

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal No.317 of 2015

Dates of hearing : 27.09.2021

Date of Judgment : 27.09.2021

Appellant Mumtaz ul Haq : through Mr. Noor Mohammad Dayo, Advocate alongwith appellant on bail.

State : through Mr. Talib Hussain Memon, Asstt. P.G. Sindh.

JUDGMENT

Muhammad Saleem Jessar, J.- By means of this Criminal Appeal appellant Mumtaz ul Haq has assailed judgment dated 30.11.2015 handed down by learned Special Judge, Anti-Corruption (Provincial), Karachi, in Special Case No.20 of 2005 (Re: State Vs. Mumtaz ul Haq), being outcome of Crime No.34/1997, registered at P.S. ACE Karachi under Sections 5-B and 5-C read with section 5(2) of Prevention of Corruption Act (Act II of 1947), whereby the appellant has been convicted for the offences punishable under the above said sections and sentenced to undergo R.I. for five years (5) and to pay fine of Rs.5 Lacs to the Government and in case of non-payment of fine, the appellant was ordered to suffer S.I. for six months more.

The crux of prosecution case, as per contents of FIR, are that accused Mumtazul Haq before his promotion to the post of Assistant Director, K.D.A. was residing in a rented quarter in North

Nazimabad, Karachi. On 12.06.1994, he purchased a bungalow No.C-107, Block-9, measuring 600 sq. yards in Works Society, Gulshan-e-Iqbal, Karachi valuing 40 Lacs of Rupees. During his posting at Park and Recreation Department, K.D.A., he got allotted KDA land for Nursery and now he is running Nursery thereon. He is also working as Secretary, KDA Employees Cooperative Housing Society and he is also involved in corruption and misappropriation from **last twenty years**. The Secretary KDA vide his Letter No.0345/ET/84/pt/118 dated 18.03.1996 has informed that the accused has neither applied for permission to purchase the above property, nor the declaration of assets has been furnished. During the course of enquiry, he failed to prove justification regarding his source of income for the purchase of the above properties and, thus, he has committed an offence punishable under section 5-B and 5-C of the Prevention of Corruption Act-II, 1947. On the basis of aforesaid allegations, case was registered against the accused.

A formal charge against the accused was framed vide Ex-2 to which he pleaded not guilty and claimed to be tried vide his plea Ex-3.

In support of its case, prosecution examined PW.1, Mohammad Mujtaba Khursheed at Ex.4, who produced Photostat documents as Ex.4/1 to 4/6. P.W.2 Syed Shakeel Ahmed was examined at Ex.5. Thereafter, statement of process server namely Shakeel Hashim was recorded vide Ex.6, who deposed that PW / complainant, Jamil Ahmed Siddiqui had expired, whereas other PWs namely Mohammad Iqbal, Mohammad Arshad and Syed Masroor Ali were not traceable, therefore, he produced unserved summons of aforesaid PWs. P.W. Kafeel Ahmed Siddiqui, who was son of the complainant, during his examination before trial Court vide Ex.7, also confirmed the fact regarding death of his father. Thereafter, P.W.3 Mushtaq Ahmed was examined at Ex.8, who

produced Photostat copies of documents as Ex.8/1 to 8/10. P.W. 4 Syed Muzammil Hussain was examined at Ex.9, who produced documents as Ex.9/1 to Ex.9/6. Thereafter, statement of process server namely, Ghulam Ashar was recorded vide Ex.10, who produced death certificate of P.W. Syed Mohammad Junaid alongwith unserved summons and his report vide Ex.10/1 to 10/3. P.W. 5 Khalid Javed Abbasi was examined at Ex.11, who produced photo copies of documents vide Ex.11/1 to 11/7. Statement of process server Mohammad Qasim was recorded vide Ex.12, who produced unserved summons of P.Ws Yousuf Ali Khan and Anwar Hussain alongwith his report as Ex.13/1 to 13/4. P.W. 6 Mohammad Tariq Khan, Bank Manager, was examined at Ex.14, who produced summary alongwith photocopies of account opening form, specimen signature card and bank statement documents vide Ex.14/1. P.W. 7 Riaz Ahmed was examined at Ex.15, who produced reports and certificates as Ex.15/1. Statement of process server Mohammad Qasim was again recorded vide Ex.16, who produced unserved summons alongwith his report as Ex.16/1 and 16/2. P.W.8, Mohammad Arshad was examined at Ex.17, who produced documents vide Ex.17/1 to 17/30. P.W. 9, Mohammad Rashid was examined at Ex.18, who produced photocopies of documents as Ex.18/1 to Ex.18/10. An application was moved by accused vide Ex.19. Last witness i.e. P.W.10 I.D. Mangi, I.O. of the case was examined at Ex.20, who produced documents vide Ex.20/1 to Ex.20/21. Thereafter, prosecution closed its side vide Statement Ex.21.

Statement of accused under Section 342 Cr. P.C. was recorded vide Ex.32, in which he denied prosecution allegations and claimed to be innocent. He also got examined himself on oath and also produced Rafiq Iqbal son of Iqbal Bashir in his defence. He specifically stated, *"I am innocent and falsely implicated in this case by*

complainant Jalil Ahmed Siddiqui, whose document of plot were forged and I refused to transfer, therefore, he filed complaint against me. I will depose further in my statement on oath. I pray for justice."

