف لکھا گیا ہے۔ بیان ہذا پڑھ کر سنایا گیا ہے جسکو درست مانتے ہوئے مذکورہ نے دستخط اور انگھوٹھا ثبت کیا ہے۔ بیان ہذا کے سامنے 200 Bonds worth 40 lakh نوٹوں کو Mark/Tint کیا گیا ہے۔ بیان ریکارڈ کرنے سے پہلے ضابطہ کاروائی کی گئی ہے۔ بیان ہذا (پانچ) 5 صفحات پر مشتمل ہے۔ بیان ہذا بمہر عدالت جناب جج صاحب محمد بشیر احتساب عدالت اسلام آباد مرصل ہوئے۔ مارک شدہ بونڈوں کی فہرست بمعہ serial no ساتھ attached ہے۔"

38. The above referred scenario reveals details regarding bonds of Rs.25,000/- and Rs.15,000/- denomination, respectively, whereas the prize bonds were tainted/marked, however following discrepancies have been noted in this portion of the statement.

- (i) The mark/tint referred in the said statement has not been explained, specified or clarified by the PW-7/complainant except the term Mark/Tint was referred.
- (ii) Similarly, PW-7/complainant in his statement U/S 164 Cr.P.C. has only referred that:

"پچھلے جمعہ کو چودھری افتخار علی حیدری کی مجھے ایجے دن کو کال آئی اس نے کہا کہ ہم آپ کے دو payorder واپس کرواتے ہیں۔ ہمارے senior حکام نے فیصلہ کیا ہے کہ آپ نے یا تو پوری payment کرنی ہے ورنہ آپ کا پلاٹ cancel کر دیا جائے گا۔ پلاٹ نہ cancel کرنے کی مد میں، میں نے اس کو 7 لاکھ کیش اور 33 لاکھ کا cheque واپس کر کے نام کا دیا۔ طے یہ ہوا کہ وہ پلاٹ نہیں کینسل کرے گا۔ میں وقار کو نہیں جانتا تھا نہ ہوں۔ یہ کوئی دو ماہ پہلے کی بات ہے۔ پھر اس نے کہا کہ آپ کا 22 کروڑ 96 لاکھ والا۔۔۔ بحال کر دوں گا اور آپ سے آدھے پیسے دو سال کی قسطوں پر لے لوں گا اور سود بھی نہیں لگاؤں گا۔"

پھر اس نے چھ لاکھ کافر نیچر بھی مجھ سے لیا (index fur) سے اور وہ میں نے کرائے سے پیسے کنوائے، یہ چھ لاکھ 33 لاکھ سے minus ہونا تھا۔ پھر اس نے 85 لاکھ مزید ڈیمانڈ کی جب اس کو پتہ چلا کہ میرے پاس 10 کروڑ واپس آگئے ہیں۔ پھر میں نے 40 لاکھ کا آج نظام کیا ہے۔ 40 لاکھ کے بونڈ میرے پاس موجود ہیں۔"

The above referred facts mentioned in statement U/S 164 Cr.P.C. have not confirmed the authority or capacity of appellant/Iftikhar Ali Haideri, Deputy Director Estate Management-II, CDA, to reschedule the installments or to cancel the plot in any manner, nor even confirmed the transaction that appellant/Iftikhar Ali Haideri is ready to receive Rs.40,00,000/- in shape of prize bonds, whereas this very fact has to be seen in the light of statement got recorded by PW-2/Muhammad Hamza Shafqaat, Deputy Director General Land Estate, CDA mainly on the following facts:

- (i) *Finance department has determined tax amount against M/s Safa Gold Mall as Rs.45,00,00,000/-.*
- (ii) *The amount determined by Finance Wing against M/s Safa Gold Mall Rs.454,794,906.2/- as recovery of tax could not be lessened or increased by appellant/Iftikhar Ali Haideri.*
- (iii) *Appellant/Iftikhar Ali Haideri could only send a notice to the owner of M/s Safa Gold Mall for deposit of outstanding amount.*
- (iv) *CDA uses coercive measures against defaulters for recovery of the outstanding amount.*
- (v) *The coercive measures against the owner of M/s Safa Gold Mall were not used by CDA as he obtained a stay order from the Hon'ble Islamabad High Court.*
- (vi) *It is correct that contention of appellant/Iftikhar Ali Haideri was correct that no coercive measures could be taken against owner of M/s Safa Gold Mall in respect of outstanding amount against him as stay order exists in his favour by Hon'ble Islamabad High Court.*

39. The above referred statement of the prosecution witness clearly establishes that appellant/Iftikhar Ali Haideri was neither in position to change the recovery amount calculated by Finance Wing of CDA nor he was in capacity to do anything for such purpose, therefore, the very origin for receiving illegal gratification is not visible and not established by the prosecution which is the basic requirement referred in 1989 SCMR 1814 (Muhammad Akhtar vs. The State) as appellant was not in position to give any favour to PW-7/complainant by changing the terms of outstanding amount, even otherwise, there was a restraining order of the Hon'ble

Islamabad High Court and in view of such situation, neither any benefit nor any loss could have been caused to PW-7/complainant unless the restraining order of the Hon'ble Islamabad High Court was removed or recalled, which is beyond the competence of appellant/Iftikhar Ali Haideri.

