

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Eh. Crl. Appeal No.83-P/2009

Sanaullah Babar son of Zakaullah Babar,
 Ex.S.F. C&W Department, Peshawar.

Appellant (s)

VERSUS

The State/National Accountability Bureau,
 through its Chairman NAB Headquarters,
 Islamabad and others.

Respondent (s)

For Appellant (s) :-	<u>Qazi Muhammad Anwar, SASC.</u>
For Respondents/NAB :-	<u>Mr. Hashmat Jehangir, ADPG.</u>
Date of hearing:	<u>03.03.2021</u>

JUDGMENT

ROOH-UL-AMIN KHAN, J:-Instant appeal under section 32 of the National Accountability Ordinance (NAO) 1999, filed by Sanaullah Babar “**the appellant**” (now dead), is directed against the judgment dated 07.08.2009, passed by the learned Judge Accountability Court-IV, Peshawar, whereby he has been convicted under section 10 of the NAO, 1999 and sentenced to undergo rigorous imprisonment for 03 years and a fine of Rs.6,00,000,00/- (six crore), to be recovered from him in accordance with the provisions of section 33-E of the NAO, 1999. Moveable and immovable properties in the name and possession of the appellant as well as in the name of his wife (now widow) Mst. Nuzhat Shaheen Babar and his son Mudassar Babar, have also been forfeited in

favour of the State. Benefit of section 382-B Cr.P.C. has been extended to the appellant.

2. Allegation against the appellant is that he while serving as a Superintendent Engineer in Communication & Works Department Khyber Pakhtunkhwa, Peshawar, accumulated movable & immovable properties in his own name and in the names of his dependents and *benamidars* including his wife and son, value of which was disproportionate to his known sources of income. On the aforesaid allegation, an Inquiry was initiated by the NAB against the appellant which was converted into investigation. During investigation, it was unearth that appellant has accumulated the following immovable and immovable properties, in his own name and in the names of his dependents including his wife Mst. Nuzhat Shaheen Babar and son Mudassar Babar:-

**PROPERTIES PURCHASED BY THE
APPELLANT IN HIS OWN NAME**

S.NO.	Description	Purchase value	Approximate market price
1	2 Kanal land in Mauza Pir Piai in 1973.	Rs.2022/-	Rs.4,00,000/-
2	Plot No.124 in Khaiaban-e-Muhafiz, 20000 Sq. in 1971.	Rs.7000/-	Rs.16,00,000/-
3	Plot No.37-C, Peninsula Commercial Lane No.18, measuring 200 Sq. Yds, Defence Karachi in 1975.	Rs.3100/-	Rs.1600,000/-
4	Residetial Villa Home in Dar-Khashan Township, Clifton Karachi in 1979	Rs.2,54,000/-	Rs.20,00,000/-
5	Plot No.8 Aisha Plaza Blue Area Islamabad in 1989.	Rs.9,00,000/-	Rs.10,00,000/-
6	Commercial Shop No.50 in Beverley Plaza Blue Area Islamabad in 1992.	Rs.10,67,000/-	Rs.24,00,000/-
7.	Plot No.77-E measuring 1.86 Kanal at Rehman Baba Road University Town Peshawar in 1974 and constructed house	Rs.60,000/-	Rs.40,00,000/- plus cost of const. Rs.3618191/- & Rs.7618191/-

	thereon in 1997.		
8	Plot No.29 measuring 610Sq Yrds. Jinnah Abad Colony Abbottabad in 1968 and sold in 1999.	Rs.7076/-	Rs.10,50,000/-
9	Plot No.65 measuring 2 Kanal at Hayatabad Peshawar in 1996.	Rs.1350,000/-	Rs.21,00,000/-
10.	Plot No.81/N.4, 01 Kanal Hayatabad, Peshawar in 1990 and sold it in 1998.	Rs.8,00,000/-	Rs.10,00,000/-
11	Plot No.234, 10 marla Hayatabad Peshawar in 1987 and sold it in 1996	Rs.35,000/-	Rs.8,00,000/-

PROPERTIES PURCHASED IN THE NAME OF
APPELLANT’S
WIFE/DEPENDENTS/BINAMIDARS.

