IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Criminal Accountability Appeal No. 16 of 2021
Constitutional Petition No. D-2547 of 2021

Appellant/Petitioner	:	Tahir Jameel Durrani through Mr. Raj Ali Wahid Kunwar, Advocate.
Respondent/Defendant	:	National Accountability Bureau through Mr. R. D. Kalhoro, Special Prosecutor NAB.

Criminal Accountability Appeal No. 18 of 2021
Constitutional Petition No. D-2648 of 2021

Appellant/Petitioner	:	Atta Abbas Zaidi through Mr. Shoukat Hayat, Advocate.
Respondent/Defendant	:	National Accountability Bureau through Mr. R. D. Kalhoro, Special Prosecutor NAB.

Criminal Accountability Appeal No. 19 of 2021

Appellant/Petitioner	:	Shahid Umer through Mr. Shoukat Hayat, Advocate.
Respondent/Defendant	:	National Accountability Bureau through Mr. R. D. Kalhoro, Special Prosecutor NAB.

Criminal Accountability Appeal No. 20 of 2021
Constitutional Petition No. D-2663 of 2021

Appellant/Petitioner	:	Fareed Naseem through Mr. Shoukat Hayat, Advocate.
Respondent/Defendant	:	National Accountability Bureau through Mr. R. D. Kalhoro, Special Prosecutor NAB.

Criminal Accountability Appeal No. 21 of 2021
Constitutional Petition No. D-2747 of 2021

Appellant/Petitioner	:	Waseem Iqbal through Mr. Malik Khushal Khan, Advocate.
Respondent/Defendant	:	National Accountability Bureau through Mr. R. D. Kalhoro, Special Prosecutor NAB.

Criminal Accountability Appeal No. 22 of 2021
Constitutional Petition No. D-3061 of 2021

Appellant/Petitioner	:	Fareed Ahmed Yousfani through Mr. Mohsin Shahwani, Advocate.

Respondent/Defendant	:	National Accountability Bureau through Mr. R. D. Kalhoro, Special Prosecutor NAB.

Criminal Accountability Appeal No. 25 of 2021

Appellant	:	National Accountability Bureau through Chairman N.A.B.
Respondents	:	Tahir Jameel Durrani and others
Date of hearing	:	12.01.2022
Date of Judgment	:	25.01.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO,J- By this single judgment, we intend to dispose of the aforementioned accountability appeals filed by the appellants challenging the judgment passed by the learned Accountability Court-II Karachi dated 08.04.2021 *(impugned judgment)*, the accountability appeal filed by National Accountability Bureau for enhancement of sentence awarded to the appellants and the constitutional petitions filed by the petitioners for suspension of sentences awarded to them since all these matters are the off-shoot of Reference No. 27 of 2015 filed by the National Accountability Bureau under S. 18(g) read with section 24(b) of the National Accountability Ordinance 1999 *(NAO 1999)* for committing offences of corruption and corrupt practices falling within the ambit of S. 10 read with S. 9(a) of the NAO 1999. Through impugned judgment, the appellants were convicted u/s 9(a) (vi)(xii) r/w S. 10 of the NAO 1999 and sentenced to suffer rigorous imprisonment for seven years with a fine of Rs. 5,000,000/- *(five million)* each and in case of default in payment whereof to suffer further imprisonment for six months. Benefit of S. 382(b) Cr.P.C was, however, extended to them.

2. Facts germane to the captioned matters are that the National Accountability Bureau received a complaint regarding several officials of the Lines Area Redevelopment Project (hereinafter referred to as *"LARP"*) for alleged corrupt practices. Director General NAB authorized the inquiry vide letter No. 231055-Khi/2/IW-2/CO-A/T-1NAB(K)/2015 dated 29.06.2015. After the inquiry, National Accountability Bureau (NAB) filed Reference No. 27 of 2015 against the present appellants/accused while alleging that appellant Fareed Ahmed Yousfani, acting as the Director LARP, had forged a minute sheet and a

signature thereon of the then DCO Roshan Sheikh to spark the fire to their well-thought-out plan. Afterwards, each appellant played their part in this scheme whereby they illegally bifurcated large commercial auction plots into smaller ones and leased them out at a rate *(Rs. 200/- per sq. yard)* below the standardized market rate *(Rs. 50,000/- per sq. yard)*, causing a loss of Rs.399.238 million to the government exchequer.