40. From the perusal of evidence, it has also been established that alleged recovered prize bonds referred in Exh.PW-1/2 i.e. list of the bonds, have been prepared by PW-1/Nisha Ishtiaq/Magistrate in her office prior to the said raid at the time of recording of statement of PW-7/complainant U/S 164 Cr.P.C. whereas the recovered prize bonds placed before the Court as Exh.PW-7/2 (51-250) are photocopies, on which no mark, which could be considered as Taint/Mark, has been seen by this Court as PW-1/Nisha Ishtiaq/Magistrate neither explained the said mark/taint in statement U/S 164 Cr.P.C. (Exh.PW-1/4) nor in her examination-in-chief, whereas it is the requirement of law to clearly establish the "*mark or taint made on the bonds*" in order to establish a fact that prior to raid, some taint or mark had been affixed on the bonds or currency notes which were recovered later on during the raid from accused, therefore, the usual practice for such kind of raid is to put a small initial or a signature on the bonds or currency notes to create a taint by the Magistrate and same would be notified prior to the raid, however in present case, PW-1/Nisha Ishtiaq/Magistrate has not explained the factum that each bond contains a specific taint/mark and such requirement has to be seen in the light of judgment referred 2005 P.Cr.LJ 325 Peshawar (Muhammad Saleem Khan vs. The State), wherein it was held that currency notes which were passed on to the complainant, their serial numbers were noted but without putting any initial or any other mark thereon, such currency notes could not be strictly termed as tainted currency notes.

41. The prosecution is bound under the law i.e. Qanun-e-Shahadat Order, 1984 to establish that a particular sign, taint, or mark was made on the recovered bonds prior to raid and if such factum has not been disclosed or proved in this manner, it would be considered that prosecution has withheld the evidence under Article 129(g) of Qanun-e-Shahadat Order, 1984 as the onus is upon the prosecution to prove this particular fact in a manner like any other recovery memo has been proved whereby the recovery witnesses or the executor of the memo confirms his own signature and owns the statement whereas the statement of PW-1/Nisha Ishtiaq/Magistrate is silent in this regard as she only said in her statement that:

"All the bonds are tainted by me."

Whereas, that taint has not been explained and even she has not confirmed that particular taint which was marked by her and the same was available on each and every prize bonds unless she stated before the Court that a particular taint marked by her was available on a particular number of the bond recovered from the appellant/Iftikhar Ali Haideri, the case could not be proved.

42. We have also gone through the recovery memo Exh.PW-9/3 as well as Exh.PW-1/1 allegedly prepared on 30.11.2015 by PW-9/Muhammad Ahsan Qadir/Investigation Officer which was signed by PW-7/Complainant and PW-1/Nisha Ishtiaq/Magistrate, which only refers that:

(10) "پرائز بونڈز مالیت -/Rs25000 تعداد 100 عدد"

(11) "پرائز بونڈز مالیت -/Rs15000 تعداد 100 عدد۔ (نشان زدہ) [تفصیل ساتھ لف ہے۔]"

The above referred recovery memo does not contain the details of prize bonds numbers which is the most essential part to establish that particular prize bond numbers were given by PW-7/complainant to PW-1/Nisha

Ishtiaq/Magistrate prior to the raid and same were tainted/marked by her and all those prize bonds have been recovered from the possession of appellant/Iftikhar Ali Haideri at the time of raid on 30.11.2015, therefore, it could not be assumed that which prize bond numbers have been recovered from the possession of appellant/Iftikhar Ali Haideri, which is the key factor of any raid conducted in offences U/S 161 of the PPC, whereas it is settled proposition of law that recovery of any amount of bonds is a corroborative piece of evidence as referred in 2017 PCr.LJ 459 Lahore (The State vs. Khalid Rasheed Kambho). Hence, in order to corroborate the recovered bonds with any prior prepared list by PW-1/Nisha Ishtiaq/Magistrate, it has to be given an effect only through a manner by placing the numbers of prize bonds in the recovery memo as it is the mandatory requirement to refer the numbers of currency or bonds in the recovery memo. Reliance is placed upon 1989 P.Cr.LJ 1382 Karachi (Sher Afzal vs. The State). Whereas, none of the recovery witnesses i.e. PW-1/Nisha Ishtiaq/Magistrate, PW-7/complainant, or PW-9/Ehsan Qadir/I.O. have stated even a single word regarding the details of bonds numbers in their statement as those numbers were not available to them while preparing the recovery memo Exh.PW-9/3 and Exh.PW-1/1 (same document), therefore, there will be no effect of recovery in favour of prosecution case as the prosecution has not discharged the onus to prove that particular prize bond numbers have been recovered from the possession of appellant/Iftikhar Ali Haideri at the time of recovery on 30.11.2015 when raid was conducted and that particular prize bond was marked or tainted prior to recovery.