S.NO.	Description	Purchase value	Approximate market price
1	05 Kanal 7 marls land in Mauza Pir Piai in the name of Mst. Nuzhat Shaheen and Mudassir (son), Kaleem Ullah and sister in law Nighat in 1985.	Rs.2,00,000/-	Rs.10,70,000/- plus Cost. Cast of boundary walls Rs.2,00,000/-
2	58 Kanal 5 marla land at Urmar Payan Peshawar in the name of Mudassir Babar (son) in 1999.	Rs.1,00,000/-	Rs.11,60,000/-
3	04 kanal 3 marla land on Warsak Road Peshawar in the name of Mst. Nuzhat Shaheen in 1993-94.	Rs.4,74,000/-	Rs.49,80,000/-
4	Plot No.94, 01 Kanal in Hazara DA, Abbottabad in the name of Mst. Nuzhat Shaheen in 1996.	Rs.1,50,000/-	Rs.4,00,000/-
5	1 Kanal Plot in HAD Abbottabad in the name of Mst. Nuzhat Shaheen in 1990.	Rs.1,50,000/-	Rs.4,00,000/-
6.	Flat No.8-A.7 Clara Apartment Diplomatic Enclave Ramna Islamabad in the name of Farzana Babar (daughter)	Rs,1200,000/-	Rs.20,00,000/-
7	Residential Plot in Clara Apartment Diplomatic Enclave Ramna Islamabad in the name of Shahidullah Babar (brother in law) in 2001.	Rs.12,00,000/-	Rs.20,00,000/-
8	Commercial Unit in Rehmat Plaza Blue Area Ismabad in the name of Mst. Nuzhat Shereen in 1988.	Rs.8,00,000/-	Rs.40,00,000/-
9	Plot No.3 Sector F.8/3 Islamabad measuring 1000 Sq Yds in the name of Mst. Nuzhat in the year 1986 and constructed bungalow on it.	Rs. 10,00,000/- plus cost of const. Rs.25,00,000/- and Rs.35,00,000/-	Rs.89,00,000/-

10	Two residential apartment in Nasir Apartments Diplomatic Enclave Islamabad in the name of daughter Farzana Babar in 1997-1998	Rs.66,00,000/-	Rs.66,00,000/-
11	Residential Plot, measuring 600 Sq. Yds at Shami road Peshawar Cantt. In the name of Mst. Nuzhat Shaheen in 1979 and constructed a bungalow on it in 1986.	Rs.1,50,000/- plus cost of Const. Rs.10,00,000/- & Rs.11,50,000/-	Rs.19,90,000/- Cost of Const. Rs.12,21,318/- and Rs.32,11,318/-
12	Plot measuring 2 Kanal at Parade Ground, Nowshera Cantt in the name of Mst. Nuzhat Shaheen in 1985 and constructed a duplex on it in 1990.	Rs.2,20,000/- plus cost of Const. Rs.13,00,000/- Rs.15,20,000/-	Rs.12,00,000/- plus cost of construction Rs.20,89,303/- Rs.3289303/-
13	House measuring 9 Kanal in the name of Law Khisro Khan (father) in 1971 and transferred in the name of daughter and son.	Rs.36000/-	Rs.54,00,000/-
14.	Plot No.64/J-2 measuring 2 Kanal in the name of father in law in 1987, transferred in the name of wife Nuzhat Shaheen and constructed Bungalow in 1996.	Rs.1,26,000/- plus Cost of Cons.	Rs.32,71,844/- plus cost of Const. Rs.24,00,000/- Rs.5671844/-
15	Plot measuring 2 kanal Hayatabad Peshawar in the name of Mst. Nuzhat Shaheen Babar in 1995,	Rs.14,70,000/-	Rs.21,00,000/-

BANK ACCOUNTS.