3. A formal charge was framed against the appellants on 16.04.2016 u/s 9(a) of the NAO 1999 punishable u/s 10(a) of the NAO 1999, to which they pleaded not guilty and claimed to be tried. In order to substantiate the charges against the appellants, prosecution examined as many as 10 witnesses namely PW-1 **Muhamad Hussain Syed**, PW-2 **Roshan Ali Shaikh**, PW-3 **Muhammad Afzal Aziz**, PW-4 **Mehfooz-un-Nabi Khan**, PW-5 **Abdul Latif**, PW-6 **Syed Shahab Ahmed**, PW-7 **Syed Mansoor-ul-Haq**, PW-8 **Saeed Ahmed**, PW-9 **Jafar Imam Siddiqui** and PW-10 **Sabeeh Rafay**. CW-1 **Shahnawaz** was also examined as a court witness. Subsequently, an application u/s 227 Cr.P.C was filed by the prosecution and after hearing the parties, the same was allowed on 22.08.2020 and amended charge was framed on 03.09.2020 u/s 9(a)(vi)(xii) NAO 1999 punishable u/s 10(a) of the NAO 1999.

4. Thereafter, statements of accused were recorded u/s 342 Cr.P.C wherein they denied the allegations levelled against them and claimed their innocence. However, they neither examined themselves on oath nor produced any witnesses or documents as evidence in their defence. After perusing the evidence and hearing the counsel for the parties, learned trial Court, vide impugned judgment, convicted and sentenced the appellants, details of which are provided supra.

5. It was collectively contended by the counsel for the appellants that the NAB Investigation Officer did not produce the relevant documents at the time of investigation; that the allegations levelled against the appellants are bogus, fake and fabricated; that the learned trial Court considered the evidence already recorded prior to the amendment of charge while convicting the appellants; that the signatures available on the alleged documents were never sent to the handwriting expert for verification and opinion; that the prosecution has not been able to bring on record the original documents relied upon and only

photostat copies of the documents are available which are not admissible in evidence in view of Article 78 of the Qanun-e-Shahadat Ordinance; that the trial Court failed to consider the objections raised by the counsel for the appellants at the trial; that the appellants had no intention to amass wealth through illegal means and did not gain any advantage through the alleged acts and therefore *mens rea* for misappropriation and corruption is not established; that financial loss, if any, has already been paid for through plea bargains of the co-accused; that the appellants are not beneficiaries of any illegal proceeds gained by the co-accused; that none of the prosecution witnesses have implicated the appellants in the commission of the alleged offence; that the judgment passed by the learned trial Court is illegal and void ab-initio and learned trial Court has failed to frame proper points for determination; that some documents relied on by the trial Court while convicting the appellants were not available at the time of framing of charge and therefore they were never confronted with the same as a result of which the documents could not be used against the appellants. In support of their submissions, learned counsel have placed reliance on the cases reported as *Hasta Ismail and others v. Emperor* (AIR 1937 Lahore 593), *Naimatullah Shah v. Farmanullah and others* (1980 SCMR 953), *Pir Mazharul Haq v. The State* (PLD 2005 SC 63), *Khudai Rehm v. Hazrat Noor* (1985 CLC 802), *Rab Nawaz v. The State* (PLD 1994 SC 858), *Haji Kabir Khan v. The State* (2003 YLR 1607), *Nazir Ahmed v. The State* (PLD 2005 Karachi 18), *Imamdin v. Bashir Ahmed* (PLD 2005 SC 418), *Pakistan Engineering Consultant v. Pakistan International Airlines* (PLD 2006 Karachi 511), *Mst. Suban v. Allah Ditta* (2007 SCMR 635), *The State v. Idrees Ghauri* (2008 SCMR 1118), *Mohammad Karim and Kaka v. The State* (2014 YLR 353), *Muhammad Nawaz v. The State* (2016 SCMR 267), *The State v. Anwar Saifullah Khan* (PLD 2016 SC 276), *Ali Akbar v. The State* (SBLR 2016 Sindh 1543), *Irfan v. Muhammad Yousaf* (2016 SCMR 1190), *Azeem Khan v. Mujahid Khan* (2016 SCMR 274), *Syed Hamid Saeed Kazmi v. The State* (2017 P.Cr.L.J 854), *Muneer Ahmed v. DG NAB Karachi* (2019 SCMR 1738), *Talal Ahmed v. The State* (2019 SCMR 542), *Allauddin v. The State* (2020 P.Cr.L.J 819), *Bashir Ahmed v. The State* (PLD 2020 Sindh 282), *Muzaffar Ali Abbasi v. NAB* (2020 P.Cr.L.J 1403), *Masood Chisti v. Chairman NAB* (PLD 2020 Islamabad 350), *Mst. Akhtar Sultana v. The State* (PLD 2021 SC 715), unreported order dated 28.07.2016 and 11.11.2016 in Reference No. 08/2014 and unreported judgment dated 10.05.2019 in Reference No. 24/2017,