43. It is also settled proposition of law that it is mandatory upon prosecution to prove the documentary evidence in a manner required under Articles 72, 73, 75, and 76 of the Qanun-e-Shahadat Order, 1984 where

contents of document have to be proved independently, in this case Exh.PW-4/2, Exh.PW-4/3, Exh.PW-4/4 are photographs of the furniture which were taken in the showroom in order to prove the original furniture whereas it is necessary to produce the original furniture before the Court, therefore, photographs are inadmissible. Similarly, the factum of adjustment of rent by index furniture showroom against the price of furniture has not been substantiated in accordance with law as sale report Exh.PW-4/8, Exh.PW-4/10, emails Exh.PW-4/11, Exh-PW-4/12, Bank deposit slip Exh.PW-4/13, Exh.PW-4/14, General ledger Exh.PW-3/2, Cash Book Ledger dated 10.08.2015 Exh.PW-3/3, Email Exh.PW-3/4, Email Exh.PW-3/6, Cash payment voucher Exh.PW-3/9 have not been proved in accordance with Qanun-Shahadat Order, 1984 as all these documents are private documents which could not be linked with the appellant Iftikhar Ali Haideri, emails and cash ledgers are printed /downloaded documents which could only proved through their source material subject to certificate from their authors which has not been available on record. Therefore, while relying upon (2017 PCr.LJ 854 Syed Hamid Saeed Kazmi and others Vs. The State) wherein it was held that:-

(b) Qanun-e-Shahadat (10 of 1984)---

---Arts. 75, 76, 79 & 89 (5)---Criminal trial---Documentary evidence---Principles---Documents produced by prosecution during the course of trial in order to prove accusation cannot be admitted in evidence if original documents are not produced in evidence---No reliance for the purposes of conviction can be placed on photostat copies of documents, if the same are not admissible as not validly tendered in evidence---Documents whose contents have not been proved by way of its author, executors and witnesses of contents, as such the same are not admissible---Foreign documents without legal translation and attestation from High Commission, Embassy and Ministry of Foreign Affairs are not admissible.

In above background, the recovery memo of the bonds Ex.PW9/3 and EX.PW1/1 only refers the term "bonds" and is silent regarding the serial numbers yet mainly relied upon the list prepared by PW-1/Nisha Ishtiaq/Magistrate at her office referred as Exh.PW-1/2 which contains the numbers of the bonds but that list was neither signed by PW-7/complainant nor by PW-9/Ehsan Qadir/Investigation Officer. Even otherwise, PW-1/Nisha Ishtiaq/Magistrate further confirms that:

"the list of the bonds is computer generated and it was not prepared by me."

Similarly, PW-1/Nisha Ishtiaq/Magistrate has also not followed the very mandate of law by recording the statement of PW-7/complainant, appellant/Iftikhar Ali Haideri as well as PW-9/Ehsan Qadir and recovery witnesses at the time of raid on 30.11.2015 whereby alleged prize bonds were recovered from the appellant/Iftikhar Ali Haideri in order to strengthen the prosecution case. The raiding Magistrate is bound to record the version of appellant/Iftikhar Ali Haideri on spot after the recovery and when no such exercise has been made then it could not be assumed that the said prize bonds were given to appellant/Iftikhar Ali Haideri as illegal gratification, which is the requirement of the situation as held in **2004 MLD 168, 2016 YLR Note 191 (Muhammad Tariq vs. The State)**. Even otherwise, PW-1/Nisha Ishtiaq/Magistrate in her cross-examination also confirms the following factors:

- ***I did not talk with accused. I did not record his version. I did not obtained the signature of accused on any paper.***
- ***It is correct that High Court Rules and Order prescribed that version of the accused should be recorded after raid.***
- ***I have not been shown the original bonds which I have seized at the time of raid today in Court.***

The above referred background demonstrates that the star witness of the raid i.e. PW-1/Nisha Ishtiaq/Magistrate is not in a position to verify the

bonds which were recovered by her on the day of raid i.e. 30.11.2015, therefore, the recovery of the prize bonds have not been proved in accordance with law.

44. PW-7/complainant in his cross-examination acknowledged the following important piece of evidence with reference to PW-1/Nisha Ishtiaq/Magistrate.

- (i) *She did not record my statement in Emperor's Table Restaurant.*
- (ii) *She also did not record statement of accused facing trial in Emperor's Table Restaurant.*
- (iii) *In my presence she did not write any paper.*
- (iv) *In my presence Ehsan Qadir and Gul Anwar did not record any statement of accused or Magistrate Nisha Ishtiaq in Emperor's Table Restaurant.*

Similarly, PW-7/complainant stated that his statement was not recorded by the Investigation Officer in the Emperor's Table Restaurant except he signed the seizure memo Exh.PW-7/3.

45. Therefore, the stance taken by PW-7/complainant, if read in juxtaposition with PW-1/Nisha Ishtiaq/Magistrate, it clearly establishes that the raiding Magistrate PW-1/Nisha Ishtiaq/Magistrate as well as PW-9/Ehsan Qadir/I.O. have clearly violated the mandatory provisions of law as such no statement was recorded by any of the official regarding the said incident/raid to establish the fact that a raid was conducted in accordance with law and prosecution has to prove such fact through PW-9/Ehsan Qadir, PW-7/complainant and PW-1/Nisha Ishtiaq/Magistrate, which they failed to discharge their onus.