In his statement on oath recorded under Section 340 Cr. P.C. vide Ex.23, he deposed that the Investigating Officer has wrongly assessed the value of property as Rs.1,43,00,000/-, whereas, as per law, the value of the property is always assessed according to market value and in the year 1997 market value of the property was Rs.22 Lac. He further stated that, in fact, the complainant of the instant case was on inimical terms with him because he (accused), being Assistant Director, (Land Department) KDA, North Karachi Township at the relevant time, had cancelled a plot bearing No.A-1, Sector 15-B, North Karachi which was purchased by the complainant, after receiving letter for cancellation of plot from Deputy Director Anti-Corruption Establishment on the basis of FIR No.109/1986 registered at ACE Karachi. He produced relevant documents in support of his assertions. He further deposed that the complainant had approached to Secretary, Provincial Ombudsman Karachi in respect of cancellation of his plots by way of moving an application; however, said application was dismissed and he produced copy of the report received from the office of Provincial Ombudsman Karachi as Ex.23/C.

He also gave details regarding the properties which are the subject matter of the case of prosecution and elaborately explained as to from which fund he purchased some of the such properties and also stated that some of the properties were not owned by him but the same were purchased by his relatives and either he was ostensible owner in respect of such properties or General Power of Attorney was executed in his favour in view of the circumstances explained by him. He also stated that some properties were obtained by him by way of inheritance. According to him, the Investigating

Officer has wrongly calculated the value of the properties. He further deposed that he had narrated the above facts to the Investigating Officer but he neither took the same into consideration, nor did mention the actual facts in the investigation papers. He further deposed that in the year 1996 Secretary, K.D.A. namely, Aftab Ahmed Lodhi sent a letter to Director, ACE Karachi wherein nothing was complained against the accused but the I.O. has not investigated the matter fairly. He reiterated that he is innocent and prayed for justice.

After formulating the points for determination, recording evidence of the prosecution witnesses as well as defence witnesses and after perusing written arguments submitted by the accused in person, so also by learned DDPP, appearing for the State, learned trial Court vide impugned judgment convicted and sentenced the accused / appellant as stated above. Against the said judgment the appellant has preferred instant appeal.

I have heard learned counsel for the appellant as well as learned A.P.G. appearing for the State and perused the material available on the record.

Learned counsel for the appellant submitted that entire prosecution case was initiated upon a complaint made by one Jalil Amed Siddiqui (since deceased) who was on inimical terms with the appellant. In support of this assertion, he referred statement of accused (*Ex.22 available at pages 1645 to 1655 of paper book part-II*). He further submitted that due to theft of certain record including relevant registers, some of documents regarding different categories of the plots were missing. He further submitted that prior to said FIR, K.D.A. got published notice in Daily Jang vide its issue dated 22.11.1994 in respect of disputed plot belonging to complainant (*Ex.23/A available at page-1633 of the paper book part-II*). He next

submitted that complainant Jalil Ahmed Siddiqui maneuvered fake documents in respect of plot No.A-I, Sector 15-B, Buffer Zone, North Nazimabad, Karachi, in his favour, therefore, the State through KDA got registered FIR No.109/1986 at P.S. ACE, Karachi against some officials of K.D.A. including complainant (Ex.23/B *available at page-1665 of the paper book part-II*). He, therefore, submitted that malice on the part of the complainant was established and even the complainant, due to his demise, did not appear before the trial Court for recording his evidence. He further submitted that P.W.2 Syed Shakil Ahmed (Ex.5 at page 111 of paper book part-I), whose evidence was important as he was a senior officer in K.D.A., made admission to the effect that he had no knowledge about property purchased by the appellant in his own name or in the name of his dependents; however, there were some allegations of corruption against him. It will be advantageous to reproduce hereunder relevant portion from his evidence (*at page-111 of the paper book, part-I*):

"I do not know if accused has purchased any property in his own name or of his dependents, however, there were allegations of corruption against him. There was no such application for permission of purchaser of property or any declaration of assets of accused in his personal file."

Learned counsel further submitted that nothing has been brought on record to show that appellant had indulged in any malpractice through which he gained a lot by misusing his authority. He further submitted that merely bare words do not constitute any offence against the accused.

So far as alleged properties, which have come on surface during investigation, are concerned, learned counsel submitted that said properties were purchased by the appellant through known sources for which details have been given by him, which have also

been made part and parcel of the record vide his statement recorded on oath under Section 340 Cr. P.C. (Ex.23 available at page-1645 of the paper book part-II). Learned counsel added that complainant did not adduce even a single document in support of his allegations against the appellant and the Investigating Officer wrongly calculated value of the properties contrary to market value though, at the relevant time, the properties were of lower price / cost. In support of his contentions, learned counsel placed reliance upon the cases of *MOEEN JAN NAEEM Vs. ISLAMIC KREPUBLIC OF PAKISTAN THROUGH SECRETARY, ESTABLISHMENT DIVISION, ISLAMABAD, ETC. (NLR 1990 TD 525)* and *THE STATE AND OTHERS Vs. M. IDREES GHOURI AND OTHERS (2008 SCMR 1118)*. He has also submitted written synopsis, which are herein taken on record.

