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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mubeen Lakho.

Criminal Accountability Appeal No.29 of 2019 a/w
C.P. No.D-5594 of 2019.

Appellant/Petitioner: Umer Abul Hassan S/o. Syed Hassan, through
M/s. Farooq H. Naek and Barrister Usman,
Neel Kashav, Advocate.

Criminal Accountability Appeal No.30 of 2019 a/w
C.P. No.D-5846 of 2019.

Appellants/Petitioners: 1. Muhammad Jaffer Khan S/o. Sher
Muhammad Khan.
2. Kamran Nabi Ahmed S/o. Nabi Ahmed.
3. Abdul Aleem Khan S/o. Abdul Jabbar Khan.
4. Jallat Khan S/o. Jo Muhammad
Through M/s. Mirza Sarfraz Ahmed and
Muhammad Kamran, Advocates.

Respondent/State (NAB): Mr. Zahid Hussain Baladi Special Prosecutor
NAB.

Date of hearing: 28.01.2020, 29.01.2020 and 03-02-2020.
Date of Judgment: 20.02.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, I.- The appellants Umer Abul Hassan S/o. Syed Hassan, Muhammad Jaffer Khan S/o. Sher Muhammad Khan, Kamran Nabi Ahmed S/o. Nabi Ahmed, Abdul Aleem Khan S/o. Abdul Jabbar Khan and Jallat Khan S/o. Jo Muhammad were convicted by the Accountability Court No.III, Sindh Karachi, vide Judgment dated 20.08.2019 in Reference No.33/2016 under section 10(a) of the National Accountability Ordinance, 1999 r/w Sr. No.1, 4 and 5 of the Schedule and sentenced to suffer 07 (seven) years imprisonment and to pay fine of

Rs.70,252,484/-, 5,25,31,811/-, Rs.3,76,67,795/-, Rs.2,75,84,490/- and Rs.40,60,000/- respectively and in case of non-payment of fine all the accused shall suffer R.I. for two (02) years more. The appellants were also disqualified for a period of ten years to be reckoned from the date of release after serving out the sentence from holding public office. Hence the appellants have filed these Criminal Accountability Appeals against conviction as well as C.Ps for suspension of sentence and release on bail.

2. The facts of the case as narrated in the reference are that a complaint against the management of Pakistan Post Office Employees Cooperative Housing Society Limited (the Society) regarding their involvement in embezzlement of funds was received by NAB. Thereafter, an inquiry was authorized against the accused persons, which was subsequently converted into an investigation. It was found that the Society was registered under the Cooperative Societies Act, 1925. The Society owns land in different dehs and sectors of Gulzar-e-Hijri (Scheme-33) Karachi viz. NBP/48-A, 53-A, 13-A, 25-A and 26-A. The Society incurred Rs.173,776,466/- as expense during the period from the year 2004-05 to 2013-14 on account of internal development works, but no significant work was carried out on the ground which showed that millions of rupees have been embezzled and misappropriated by the management of the Society. It is alleged by the prosecution that accused No.1 Kamran Nabi being the Chairman of the Society has given an amount of Rs.96,724,765/- to four different contractors for the internal development work and for approval of layout plans of different sectors of the society but when the internal development works were verified by the experts of Pak PWD, the cost of internal development work in Sector 25-A was calculated and verified as Rs.7676,874/- and in Sector 13-A Rs.81,84,680/-, besides such payment, he in connivance with two different honorary secretaries namely Muhammad Jaffar Khan and Abdul Aleem Khan (Accused No.2 & 3) made payment of Rs.28,951,191/- to four companies i.e. M/s. Hani Enterprises, M/s. Full Range Enterprises, M/s. Planning and Development Enterprises and M/s. Techno Construct without carrying out any work and also with the connivance of two different honorary secretaries withdrew Rs.24,822,490/- in cash from the bank account of the Society maintained at Habib Metropolitan Bank,

Gulshan Chowrangi Branch which is in violation of by law No.73 of the Society and also no development work was carried out against the said amount. He further in connivance with accused No.2 has given 12 cheques amounting to Rs.9,150,000/- to Nafees Ahmed (accused No.6). He also in connivance with accused No.2 had issued cross cheques amounting to Rs.4,060,000/- to Jallat Khan (accused No.7), so also with connivance of accused No.2 he had issued cross cheque amounting to Rs.500,000/- to accused No.6, with the result that he with the connivance of co-accused persons have misappropriated/embezzled an amount of Rs.148,376,892/- of the Society.