6. On the other hand, learned Special Prosecutor NAB while controverting the submissions of the learned counsel for the appellants argued that photostat copies of the evidence are admissible and can be considered by the court as secondary evidence; that original note sheet could not be traced after investigation; that all the appellants played crucial role in the whole scam by forging documents and illegally bifurcating the plots for which adequate proof is available on the record; that the prosecution witnesses went through lengthy cross-examinations, but nothing favourable was gained for the appellants; that the trial Court has given sound and valid reasoning while convicting the appellants/petitioners, therefore the impugned judgment does not call for any interference by this Court. However, he contended that the sentence awarded to the appellants is inadequate and may be enhanced to 14 years. In support of his contentions, he has referred the unreported judgment dated 01.09.2020 passed in Cr. Accountability Appeal No. 39/2018 *Karamuddin Panhyar v. The State* and unreported judgment dated 19.01.2021 passed in Cr. Accountability Appeal No. 19/2019 *Muhammad Sajjan Mallah v. The State*.

7. We have considered the submissions made by the learned counsel for the appellants, NAB and have perused the relevant material available on record.

8. We have observed that the short-fall to the government exchequer through the bifurcation of larger plots to small 32 sq. yards commercial plots is not denied by any of the appellants, although what is contested by them is the roles played in the scheming. It may be rather advantageous to tackle the arguments put forth by the appellant's counsel before entering into the merits of the case for the sake of brevity. The main contention that this Court could gather, from the arguments, of the counsel for the appellants is that firstly the signatures available on the documents produced by the investigation officer were not sent to the handwriting expert for comparison or opinion. Said contention barely holds any weight before us as not only have the appellants failed to question the genuineness of their signatures on the documents at the time of cross-examination of witnesses, they had also failed to file a motion before the trial Court for verification of the signatures by a handwriting expert. The presumption from said act here would be that they knew that the signatures