On the other hand, learned Assistant P.G. Sindh, appearing for the State, opposed the appeal on the ground that impugned judgment does not suffer from any illegality or infirmity which may require interference by this Court and it being well-reasoned, deserves to be upheld.

The instant case was initiated against the accused / appellant, Mumtaz ul Haq, on the basis of complaint moved by one Jalil Ahmed Siddiqui which, as per statement of I.O. P.W. I.D. Mangi, was received by him from the Directorate of ACE, Karachi on 15.08.1995. It is not understandable as to how I.O. took a long period of about **two years** in ascertaining the truth or otherwise of the contents of said complaint, as admittedly F.I.R. was registered on 05.7.1997. Even there is lethargy of great scale on the part of complainant Jalil Ahmed Siddiqui in moving such complaint as he himself admitted in his complaint, *"he is also involved in corruption and misappropriation from last twenty years..."*. It has not been explained that if the accused was involved in the acts of corruption

for the last twenty years, thereby he accumulated properties which were beyond his known sources of income, then as to what prevented the complainant to move complaint against the accused at an earlier stage. Even if it is presumed, for the sake of arguments, that the I.O. got registered the F.I.R. after receiving permission from the competent authority, even then there is delay of about 11 days in lodging the FIR as, according to his own admission made in his evidence, *“The competent authority accorded the permission vide letter dated 24.06.1997 issued by the Director of ACE Sindh Karachi for registration of case”*. Even, no explanation has been offered in the F.I.R. for such delay. In this view of the matter, lethargy on the part of complainant Jalil Ahmed Siddiqui for about twenty years, then long and considerable time of about **two years** taken by the I.O. in the enquiry even before lodging of F.I.R. and then inordinate delay of about 11 days in registering the case against the accused even after receiving permission from the competent authority, speaks a volume about the conduct of prosecution. No plausible, rather simple, explanation has been furnished by the prosecution for such delay. This creates doubt regarding involvement of the accused in the commission of alleged offence.

In the case reported as Ayub Masih v. The State (PLD 2002 SC 1048) Honourable Supreme Court held as under:-

*“The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. **Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire prosecution case and is to be taken into consideration while evaluating the prosecution evidence.** It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction*

but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused."

In another case reported as Syed Altaf Hussain Shah Vs. State (2018 YLR 482 Karachi) this Court while dealing with a case relating to offence under Sections 409 PPC and 5(2) of Act-11, 1947, held that on account of delay of about one year in lodging the FIR without furnishing satisfactory explanation for such delay, false implication of the accused cannot be rule out.

In view of above, possibility of deliberation and false implication of the accused could not be overruled.

Another serious lacuna on the part of Investigating Officer is that it took almost **eight (8)** years in submitting challan before the competent Court of law, as admittedly the F.I.R. was lodged on 05.7.1997 whereas challan was submitted on 24.05.2005 which is also apparent from the first Diary Sheet of the trial Court which reads, "24-05-2005: *Challan present by Inspector I.D. Mangi against accused Mumtaz-ul-Haq...*". Needless to emphasize that in every criminal case, officer incharge of police station is required to submit Challan within 14 days of the registration of F.I.R. and if investigation is not completed within stipulated period of 14 days then only a further time of 3 days could be granted for submission of interim challan. In this connection, reference may be made to the case of *Mian GHULAM IJAZ and others Vs. THE STATE and others* reported in **P L D 2018 Lahore 151**, wherein it was held:

"12. It is also the requirement of law that every investigation is to be completed without unnecessary delay and as soon as it is completed, officer incharge of police station is required to submit Challan through Public Prosecutor but not later than 14-days and if investigation is not completed within stipulated period of 14-days from date of recording of FIR then officer in-charge of police station within 3-days of expiration of such period, forward to Magistrate through Prosecutor

an interim report stating therein the result of investigation so that Court would commence trial on the basis of such interim report...”

Yet in another case, viz. *ADNAN PRINCE Vs. The STATE through P.G., Punjab and another*, reported in **P L D 2017 Supreme Court 147**, Honourable Supreme Court took a serious view for not submitting the challan within the time prescribed under the law. It was observed:

“Many years back, the State/Government with the object to put the criminal justice system into the correct channels, bifurcated the police force to preventive/detective, investigation and prosecution wings. The establishment of the same cost dearly the public exchequer because extraordinary budget was allocated for this purpose by all the Governments of the Provinces including Federal Government, however, such costly exercise could not improve the system because supervising officers of these three wings of the police are taking least interest to streamline the working of each wing, in an efficient and effective manner and to comply with the mandatory provisions of law. Thus even today charge sheets and submission of the challans before the competent courts in criminal cases are delayed beyond the mandatory statutory period for no reason much less plausible. Even interim challans as required under the law are not submitted within the statutory period. This conduct and attitude as well as performance of investigating, prosecution and detective agencies are absolutely un-acceptable and un-condonable because on the one hand, the law is disregarded while on the other hand, with the passage of time and long delay in the submission of challans, trial in each case is delayed and some of the witnesses including star witness either vanish being killed by the opponents, meet natural death or abandon their permanent abode/place of official duties due to transfer to another place or district making it a cumbersome job for the trial court to procure their attendance. This is one of the major contributory factor in the backlog, crisis/pendency of criminal cases. Such type of un-condonable delay in many cases becomes a cause of frustration both for the accused, the aggrieved complainant party and in some cases, the aggrieved

party ordinarily takes the law into hands indulging in revengeful acts.