S.No.	Title of Account	Description of Account	Main Transaction credit.	Balance
1	Mst. Nuzhat Shaheen Babar	A/C No.113-2032236149 Faysal Bank Ltd Islamabad	Rs.19,00,000/- as on (4.1.2002).	Nil
2	Sanaullah Babar	PLS A/C. No.2461 Emirates Bank Peshawar	Rs.12,70947/- as on 01.01.1991.	Rs.3717/-
3	Sanaullah Babar	A/C No.1166-580050-101 Emirates Bank Ltd.	Rs.27,00410/79 as on 04.04.1996	Rs.18062/77
4	Mst. Nuzhat Shaheen Babar	A/C No.1166-580050-101	Rs.5,129/38	Rs.5129/38
5	Mst. Nuzhat Shaheen Babar	TSB LIOyds Bank London British Pounds 11,067.00	Rs.995430/-	Nil
6	Sanaullah Babar	A/C. no.0957-02-01-0039660 Muslim Commercial Bank Ltd. University Town Branch Peshawar.	Rs.18,00,000/- as (24.01.2001)	Nil
		Total	Rs.94,31,917.17	Rs.26909/15

Vehicles

S.No.	Description	Approximate Market value
1.	Suzuki Swift No.PRM.7, Model 1992 in the name of Mst. Nuzhat Shaheen	Rs.2,00,000/-
2	Suzuki Carry No.PR.15, Model 1988 in the name of Mst. Nuzhat Shaheen in 1988	Rs.1,60,000/-
3	Pajero Mitsubishi No.B.4714 Model 1987/88 in the name of brother-in-law Shahidullah Babar	Rs.4,00,000/-
	Total	Rs.7,60,000/-

It was opined by the Investigating Officer that the appellant and his wife did not own or possess any inherited property so as to justify acquisition of the above mentioned properties in his name or in the names of his dependents/benamidars. Final report/Challan in terms of section 173 Cr.P.C., was submitted before the Chairman NAB Islamabad, upon which a Reference was submitted against the appellant and his wife Mst. Nuzhat Shaheen Babar (co-accused) before the learned Trial Court, where they were formally charge sheeted to which they pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as forty witnesses and after closure of the prosecution evidence, statements of the accused were recorded under section 342 Cr.P.C. wherein they denied the charged and claimed the properties in their name to have been acquired by them through legal income which they had earned from their salaries, other service benefits, pensions and sale and purchase of various plots on profit. In their defence, the accused also produced eleven witnesses. On conclusion of trial, the learned trial

court acquitted co-accused Mst. Nuzhat Shaheen Babar, however, convicted and sentenced the appellant Sanaullah Babar vide impugned judgment dated 07.08.2009. The properties of the appellant and co-accused Mst. Nuzhat Shaheen Babar and Mudassar Babar were, however, forfeited in favour of the State through the impugned judgment, hence, this appeal.

3. During pendency of the appeal, the appellant died and on 09.03.2011, the following order was passed by this Court:-

“The former produced the death certificates with regard to appellant Sanaullah Babar, photo copies of which are placed on record as Exh.PA and Exh.PA/1. Accordingly, the prosecution, to the extent of conviction and sentence of the appellant stands abated, however, legal question has to be resolved, as to whether the NAB can still chase the property of the deceased to recover the fine amount and whether the legal heirs of the deceased-appellant could be deprived of inheritance and whether the principles of detachment would be also attracted at the appellate stage, moreso, when the judgment of conviction was under suspension”.

4. Legal heirs of the deceased appellant also filed Cr.Misc. No.33/2011 for their impleadment in light of judgment dated 20.09.2011, rendered by the Hon’ble Supreme Court in Cr.A. No.170/2003, titled, “Ghani ur Rehman Vs NAB), which was allowed vide order dated

01.03.2012 and accordingly the legal heirs of the deceased were arrayed as appellants in the appeal.

5. Because the properties of Mst. Nuzhat Shaheen Babar and Mudassar Babar, widow and son of the appellant, were also forfeited through the impugned judgment dated 07.08.2009, therefore, they have filed **Writ Petition No.3703-P/2017 and WP No.2308-P/2009,** resultantly, for setting aside of the impugned judgment to the extent of confiscation of their properties.

6. Since, the appeal and the writ petitions are arising out from one and the same judgment of the learned trial Court, therefore, we propose to decide the same through this single judgment.

7. We have heard the exhaustive arguments of learned counsel for the parties and record perused with their able assistance.