available on the documents were theirs and genuine, but only decided to use this defence at a later stage to seek acquittal on a rather measly ground. We are fortified in our view by the unreported judgment dated 06.04.2020 passed by this Court in **Criminal Accountability Appeal No. 5 of 2018** ***(Altaf Ahmed s/o Gul Hassan Shaikh v. The State)***. Even otherwise, we have no hesitation in holding that a report of an expert is at most an opinion under the law and is not binding upon the Court. While relevancy is attached with the opinion of an expert witness such as a handwriting expert, it does not amount to conclusive proof of innocence and can at most be confirmatory or explanatory of direct or circumstantial evidence which the appellants have not provided in their defence. When such confirmatory evidence is put in juxtaposition with other confidence inspiring evidence, preference is always given to other forms of confidence inspiring evidence which in this case is available in abundance. The Hon'ble Apex Court, in numerous pronouncements, has held that in the presence of confidence inspiring and direct evidence, expert evidence carries no legal value. Reliance in this respect is placed on the cases reported as **2006 SCMR 193** ***(Mst. Saadad Sultan and others v. Muhammad Zahoor Khan and others)*** and **2015 SCMR 284** ***(Qazi Abdul Ali v. Khawaja Aftab Ahmad)***.

9. The next contention raised by the counsel for the appellants is that several original documents were not produced by the investigation officer, rather their Photostat copies were made available. The foundational principle that governs nature of documents in evidence is that the same are categorized as either "primary evidence" or "secondary evidence" under the Qanun-e-Shahadat 1984. Primary evidence, as understood, would include original documents. The Photostat copies, on the other hand, fall within the ambit of secondary evidence. Article 76 of the Qanun-e-Shahadat 1984 allows for the Court to consider secondary evidence in certain prescribed circumstances, one of which is (c) *"when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time."* It is a matter of record that the original documents of the Photostat copies were, after due inquiry, not found by the investigation officer being fabricated ones and such fact was also admitted by prosecution witnesses in their evidence, at which point again they were never cross-examined. Moreso, we have also considered the argument raised by the counsel for appellants that

the trial Court failed to consider the objection raised on the production of photocopy of documents. Although said objections were overlooked by the learned trial Court, we considered the same and found them not worthy of credence as the same were able to be considered as secondary evidence in the absence of original ones which were public documents and bore the signatures of the appellants, the veracity of which was never questioned by the appellants at the time of cross-examination. It is settled law that when a particular fact deposed by a witness in his examination-in-chief is not challenged in cross-examination, it amounts to an admission on the part of the opposing party. In this regard, reliance placed on case reported as **(1991 SCMR 2300)** ***Mst. Nur Jehan Begum through Legal Heirs v. Syed Mujtaba Ali Naqvi***. Therefore, Photostat copies of documents were admissible in evidence and could verily be considered secondary evidence in order to reach a just and fair conclusion. In this respect, reference is made to the unreported judgment of this Court dated 29.01.2021 passed in **Criminal Accountability Appeal No. 19 of 2019** ***(Muhammad Sajjan Mallah v. The State)***. Another noteworthy contention raised by the counsel for the appellants is that the appellants were never supplied with the documents produced by the investigation officer u/s 265-C after filing of an application u/s 540 Cr.P.C. Needless to state that powers conferred on the Court under S. 540 Cr.P.C are rather wide and the sole purpose of the legislature to allow such powers is for just decision of the cases. The Hon'ble Apex Court, in the case reported as **PLD 1984 SC 95** ***(Muhammad Azam v. Muhammad Iqbal v. others)*** has observed that:-

> "It needs to be observed that for purpose of acting under section 540, Cr.P.C. (whether the first or second part), ***it is permissible to look into the material not formally admitted in evidence, whether it is available in the records of the judicial file or in the police file or elsewhere***. The perusal of both these records would show that if evidence, in connection with the items already noticed, would have been properly entertained the reasoning and decision of the learned two Courts might have been different.
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> ... the Court shall act in accordance with the dictates of the law. In fact the ***Court has no discretion in this behalf. It is obligatory on it to admit evidence thereunder if it is essential for the just decision of the case.***"