3. It is also alleged that accused Muhammad Jaffar Khan accused No.2 was Honorary Secretary of the Society since January, 2013, his first tenure in the Society was from the year 2003 to August 2007 and during his first tenure in the society he had spent an amount of Rs.96,724,765/- on the internal development work and approval of layout plans of the different sectors of the society through four different contractors, but when the internal development works were verified by the experts of Pak PWD, the cost of internal development work in Sector 25-A was calculated as Rs.7,656,874/- and Sector 13-A as Rs.81,74,680/- besides this no further work was found on ground so also he in connivance with accused No.1 paid Rs.6,656,891/- to the Proprietor of M/s. Hani Enterprises (accused No.4), M/s. Full Range Enterprises (accused No.4) and M/s. Planning and Development Enterprises (accused No.5) without any justification of development work. He also in connivance with accused No.1 misappropriated the funds of the Society by issuing bearer cheques and withdrew a sum of Rs.7,173,440/- from Habib Metropolitan Bank, Gulshan Chowrangi Branch in violation of by-law No.73 of the Society. He gave 12 cheques amounting to Rs.9,150,000/- to accused No.6 Nafees Nabi Ahmed and also gave cross cheque amounting to Rs.4,060,000/- to accused No.7 Jallat Khan, he also in connivance with accused No.1 Kamran Nabi Ahmed had issued cross cheques amounting to Rs.500,000/- to accused No.6 without justification and thus he in connivance with co-accused persons misappropriated/embezzled an amount of Rs.108,433,632/- of the Society.

4. It is further the case of prosecution that accused No.3 Abdul Aleem Khan was also Honorary Secretary of the Society w.e.f. August, 2007 to January, 2013, when he in connivance with accused No.1 Kamran Nabi Ahmed had paid an amount of Rs.22,294,210/- to Umer Abul Hassan, Proprietor of M/s. Hani Enterprises, M/s. Techno Construct and Full Range Enterprises (accused No.4) without any development work. He further in connivance with accused No.1 issued bearer cheques amounting to Rs.17,649,050/- for cash withdrawal from the account of society maintained at Habib Metropolitan Bank Gulshan Chowrangi Branch, which is in violation of bylaw No.73 of the society. He also operated bank account bearing No.001173-1 maintained in National Bank of Pakistan, Sakhi Hassan Branch and has made cash withdrawal of Rs.11,992,200/- from it through different cheques which is against by law No.73 of the Society, thus he also in connivance with co-accused had embezzled an amount of Rs.51,935,460/- of the society.

5. It is also alleged that accused No.4 Umer Abdul Hassan being proprietor of M/s. Hani Enterprises and M/s Techno Construct had received Rs.60,656,052/- for the internal development work in Sector 25-A against the verified internal development work by experts of Pakistan Public Works Department amounting to Rs.7,656,874/- in sector 13-A. He also received an amount of Rs.18,558,005/- for the internal development and approval of layout plan against the verified internal development work of Rs.8,174,680/-, in sector 26-A he had received an amount of Rs.5,509,128/- for the approval of layout plan, so also used the name of another company i.e. M/s. Full Range Enterprises by way of opening fake bank account maintained with Habib Bank Limited and Soneri Bank Limited and received an amount of Rs.9,800,000/- for removal of rock and leveling of ground in sector 26-A, whereas no work was found to be carried out as per experts of Pak PWD, besides the above mentioned amount, he received Rs.26,451,191/- without any justification in the name of above mentioned companies and he with the connivance of accused no.1, 2 & 3 have misappropriated/embezzled Rs.105,142,822/- of the Society.

6. It is further alleged by the prosecution that accused No.5 Syed Tehzeeb Hussain Zaidi being proprietor of M/s. Planning and Development had received an amount of Rs.1,000,000/- for dismantling of existing encroachment, an amount of Rs.100,000/- for construction of check post and Rs.1,101,580/- for the guide boards and maintenance of site office in Sector 25-A but during ground check of the site by the experts of the Pak PWD there were no guide boards and site office. He also received an amount of RS.2,500,000/- without any justification and in connivance with co-accused No.1, 2 & 3 he had misappropriated / embezzled a sum of Rs.4,701,580/- of the Society.