46. In order to establish the recovery of the prize bonds, it is necessary to go through the statements of recovery witnesses who have recovered the prize bonds from appellant/Iftikhar Ali Haideri in the Emperor's

Table Restaurant whereas PW-7/complainant stated before the Court that:

- *I put out the bonds from my side pocket and handed over to accused Iftikhar Ali Haideri. He placed the bonds inside of his coat.*
- *Two NAB officials came and got hold of accused Iftikhar Ali Haideri from his arm and got stood him and conducted body search and recovered twelve things including two bundles of the bonds, Pak rupees above Rs.60,000, copy of CNIC, membership card, etc.*

However, during the course of cross-examination, PW-7/complainant acknowledged that:

“I did not put the bonds on the table. The bonds were in my pocket. I handed over the bonds to the accused facing trial after pulling the same from my pocket.”

The above referred statement has to be placed in juxtaposition with the statement of PW-8/Muhammad Asif Khan, Deputy Assistant Director, NAB, who stated before the Court in his examination-in-chief that:

- *During conversation Rana Abdul Qayyum PW handed over a shopping bag of white color to Iftikhar Ali Haideri accused. The accused placed the same inside of the coat.*
- *In a meanwhile my senior Mohsin Ali Khan and others entered into Emperor's Table Restaurant. They asked Iftikhar Ali Haideri accused to get and searched his body. Purse and shoppers were recovered from his pocket. When shopper was opened prize bonds of Rs.40,00,000/- was recovered from that shopper.*
(Underlining is provided for emphasis)

However, during the course of cross-examination, PW-8/Muhammad Asif Khan acknowledged that:

“The thing which was handed over by PW Rana Abdul Qayyum to Iftikhar Ali Haideri accused was wrapped in a white color shopping bag. I have not been shown that white color shopping bag today in the Court. Similarly, prize bonds are not shown to me today which were taken into possession vide seizure memo. Articles mentioned in seizure memo available at Page 14 of the Reference Exh.PW-8/1 are not shown to me. I did not go to office of Nisha Ishtiaq PW. Nor Nisha Ishtiaq PW shown to me the prize bonds

allegedly produced by Rana Abdul Qayyum before her. I have also not seen Nisha Ishtiaq tinting the prize bonds."
(Underlining is provided for emphasis)

47. The last witness of recovery i.e. PW-9/Ehsan Qadir, Assistant Director NAB, Rawalpindi/Investigation Officer of the case, also got recorded his statement regarding the prize bonds in following words:

"After some discussion complainant pulled out prize bonds from his pocket and handed over Iftikhar Ali Haideri accused facing trial. After receiving those prize bonds, accused facing trial placed the same inside pocket of his coat."

However, during the course of cross-examination, PW-9/Ehsan Qadir admitted before the Court that:

- *I have not mentioned of any shopping bag in seizure memo wherein things wrapped were handed over to the accused in Safa Gold Mall during raid proceedings.*
- *List of bonds does not bear my signature. My signature does not appear on seizure memo Exh.PW-9/3.*
- *List of the bonds was prepared by Nisha Ishtaiq in her office and he has only seen photocopies of the bonds available at Page 151 of the Reference.*
(Underlining is provided for emphasis)

However, PW-9/Ehsan Qadir acknowledged a glaring irregularity in this case while recording his statement that:

"I have seen photocopy of bonds available at Page 151 of the reference, bearing No.A565301 of denomination of Rs.25,000/-. The number A565301 does not figure anywhere in the list of bonds annexed with reference. Same is position in respect of numbers of bonds available at pages from 152 to 250 of the reference, not a single number figures in the list attached with the reference. I have seen the list attached with the reference where number of bonds of Rs.15,000 is mentioned. At Serial No.1 against Rs.15,000/- bonds number is mentioned as 'A069101' to 'A096105'. This figure shows that bonds 27,005/- were taken into possession of Rs.15,000/- and worth of those bonds is more than Rs.40,00,00,000/-. In the list at Page 17 of the Reference, numbers of eight bonds of Rs.15,000 are not mentioned."
(Underlining is provided for emphasis)

48. The above referred differences in the bond numbers clearly establishes that:

- (a) All star witnesses i.e. PW-7/complainant/Rana Abdul Qayyum, PW-1/Nisha Ishtiaq/Magistrate, PW-9/Ehsan Qadir/I.O., and PW-8/Muhammad Asif Khan have not seen the prize bonds with reference to the list prepared by PW-1/Nisha Ishtiaq/Magistrate in her office.
- (b) The alleged recovered prize bonds have not been sealed by PW-1/Nisha Ishtiaq/Magistrate at the time of recovery which is the requirement of trap proceedings in order to confirm that things/articles, which were recovered, have been seized so that no further tempering or rectification or amendment could be made or the same may not be changed.
- (c) Therefore, the recovered prize bonds have no significance to convict the appellant/Iftikhar Ali Haideri in a manner as stated by the prosecution or by learned Trial Court.