Therefore, the trial Court was bound to admit further evidence through an application u/s 540 Cr.P.C. The investigation officer, in his cross-examination,

also deposed that the documents later produced at Ex. 23/4 were already available with NAB and he had seized the same under mashirnama dated 08.09.2015, before the filing of the reference, and subsequently filed them through the application u/s 540 Cr.P.C for which notice was issued to the appellants and they were provided adequate opportunity to cross-examine him in this regard. The documents produced later on also found mention on page 23 of the IR. Despite raising said objection and being given the opportunity to cross-examine the investigation officer with regard to these documents, the appellants failed to do so. It is also noted that the purpose of providing these documents to the appellants at the time of trial is so they can prepare their defence in this regard and deny or accept their validity in their statements u/s 342 Cr.P.C. However, it is rather surprising to note that none of the appellants have out-rightly dismissed the claims of the prosecution with regard to the veracity of the documents produced neither before the trial Court nor in the statement of accused u/s 342 Cr.P.C and have made rather dry claims at this stage with regard to non-availability of documents produced later on through the application as a defence which cannot be entertained. Moreover, all the documents produced were part and parcel of public record and the appellants failed to furnish any explanation with regard to the same nor examined any witness in their defence against the said documents or produced any other credence-worthy document for the Court. Even if the said documents were not given as much weightage in terms of evidence, sufficient material was available at trial alongside 27 plea bargains that prove the version of the prosecution. Appellants also contended that after the amendment of charge, learned trial Court failed to recall and re-examine the witnesses. It is a matter of record that the initial charge was framed on 16.04.2016 under S. 9(a) punishable under S. 10(a) of the National Accountability Ordinance 1999. The amended charge was framed on 03.09.2020 and the only change made was the addition of subsubsections (vi) and (xii) of S. 9(a), which were already provided in the initial charge under S. 9(a). The nature of the allegations in the amended charge remained the same alongside the details of plots that were produced by the trial court in the first charge and amended charge; as such no material injustice was caused to the appellants while basing their conviction on the already recorded

evidence. Even then, the appellants did not raise such objection before the trial Court.

10. Now coming to the merits of the case, at the very outset, we find that the prosecution based on the evidence has successfully proved a case showing misuse of authority by the appellants. The appellants, in collusion with each other, enabled initially by the appellant Fareed Ahmed Yousfani, started the scheme of converting large plots into smaller 32 *sq.* yards commercial plots and then auctioned them at the rate of Rs. 200/- per square yard when the market value for the same was Rs. 50,000/- per square yard, causing a loss of Rs. 363,200,000/- to the government exchequer pertaining to a total of 227 plots. Then, a further loss of Rs. 36,038,196/- was caused by failing to collect non-utilization fees against plot No. MC-06. Each of the appellants played rather elaborate roles in this scheme. Appellant Fareed Ahmed Yousfani being the Project Director, LARP forged and fabricated a minute sheet through fake signatures of Roshan Sheikh, the then DCO Karachi to seek changes in approved planning in respect of large auction plots, which were kept to be auctioned through a minimum reserve price of Rs.50,000/- per square yard. These plots were then illegally bifurcated into smaller 32 square yard commercial plots in Sector 1 Lines Area. He also signed many allotment orders in the shape of 32 square yards plots which were carved out from large reserved auction plots. Appellant Tahir Jameel Durrani being the Project Director LARP illegally bifurcated 32 square yards plots for Plot No.C-2/9, measuring 1333 square yards and illegally allotted 40 plots of 32 square yards each to fictitious allotees through forged note sheet containing fake/fictitious signatures of the then DCO/Administrator KMC in Sector-1, Lines Area. Appellant Farid Naseem, Deputy Director Engineering, LARP also carried out bifurcations of large auction plots on the basis of forged papers without any approval from the competent authority. Appellant Atta Abbas as the Additional Director Coordination and Shifting LARP processed mutations in illegal allotments of 32 square yard commercial plots carved out from large auction plots. Appellant Shahid Umer being the Additional Director Finance, LARP maintained the books with regard to financial dealings pertaining to rate calculations and also issued challans with respect to the 32 square yards commercial plots. He also signed all the note sheets in allotment files and also the challan forms for various plots. Appellant

Waseem Iqbal while performing the duties of Deputy Director Lease, LARP processed all the leased files and without properly checking approved planning before allowing leases of the allotments of 32 square yards commercial plots, did so in departure to the approved master plan.