7. Whereas, deceased accused No.6 Nafees Nabi Ahmed being a private person and beneficiary had received 12 cheques amounting to Rs.9,150,000/- from the bank account of the Society, who also received a cheque bearing No.46957086 dated 28.10.2011 amounting to Rs.500,000/- from accused No.1 & 2, which was credited/deposited in his **personal account** bearing No.20311-714-101718 maintained at the same bank i.e. Habib Metropolitan Bank, Gulshan Chowrangi Branch, Karachi. He with the connivance of accused No.1 & 2 **pocketed an amount** of Rs.9,650,000/- and accused No.7 Jallat Khan being a private person and beneficiary had also received 6 cheques amounting to Rs.4,060,000/- from accused No.1 & 2 **without any justification.**

8. As such all above named accused persons with the connivance of each other have embezzled the funds of the Society to the tune of Rs.160,369,092/-, thus all accused have committed the offence of corruption and corrupt practices, hence a reference was filed against them under the National Accountability Ordinance 1999 by the National Accountability Bureau for corruption and corrupt practices read with the schedule of offenses to the aforesaid Ordinance.

9. To prove its case the prosecution examined 11 prosecution witnesses including I.O. and exhibited numerous documents. All the accused persons recorded their statements under S.342 Cr.PC but did not examine themselves on oath although accused No.4 Umar Abul Hassan called 3 DW's in support of his defense case.

10. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment dated 20.08.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

11. Learned counsel for Umer Abul Hassan contended that the appellant was the developer and played no role in the embezzlement of any funds; that he was awarded contracts for certain areas and after receiving funds from the Society for work on those areas he had carried out the required work, that there was no proof of any embezzlement by him, that so called the PWD experts did not have the required expertise to make any assessment on the work done vis a vis its cost and that the IO in cross examination had admitted that the work was done in the areas for which the appellant had been awarded work in pursuant to his contracts which concerned leveling of the land, constructing roads and sewerage works and there was plenty of doubt in the case against the developer and as such he was entitled to the benefit of the same and thus should be acquitted of the charge. In support of his contentions he referred to the evidence of the PW's especially the IO and placed reliance on numerous documents including audit reports.

12. Learned counsel for Kamran Nabi Ahmed adopted the arguments of the developer concerning the completion of the development works and that all the funds paid to the developer had been utilized for the devolvement works and that there had been no embezzlement either by the Society, himself or the developer in respect of such funds. In addition he contended that he was Chairman from 2003 to 2007 and during this period all acts concerning the Society's land and development on the land been done in accordance with law and the relevant bye laws. That with regard to any other payments which were made these had been done with the authorization of the Society and that these had been paid for the purpose of salaries relating to the Society and other works needed to be done by the Society, that there had been no violation of by law 73 concerning financial matters, that there was no mens rea on the part of the appellant, that this was a put up case by the old management in connivance with the NAB so that the old management could take over the

Society and that as such he should be acquitted of the charge based on the benefit of the doubt. In support of his contentions he placed reliance on **Maula Bux Shaikh V Chief Minister of Sindh** (2019 PLC CS 282).

13. Learned counsel for Abdul Aleem Khan adopted the arguments of the developer concerning the completion of the development works and that all the funds paid to the developer had been utilized for the devolvement works and that there had been no embezzlement either by the Society, him or the developer in respect of such funds. In addition he contended that the reference was not maintainable as the NAO was not applicable to the appellants, that he was Secretary between the years 2003 to 2014 and during this period all acts concerning the Society's land and development on that land had been done in accordance with law and bye laws and like wise any payments made to any party and in particular he relied on bye law No.59, that as Secretary he had no liability whatsoever as he performed only administrative duties, that no PW had deposed against the appellant, that he had no mens rea, that the responsibility for the decisions made by the Society rested with its Chairman (appellant Kamran Nabi) and the other committee members and not with the appellant who was only the secretary and that based on the benefit of the doubt he should be acquitted of the charge.

14. Learned counsel for Muhammad Jaffer Khan adopted the arguments of Abdul Aleem Khan as they were both former Secretaries and as such were both sailing in the same boat.