49. The other important aspect which has not been taken into account is that the shopping bag wherein the alleged prize bonds were wrapped, which is the key evidence, was neither produced nor even taken in custody vide recovery memo, therefore, the difference in the statements of PW-1/Nisha Ishtiaq/Magistrate, PW-7/complainant, PW-9/Ehsan Qadir and PW-8/Muhammad Asif Khan is fatal for the prosecution case when some of the witnesses stated before the Court that bonds were delivered whereas other witnesses claimed that the prize bonds were in the shopping bag and even the star witness i.e. PW-7/complainant stated that he has delivered a packet but other witnesses used the word "prize bonds", therefore, there is a clear contradiction among the statements of eye

witnesses. Even otherwise, two of the witnesses i.e. PW-8/Muhammad Asif Khan and PW-9/Ehsan Qadir, were not present at the time of passing of the alleged prize bonds to appellant/Iftikhar Ali Haideri and similarly PW-1/Nisha Ishtiaq/Magistrate has also not seen the passing on of the prize bonds to appellant/Iftikhar Ali Haideri as she was sitting behind the table of PW-7/complainant. Whereas at this juncture, the entire picture of inside of the Emperor's Table Restaurant is required to be proved through a site plan in order to establish the distance, direction, and nature of sitting places whereby PW-7/complainant had passed on the alleged prize bonds to appellant/Iftikhar Ali Haideri but no such site plan was prepared by Investigation Officer through which prosecution can demonstrate that the witnesses can see the passing on of the tainted prize bonds.

50. It is also the mandatory duty of prosecution to prove that the recovery has been made in accordance with the provisions of Section 103 Cr.P.C. wherein it is made mandatory upon an officer who wants to make a search of a person, he should call upon two or more inhabitants of the locality in which a place or person has to be searched. Whereas in this case, the Emperor's Table Restaurant is a public place where 10/12 staff/employees were available but they were not associated as witnesses of recovery, although such kind of recovery has been witnessed by every individual who was available on 30.11.2015 at the time of raid and when such compliance has not been made, the Courts, usually refused to acknowledge the raid within the legal bounds. Reliance is placed upon 2001 P.Cr.LJ 2062 Karachi (Javad Ali Memon vs. The State), 1996 SCMR 181 (Muhammad Ashraf vs. The State), and 2004 MLD 1368 (Fazal-ur-Rehman vs. The State), therefore, the recovery proceedings should have been considered not valid in the eyes of law.

51. We have also seen the Raid Report referred as Exh.PW-1/3 which is a computer generated document prepared PW-1/Nisha Ishtiaq/Magistrate on 01.12.2015 i.e. the next day of raid, as it was not prepared at spot. Even the said raid report was not seen in original by PW-9/Ehsan Qadir and all the witnesses have confirmed that they have not heard the conversation made between PW-7/complainant and appellant/Iftikhar Ali Haideri. Although, it is not mandatory to hear the conversation but in cases where conversation was not heard then it could not be assumed that any amount or bonds which were paid or transferred or delivered to accused/appellant/Iftikhar Ali Haideri, have been delivered in consequence to agreement for any legal or illegal job, therefore, the recovery has to be considered as corroborative in nature as held by 2017 PCr.LJ 459 Lahore (The State vs. Khalid Rasheed Kamboh), unless the accused admits the possession of recovered currency notes or the bonds, whereas in this case, appellant/Iftikhar Ali Haideri in his statement U/S 342 Cr.P.C. has not acknowledged the recovery of prize bonds while answering the question No.6 in the following manner:

"Q6: It is in the evidence that you were caught red handed during raid conducted on 30-11-2015 and supervised by Magistrate Nisha Ishtiaq and tinted bonds copies of which are Exh.PW-07/2 of worth rupees 40 lac were recovered from inside pocket of your coat on the spot (Impresstable Restaurant). During conversation between complainant and you at impresstable restaurant you decreased the amount from 85 lac to 80 lac. What do you say about your presence on the spot, said bonds, their recovery from you possession and other facts?"

Ans: No. It is incorrect. I did not receive bonds from the complainant nor the same were recovered from my coat. As Nisha Ishtiaq PW-1 stated before this Court that bonds were recovered from the shirt. Nisha Ishtiaq PW-1 in a raid report prepared on 1/12/2015 and Muhammad Asif PW in a statement recorded and attached with the reference made no mention of hearing conversation. This crude/dishonest improvement duly confronted shows bias, interest and dishonesty of witnesses."

52. In view of above background, the prosecution, i.e. NAB officials, are bound to prove that appellant/Iftikhar Ali Haideri was asking for illegal gratification or bribe for a particular job and they have heard the conversation and if the conversation was heard then same has to be made part of their statement otherwise it is simply a fact of recovery which has to be corroborated through some incriminating material whereas in this case it has been acknowledged by the NAB authorities before the Court as well as through PW-2/Muhammad Hamza Shafqaat that it is not within the powers and jurisdiction of appellant/Iftikhar Ali Haideri to decrease or increase the amount against M/s Safa Gold Mall or against the PW-7/complainant, therefore, the conversation is the mandatory part to link up the chain with other corroborative pieces of evidence and such factors necessitate the hearing of conversation. Reliance is placed upon 1996 SCMR 181 (Muhammad Ashraf vs. The State), 2001 SCMR 634 (Bashir Ahmad vs. The State), 2001 SCMR 41 (Rashid Ahmad vs. The State), 1990 MLD 1575 Karachi (Ghulam Mustafa vs. The State), PLJ 1996 Karachi 1458 (Shabir Ahmad vs. The State), PLJ 2001 SC 240 (Bashir Ahmad vs. The State), and NLR 1998 Criminal 63 (Sajid Naveed vs. The State).

