IN THE HIGH COURT OF SINDH, KARACHI

Present: ***Mr. Justice Muhammad Junaid Ghaffar***
Mr. Justice Agha Faisal

Criminal Accountability Appeal No. 09 / 2015

Appellants:	**Syed Ali Nawaz Shah & Others, Through M/s. Mehmood A. Qureshi & Shoukat Hayat Advocates.**
Respondent:	**The State, Through R. D. Kalhoro, Special Prosecutor NAB.**

Criminal Accountability Appeal No. 30 / 2015

Appellant:	**The State, Through R. D. Kalhoro, Special Prosecutor NAB.**
Respondents:	**Syed Ali Nawaz Shah & Others, Through M/s. Mehmood A. Qureshi & Shoukat Hayat Advocates.**
Date of hearing:	**13.09.2022**
Date of judgment:	**13.09.2022**

JUDGEMENT

Muhammad Junaid Ghaffar, J: Through this Criminal Accountability Appeal, the Appellants have impugned Judgment dated 10.09.2015 passed by the Accountability Court No. IV at Karachi in Reference No. 01 of 2010 (***Old Reference No. 28-A/2001***) whereby, the Appellants have been convicted for having committing the offence of Corruption and Corrupt Practices as defined under Section 9(a)(iv)&(ix) of National Accountability Ordinance, 1999 punishable under Section 10(a) ibid in the following terms:-

(i) "Convict accused Syed Ali Nawaz Shah S/o Syed Shuja Muhammad Shah under Section 9(a)(iv)&(ix) of National Accountability Ordinance, 1999 and sentenced him under Section 10(a) of National Accountability Ordinance, 1999 to suffer R.I. for five (05) years and fine of Rs.563,200/- (Rupees Five Lacs Sixty Three Thousand & Two Hundred Only). In case, he fails to pay the fine, it shall be recoverable as arrears of land revenue in terms of Section 33-E of Ordinance ibid. The accused shall be entitled to the benefit of Section 382-B Cr.P.C.;

(ii) Convict accused Syed Khadim Ali Shah S/o Syed Bhudal Shah under Section 9(a)(iv)&(ix) of National Accountability Ordinance, Sindh, 1999 and sentenced him under Section 10(a) of National Accountability Ordinance, 1999 to suffer R.I. for four (04) years and fine of Rs.547,525/- (Rupees Five Lacs Forty Seven Thousand Five Hundred & Twenty Five Only). In case, he fails to pay the fine, it shall be recoverable as arrears of land revenue in terms of Section 33-E of Ordinance ibid. The accused shall also be entitled to the benefit of Section 382-B Cr.P.C.;

(iii) Convict accused Syed Imtiaz Ali Shah S/o Ghulam Hyder Shah under Section 9(a)(iv)&(ix) of National Accountability Ordinance, 1999 and sentenced him under Section 10(a) of National Accountability Ordinance, 1999 to suffer R.I. for three (03) years and fine of Rs.431,106/- (Rupees Four Lacs Thirty One Thousand One Hundred & Six Only). In case, he fails to pay the fine, it shall be recoverable as arrears of land revenue in terms of Section 33-E of Ordinance ibid. The accused shall also be entitled to the benefit of Section 382-B Cr.P.C."

2. Learned Counsel appearing on behalf of the Appellants have jointly contended that besides the fact that no witness has directly implicated the present Appellants in the commission of the alleged offence; the learned trial Court while recording the evidence has violated the provisions of Section 353 of the Criminal Procedure Code read with Article 47 of the Qanoon-e-Shahadat Order, 1984("**1984 Order**"); hence, the very evidence cannot be used against the Appellants; that the case also does not fall within the exception provided under Section 512 of the Criminal Procedure Code; that the entire set of documents which were exhibited in some earlier Reference were relied upon by the prosecution and the learned trial Judge in this case, whereas, they were never exhibited or were confronted to the Appellants; that in fact there is no evidence on the record of this Reference, whereby, any conviction can be maintained; that it has been alleged that Form-B in respect of land of the Appellants for which allegedly undue compensation was received were forged and fabricated; but were never produced in the evidence, nor they were referred to any handwriting expert to prove such allegation of fraud or fabrication; that the land of the Appellants was compulsorily acquired by the Government and they received payments through cheques under protest and thereafter, on their complaint the Collector did not refer the matter to the Court pursuant to Section 18 of the Land Acquisition Act, 1894, compelling the Appellants to file Suit(s) for Compensation which were decreed, whereas, the Appeal against such Judgment and Decree was also dismissed and no further remedy was availed by the Government; that in law the custodian of the record is the concerned Patwari, who was never examined, whereas, the witnesses who were examined have not fully supported the case of the