10. This has certainly resulted in unrest and element of intolerance in the society which ultimately would have negative impacts on the performance of the government as a whole.

11. Accordingly, copy of this judgment be sent to the Attorney General of Pakistan, all the Prosecutor Generals of the Provinces and Islamabad Capital Territory-ICT, Advocate Generals of the four Provinces, DIGs/Addl. IGPs who are the Incharges of the Investigation Wings, Ministry of Interior, Govt. of Pakistan and all the Chief Secretaries of the four Provinces, all the Home Secretaries of the provinces, IGP-Islamabad, Chief Commissioner-ICT with the direction to hold deliberations and consultations and after giving deep thought to the subject matter, they should collectively and individually devise a proper strategy/policy to arrest this grave menace of delay and causes thereof and to immediately redress the same within the possible minimum time so that compliance is made with the mandatory provision of law and the relevant article of the Constitution in its true letter and spirit and to make accountable each and every officer who is found responsible for such delay and to show a visible and efficient performance in all three fields, failing which the public would be justified to protest that their money is going waste without any fruitful result even after introduction of the new system.

12. Copy of the actions taken along with minutes of each and every action taken, in view of above guidelines be submitted periodically to the Registrar of this Court with detailed information about the cases pending investigation before the Investigating Agency, the Prosecution Branch and to explain the delay in the submission of challans to the trial court."

In view of above, it can safely be held that the delay of about eight (8) years in submission of challan is sufficient to vitiate the entire proceedings. Even, if it is presumed that the I.O. of the case was waiting for the permission of competent authority for submission of challan, although the same is not supported by any provision of law, even then, as per Investigating Officer's own

admission in his evidence to the effect, *“Approval for prosecution of accused was accorded by ACC-I vide letter dated 16.02.2005.”*, there is apparently unexplained delay of **3 months and 8 days** in submission of challan which is also fatal to the prosecution case.

Now advertent to the merits of the case, it seems that P.W.1 namely, Mohammad Mujtaba, who was Honorary Secretary of Works Cooperative Housing Society of K.D.A at the relevant time, had brought record of the Society. He deposed that, as per record of the Society, Plot No.C -107, Block9, Scheme No.24 was in the name of accused Mumtaz ul Haq, who had purchased the same for a sale consideration of Rs.18,00,000/-. According to him, at the time of recording his evidence, the said plot was valued at One Crore of rupees. In his cross-examination, he admitted that on 7th July, 1994 accused had sent an application intimating the society to have purchased the said plot jointly with his mother Mehmooda Begum. He further admitted that in 1991 an agreement showing Mehmooda Begum as joint partner was sent and placed on record. He further admitted that Mst. Mehmooda Begum had executed a Relinquishment Deed in respect of her share in the said property in favour of accused.

P.W.2, Shakeel Ahmed deposed that he had remained posted in K.D.A. on various posts. He deposed, *“I do not know if accused has purchased any property in his own name or of his dependents, however, there were allegations of corruption against him. There was no such application for permission of purchase of property or any declaration of assets of accused in his personal file.”*

P.W.3 Mushtaq Ahmed deposed that in the year 2000 he had purchased a plot and at that time accused was holding the office of Honorary Secretary of KDA Employees Housing Society and the said plot was in the name of his wife. He showed his ignorance as to whether the said plot was purchased by the wife of accused in the year 1981 in an open auction at the rate of Rs.143 per sq. yards.

P.W. 4 Syed Muzammil Husain was posted as branch manager in Allied Bank, Plaza Square Branch, Karachi at the relevant time. He deposed that as per bank record, wife of accused namely, Mrs. Abida Nasreen was holding bank account in the said branch and in the year 2000 she debited Rs.17,80,943/- and credited Rs.17,81,678.35. In his cross-examination he admitted that the I.O. never investigated him about the account of one Fahmida Begum bearing No.2686.

P.W.5 Khalid Javed Abbasi deposed that plot No.313-B, Block L, North Nazimabad, Karachi, was purchased by his wife Neelam Javed on 02.3.1994 for Rs.11 Lac on the basis of Power of Attorney executed by one Shaikh Salahuddin in favour of Abida Nasreen, wife of accused. In his cross-examination he admitted that parentage of allottee Salahuddin Amir was Shaikh Mohammad Aslam; however, he showed his ignorance that said Shaikh Mohammad Aslam was the father of accused's wife Abida Nasreen.

P.W. 6 Mohammad Tariq Khan, who was Manager HBL, Civic Centre Branch had produced a summary regarding account maintained by accused in the aforesaid branch.