11. Prosecution produced an abundance of documents pertaining to each one of these plots with signatures of the appellants, proving their culpability. Even otherwise, it needs no reiteration that in such like case(s), prosecution is only required to discharge its *initial burden* and prove the charge before the Court and is not required to prove the case as *normally* required for any ordinary offence. After doing so, the prosecution would be deemed to have discharged its burden of proof and then the burden of proof shifts upon the accused to refute the presumption of guilt against them. In this respect, reliance is placed on the case law reported as **PLD 2001 SC 607 *(Khan Asfandyar Wali v. Federation of Pakistan)***. In the case in hand, the *peculiar* nature of allegations was only requiring the prosecution to establish that the appellants held the given position at the relevant time and during said period, they had approved allotments of 32 sq. yard plots, forged documents and signatures and ultimately had caused the loss of Rs. 399.238 million to the government exchequer. Each of the prosecution witnesses squarely implicated the appellants with respect to their relevant part played in the scam. The appellants did not allege any *mala fide* against any of the prosecution witnesses nor claimed that any of them were inimical towards them so as to falsely implicate them. Before entering deeper into the merits of the case, it would be pertinent to examine as to what the legislature meant by the word "misuse" present in section 9(a)(vi) of the Ordinance for which the appellants were convicted. According to the concise Oxford Dictionary (9th Edition), on page 872 the word "misuse" is described as *"to use wrongly and apply to the wrong purpose"*. The Oxford (Advanced Learner's) Dictionary (5th Edition), page 747 provides the meaning as its meaning as "To use in the wrong way or for the wrong purpose: misuse a word/an expression, **misuse alcohol/public funds**; to treat badly." Contrarily, the Chambers' 21st Century Dictionary (Revised Edition), page 877 provides the meaning of the word "misuse" as "To put something to improper or inappropriate use or; To treat something or someone badly." National Accountability Ordinance 1999 itself does not define the word misuse, therefore it would be wise to interpret the

same using the general rule *i.e.* the dictionary meaning. A person may, in exercise of his authority, go wrong due to some ordinary human failing, or error but this, per se, will not be actionable under the law. However, if a person knowingly and deliberately follows a wrong course of action and deviates from the purpose of law to achieve some other objective either prohibited or not intended by the law then he becomes liable under the law. This brings the Court to the contention raised by the counsel for the appellants regarding the absence of *mens rea* which is required by the legislature to establish a charge under S. 9(a)(vi). As far as appellant Fareed Ahmed Yousfani is concerned, it is common sense that forgery of signatures in itself is a criminal offence, therefore *mens rea* is rather easy to establish, in fact inferred from such act of forgery alone. Coming to the establishment of *mens rea* for the rest of the appellants, their respective counsel argued that they had no "ill intent" or malice behind their actions and were rather reckless at best. It is important to note that *mens rea* traces back to the ages of common law within the English Jurisdiction and in British Occupied Sub-Continent, however the universally applicable test for *mens rea* came from the English Jurisdiction in the case of ***R v. Cunningham*** **(1957) 2 AER 412** wherein one of the qualifying factors to establish "guilty mind" *(mens rea)* had to be satisfied; (1) an actual intention to do the particular kind of harm that in fact was done; or (2) recklessness as to whether such harm should occur or not. Relevant to the present appellants, knowing that their "recklessness" as argued would surely cause huge losses to the government exchequer as a set price of Rs. 50,000/- per square yard was mentioned in the approved master plan, they chose to bifurcate plots and lease them out for a meagre amount of Rs. 200/- per square yard. The test is always objective and will never take into account any other extra-ordinary factors and the Court is to see what a reasonable, careful and diligent individual would have done when in such a position. When seen with an objective approach, even if the appellants were reckless in their job, such recklessness knowing the risk amounted to ill intent or a guilty mind. Even otherwise, one can only be naïve too many times. Had their naivety been a one-off, this Court would have reconsidered its view, but the appellants went on to lease out as many as 227 plots and said actions cannot be from a naïve person, but a criminal mastermind who only sought to misuse his powers to gain for himself or the others. The appellants, being representatives of a public

functionary, deliberately used/exercised their own authority or for that matter usurped the power of the public functionary with the object of gaining advantage/benefit. Under such circumstances, they are guilty of an offence under section 9(a)(vi) of the Ordinance.