prosecution beyond reasonable doubt; that it is a case of no evidence and therefore, the impugned Judgment and Decree cannot be sustained. In support they have relied upon *Pakistan Engineering Consultants through Managing Partner V/s. Pakistan International Airlines Corporation through Managing Director and another* (PLD 2006 Karachi 511), *Khan Muhammad Yusuf Khan Khattak V/s. S.M. Ayub and 2 others* (PLD 1973 Supreme Court 160), *Syed Ali Nawaz Shah and others V/s. The State and others* (2003 SCMR 719), *Syed Ali Nawaz Shah and 2 others V/s. The State and others* (PLD 2003 Supreme Court 837), *Nur Elahi V/s. The State and others* (PLD 1966 Supreme Court 708), *Muhammad Akib Pali V/s. Madad Ali and 2 others* (PLD 1972 Karachi 433), *Bashir Ahmed V/s. The State* (PLD 2004 Karachi 577), Chaudhry *Muhammad Aslam V/s. The State* (2010 P.Cr.L.J 1778), *Ghulam Hussain and others V/s. The State* (1996 P.Cr.L.J 514), *Ali Akbar V/s. The State* (PLD 1997 Karachi 146), *Askari Hassan V/s. The State* (PLJ 2010 Cr.C. (Karachi) 381), *Zahoor V/s. The State* (1991 MLD 1951) and *Zafarullah and others V/s. The State* (1972 P.Cr.L.J 734).

3. On the other hand, learned Special Prosecutor NAB has supported the impugned Judgment and submits that there is no irregularity and illegality in recording of the evidence as in the earlier round of litigation and before remand of the case, the evidence was already recorded; that the Appellants failed to attend the Court in the first round and never cross examined the witnesses; that they have been fully implicated by the prosecution witnesses; hence, no case for indulgence is made out. In support he has relied upon *Mst. Nasim Mai Vs. The State* (2004 P.Cr.L.J.1084).

4. We have heard the Appellants Counsel as well as learned Special Prosecutor NAB and have perused the record including R & P of this case. It appears that the case of the prosecution as alleged in the Reference is that between 1994 to 1996 the Appellants in connivance with officials as well as Land Acquisition Officers of Left Bank Outfall Drain ("**LBOD**") Mirpurkhas Project on the basis of fake / tampered 'B' forms and Deh Form VII, without getting them verified from the Survey & Settlement Department got compensation in excess of their entitlement and thereby committed the offence of Corruption and Corrupt Practices as defined under Section 9 read with Section 10 of the NAB Ordinance. It was alleged that Appellant No. 1 obtained undue compensation of Rs.

563,200/-, Appellant No. 2 Rs. 547,525/- and Appellant No. 3 Rs. 431,106/-. It further appears that initially, during the pendency of the trial against more than 55 different persons, Non-bailable warrants were issued against the present Appellants; and they being aggrieved approached this Court vide Criminal Bail Application No. 1315 of 2001 and vide order dated 02.10.2001 the non-bailable warrants against the present Appellants were suspended upon deposit of the amount in question through Pay Orders in the name of Chairman NAB in the Accountability Court seized with the trial. Record further reveals that thereafter, the trial Court proceeded against the main accused i.e. the officers of the relevant Departments, whereas, most of the land owners were proceeded Ex-parte or entered into a plea bargain with NAB, whereas, while delivering its Judgment against the main accused dated 11.03.2002, the present Appellants were treated to have entered into a plea bargain under Section 25(b) of the NAB Ordinance, 1999, presumably on the ground that they had deposited the amount so mentioned in the Reference. The Appellants being aggrieved with the said judgment filed Criminal Accountability Appeals before this Court which were dismissed vide Judgment dated 27.02.2002; and being further aggrieved they approached the Honorable Supreme Court through Criminal Appeal No. 414 of 2002 which was then allowed by the Hon'ble Supreme Court which is also reported as *Syed Ali Nawaz Shah & 2 Others Vs. The State* (PLD 2003 SC 837). The Hon'ble Supreme Court held that the deposit of the amount for suspension of non bailable warrants cannot be treated as a request for plea bargain under Section 25(b) of the NAB Ordinance; hence, while allowing the Appeals, it directed the trial Court to proceed with the Reference against the Appellants on merits for its decision in accordance with law. Thereafter, the trial Court renumbered the Reference as Reference No.28A of 2001, and upon transfer to another Court it was once again numbered as Reference No.10 of 2010, and was proceeded independently on merits against the Appellants as directed by the Hon'ble Supreme Court.