53. In view of above authoritative judgments, this Court is convinced that hearing of conversation is mandatory in such like cases where the missing link has to be proved for the conviction of appellant whereas in present case, the conversation was not heard, therefore, the recovery of prize bonds, which is not proved, could not be considered to convict the appellant/Iftikhar Ali Haideri in any manner.

54. Besides the above referred illegalities of the case, the most important question before this Court is as to whether NAB has jurisdiction to proceed against the appellant/Iftikhar Ali Haideri under the NAO, 1999? Whereas, we are of the confirmed view that the NAO, 1999 deals with cases with aim

to eliminate and eradicate corruption and corrupt practices, and to hold accountable all those persons accused of such practices and matters ancillary thereto, whereas the preamble of the NAO, 1999, if read in juxtaposition with the term "*corruption*" which is generally defined as an act of doing something with intent to give some advantage inconsistent with official duty and rights of the others, amounts to misconduct in office, misbehavior in office, misdemeanor in office or official corruption, although in a civil society, it is a disease like cancer, if not cured in time, was sure malign the polity of a country leading to disastrous consequences. Corruption has been termed as plague which is not only contagious, but if not controlled, spreads like a fire in jungle, and it could be compared with HIV virus which leads to incurable diseases of AIDS, as referred in PLD 2012 SC 610 (Suo Moto Case No.15 of 2009) (Corruption in Pakistan Steel Mills Corporation). The charge against the appellant/Iftikhar Ali Haideri in terms of Section 9(a)(i)(ii)(iv) and (vi) of the NAO, 1999 framed by the learned Trial Court is relating to gratification received by appellant/Iftikhar Ali Haideri directly or indirectly or in terms of reward as specified in terms of Section 161 of the PPC for doing or for bearing to do any official act or showing in exercise of his official functions, favor or disfavor to any person, however all such issues have to be seen with reference to the mode and manner provided under the NAO, 1999 whereby the NAB authorities have to receive a complaint or at their own end start an inquiry on the order of the competent authority to establish and to collect the evidence and after initial inquiry in terms of Section 19 of the NAO, 1999, when the NAB authorities are satisfied that any of the provision of the said Ordinance has been contravened, the matter shall be converted into investigation following the arrest, if so required, and to submit a reference before the Accountability Court, whereas at the same time in comparison to the NAO,

1999, the previous limelight legislation is the FIA Act, 1974 with its FIA Rules, 1975, as well as the Prevention of Corruption Act, 1947, which empower the authorities to check the misconduct of a public servant, especially with reference to Section 7 of the PPC, in all those cases under those two special kinds of law, the anti corruption establishment can take cognizance of offences of illegal gratification which exclusively fall within the mandate of Prevention of Corruption Act, 1947, however the authorities have prepared an SOP to prevent overlapping of both these special laws as there is serious difficulty while dealing with the cases of illegal gratification as there is no classification whatsoever has been provided in the NAO, 1999, especially when a public servant accepting a bribe has been referred to NAB Court under Section 19(g) of the Ordinance, and it is very difficult to draw a line between such cases which have been referred to NAB Court or Special Court for the same offence, especially when the NAO, 1999 has not repealed the provision of Prevention of Corruption Act, 1947 and the offences referred in the schedule of Special Court remain continue triable by that Special Court. It is also settled proposition that Court should make every effort to save rather than destroy a statute as held in PLD 2001 SC 660 (Asfandiyar Wali vs. FOP). Whereas, the very mandate of the NAO, 1999 is to eradicate corruption of large scale and cases should not be picked by the choice of the NAB authorities when same already fall within the jurisdiction of FIA authorities. It is also not denied that all laws must be applied equally upon every person subject to reasonable classification as held in 2001 SCMR 1161 (Attiyya Bibi Khan vs. FOP) that:

*“Art. 25. Equal protection of law and equal treatment before law --
- Principles stated.*

Following are the principles with regard to equality of citizens:

(i) That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that

persons similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based--

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification."

The above referred view has also been endorsed by the apex Court in case cited as (2001 SCMR 1231 *Safdar vs. Government of Sindh*).

55. In the authoritative judgment passed by the Division Bench of the Sindh High Court in 2003 MLD 777 *Sindh (Rauf Bakhsh Kadri vs. The State)*, the matter was remanded to the Chairman NAB to re-examine the cases on the touchstone that matter of corruption should be considered on the basis of its volume and in this regard the SOPs have been prepared by the NAB authorities wherein a case of Rs.100 million and above has to be considered for the exercise of jurisdiction under the NAO, 1999. The terms of SOP are hereby reproduced:-

National Accountability Bureau (NAB), Standing Operating Procedure (SOPs), Operational Methodology, Volume-I, Operations Division and Prosecution Division Edition 2015

1. **Handling of Complaints** All complaints directly received at NAB Headquarters, Islamabad will be forwarded to concerned Regional NAB on the basis of territorial jurisdiction through the Complaints Cell of NAB Headquarters.