12. It was also contended by the counsel for the appellants that none of them had gained any benefit or favour from the alleged actions. Section 9 of the NAO 1999 provides that if someone *"misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempt to render to do so, or wilfully fails to exercise his authority to prevent grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority."* Perusal of Section 9 shows that to establish an offence under NAO 1999 (i) an official needs to misuse his authority, which factor has already been discussed by us *(para 10)*; and, (ii) gains benefit for himself, or any other person or even attempts to do so. Therefore, S. 9 of the NAO 1999 provides a punishment for even an attempt at the misuse of authority to gain any benefit or favour for oneself or someone else. This also controverts the argument of the counsel for the appellants regarding the alleged allotment of plots being cancelled. No doubt, the allotment of plots was cancelled and much of the loss was recovered through plea bargains of 27 of the 32 other accused, the essence of the offence still remains. Corruption and misuse of authority, like a cancer, eats away at the core of the society at large in times where living a respectable life is getting harder to achieve. In these times, if these leeches in the society in the shape of corrupt office holders and public functionaries are allowed to flourish and enjoy their lives without any consequences, morality in this society would be dead and it will only prompt everyone to take part in-fact encourage such practices. It is high time that accountability for such actions is taken and as judiciary, it also falls upon the Courts to ensure that it does.

13. As far as the case law cited by the learned counsel for the appellants is concerned, suffice it to say that the same is distinguishable on both facts and circumstances than that of the present case. Prosecution witnesses were put through lengthy cross-examinations, yet nothing fruitful was borne out of the same. Learned counsel for the appellants presented a barrage of arguments that were all tackled and the appellants also failed to point out any illegalities or

irregularities in the impugned judgment. The findings of the Accountability Court-II Karachi in Reference No. 27 of 2015 are fully supported by the evidence on record. However, the sentence awarded to the appellants in our view is rather harsh for several reasons. The matter initiated in the year 2015 and the Appellants went through the agony of trial. The loss to the government exchequer was also recovered through 27 plea bargains with the co-accused and the cancellation of allotments of plots. Nothing was brought on record to suggest that the appellants are hardened or habitual criminals, rather they are first offenders. We, therefore, alter the sentence of seven years each, awarded to the appellants for offence u/s 9(a)(vi)(xii) NAO 1999 and reduce it to five years on each count. The amount of fine and sentences awarded in lieu therefore shall remain intact. Resultantly, Accountability Appeals No. 16, 18, 19, 20, 21 and 22 filed by the appellants namely Tahir Jameel Durrani, Atta Abbas Zaidi, Shahid Umer, Fareed Naseem, Waseem Iqbal and Fareed Ahmed Yousfani are dismissed being devoid of merits and the impugned judgment dated 08.04.2021 is upheld with the above modifications to the quantum of sentence. Since the appeals at hand are dismissed, Constitution Petitions filed by the appellants for suspension of their sentences, having become infructuous are also dismissed.

14. So far as the accountability appeal No. 25 of 2021 filed by the National Accountability Bureau seeking enhancement of sentence, is concerned, since the sentence awarded to the appellants is reduced, no case for enhancement thereof is made out due to the reasons mentioned above and therefore appeal for enhancement of sentence is dismissed being devoid of any merit.

15. Captioned accountability appeals and constitutional petitions are disposed of in the above terms.

JUDGE

JUDGE