5. As to the legal objection raised on behalf of the Appellants that evidence has not been recorded in accordance with law, and in violation of Section 353 Cr.P.C. read with Article 47 of the 1984 Order, it appears to be a matter of record that the trial Court while proceeding afresh against the present Appellants after remand of the matter by the Hon'ble Supreme Court, though re-examined prosecution's available witnesses, however, while doing so, neither the prosecution; nor the trial Court brought on

record the documents which were earlier Exhibited by these witnesses in the earlier trial against the main / remaining accused. The situation in hand is dealt with through Section 353 Cr.P.C. and Article 47 of the 1984, Order, and It would be advantageous to refer to these provisions which reads as under:-

> "353. *Evidence to be taken in presence of accused*. Except as otherwise expressly provided, all evidence taken under [1][Chapters XX. XXI, XXII and XXII-A] shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader."
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> Article "47. *Relevancy of certain evidence for proving*, *in subsequent proceeding, the truth of facts therein stated*. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:
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> Provided that the proceeding was between the same parties or their representatives in interest;
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> the adverse party in the first proceeding had the right and opportunity to cross-examine:
>
> the questions in issue were substantially the same in the first as in the second proceeding.
>
> *Explanation.* A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this Article."

6. In terms of Section 353 Cr.P.C. all evidence is to be taken in presence of accused; except as otherwise expressly provided, and when his personal attendance is dispensed with, in presence of his pleader. Admittedly, insofar as the earlier evidence, including the documents which were exhibited are concerned, were never brought in the evidence before the present Appellants, hence, the same cannot be treated as evidence recorded in presence of the accused. As to earlier proceedings, it is a matter of record that the trail Court had treated them as guilty of having entered into a plea bargain with NAB, and therefore, were never required to attend the Court as accused at the time of evidence of the prosecution. Insofar as Article 47 of the 1984 Order is concerned, it provides relevancy of certain evidence for proving the same in subsequent proceedings, and states, that the evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving the same, in a subsequent proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or

is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. It further provides that such proceedings should be between the same parties or their representatives in interest and *the adverse party in the first proceeding had the right and opportunity to cross-examine* and the questions in issue were substantially the same in the first as in the second proceeding. Now when both these provisions are read into juxtaposition, it appears that apparently, the learned trial Court failed to appreciate these provisions and simply allowed the prosecution to rely / mention these documents in their deposition / subsequent examination in chief which were exhibited by them in the earlier proceedings. Though the witnesses produced subsequently, (including some of the earlier witnesses as well as new witnesses in place of those who had expired), were cross-examined on behalf of the Appellants, but at no point of time, any of the documents and the exhibits recorded in the earlier evidence were ever brought on the record of the subsequent proceedings in hand. We have labored ourselves through the entire R&Ps of this Reference, and are surprised to note that not even certified copies of the earlier exhibits were produced in their examination in chief by the witnesses, and instead they only stated that all documents have already been exhibited in the earlier evidence. In our considered view, a bare minimum, production of certified copies could have sufficed, as in that case the Court could have permitted production of such certified copies, being part of the judicial proceedings to be exhibited once again in the subsequent proceedings. As noted, in R&Ps there is nothing on the record in this Reference, and admittedly, the trial Court may be for the reason that it had the privilege of examining the earlier record and the evidence, simply referred to the exhibit numbers of the earlier proceedings and thought that they are also part of the present proceedings and can be used as evidence against the present Appellants. We are afraid this procedure adopted by the learned trial Court was not only irregular; but apparently is an illegality which perhaps cannot be cured in any manner. In *Muhammad Younis*[1], a learned Division Bench of the learned High Court was seized with almost an identical situation, wherein certain witnesses were common in three cases and when one of these witnesses appeared in the witness box, his statement was recorded in one case and then a verbatim copy of his statement was placed on record of two other cases, with the addition of such matter brought out in