8. Allegation against the deceased appellant was that he while serving as a Superintendent Engineer in Communication & Works Department Khyber Pakhtunkhwa, Peshawar, accumulated movable & immovable properties in his own name and in the names of his wife Mst. Nuzhat Shaheen Babar (co-accused) as well as in the names of his other deponents and benamidars, value of which was disproportionate to his known sources of income. Detail of the alleged properties has been given in earlier part of the judgment.

9. No doubt, under section 14 (c) of the NAO 1999, in any trial of an offence punishable under clause (v) of subsection (a) of section 9 of the Ordinance, the fact that the accused person or any other person on his behalf is in possession of properties, for which the accused person cannot satisfactorily account of his known sources of income or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused person is guilty of the offence of corruption and corrupt practices and his conviction therefore shall not be invalid by reason only that it is based solely on such a presumption. However, every accused who faces trial in the Accountability Court or against whom a Reference has been sent, the presumption as envisaged in section 14 of NAO 1999 cannot be taken into account and the accused person cannot be convicted for the simple reason that section 14 NAO 1999, is couched in a language that accused shall be considered and presumed as guilty. The proposition regarding shifting of burden on accused person under the above section of law, for the first time came before the worthy Sindh High court in *Hakim Ali Zardari's case (2007 MLD 910)* wherein the Court while

dilating upon the provisions of section 9(a)(v) & 14 (c) of the NAO, 1999, observed as under:-

“As regards the burden of proof, the normal rule of law is that an accused is presumed to be innocent until his guilt is proved, established and the onus of establishing the guilt is always on the prosecution. But the rule of law laid down in section 14© of the Ordinance is a departure from normal law and under this section a presumption of corruption and corrupt practices is required to be drawn, if the accused or any person on his behalf is in possession of pecuniary resources or property disproportionate to his known sources of income of which sources he cannot satisfactorily account. For shifting the burden upon accused to account for the sources of income, the words of the statute are preemptory and the burden must lie all the time on the accused to prove the contrary, after the conditions laid down in the earlier part of the section have been fulfilled by the prosecution through evidence to the satisfaction of the Court and then the Court is required to draw the presumption that the accused person is guilty as provided under section 14© of the Ordinance. Such presumption continues to hold the field unless the Court is satisfied that the statutory presumption has been rebutted. The onus upon the accused is not as strict as the initial onus as the presumption which has first to establish the disproportion between the properties held by the accused and the known sources of his income. But where from the facts the disproportion was not

satisfactorily explained by the accused it could not be said that excessive burden was thrown on him to explain the disproportion. A reference is invited to Rameswar Parsad Upadhyaya Vs the State of Bihar (AIR 1971 SC 2474). Thus, the nature and extent of the burden cast on the accused is that he is not bound to prove his innocence beyond any reasonable doubt, therefore, while examining the explanation of the accused the above principle is required to be kept in view and if the accused is able to explain the circumstances to the satisfaction of the court then that will be enough to discharge the burden.”

10. Taking the case in hand at the touch stone of the principle referred in the judgment (supra) of the august apex court, we would evaluate the prosecution’s evidence so as to determine whether it has successfully performed its primary duty, if, yes, whether the appellant by rebutting the prosecution evidence has proved otherwise.

11. Muhammad Shafi while appearing as PW.4 produced copy of registered sale deeds in respect of Plot No.CB.29 coupled with NOC and handing taking over certificate Exh.PW.4/3 to Exh.PW.4/14, respectively. In cross-examination he stated that the allotment of the aforesaid plot in the name of the appellant was in routine on the pattern of allotment to other allottees. He admitted it correct that price of the plot was paid in installments. Kalim ur Rehman (PW.5) produced attested copy of site plan Exh.PW.5/1 of bungalow No.64-J.2 in Phase-II Hayatabad,