For the purpose of receiving, sifting and verifying complaints, a Complaints Verification Cell (CVC) is established in each Regional NAB, headed by Addl. Director /Dy. Director Complaints.

For complaints received at HQ level as well as at Regions directly and to monitor the progress of complaints received by Regional NABs, Complaints Monitoring Cell (CMC) will be headed by Addl. Director/Deputy Director (Complaints) at Regional level. The cell will comprise of as many as Investigation Officers and supporting staff as deemed fit for the efficient, smooth and viable conduct of its functioning. For efficient performance value change analysis and timeline for registration of complaint to its logical disposal have been specified.

The activities, procedures, functions, parameters and Conduct of Complaints Cells will be governed as under:-

- a. **Considerations for Cognizance of Cases.** The number of complaints received at NAB is way beyond the capacity to handle. Taking on all the complaints is rather impossible and can adversely affect the standard and quality of investigations. Therefore, it is important to sift the complaints according to the handling capacity and protect interest of state largely. To rule out misuse of discretion and standardize the selection procedure at NAB's level, the consideration for Cognizance of cases is defined as under:-

- (1) Corruption cases against NAB Officers/Officials/Law Officers/Experts of NAB.
- (2) Cases referred by Hon'ble Supreme Court of Pakistan, High Courts and Public Accounts Committee (PAC).
- (3) Cases of former/sitting legislators of National Assembly, Senate and Provincial Assemblies (including ministers/advisers etc.) and elected representatives of local bodies, where amount involved is more than Rs. 100 million.
- (4) Cases involving interest of members of public at large, where the numbers of defrauded persons are more than 50 persons and amount involved is not less than Rs. 100 million.
- (5) Cases against public servants, whether serving or retired, Bankers, Businessmen and Contractors, where amount involved is more than Rs. 100 million.

- (6) *Cases of willful loan default, loss to financial institutions as referred by State Bank of Pakistan (SBP).*
- (7) *Matters covered u/s 31 (a) of National Accountability Ordinance (NAO), 1999.*
- (8) *Cases of money laundering referred by FMU.*
- (9) *Any other cases falling within the purview of NAB, irrespective of the amount involved and status of accused person, with prior approval of the Chairman.*

In view of above background this Court comes to conclusion that NAB officials are not authorized with power to conduct raid in cases relating to receiving of illegal gratification by public servants which exclusively fall within the domain of FIA/ Anti Corruption authorities. Even otherwise, the matter pertains to an allegation of illegal gratification of an amount of Rs.85,00,000/-, which could not be considered as a mega corruption case for NAB authorities to proceed in the matter. Reliance is placed upon the recent view of the Sindh High Court reported in 2017 YLR 1 [Sindh] (Amjad Hussain Vs. NAB) wherein it was held that:-

"11. Learned PGA NAB on instructions from the Chairman NAB made written as well as oral submissions in order to assist the Court. He submitted that NAB was aware of this issue of pecuniary jurisdiction and in this respect had passed an SOP in respect of the monetary value of cases which NAB would pursue which is set out below for ease of reference.

"Priority for Cognizance of Cases: The number of complaints received at NAB is way beyond the capacity to handle. Taking on all the complaints is rather impossible and can adversely affect the standard and quality of investigation. Therefore, it is important to sift the complaints according to the handling capacity and protect interest of state largely. To rule out misuses of discretion and standardize the selection procedure at NAB's level, the consideration for cognizance of cases is defined as under:-

- i. Corruption cases against NAB officers/ official/ Law Officers/ Experts of NAB.*
- ii. Cases referred by Hon'ble Supreme Court of Pakistan, High Courts and Public Accounts Committee (PAC).*
- iii. Cases of former/sitting legislators of National Assembly, Senate and Provincial Assemblies (including ministers/advisers etc.) and elected representatives of local bodies, where amount involved is more than Rs.100 million.*

- iv. Cases involving interest of members of public at large where the numbers of defrauded person are more than 50 persons and amount involved is not less than Rs.100 million.
- v. Cases against public servants, whether serving or retired, Bankers, Businessmen and Contractors where amount involved is more than Rs.100 million.
- vi. Cases of willful loan default, loss to financial institutions as referred by State Bank of Pakistan (SBP).
- vii. Matters covered under section 31(a) of National Accountability Ordinance (NAO), 1999.
- viii. Cases of money laundering referred by FMU.
- ix. Any other case falling within the purview of NAB, irrespective of the amount involved and status of accused person, with prior approval of the Chairman"

It was further held in the same judgment that:-

39. It would therefore seem that, keeping in view the objects and purposes of the NAO on promulgation and the decision of the Hon'ble Supreme Court in Khan Asfandiyar Wali's case (Supra), that this Court has already found that:--

- (a) The NAO should only apply to large scale cases of corruption in terms of monetary value
- (b) The possibility of PB is present and
- (c) It is for the Chairman NAB to decide whether the scale of corruption justifies the filing of a reference bearing in mind the ability to secure a PB.

