

Crl.A.No.370 of 2004

Sardar Muhammad Naseem

The State

11.05.2015 M/s. Muhammad Saleem Shehnazi and Muhammad Aslam Khan Buttar, Advocates with appellant on bail.
Mr. Arif Mehmood Rana, Addl.Deputy Prosecutor General for NAB.

This single judgment shall dispose of the instant appeal and W.P.No.9763 of 2004 as both involve identical question of law and facts.

2. Through the present appeal the appellant challenges judgment dated 03.03.2004 whereby he was convicted under section 9 & 10 of the National Accountability Bureau Ordinance, 1999 for the offence of corruption and corrupt practices and sentenced to 7 years punishment of rigorous imprisonment extending the benefit of section 382-B Cr.P.C. besides imposing a fine of Rs.25,00,000/- as equal to the price/gain of the aforesaid lands acquired or purchased. Six different properties are also forfeited in favour of the Government out of which five properties were confiscated, whereas sixth was excluded. He was also disqualified from being in service. The properties mentioned at serial No.I to VI of para 43 supra, shall be forfeited to the Government of the Punjab. Property at

serial No.VI has been excluded from forfeiting as it has been further sold out to some persons other than the dependents of accused. Its price has been considered for the purpose of fine. As a consequent of above conviction, the accused shall cease to hold public office and further he shall stand disqualified for seeking or from being chosen, appointed or nominated as a member or representative of any public body or any statutory authority or in service of Pakistan for period of 10 years to be reckoned from the date he is released after serving the sentence. He shall not be allowed to apply for or be granted or allowed any financial facility in the form of any loan, or advances, or other financial accommodation by any Bank or financial institution owned or controlled by Government for a period of 10 years from the date of conviction. The amount of fine imposed today shall be recoverable as arrears of land revenue.

3. Briefly the allegations as contained in Reference No.14/2001 against the appellant are that while posted as Junior Clerk, D.C. Office, Lahore, from 1966-2000, he indulged in the acts of corruption and corrupt practices and acquired properties in his own name and in the name of his different dependents which were disproportionate to his

own known source of income. The details of the properties are as follows:-

- i) 250 Kanals 18 Marlas agricultural land in village Barka Khurd, Tehsil Cantt, District Lahore, purchased in 1990, in his own name.
- ii) 154 Kanals 6 Marlas agricultural land in village Hadyara, Tehsil Cantt, District Lahore, purchased in 1990, in his own name.
- iii) 102 Kanals 14 Marlas agricultural land in village Barka Khurd, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his wife Mst. Naseem Akhtar.
- iv) 204 Kanals 11 Marlas agricultural land in village Barka Kallan, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his wife Mst. Naseem Akhtar.
- v) 2 Kanals 2 Marlas residential plot in Harbanspura, Tehsil Cantt, District Lahore, purchased in 1989 in the name of his wife Mst. Naseem Akhtar.
- vi) 88 Kanals 13 Marlas agricultural land in village Barka Kallan, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his

two sons Khalid Mahmood and Asif Mahmood.

vii) 241 Kanals 11 Marlas agricultural land in village Hadyara, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his sons Arif Ali, Imran Mahmood, Tariq Mahmood and daughter Shabana Naseem.

Viii) 88 Kanals 13 Marlas agricultural land in village Barka Kallan, Tehsil Cantt, District Lahore, purchased in 1989 in the name of his daughter Shabana Naseem.

After the submission of reference the trial court framed charge, whereafter 12 prosecution witnesses were examined. The statement of the accused/appellant under section 342 Cr.P.C. was recorded and the appellant produced 6 DWs in respect of his defence. The trial court confiscated the above said five properties and sentenced the appellant as stated above. Hence this appeal.

4. Learned counsel for the appellant submits that the allegations against the appellant could not be proved before the learned trial court as the appellant himself and his family members already owned enough properties either through inheritance or through purchase, therefore, source of income was adequately explained. Further submits that

NAB has no jurisdiction to probe any property prior to 1999, therefore, any transaction of 1974 in the name of the appellant or his family members is outside the domain of the NAB authorities. Adds that the income from the Jhar Padawar of the land owned or calculated by the appellant, his father and sons were not taken into account which is Exh.DW23/C to Exh.DW23/L. Further adds that the other sources of earning like dairy farming, tractor trolley hiring, water selling and business run by Khalid Mehmood were not considered.

5. Conversely, learned Additional Prosecutor General for NAB submits that the prosecution has amply proved that the appellant had properties much beyond his known source of income.

6. Arguments heard. Record perused.

7. Out of eight properties alleged to have been purchased/acquired by the appellant and his family members, the prosecution could prove only four properties before the Accountability Court No.I, Lahore.