15. Learned counsel for Jallat Khan contended that he had been given a contract by the Society to remove rocks and he had been paid on the basis that he had completed his contractual obligations and thus there had been no embezzlement on his part and as such he should be acquitted of the charge.

16. On the other hand Special prosecutor NAB has contended that the development works had not been carried out, that the monies paid by the Society to the developer had all been embezzled by the developer in connivance with the appellants which had illegally awarded him the contract without either advertising or tendering as required under the bye

laws, that their had been violations of the by laws in terms of bye law 73 which concerned financial matters, that both appellant Secretaries were equally as liable as they were in connivance with the Chairman, developer and Jallat Khan, that payments had been made from the Society funds by the Chairman and both the Secretary appellants to accused Nafees Nabi (now deceased) without any authorization, that no contract had been given to appellant Jallat Khan and there was no evidence that he had carried out any work for which he had been paid, that other payments made by the Society had been made without authorization and paid to private persons for unknown reasons and as such the prosecution had proved beyond a reasonable doubt the embezzlement by all the appellants and their appeals should be dismissed.

17. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants, the impugned judgment with their able assistance and have considered the relevant law.

18. In essence, in our view, the case revolves around the senior members of the management of the Society embezzling Society funds some of which were paid to the developer to carry out development works on land owned by the Society which according to the prosecution case were either not carried out or what works were carried out were over charged/ embezzled by the developer in connivance with the appellants **and in addition** embezzled various amounts of the Society's funds by paying the same to other persons in violation of the Society's Bye laws, Rules and Regulations without any justification which caused a loss to the Society and illegally benefited those other persons .

Since the main allegation concerns embezzlement in connection with the development of land, we will deal with that allegation first.

19. Turning to the case of appellant Umer Abul Hassan who was the developer. We find no nexus between him or any other of the appellants who were members of the Society apart from the fact that the Society awarded his companies numerous contracts. In our view the question

arises whether (a) he did the work on the sites and (b) did not spend the monies which were released to the companies on the required work but rather embezzled/pocketed the same.

20. It appears from the record that the appellant was awarded development work in respect of Sector 13 A, Sector 25A and Sector 26 A and as such he can only be convicted for the works or lack of work or any embezzlement in respect of the works carried out or not carried out as the case may be in these sectors.

21. We now need to consider the development works which were assigned to the appellant keeping in view that the appellant is associated with three companies (Hani Enterprises, Full Range Enterprises and Techno Construction). **Namely whether the prosecution has proved beyond a reasonable doubt that these works were not carried out.** As per record such works are as under:

- (i) By Agreement dated 28.3.2004 Hani Enterprises for doing work of sewerage system and earth filling in Sector 13-A. (P.2819-2823) which was done by appellant as admitted by I.O. in his evidence. (P.2709-2747).
- (ii) By Agreement dated 21.4.2005 Hani Enterprises for doing work of entire water supply system in Sector 13-A (P.2825-2827) which was done by appellant as admitted by I.O. in his evidence. Sector 13 A comprises 23 acres which has been fully developed and occupied as admitted by the IO in his cross examination. Thus, it appears that these works have been completed
- (iii) By agreement dated 02.06.2014 Full Range Enterprises for doing work of removal of rock and leveling of land in Sector 26 A (P.2829-2835).

22. It appears that the appellant's companies Techno Construction and Hani Enterprises were awarded different works in Sector 25-A of the Society viz:

- (a) By Agreement dated 20.6.2004 contract for approval of Lay Out Plan. (P.2841-2843).
- (b) By Agreement dated 15.9.2004 contract for road works in Phase-I (i.e. clearing and cutting the area and lying of the imported earth rolling and compaction as road base). (P.2845-2849).

- (c) By Agreement dated 19.1.2005 contract for entire Road work in Phase-II (P.2851-2853).
- (d) By agreement dated 29.2.2005 contract for internal development work of entire sewerage system (P.2855-2859).
- (e) By Agreement dated 14.11.2005 contract internal development of road works in Phase-III (P.2861-2863).

23. It appears from the evidence that all the above were completed by the appellant's companies as admitted by the IO in his evidence (P.2709-2747) and letter of the Society dated 20-12-2015 (P.2869) and three certificates of the CDGK (P.2871-2875)

24. It would appear from the evidence and in particular the agreements that none of the appellants companies were awarded work in respect of sectors 53-A and 48-A of the Society and as such they cannot be convicted in respect of works not done in these sectors as they had no obligation to do any such work.