Peshawar. In cross-examination he stated that the said bungalow was owned by Mr. Khisro Khan Babar. The site plan was submitted by him for approval and it was approved on 05.06.1989. Atta-ul-Haq, Chief Officer Town-3, Peshawar while appearing as PW.7 produced record in respect of Plot allotted to Capton Habib Ullah Khan in the year 1965 in lieu of sale consideration of Rs.14143/-, which was transferred in the name of Zakaullah Khan (father of the appellant) and one Karim Akhtar in 1973, vide written deed Exh.PW.7/D-1. He stated that Zaka Ullah Khan applied for NOC to enable him to transfer the said Plot in the name of his son/appellant by way of Tamlik. Copy of application in this regard is Exh.PW.7/D-2 and NOC issued by Administrator Municipal Corporation in 1984 is Exh.PW.7/D-3. The plot was transferred in the name of the appellant vide admission deed and Tamlik nama Exh.PW.7/4 and Exh.PW.7/5 respectively. He stated that over an area of 1.86 Kanal, Zakaullah Khan, father of the appellant, raised construction. Muhammad Arshad Patwari Halqa Dalazak Peshawar (PW.9), produced revenue record regarding landed property owned by Zakaullah Khan Babar (father of the appellant), for the years 1992-1993. He also produced inheritance mutation of Zakaullah Babar Exh.PW.9/4 and mutation No.8336 vide which the appellant along with his brothers had sold three kanal and half marla land and thereafter sold the same to Muhammad

Hanif and Niaz Ali Exh.PW.9/5. He also produced mutation No.8384 attested on 14.11.2000, vide which appellant along with his brothers and sisters has sold 4 Kanal and 7 marls of land in the name of one Rasool Khan. He produced copy of mutation No.8443 attested on 24.07.2001 Exh.PW.9/7, vide which Mudassar Babar (son of appellant) has sold 24 Kanal land in the name of Siraj Muhammad and Yar Muhammad. Vide mutation No.8232 attested on 06.03.1999, appellant along with his brothers and sisters have sold 29 kanal 2 ½ marla land in the name of Mudassar Babar copy is Exh.PW.9/8. Vide mutation No.8231 attested on 06.03.1999 (Exh.PW.9/9) Mudassar Babar son of the appellant has purchased 29 Kanal 2 ½ marla land from one Sadiq Ullah. Pur Dil Patwari Halqa Tehkal Payan (PW.10) also produced revenue record in respect of properties of the appellant. Said Rehman Account Officer A.G. Officer Peshawar produced record in respect of advance drawn by Mst. Nuzhat Shaheen and balance sheet Exh.PW.8/X-1 and Exh.PW.8/X-2. Muhammad Sharif Assistant Manager Officer Estate Management Directorate CDA, Islamabad (PW.11) has produced record in respect of Plot No.1-D. In cross-examination he stated that the plot was in the name of one Begum S.Taj Imam and that Mst. Nuzhat Shaheen is the transferee of the said plot to the extent of 1/14th share and price of the plot is Rs.26,37554. Hassan Shahid Akbar (PW.13), Vice President Reliance Insurance Compnay

Limited, Islamabad Branch, Islamabad, produced lease agreement Exh.PW.13/2, according to which Mst. Farah Babar wife of Shoaib Babar has given on lease house/Plot No.I.D, Blue Area Islamabad to Reliance Insurance Company Limited on monthly rent of Rs.3932/- w.e.f. 10.07.1993 to 09.07.1996. Khalid Zafar Manager Travel Estate Rehmat Plaza Blue Area Islamabad produced lease agreement Exh.PW.14/2, according to which corner shop No.13-D ground floor Blue Area Islamabad was given on lease by Mst. Farah Babar to Travel East at the rate of Rs.9000/- per month w.e.f. 11.08.1999 to 11.08.2001. Ghulam Rasool Assistant Estate Management Officer CDA Islamabad produced record in respect of Plot No.3 Shalimar Art Islamabad Exh.PW.12/1 and other documents relating to its transfer etc. In cross examination he stated that original plot was sub-divided into two units in equal share, one unit whereof was transferred in the name of Mst. Nuzhat Shaheen Babar. He stated that original allotment price of the whole plot was Rs.88,888.85/-.