P.W. 7, who was an Architect, deposed that he had been given assignment by I.O. of the case namely, I.D. Mangi to estimate the value of House No.C-107, Block-9, Gulshan-e-Iqbal, Karachi and he evaluated the said house to be of Rs.40 Lac in 2001 and of Rs.19,74,650/- in 1991-92. In his cross-examination he admitted that he had got no separate license as "Valuer".

P.W. 8 Mohammad Arshad, who was posted as Assistant Director in K.D.A. F.B. Area Scheme 16/1 at the relevant time, deposed that as per record, Plot No. D-201, Block-4, measuring 1000

sq. yards was originally allotted to one Haji Shaikh Mohamad Shafi and after his death on 27.11.1988, out of five legal heirs of the deceased, four LRs namely, Shaikh Mohammad Ikram, Shaikh Mohammad Islam, Shaikh Mohammad Inam and Mst. Suriya Begum had executed General Power of Attorney in favour of accused for executing relinquishment deed in favour of fifth legal namely, Mst. Fahmeeda Begum and to get mutated the said property in her name, who subsequently gifted the same to one Mohammad Iqbal and Mohammad Arif.

He further deposed that plot No.R-1370, Block-A, measuring 120 sq. yards, F.B. Area, Scheme No.16 was allotted to Mrs.Mehmooda Khanum (mother of accused) and the possession thereof was handed to her on 15.01.1969, who subsequently gifted the same to accused and then it was leased out in the name of accused on 18.12.1969. The accused had sold out the same to one Syed Sabir Hussain, who then gifted the same to Mst. Abida Nasreen, wife of accused. In his cross-examination, he showed his ignorance as to whether aforesaid Mst. Fehmida Begum was mother-in-law of the accused. He admitted that the area of plot No.R-1370, Block 8 fell under encroachment belt and the cost of the said plot was Rs.6/- per sq. yard and that the payment could have been made in easy installments which might have taken years.

Then comes the evidence of most important witness i.e. P.W.10, I.D. Mangi, I.O. of the case. He deposed that in the year 1995, he was posted as Inspector in the Directorate of ACE, Karachi. On 15.8.1995 he received an application from complainant Jalil Ahmed Siddiqui alongwith certain letters from the Directorate of ACE. In the complaint various allegations of corruption and acquiring the properties beyond known sources of his income were levelled against the accused. He further deposed that after recording statement of the complainant he made enquiry in respect of

bungalow No.D-107 and then he submitted his report for registration of case against the accused and permission was duly accorded by the competent authority vide letter dated 24.06.1997 and, thus, FIR No.34/1997 was lodged against the accused. In his evidence he also gave details regarding other properties allegedly purchased by the accused either in his name or in the name of his dependents / relatives. He also gave details of bank account allegedly maintained by the accused. He deposed that during the course of investigation, he assessed the average monthly and yearly utilities of accused and after completing investigation he submitted CFR wherein he recommended either to refer the matter to NAB or to prosecute the accused before Anti-Corruption Court; however, vide letter dated 16.02.2005, approval for prosecution of the accused was accorded by ACC-I. He deposed that during the course of investigation it was established that the accused had made the property worth Rs.1,43,1240/- (Rupees One Crore, forth three lac two hundred and forth only). He then submitted challan in the Court.

In his cross-examination, he admitted that the value of plot No.D-107 was mentioned as Rs.18 Lac. He also admitted that Plot No.D-201 was purchased by accused on the basis of Power of Attorney. In the first instant, while replying to a question, he denied that Haji Shaikh Mohammad Shafi, who had allegedly executed POA in favour of accused, was not father-in-law of the accused; however, then he admitted, "*Shaikh Mohammad Shafi was your relative if not father in law.*" He further admitted that during interrogation the accused had stated that Rs.14 Lac were given to him by Mst.Fehmeeda Akhtar, who was her mother-in-law. He also admitted that he had not recorded the statement of said Fehmeeda Akhtar. He also admitted that Flat No.B-33, old No.63, was purchased by the sister of accused namely, Mst. Saleem Akhtar. He voluntarily stated that the said flat was purchased for Rs.50,000/- in