25. In our view audit Report of the Society from 06-01-2004 from 30.06.2005 is also of significance which at P.393 reads asunder;

INTERNAL DEVELOPMENT RS.4,63,02,935/-

The old record of the society in respect of Development Work done during the period of previous managements and during the tenure of Administrators appointed by the Government are not available on record of the society as reported, as such nothing can be said about the work done before the period of sitting management of the society.

Reportedly the sitting management after taking over the charge and control of the society has taken up the Internal Development Work of the society. The detail of above work as provided at the time of audit are as under:-

1.	M/s. Hani Enterprises	Earth Work on Roads and Laying of Sewerage System at Sector 13-A.	Rs. 93,90,700.00
2.	M/s. Full Range Enterprises	Removal of Rock and Leveling of Ground at Sector 26-A.	Rs. 18,50,000.00
3.	M/s. Planning & Development Consultants.	Dismantling of Existing Encroachment Construction of Check Post. Re-demarcation of Area. Renovation of Site	Rs. 11,00,000.00

		Office. Providing Electrification at Sector 25-A.	
4.	M/s. Techno Construct.	Approval of Lay Out Plan.	Rs. 14,16,000.00
5.	M/s. Hani Enterprises	Earth Work on Roads and Laying of Sewerage System at Sector 13-A.	Rs. 55,73,800.00
		Road Works. Sector 25-A	Rs. 90,29,042.00
6.	M/s. Full Range Enterprises	Removal of Rock and Leveling of Ground at Sector 26-A.	Rs. 4,50,000.00
7.	M/s. Techno Construct.	Approval of Lay Out Plan of Sector 25-A. Approval of Lay Out Plan of Sector 26-A.	Rs. 31,02,633.00
		Sewerage Work at Sector 25-A.	Rs.1,39,34,000.00
8.	City District Government	Scrutiny fees for approval of layout plan.	Rs. 5,83,000.00

It was informed that previously M/s. Rizvi Associates, Consulting Engineers and Architects were rendering their services for the society @ 5% duly appointed by the previous management. The sitting management found the rate on very high side as such they requested the Consultant to render services @ 3% instead of 5% in view of the financial condition of the society. The Consultant agreed to work on 3% as per request of the society.

The sitting management of the society called the tenders and quotations of the above work through their Consultant and awarded the work with the approval of the managing committee of the society. The copies of Agreement made with the Contractors are attached with the Audit Report for ready reference. It is pointed out that the Tenders/Quotations were not called through press.

The Development Work done by the sitting management could not be physically verified being a technical job. However, the Consultant of the society M/s. Rizvi Associates have verified all the Development Work done by the sitting management for the period from March, 2004 to June, 2005 and issued completion Certificates dated 30.11.2004 and 05.07.2005 (Copies are attached with the Report). (Bold added)

26. This tends to show that all the given work was done within the given period which has been certified by the society's consultants M/s. Rizvi @ Associates and yet no S.161 statement let alone PW from Rizvi and Associates was called to deny this fact by the IO which suggests that the work was done. If there was doubt as to the genuineness of the verifications/certificates by M/S Rizvi and Associates then M/S Rizvi and

Associates should also have been made an accused which they were not which tends to indicate that the IO believed the veracity and genuineness of the verifications and completion certificates by Rizvi and Associates in respect of the works.

27. We have found that the audit Report for the year 2006 to 2009 (P.407 to 481) was certified as per PW 2 Muhammed Azeem (Asstt. Registrar IV Co-operative Societies) as B class which means that the work had been carried out to a good level and as such there was no question that no work had been done on the sites which the appellant's companies had agreed to carry out development work as at that time. Furthermore the IO in his evidence admitted that the completion certificates had been issued by the consultant in respect of the works up from 2004 to 2008 which corroborates that fact that up to 2008 the work assigned to the appellants companies had been carried out.

28. Thus, it would appear from the evidence that all of the work which the appellants companies were required to carry out were carried out.

29. So far as the appellant developer is concerned the next issue is one of cost. Namely whether the prosecution has proved beyond a reasonable doubt that the payments made to the developer were not utilized by the appellant via his companies and were embezzled.

30. The prosecution produced two officers from PWD to assess whether the works had been done and what was the cost of carrying out the works.