12. Zafar Iqbal (PW.15) Land Superintendent Cantonment Peshawar produced record in respect of Plot No.38/40, Peshawar Cantt, which was purchased by Mst. Nuzhat Shaheen Babar on 22.09.1979 vide sale deed Exh.PW.15/20. Shabana Irfan (PW.16) deposed that she has purchased house No.3-A, Sector F-8/3, Islamabad from Nuzhat Shaheen Babar in lieu of sale consideration of

Rs.89,00,000/- vide agreement deed Exh.PW.16/1. Yamima Mitag (PW.17) deposed that Mst. Nuzhat Shaheen Babar rented her a house No.3-A Sector F.8/3 Islamabad at the rate of Rs.30,000/- per month. In this regard she produced rent receipts and rent agreements Exh.PW.17/1 to Exh.PW.17/5. Habib Malik Orakzai (PW.18) deposed that he obtained Flat No.12-1-D Rehmat Plaza Islamabad on payment of rent at the rate of Rs.8000/- per month from Ms. Nuzhat Shaheen. Abdul Qayyum (PW.21) produced record in respect of a shop situated in Beverly Centre Islamabad. He deposed that the appellant purchased the said shop in lieu of sale consideration of Rs.10,67,000/-, which was agreed to be paid in installments. Inamullah Patwari Halqa Pirpiai (PW.22) produced revenue record i.e Goshwara Takhmina Paidawar Exh.PW.22/1 and mutation No.2931 Exh.PW.22/3 as well as record in respect of income of the appellant from agricultural land. Bakhat Ayaz Khan (PW.25) deposed that he obtained a house on rent from Mst. Nuzhat Shaheen Babar in Rs.9000/- per month, situated in Jinah Park road, Nowshera Cantt. In this regard she produced rent deed; rent receipts, electricity bills and others documents.

13. Noor-ul-Amin Deputy Director Estate Management, CD & MD, Peshawar (PW.27), produced record in respect of plot No.64 Sector G.I, measuring 2 Kanals and Plot No.65 Sector G.I measuring 2 Kanals.

Farzana Gohar Taxation Officer, Peshawar (PW.28), produced assessment order of Continental Guest House University Town Peshawar owned by appellant Sanaullah Babar Exh.PW.28/11. Mumtaz Khalil (PW.29) produced service record in respect of Mst. Nuzhat Shaheen Exh.PW.29/1, according to which she joined the service as a Lecturer in Education Department on 21.06.1978 and was promoted as Assistant Professor on 25.05.1992. Abdur Rehman (PW.31) produced assessment record in respect of Bungalow No.87, Plot No.40 Shami road, Peshawar Exh.PW.31/1 owned by appellant Sanaullah Babar and assessment report regarding Guest House on Plot No.77-E Rehman Baba road University Town Peshawar, owned by appellant Sanaullah Babar Exh.PW.31/2 coupled with assessment report in respect of residential bungalows constructed over plot No.64 and Plot No.3. Syed Hidayat Jan (PW.32) produced service record in respect of appellant Sanaullah babar Exh.PW.32/2, according to which he had joined service on 07.04.1967. Muhammad Riaz Pasha (PW.33) deposed that he was dealing in property business and appellant was known to him, who used to purchase and sell immovable properties through his office. Dr. Muhamamd Usman Khan (PW.37) produced record in respect of Plot No.124 and Plot No.37 Defence Housing Society Karachi, owned by the appellant and record in respect of constructed house valley No.C.67

Defence Housing Society Karachi allotted to the appellant on 01.01.1978.

14. Qazi Abdul Hameed, the Investigating Officer NAB, appeared as PW.39 deposed that on 2.1.2002 he arrested the appellant, obtained his physical custody and interrogated him. Mst. Nuzhat Shaheen Babar wife of the appellant was also arrayed as accused in the Reference, however, was not arrested. He collected evidence and found that the appellant has accumulated illegal assets to the tune of Rs.8,31,42,573.17 disproportionate to his known sources of income of his salaries and allowances to the tune of Rs.15,67,678/- whereas total salaries and allowance of co-accused Mst. Nuzhat Shaheen Babar were found to be Rs.19,99,633/- who was serving as Assistant Professor Education Department. He further deposed that he recorded statements of the PWs under section 161Cr.P.C., collected evidence in respect of movable and immovable properties of the accused and collected record in respect of Bank Accounts of the accused. He deposed that accused have purchased various properties in the shape of plots and house in Nowshera, Islamabad, Abbottabad, Peshawar and Karachi in respect of which the accused failed to disclose their legal sources. The said assets were concealed by the accused in their income tax and wealth tax returns submitted before the Income Tax Department. He further deposed that according to his investigation, the accused

have inherited only six kanals land (Barani) in village Pirpai Nowshera and five Kanals at village Ormar Peshawar which is in possession of the tenants.