8. Firstly, the land measuring 44 Kanals 5 Marlas in Barka Khurd is alleged to have been purchased by the appellant for Rs.2,50,000/- but the appellant claims that the same was purchased by Khalid Mehmood his son in the name of the appellant which plea was believed by the trial

court by holding that he may have sufficient sources. Secondly, the land measuring 85 Kanals 5 Marlas in Barka Khurd was purchased on 04.04.1990 in the name of the appellant for a consideration of Rs.3,50,000/-. The same plea taken by the appellant in defence was not relied upon by the learned court. Thirdly, property is land measuring 144 Kanals 8 Marlas in Hadyar was allegedly to have been in the name of the appellant on 28.01.1990 for an amount of Rs.6,00,000/- which the appellant claims to have purchased from the money in the bank account of his son, namely, Khalid Mehmood. The bank statement of Account No.380 Exh.DW2/A, Account No.426 Exh.DW7/A and Account No.312 Exh.DW7/A which are in the name of Khalid Mehmood but the learned court held that the transaction from the said account was not possible as balance in Account No.380 was Rs.59934/-, Account No.426 Rs.145010/- and Account No.312 was not operative after December 1987. Fourthly, the land measuring 112 Kanals 18 Marals was purchased in Barka Khurd on 14.05.1990 for a consideration of Rs.3,50,000/- and the same plea was raised by the appellant that the said property was purchased by his son. The land measuring 204 Kanals 11 Marlas in Barka Kalan was purchased in the year 1988 from one Masood Abbas in the name of wife of the appellant,

namely, Naseem Akhtar for Rs.2,00,000/-, which according to the appellant was paid by Khalid Mehmood after selling of the trolley. However, neither Naseem Akhtar nor Khalid Mehmood appeared either as a witness.

9. The appellant produced Khushi Muhammad/DW20, Mohsin/DW21 and Muhammad Ilyas/DW22, who categorically stated that the land was purchased by Khalid Mehmood but the learned trial court did not believe their statements on the ground that the said Khalid Mehmood did not appear and that it was not stated by them that the money was paid by Khalid Mehmood. A close perusal of the statements of the DWs reveals that the money was paid to the seller and the appellant was not required to establish that he paid the money from his own personal resources. The prosecution could have brought the seller of the said land as a witness to show that the amount of Rs.2,50,000/- was received actually from the appellant.

10. To prove the said transaction as Benamidar, the question arises as to what was the prime responsibility of the prosecution and after that what was the duty of the appellant to show that the said property was a Benami transaction. But before we look into this aspect it is worth mentioning that the appellant had already retired in the year 2001 and for the last 20 years since the allegation of

purchasing properties from unknown sources of income, no agency or authority had ever probed about such allegation. The learned trial court basically construed the non-appearance of the wife of the appellant and his son as a proof of the fact that the property was purchased by the appellant.

11. Admittedly, no notice was issued to the alleged Benamidars prior to confiscation of the property, which is fatal to prosecution case. Reliance is placed upon Syed ZAHIR SHAH and others versus NATIONAL ACCOUNTABILITY BUREAU and others (2010 SCMR 713). The relevant extract from para 18 is reproduced as under:-

“18. It is an admitted feature of the case that the stated Benamidars and the dependents of the appellant, in view of the accusation and the allegations, as well as; contained in the Reference and the report filed in the trial Court under section 173, Cr.P.C. supported by the incriminating material; notice was not directed to be issued to the alleged Benamidars by the trial Court nor they were heard obviously before passing of the final judgment in the case although, it was evident that they were fully aware and in the knowledge of the proceedings before the trial Court, which related to the assets and properties in which right and interests have been claimed by the petitioners before us in these two civil petitions for leave to appeal, as well as; interesting to note that out of the alleged Benamidars Mst. Tasneem Begum and Yasir Shah wife and son respectively of the appellant had appeared as D.Ws. before the trial Court yet, their appearance as D.Ws. for the accused would not

by itself be a valid substitute of notice to Benamidars, affording them opportunity of hearing and leading evidence if so deemed proper by them in support of their claims to be the legitimate owners as having rightful interest in such properties.....”

12. Shockingly, in the entire judgment we have not been able to read a single line in which the income of the appellant since 1960 to 2001, his regular and normal expenses and his additional source of income were ever discussed. In a case of assets beyond means, of course, prior to discussing the assets, the known source of income both legal and illegal has to be brought on the record. As observed by the learned trial court Rs.2,50,000/- for 44 Kanals 5 Marlas, Rs.3,50,000/- for 85 Kanals 5 Marlas, Rs.6,00,000/-, 144 Kanals 14 Marlas, Rs.3,50,000/- for 112 Kanals 18 Marals and Rs.2,00,000/- for 204 Kanals 11 Marlas make it Rs.17,50,000/- but nowhere the salary of the appellant for the last 41 years, his savings and his other emoluments were even discussed. The court had no formula to apply in order to ascertain as to what are the assets beyond means. We have left with no option but to disagree in the most definite terms with the findings of the learned trial court.

13. As a result of which, we allow this appeal, set aside the judgment of the trial court and acquit the appellant of

the charges. His sureties shall be discharged at once and the properties so confiscated shall also stand released.

(S.M. KAZIM RAZA SHAMSI) (ALI BAQAR NAJAFI)
JUDGE JUDGE

Approved for reporting.

JUDGE

Hashmi