the year 1980 by accused. He also admitted that value of the said flat in the year 2000-2001 was shown to be Rs.7 Lac. He showed his ignorance that file of the plot purchased by complainant Jalil Ahmed Siddiqui was lost and on the directions of Anti-Corruption Court, his 32 plots had been cancelled. He admitted that the value of Plot No.C-107 was assessed vide report dated 14.09.1995 of the Technician as Rs.26,50,000/- and in August 2001 the cost of the said property was valued at Rs.40 Lacs which included cost of construction of Rs.2 Lacs. He further admitted that the accused sold Plot No.ST-2, Sector 15-A/4, KDA Employees Society for Rs.62 Lacs. Again, in the first instance, he denied that the accused had provided him copies of declaration submitted in the year 1980-81; however, in the same breath he admitted, *“you might have provided me those copies but the same were not available in your service record.”* He showed his ignorance as to whether Secretary KDA in his reply had stated that the comments cannot be offered without documentary evidence in this regard. He also admitted that younger brother of accused lived in Qatar-Doha and that he had sent Rs.3,88,306/- to the accused. He further admitted that Plot No.1370, Block-9, F.B. Area was purchased by mother of accused namely, Mehmooda Begum. He also admitted that the said plot was given to Mehmooda Begum in the year 1969. He also admitted that the accused sold the said plot to one Sabir Hussain. He also admitted that Plot No/C-11, 15-A/4 was allotted to mother of the accused by KDA Employees Society. He also admitted that the accused had purchased the plot No. ST-2, Sector 15-A, measuring 1600 sq. yards in the name of his wife, Mst. Abida Nasree on 19.01.1982 and that same was then sold out to one Haji Mushtaq Ahmed for sale consideration of Rs.62 Lacs. He also admitted that he did not call brother of accused for recording his statement. He further admitted that Plot No.B-313, Block L, North Nazimabda was allotted to one Salahuddin Aamir son of Shaikh Mohammad Aslam by KDA. He also admitted that

said Salahuddin Aamir was brother-in-law of accused. He also admitted that Salahuddin had executed GPOA in favour of accused's wife and that subsequently she sold out the said plot for Rs.11 Lacs and that said amount was deposited in the joint bank account operating by the accused and her wife.

As stated above, accused also got him examined on oath under Section 340 Cr. P.C. vide Ex.23, wherein he deposed that Investigating Officer has wrongly assessed the value of property at Rs.1,43,00,000/-, whereas, as per law, the value of the property is always assessed according to market value and in the year 1997 market value of the property was Rs.22 Lac. He further stated that, in fact, the complainant of instant case was on inimical terms with him because he (accused), being Assistant Director, (Land Department) KDA, North Karachi Township, at the relevant time, had cancelled a plot bearing No.A-1, Sector 15-B, North Karachi which was purchased by the complainant, after receiving letter for cancellation of plot from Deputy Director Anti-Corruption Establishment on the basis of FIR No.109/1986 registered at ACE Karachi. He produced relevant documents in support of his assertions. He further deposed that the complainant had approached to Secretary, Provincial Ombudsman Karachi by way of moving an application; however, said application was dismissed and he produced copy of the report received from the office of Provincial Ombudsman Karachi as Ex.23/C.

He also gave details regarding the properties which are the subject matter of the prosecution case and elaborately explained as to from which fund he purchased some of the such properties and also stated that some of the properties were not owned by him but the same were purchased by his relatives and either he was ostensible owner in respect of such properties or General Power of Attorney was executed in his favour in view of the circumstances

explained by him. According to him, the Investigating Officer has wrongly calculated the value of the properties. He further deposed that he had narrated the above facts to the Investigating Officer but he neither took the same into consideration, nor did mention the actual facts in the investigation papers. He further deposed that in the year 1996 Secretary, K.D.A. namely, Aftab Ahmed Lodhi sent a letter to Director, ACE Karachi wherein nothing was complained against the accused but the I.O. has not investigated the matter fairly.

The accused also examined defence witness namely, Rafiq Iqbal, who deposed that Flat No.SE.2/60, Block 'G', Bhayani Chamber, North Nazimabad was purchased by her mother Mst. Saleem Akhtar in 1980 who was a retired government teacher. He further deposed that as he, as well as his brothers were minor at that time, therefore, his mother had executed General Power of Attorney in favour of accused Mumtaz ul Haq, who is his real maternal uncle. In his cross-examination he admitted that in 1980 he was not minor as his age at that time was 24 years. He denied the suggestion that accused Mumtaz ul Haq had purchased said flat in the name of her mother and that he had concealed the real fact from the government.

It is significant to point out at this stage that the prosecution could not examine complainant Jalil Ahmed Siddiqui. Although the reason for his non-examination given by the prosecution is that he had expired during the proceedings; however, it seems that as per evidence of complainant's son namely, Kafeel Ahmed Siddiqui (*Ex.7 at page 121 of paper book Part-I*) complainant expired on 11.12.2006 whereas F.I.R. was registered in the year 1997 and the challan was presented before the Court in 2005 after a long delay of about eight (8) years and then Charge was also framed after more than three years mostly for the reason of non-availability of police papers. In

such circumstances, the contents of the complaint moved by the complainant, on the basis whereof, in fact, the proceedings were initiated, could not be proved through recording of his evidence.

It is also apparent that although the Investigating Officer has given elaborate details of the properties allegedly purchased by the accused which, according to him, were beyond the known sources of his income; however, he has miserably failed to give details of the income either earned by the accused in the shape of his salary etc. or received by him through other **sources**, details whereof have been given by him in his statement on oath.

It is also significant to point out that the Charge relates to the period from 1980 till the date of retirement of the accused i.e. 31.03.1999, therefore, the properties relating to the period prior to 1980 and after 31.03.1999, which is the date of his retirement, are to be excluded. Moreover, the properties which came in his possession by way of other means i.e. gift / inheritance or by receiving sale proceeds of certain properties owned by him and / or earning profits by selling certain properties would also to be termed his legitimate income.