[1] PLD 1953 Lahore 321

cross examination for the special purpose of that particular case. It was held that the witness was thus not examined in full in each case. It was further held that "*the question arises whether this procedure, which was not sanctioned by the Code of Criminal Procedure, Imported a mere irregularity or an illegality into the trials. We are disposed to hold that the procedure adopted was illegal and not merely irregular"*. The final conclusion drawn was that the procedure adopted vitiated the trials. In *Nur Elahi*[2], the proposition expounded by a Single Judge of High Court of West Pakistan, Lahore, that witness in two cases should be examined only once and their statements read out as evidence in other case, was held to be not supportable in law. In *Alam Sher*[3], similar view has been expressed by a learned Judge of the Lahore High Court, by placing reliance on *Muhammad Younis*[4]; *Nur Ilahi*[5]: *Abdul Waheed*[6] and *Qilandar Khan*[7]. Similar has been expressed by a learned Single Judge of this Court in *Khwaja Muhammad Anwar*[8]. In *Bashir Ahmed*[9] a learned Division Bench of this Court dealt with a case wherein there were several accused including a juvenile in respect of a case of kidnapping, whereas, the said juvenile, through a separate trial was convicted on the basis of evidence recorded in the trial of other accused, whereas, the star witnesses of the prosecution i.e. kidnapee and his father were never examined against the juvenile. The learned Division Bench agreed with the proposition that the evidence recorded earlier in the case of other accused for the same offence cannot be used against the juvenile; and the conviction awarded to him was set-aside. In *Ghulam Hussain*[10] a learned Single Judge of this Court after examining the entire case law on the subject issue was pleased to hold that "*it is the duty of the trial court to give separate numbers to all documents exhibited during recording of evidence and the trial court was bound to record evidence of each witness separately in all the other cases*". What has happened in this case is unheard of and is not supported by any law or precedent that a witness coming into a witness box while recording his examination in chief can say that he has already produced the entire record / documents in an earlier case and merely refers to certain exhibit numbers of that case, without producing any certified copy of the said exhibits / document. In fact, the present

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[2] PLD 1966 SC 708(5 Member Bench)
[3] 1977 P Cr. L J 1078
[4] PLD 1953 Lahore 321
[5] PLD 1966 SC 708
[6] 1968 P Cr. L J 776
[7] PLD 1971 Peshawar 119
[8] 1983 P Cr. L J 2070
[9] PLD 2004 Karachi 577
[10] 1996 P Cr. L J 514

Appellants were never confronted with any such document / exhibits at any stage of their trial. We may observe that a deposition of a witness does not merely includes his examination in chief / statement; but so also the documents he intends to prove in his / her evidence. Here in this case, once the documents were never produced in presence of the accused / appellants; nor were exhibited in any manner, they had in fact no proper opportunity to cross examine the witnesses on such documents which were never part of the record in this case. The entire evidence, is thus, against the mandate of the criminal jurisprudence as well as the law, including but not limited to Section 353 Cr.P.C. and Article 47 of the 1984 Order.

7. Notwithstanding the above legal shortcomings in the evidence of the prosecution and violation of law and the procedure, we have, nonetheless, even examined the said evidence on merits and have come to the conclusion that none of the witnesses have been able to prove the case against the present Appellants beyond any reasonable doubts and have not implicated them in the commission of the offence as alleged. It is a matter of record that the present Appellants were land owners and their land(s) were acquired compulsorily under the Land Acquisition Act, 1984 for the purpose of constructing LBOD Mirpurkhas Sector. In addition to the Appellants, lands were also acquired from other Khatedars. It is the case of the prosecution that, though, the Appellants, including the other accused were entitled for compensation under the Land Acquisition Act partly; however, they managed to get excess payments to a certain extent as stated in the Reference on the basis of forged and fabricated Form-B; hence, were not entitled for such compensation. This according to NAB was an offence of corruption and corrupt practices under Section 9(a) (iv) & (ix) of the NAB Ordinance. However, it is a matter of record that none of such alleged forged and fabricated Form-B or for that matter Form-VII, were brought in evidence. Not even in the earlier evidence. Since they were never produced, it is also a matter of record that these forms which have been alleged to be forged and fabricated, were never referred to any hand writing expert. In that case, when the very basic document which is alleged to be forged was never brought on record before the trial Court, nor was ever referred to any hand writing expert, the learned trial Court could not have come to conclusion that which of the forms are genuine and which are not. This was the entire basis of the allegation against the Appellants; and once it is produced before the trial Court, how could a

person be convicted for such an offence is beyond comprehension. The test for appreciating evidence in criminal matters is well settled and one need not go into reiteration that it has to be bereft of any reasonable doubt. We have time and again made a query from the learned Special Prosecutor NAB regarding exhibit numbers of these forged and fabricated Form-B and Form-VII, so as to see for ourselves the alleged forgery, if any; however, we have not been assisted in any manner in this regard. It seems that no such Forms were ever produced in the evidence; not even in the earlier proceedings. This destroys the entire case of the prosecution.