15. Perusal of the evidence led by the prosecution reveal that the same is sufficient only to prove the immovable properties owned by the appellant and his widow Mst. Nuzhat Shaheen and son Mudassar Babar, out of which some properties have devolved upon them by operation of law i.e. through inheritance and some have been purchased by them by making payment in lump sum and installments, however, an iota of evidence to the effect that these properties have been acquired by the appellant in his own name and in the names of his dependents by misappropriating the Government funds/money by misusing their officials capacity. Single instance has not been brought on record to show that the appellant ever remained involved during his service in any kind of corrupt practices. Contrary, the sources on the basis of which the appellant and his deponents have acquired properties have been plausibly explained by the appellant and his widow Mst. Nuzhat Shaheen Babar by producing evidence in their defence whereby the allegation leveled against them in the Reference were rebutted through cogent documentary proof/evidence. According to defence evidence Zaka Ullah Babar was the father of appellant Sanaullah Babar, who was holding 58 Kanals and 5 marlas landed property in Mauza

Pirpai. Similarly, his mother was owner of 46 Kanals land in said Mauza. Father of the appellant was serving in railway and then in Electricity Department, later on, called WPADA before independence of Pakistan, who got retired in 1960. Appellant including his two brothers were engineers, one a doctor and another is a retired Brigadier from Pakistan Army and the last one served the Pakistan Army as a Colonel. The appellant along with his brothers and sisters inherited landed property from his deceased father. He also purchased shares of his brothers and sisters in lieu of Rs.1,80,000/- in 1999. The appellant had joined service in 1967 as MES and then as Executive Engineer in 1973 in C&W Peshawar. He was promoted as Superintending Engineer in 1981 and as Chief Engineer in 1994, who got retired in 1996. Mst. Nuzhat Shaheen, widow of the appellant joined service as lecturer in 1978 and was promoted as an Associate Professor. The appellant had extra advantage of having at his disposal the pay and emoluments of his wife Mst. Nuzhat Shaheen Babar since 1978. After retirement of the appellant and his wife Mst. Nuzhat Shaheen Babar, they remained indulged in purchasing and selling immovable properties. Record reflects that land measuring 02 Kanal had been purchased by the appellant in Mauza Pir Piai on meager amount of Rs.2022/- and plot No.124 measuring 2000 Sq Yds in Khaiaban-e-Muhafiz in 1971 in lieu of Rs.7000/- market

value of which is now more than Rs.16,00,000/-. The appellant while serving as AGE in MES, was allotted Plot No.124 measuring 2000 Sq Yard in 1971 for Rs.7000/- to be paid through installments who sold the same in the year 1998 in lieu of Rs.16,00,000/-. Similarly, Plot No.37-C was allotted to the appellant on ballot draw in the year 1975 for a total amount of Rs.3100/-. The appellant being member of Defence Housing Society was allotted residential villa in Darakhshhan Township Sea view Clifton Karachi in lieu of Rs.2,54,000/- in 1979 on installments, which he shared with his colleague namely, Naseem Paracha, who was a businessman and also served in Pakistan Army. The plot was sold in 1982 for Rs.16,00,000/-. The appellant also purchased Plot No.8 along with superstructure in 1989 for Rs.9,00,000/- and the same was sold by him in the same year in lieu of Rs.10,00,000/-. Commercial Shop No.50 in Beverley Plaza Blue Area Islamabad was purchased by the appellant in the year 1992 in lieu of Rs.10,67000/- and sold the same in lieu of Rs.24,00,000/- in the year 2001. The sale price of the above mentioned plot was paid by the appellant in installments. Record depicts that Plot No.77-E measuring 1.86 Kanal at Rehman Baba road University Town Peshawar was purchased by the late father of the appellant in 1972 in lieu of Rs.7000/- on which he also raised construction. The said plot was gifted to the appellant by his father. The appellant later on converted the said