In the synopsis submitted by the advocate for the appellant, comprehensive details have been furnished by him in this respect. Learned counsel has furnished details of the income earned by the accused during his service tenure right from 13.10.1958 till his retirement i.e. 31.03.1999. Besides, he has also furnished details of the properties which relate to the period prior to 1980. Amongst such properties; are Plot No.V-B, 6/13-A, measuring 299 sq. yards, old Nazimabda allotted by KDA to the appellant at the rate of Rs.3.50 per sq. yard payable in easy instalments which was subsequently sold by the appellant in **1964** and he received sale proceeds of the same. Plot No.R-1370/8, measuring 147.22 sq. yards situated in F.B. Area was allotted by KDA to mother of accused on

26.11.1963 which was subsequently gifted to the appellant by her and, thereafter, the same was sold to one Mohammad Yousuf and appellant also received sale proceeds and profit therefrom. Appellant received an amount of Rs.388,306/- from his brother which fact has also been admitted by I.O. in his cross-examination. Appellant also got rent for 36 months in respect of House No.C-107, Block No.9, Scheme No.24, Gulshan-e-Iqbal, Karachi which comes to Rs.306,000/-.

Even if above facts, as narrated in the synopsis are ignored, even then the accused in his statement on **oath** had given sufficient details regarding the properties and the source from which the same came into his possession. Although, the I.O. during the course of investigation and even in his evidence has alleged that the accused had acquired the said properties which were beyond the known sources of his income; however, he has miserably failed to enquire into and give details regarding the income of the accused / appellant and other earnings of the accused which is fatal to the prosecution case in such types of cases. The I.O. has also failed to record statements of the wife, mother-in-law, brother and other relatives of the accused / appellant in order to ascertain the truth or otherwise of complainant's allegations as well as the defence put forward by the accused. At the same time, prosecution is also duty-bound to establish, by producing tangible evidence, that the accused has misused his official position / authority in order to acquire the properties disproportionate to known sources of his income. In this connection reference may be made to certain judgments pronounced by the Superior Courts.

In the case of **SARDAR MUHAMMAD NASEEM Vs. THE STATE** reported in **2016 P Cr. L J 300 [Lahore]**, it was held as under:

"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."

In another case reported as **GHULAM SARWAR KHAN LALWANI Vs. THE STATE (2016 P Cr. L J 1343)** [Lahore], a Division Bench of Lahore High Court while highlighting ingredients to prove the allegations of acquiring properties by a public servant beyond his known sources of income. It was held as under:

"20. Following necessary ingredients to prove such type of charge were highlighted by a learned Division Bench of the High Court of Sindh in the case of "Hakim Ali Zardari v. State" (2007 MLD 910) which were endorsed by the apex Court in the case of "Muhammad Hashim Babar v. The State and another" (2010 SCMR 1697), "Khalid Aziz v. The State" (2011 SCMR 136) and "Ghani-ur-Rehman v. National Accountability Bureau and others"(PLD 2011 SC 1144).

- 1) *That the accused was holder of a public office.*
- 2) *The nature and extent of pecuniary resources of property which were found in his possession.*
- 3) *Known sources of income of the accused after thorough investigation, and*
- 4) *Such resources or property found in possession of accused were disproportionate to his known sources of income."*

In the case of **Brig. (R) IMTIAZ AHMAD Vs. THE STATE**, reported in **P L D 2017 Lahore 23**, a Division Bench of Lahore High Court, made following observations:

“14. The accused was made to explain his legal source of income and in response to which he has not only produced his own defence witnesses but has also explained his entire assets and has reasonably explained the source to purchase those assets which were in the form of profits in various business which he has declared in the Wealth Tax Statement and Income Tax Returns as well as in Declaration Form prescribed for a government servant. In our considered opinion by merely showing the details of assets and without disclosing the source of income, the prosecution has not been successful in shifting the onus to the accused to prove his innocence.”

15. We have not been able to point out a single piece of evidence or even allegation either at the investigation stage or before the trial court to suggest that appellant Brig. (R) Imtiaz Ahmad, has allegedly misused his authority to earn the ill-gotten money in order to build up his assets illegally. The learned trial court on its own while adopting the inquisitorial proceedings has calculated the known source of income in the judgment whereas to our opinion the court was simply required to weigh the prosecution evidence and to see as to whether it had successfully proved the case against the appellants beyond reasonable doubt. To cater the situation we have been guided again by the Supreme Court of Pakistan in Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 Supreme Court 1144), wherein it was held that the prosecution must bring on record the misuse of authority of the public servant to show that the assets built by him is disproportionate to the known source of income. Relevant extract of said judgment is reproduced as under:--

“The law now stands settled that in order to prove commission of an offence under section 9(a)(v) of the National Accountability Ordinance, 1999 it has to be proved by the prosecution as to what were the known sources of income of the accused person at the relevant time and that the resources

or property of the accused person were disproportionate to his known sources of income and it is after such proof has been led and the necessary details have been provided by the prosecution that the onus shifts to the accused person to account for such resources or property because mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily to account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence. In the case in hand the appellant's sources of income had never been brought on the record by the prosecution and had never been quantified by it at any stage of this case and, therefore, it was not possible for the learned trial court to conclude or to hold that the appellant or his dependents or so-called benamidars owned or possessed assets or pecuniary resources disproportionate to the appellant's income. It is unfortunate that the investigating officer of this case as well as those responsible for prosecution of this case before the learned trial court had, probably on account of their sheer incompetence, utterly failed to do the needful in this regard and it is regrettable that even the learned trial court as well as the learned appellate court had completely failed to advert to this critical aspect of the present case."