31. PW 3 Syed Shehzade Hussain was an assistant executive engineer in PWD. At the out set he is only a diploma holder in Associate Engineering and thus it is doubtful that he had the required expertise to make such a report. Importantly, he carried out his inspection in 2016 when the works started in 2004 which was over 12 years later so conditions on the ground would have greatly varied over that time especially with respect to encroachments. In his evidence he even admits that some development work in terms of road and sewage work was carried out on Sector 25 A and Sector 13 A. However he failed to take any

photo's to show whether any development work had been carried out or not and does not even know the area of the Society's housing scheme. Furthermore, the development plans were not with him at the time of site visit, he has not quoted the amount of land he measured, the method of assessment and rates for fixing the cost of works which had been carried out. He admits that part of Sector 25 A was occupied by land grabbers and cannot rule out the possibility that land grabbers had destroyed any development work which had been completed. He did not consider any topographical report which in our view was absolutely crucial for him to have done. This is because the land in question prior to its development was rocky, hilly etc and one of the jobs given to the developer was in essence to level the land, then build sewage works and roads and not to build any buildings. Thus, in our view to assess whether any site clearing, leveling had been done it was crucial for him to have seen what the topography/condition of the land was like **before** the developer started work on its leveling/clearing so that he could assess the extent of the work done yet he failed to do so. It appears that the site plan, lay out plan were not with him when he visited the site. He has given an assessment of the work done in Sector 25-A and 13-A of his report which reads as under.

1. Pakistan postal office Employees C.H. Society on sector No.25-A Scheme No.33, Karachi.

In this scheme the road work and sewerage system work was executed approximately in the year 2005-06. As per measurement taken at site the cost of Road work and sewerage system is calculated as Rs.76,56,874/-. (Bold added)

2. Pakistan postal office Co-op Housing Society on sector No.13-A Scheme No.33, Karachi.

In this scheme the road work and sewerage system work was executed approximately in the year 2005-06. As per measurement taken at site the cost of Road work and sewerage system is calculated as Rs.81,74,680/-. (bold added)

32. We are however at a loss to understand the basis on which he has made these calculations. He has not given any precise details of work carried out, his measurements, the rate he applied to those measurements nor his assessment formula and what kind of materials which were used

and what the cost of such material would be. For example, what was the condition of the leveled land before it was leveled, what was the measurement of such leveled land, what equipment would be required to level the land, how much labour was involved etc. Likewise for the roads and sewage works. In our view his calculations seem to lack precision and cannot be safely relied on as being accurate for the reasons mentioned above.

33. PW 6 Arshad Ali was sub engineer at PWD who carried out the site inspection with PW 3 Syed Shehzade Hussain and was a more senior officer. He corroborates PW 6 regarding the works which were carried out and not carried out. Despite being the senior officer it is significant that he was not even a qualified engineer having no BE degree. He also did not know the condition/topography of the land prior to its leveling. In his evidence he states that the cost of any project is calculated on the basis of material cost and other expenses and the cost of the road is assessed on the basis of its length core and width but he admits in his cross examination that these important factors are not mentioned in his report. Likewise in his report there is no detail of the sewerage works, size of pipes, depth and infrastructure and water supply and number of man holes, and material and labour costs and item wise cost of development work. The fact that PWD charged different rates for its work which mainly concerns Government buildings as opposed to private developers as in this case also goes against this PW's accuracy of his cost estimate regarding the cost of the works. Crucially the very person who may have given some credibility to their report namely the Society's consultant engineer was not present at the time of inspection who had certified the works and could have justified or not any costs which were spent on the projects whose report it appears was not even considered by this PW before preparing his report.

34. Thus, of the two PW's from PWD as discussed above who prepared the report stating how much was spent on the development works by the appellant developers companies we are of the view that it's accuracy is doubtful and cannot be safely relied upon.

35. Further weight is given to this conclusion when we consider the evidence of the IO who admits in his evidence that he is unaware of any Society in Pakistan which was developed by PWD which is a clear indication that the report should have been prepared by other private developers with experience in such work as opposed to PWD so that its accuracy could be relied upon, that development work is usually carried out by town planners of Sindh's SBCA yet none of them were associated in preparing the report prepared by PWD. He also admits that Sector 13 A is completely occupied which implies that as people are living there the land must have been leveled and roads and sewage built as such there appears to be no question that this development works was not carried out. He cannot say if sector 25-A is occupied and did not take the statement of any resident of S.13 A and 25-A on whether the issue of the availability of roads or sewerage works.