house into a guest house. As regards Plot No.29, measuring 610 Sq Yards in Jinnah Abad Colony Abbottabad, the appellant when posted as AGE Quetta it was allotted to him on sale price of Rs.7076/- which was paid in ten installment at the rate of Rs.700/-. The appellant sold the said plot in the year 1999 against sale consideration of Rs.10,50,000/-. Similarly, plot No.65 was purchased by the appellant in auction like Plot No.64 and 1/4th payment of the same was made. Subsequently, it was sold by the appellant and the remaining amount was deposited by the buyer. Plot No.81/N-4 measuring one Kanal situated in Hayatabad had been purchased by the appellant in lieu of Rs.6,00,000/- in the year 1990 and sold it in the year 1998 against a sale consideration of Rs.12,00,000/-. Similarly, Plot No.234 measuring 10 marlas was allotted to the appellant under the then Chief Minister's quota for a total amount of Rs.35,000/- which were paid in installments. The appellant sold the said plot in the year 1996 against sale consideration of Rs.8,00,000/-. Record depicts that 58 kanals 5 marls land in Mauza Urmar Payan Peshawar in the name of son of the appellant Mudassar Babar was the ancestral property of the appellant. The said property was gifted to Mudassar Babar by all legal heirs of Zakaullah Khan late for the purpose of getting education in England, however, the said property was later on sold in lieu of Rs.15,40,000/- and an account in TSB LIOyds Bank

London was opened and son of the appellant Mudassar Babar studied in England.

16. Like appellant, Mst. Nuzhat Shaheen Babar has also explained legal sources of her income on which she has acquired the movable and immovable properties in her name. According to record she is the daughter of Khisro Khan who was serving in Railway before partition of Pakistan having a house in Sirki Gat Peshawar City, known as Babar Manzil. Her father had also purchased a house in Chinar Lane, Peshawar in 1966 and a bungalow 31-A the Mall Nowshera Cantt which he was holding as an old grant lessee. In this view of the matter he by all standards was a man of resources. Mst. Nuzhat Shaheen Babar joined Education Department as a lecturer in 1978 and was promoted as Assistant and Associate professor. Perusal of the evidence led by the deceased appellant in defence depicts that he has plausibly explained each and every property in his name and in the names of his son and widow Mst. Nuzhat Shaheen Babar. Similarly, the account of sources of income furnished by them appeal to a prudent mind that the appellant and Mst. Nuzhat Shaheen Babar were having sufficient sources of income on which they could purchase the properties. Besides, as stated earlier, most of the properties which are a bit expensive have been purchased by the appellant and his widow after their retirements from service. It does appeal to a prudent mind

that they being gazetted Officer would have received handsome pension. Similarly, details of the properties purchased and sold by the appellant reveal that the spouses have purchased land and plots on meager amount and have sold out the same on handsome price, which boost their income quickly. The findings of the learned trial Court with regard to guilt of the appellant are based on mere presumptions and assumption. It is settled law that assumptions and presumptions how high may be cannot be a substitute of evidence. The deceased appellant through evidence led by him in defence has successfully rebutted the allegation of the prosecution and the prosecution has failed to prove its case through cogent and confidence inspiring documentary and oral evidence. A shred of evidence has not been brought by the prosecution to prove corruption and corrupt practices of the appellant and his wife while they were serving in the service of Pakistan. In this view of the matter, the impugned judgment is not sustainable in the eye of law.

17. Accordingly, this appeal and the connected Writ Petitions No.2308-P and 3703-P of 2009 and 2017, respectively, filed by Mst. Nuzhat Shaheen Babar and Mudassar Babar, are allowed, consequently, the impugned judgment dated 07.08.2009 to the extent of sentence of fine and forfeiture of properties in the name of the deceased appellant and his dependents including his widow

Mst. Nuzhat Shaheen Babar and son Mudassar Babar, is
hereby set-aside.

Announced:

03.03.2021

M.Siraj Afridi PS

Senior Puisne Judge

JUDGE

**DB of Hon'ble Mr. Justice Rooh ul Amin Khan senior Puisne Judge; and
Hon'ble Mr. Justice Ishtiaq Ibrahim**