40. We agree with such finding and taking into account the above discussion on the pecuniary jurisdiction of NAB including NAB making the best use of its human resources, equipment, office space etc., and budget limitations we hereby endorse by way of judicial order the NAB's SOP for dealing with pecuniary jurisdiction which is set out at para 11 of this order which in our view meets the guidelines already set out by this Court in Rauf Bakhshi Kadri's Case (Supra) as we consider the figure of Rs.100 M to be significantly large to justify the intervention of the NAB being the premier anti corruption body in the Country provided that when a case does not fall within the SOP and is to be transferred to another agency the reasons for so doing are recorded in writing by the Chairman NAB. For avoidance of doubt we also endorse (ix) of the SOP which reads as under:

"Any other case falling within the purview of NAB, irrespective of the amount involved and status of accused person, with prior approval of the Chairman"

41. This is because there may be cases falling below Rs. 100M which cannot be prosecuted by any other agency and as such rather than letting the culprit off scott free he/it should be prosecuted by NAB at the discretion of the Chairman. However in cases below Rs. 100M which can be dealt with by other

agencies such as FIA, ACE we would expect NAB to send such cases to such alternate agencies for prosecution by virtue of section 18(d) of the NAO which reads as under:--

"S.18(d). The responsibility for inquiry into and investigation of an offence alleged to have been committed under this Ordinance, shall rest on the NAB to the exclusion of any other agency or authority, unless any agency or authority is required to do so by the Chairman (NAB) or by an officer of the NAB duly authorized by him."

The above referred view expressed by the Sindh High Court clearly carved out a way in overlapping jurisdiction of three special laws and we are in agreement with the said view that the guidelines set out in the SOP as well as the case cited above clearly set out the parameters for exercise of jurisdiction by the NAB authorities and in this case the prosecution could not demonstrate as to how and under what circumstances the process of inquiry and investigation has been complied with under the provisions of NAO, 1999, even the exigency has not been established with the lawful reasons for not calling the appellant in the inquiry proceedings.

56. We are also fortified with the view given by the Division Bench of the Lahore High Court in PLD 2008 Lah 381 (Rizwan Ahmed vs. NAB), though it is a bail matter but the said bench has given reasons with the following findings:

"The main purpose of the promulgation of NAO, 1999 was to check large scale rampant corruption in the public offices in particular and in country in general, therefore, the NAB authorities took cognizance of cases of high magnitude corruption and other laws on subject of checking of corruption from the public offices, such as Anti corruption law and criminal Law Amending Act, 1958 were not repealed and remained as live statute and the special courts under said statutes are very much functional along with investigation staff etc. There is no jurisdiction with the Chairman, NAB or any office delegates who make pick and choose for filing reference against anybody under the provision of NAO, 1999 as discretion with NAB authorities is not absolute or arbitrary."

57. In view of above referred background, we are convinced that appellant/Iftikhar Ali Haideri, Deputy Director Estate Management-II, CDA, is not empower to give any benefit to PW-7/Rana Abdul Qayyum/complainant for increase or decrease in the demand generated by CDA, i.e. Rs.454,750,207, for balance premium against M/s Safa Gold Mall plot, situated in Sector F-7, Islamabad and even no benefit, letter, or relaxation has been extended to PW-7/complainant by the appellant/Iftikhar Ali Haideri against the alleged consideration referred as illegal gratification. Similarly, the prosecution witnesses i.e. PW-1/Nisha Ishtiaq/Magistrate, PW-7/complainant, and PW-9/Ehsan Qadir have failed to prove the recovery of prize bonds and even the recovery memo does not contain prize bond numbers, the taint and the mark on each prize bonds has not been proved in accordance with law, nor even the witnesses were shown the bonds at the time of recovery neither any statement of appellant/Iftikhar Ali Haideri as well as witnesses was recorded by the PW-1/Nisha Ishtiaq/Magistrate or by the PW-9/Ehsan Qadir/Investigation Officer at spot and even the witnesses have not seen the delivery of prize bonds to the appellant/Iftikhar Ali Haideri, whereas NAB authorities have exercised their jurisdiction while initiating the inquiry/investigation in the instant Reference which is not warranted under the law, therefore, the entire edifice constructed by the NAB authorities as well as by the prosecution witnesses crumbles down and charge has not been proved against the appellant/Iftikhar Ali Haideri in any manner. Hence, benefit of doubt emerged on the scene which has to be extended to the appellant/Iftikhar Ali Haideri, therefore, the captioned criminal appeal No.9/2017 (Iftikhar Ali Haideri vs. NAB) is hereby allowed and appellant/Iftikhar Ali Haideri is acquitted from charge of corruption and corrupt practices of the NAO, 1999 and the impugned judgment dated

10.01.2017 passed by Accountability Court-I, Islamabad is hereby set aside and the writ petition No. 157/2017 titled as The State Vs. Iftikhar Ali Haideri seeking post arrest bail/suspension of sentence becomes infructuous.

(ATHAR MINALLAH)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 15th January, 2018.

JUDGE

JUDGE

Approved for reporting

Khalid Z.