In the case of MARYAM NAWAZ SHARIF Vs. CHAIRMAN, NAB and 2 others (P L D 2020 Lahore 205) also similar view was taken.

In the case of **Anwar Badshah v. Chairman, National Accountability Court (2013 P.Cr.L.J. 1607)**, it was held as under:

"31. But, the prosecution had not produced any evidence worth its name before the learned trial court to establish any misuse of his authority by the appellant so as to develop and establish any nexus between misuse of his authority and amassing of wealth or accumulation of assets by him. In the complete absence of any evidence brought on the record by the prosecution in the above mentioned regard it could not be held by the learned Court below that the

Charge, as framed against the appellant, stood established by the prosecution."

In the case of *The STATE through Chairman NAB Vs. Syed HAMID UMER*, reported in 2020 P Cr. L J 514 [Sindh], a Division Bench of this Court held as under:

"17. In this case we are of the view that the respondent has, from the evidence on record, been able to satisfactorily explain from where and how he acquired assets. The prosecution in our view has also severely damaged its case by not taking into account the financial position of the wife of the respondent Mrs. Arshi Hamid Syed who according to the IO was a lady of some independent means who might well have been in a position to purchase the property in her name out of her own source of funds and thus it cannot be conclusively found that the properties in her name were not bought by her out of her own independent financial resources."

(underlining and emphasis are mine)

Another worth importance point in the instant case is that learned trial Court in the impugned judgment instead of taking into consideration the well settled principle that it is the prosecution who, in the first instance, has to prove its case against the accused beyond any reasonable doubt and it only then that the burden shifts upon the shoulders of the accused to disprove the prosecution allegations. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. However, in the instant case, from the perusal of impugned judgment it seems that although the trial Court has authored a lengthy judgment comprising 36 pages; however, mostly in the judgment the contents of the evidence of prosecution witnesses and that of defence witnesses have been

simply mentioned without any effective discussion thereupon and then it has been held that accused has not produced any documentary evidence regarding purchase of the properties in question, which too factually is not correct, and that prosecution has established its case against the accused. In this connection, reference may be made to the case of Wazir Mohammad Vs. The State (1992 SCMR 1134) it was held by Honourable Supreme Court as under:

*“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but **no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.**”*

In another case reported as Shamoona alias Shamma Vs. The State (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

*“The prosecution must prove its case against the accused beyond reasonable doubts **irrespective of any plea raised by the accused in his defence.** Failure of prosecution to prove the case against the accused, entitles the accused to an **acquittal.** The prosecution cannot fall back on the plea of an accused to prove its case.....**Before, the case is established against the accused by prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise.**”*

Apart from above, none of the prosecution witnesses has specifically involved the accused in amassing the properties beyond known sources of his income by misusing his official position / authority and / or indulging in corruption or corrupt practices. As stated above, P.W. Shakil Ahmed admitted that he had no knowledge about property purchased by the appellant in his own name or in the name of his dependents; however, there were some allegations of corruption against him. Likewise, P.W. Mohammad Mujtaba, who was Honorary Secretary of Works Cooperative Housing Society of K.D.A at the relevant time, admitted that on 7th July, 1994 accused had sent an application intimating the society to

have purchased the said plot jointly with his **mother Mehmooda Begum**. He further admitted that in 1991 an agreement showing Mehmooda Begum as joint partner was sent and placed on record. He further admitted that Mst. Mehmooda Begum had executed a **Relinquishment Deed** in respect of her share in the said property in favour of accused. The I.O. of the case namely, P.W. I.D. Mangi In his cross-examination also made various admissions, which have been incorporated in the earlier part of this judgment, which also put serious dents in the prosecution case.

The accumulative effect of above, would be that prosecution has not been successful in proving its case against the accused beyond reasonable doubt which is requirement of the law, as such the conviction and sentence awarded to the accused / appellant vide impugned judgment cannot be maintained.

For the foregoing reasons by short order dated 27.09.2021 instant criminal appeal was allowed. Consequently, impugned judgment dated 30.11.2015 handed down by learned Special Judge, Anti-Corruption (Provincial), Karachi, in Special Case No.20 of 2005 (Re: State Vs. Mumtaz ul Haq), being outcome of Crime No.34/1997, registered at P.S. ACE Karachi under Sections 5-B and 5-C read with section 5(2) of Prevention of Corruption Act (Act II of 1947), was set aside and the appellant Mumtaz ul Haq son of Late Sheikh Zahoor ul Haq, who was present on bail, was acquitted from all the charges. He was present on bail, his bail bonds were cancelled and surety stood discharged.

Above are the reasons for the said short order.

JUDGE