36. The IO also admits that outer development charges have been paid for the development works and that the layout plans have been approved for these development works and scrutiny fees have been paid. Notably these documents form a part of the evidence and are supported by the evidence of the three DW's who were called by the developer/appellant.

37. Thus, we are of the view that the prosecution has not been able to prove beyond a reasonable doubt that the works which the developer agreed to do were not carried out and that any funds were embezzled in respect of payment which the developer received for carrying out these works and thus with regard to this aspect of the case all the appellants are acquitted of the charge by being extended the benefit of the doubt.

With regard to other payments made by the Society.

38. In our view no evidence has been produced to justify the payments by the Society for other uses to other persons. No resolutions exist, no justification for payments exist and no proof that even any work was done has been provided. We find it inexplicable that funds of the Society were paid to Nafees Nabi who was a private person who had nothing to do with the Society and with any construction works and that he was involved in subletting the works to Jallat Khan. We do not accept the

arguments that the Secretaries had no role to play in the disbursement of funds and in our view they are equally as liable as the Chairman for the illegal disbursement of funds to others in order to benefit them which lead to a loss to the Society and undue benefit to Nafees Nabi and Jallat Khan. In short we find the appellants who were associated with the payment to others were all on board in respect of this illegality and embezzlement which lead to a loss to the Society. Violations of bye law 73 also tend to corroborate this finding and as such we find that the amounts paid to others as misappropriation and embezzlement of the Society's funds which falls with the purview of the NAO. In this respect we reproduce below typed P.51 of the impugned judgment.

"Accused Kamran Nabi, Muhammad Jaffar and Abdul Aleem Khan in their 342 Cr.P.C. statement admitted the withdrawal of cash amount from the account of society however, according to them same was spent on the expenditure of the society in various heads, but they have failed to produce any proof of such heads neither produced report of external auditor nor apply for calling them as witness. Accused Abdul Aleem Khan produced minutes of meeting to substantiate and justify the cash withdrawal, but it bears his single signature, he did not produce any attendance sheet to establish that any such meeting was held and members participated in it neither proves the lawful use and official withdrawal of society funds thus failed to justify the cash withdrawal. Accused Jallat Khan produced one agreement for machinery and labour and admitted in his statement under section 342 Cr.P.C. that amount was paid to him by deceased accused Nafees Nabi Ahmed in pursuance of agreement executed between them, but failed to prove the work performed by him against said payment."

Conclusions.

39. In our view this case of embezzlement and misappropriation of the Society's funds divides into two parts.

40. **The first part** relates to the failure to carry out certain development works by the developer and the misappropriation and embezzlement of the Society's funds and in this respect for the reasons discussed above by extending the benefit of the doubt all the appellants are acquitted of this charge.

41. The second part relates to the appellants connected with the Society (namely, Kamran Nabi, Aleem Khan, and Jaffer Khan paying private persons (Nafees Nabi (deceased) and Jallat Khan) without authorization and justification funds of the Society which in our view caused a loss to the Society and were embezzled and in this respect we find that the prosecution has proved its case against the appellants Kamran Nabi, Aleem Khan, Jaffer Khan and Jallat Khan beyond a reasonable doubt in respect of this aspect of the case and as such their convictions in the impugned judgment are upheld.

42. With regard to sentencing, having found^{38/39} that the aforesaid appellants have been acquitted in respect of the major amount of embezzlement in respect of the development works we deem it appropriate to exercise our discretionary powers under S.423 Cr.PC and reduce the sentence of imprisonment handed down to the aforesaid appellants Kamran Nabi, Aleem Khan, Jaffer Khan and Jallat Khan from 7 years to 3 years each and with Kamran Nabi, Aleem Khan and Jaffer Khan each paying a fine of RS one crore and 29 lacs and Jallat Khan paying a fine of RS forty lacs and sixty thousand failing which the defaulting appellant shall under go a further period of imprisonment of 3 months. S.15 NAO shall also be applicable to the convicted appellants.

43. The appeals and Constitutional petitions stand disposed of in the above terms.