8. Even otherwise, when the evidence of the prosecutions witnesses is examined, it appears that they have miserably failed to implicate the present Appellants. P.W-1 Zamir Hussain examined as Exhibit 8 was also examined earlier in Reference No. 28 of 2001 at Exhibit 54 and while recording his deposition, he referred to all the previous documents exhibited by him starting from Exhibit 54/1 to Exhibit 54/22 which were exhibited in the earlier proceedings; but were never brought on record in this case. While being cross-examined, in response to various questions he has stated that: -

> **"It is correct to suggest that I was not custodian of the record which I have produced before FIA.**
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> **It is correct to suggest that no complaint was received in our department against accused Ali Nawaz Shah, Imtiaz Ali shah and Khadim Ali Shah in respect of any malpractice and deviation from prescribed procedure.**
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> **It is correct to suggest that Exhibits 54/23, 54/25 and 54/26, produced by me in court, pertained to the 141 "B" forms for re-measurement. It is correct to suggest that Exhibit 54/23 to Exhibit 54/26 are of before my joining as joiner clerk in land Acquisition Branch".**

9. P.W.2 Wahid Bux was examined as Exhibit 10, whereas, his earlier evidence was exhibited as Exhibit 57. He also recorded his deposition in the same manner by relying upon the earlier Exhibits. He was also cross examined and he has stated that:-

> **"It is correct to suggest that documents Exh.55/2 to Exh.55/99 were not produced by me before I.O. nor I was custodian of these documents. It is correct to suggest that I was not involved in the process of preparation of 'B' forms etc., land acquisition, sanction of awards and making payments to the claimants in respect of this project.**
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> **It is incorrect to suggest that accused Hasan Zaeem Aftab, Project Director LBOD is also an absconder in this case. Voluntarily says he has been acquitted by this Court.**

No complaint was came into my notice during my posting in Land Acquisition Office, LBOD, Mirpurkhas stating that the land was acquired unlawfully or fraudulently on exorbitant price.

I do not know that lesser payment was made to the accused persons than they were entitled under the law. I do not know that the documents produced in Court at Exh.55/2 to Exh.55/99 which bear signatures of accused Mangharam Sherma and Fazalullah Siddiqui, were sent by the I.O. to the Handwriting Expert for comparison and verification of their signatures or not."

10. P.W.3 Sikandar Ali was examined as Exhibit-11, whereas, earlier he was examined as Exhibit 64. He also adopted the same procedure but was not cross-examined as he never deposed anything against the present Appellants. Same was the position of P.W-4 Nehal Exhibit 12. P.W. 5 Hussain Bux Exhibit 13 and so on. The next relevant witness was P.W-11 Muhammad Bachal Exhibit 21, whereas, his earlier evidence was Exhibit 56 and he deposed in the same manner. He was also cross examined and he has stated that: -

"It is correct to suggest that I have retired from government service on 08.05.1995.

It is correct to suggest that no documents were produced by me before I.O. in this case.

It is correct to suggest that documents regarding ownership, land and area of land are in the domain of the revenue department. It is correct to suggest that all documents pertaining to the ownership, area of land, details of khatedars are with the revenue department and are under the control of District Revenue Officer under Land Revenue Act.

It is correct to suggest that government acquired land for LBOD and prepared a sketch of LBOD scheme for Sam Nala and notification under the Land Acquisition Act was also issued. I cannot produce such notification and sketch of LBOD in Court.

It is correct to suggest that the case of each khatedars of acquisition of land is separate.

I cannot produce letter of Director Survey along with sketch whereby he directed me to survey the land. I had not issued notices to the khatedars with direction to remain present at the site at the time of survey. It is correct to suggest that the land was surveyed by the Patwari of survey department and no other person was present at the time of survey.

It is correct to suggest that one copy of 'B' form was retained by me. It is correct to suggest that I have not produced such copy of 'B' form before the I.O. I do not remember if the original 'B' form retained by me was shown to me by the I.O. or not. It is correct to suggest that in my statement under Section 161 Cr.P.C., the name of any khatedar, area of land of khatedar and rate determined by Land Acquisition Officer are not mentioned.

It is correct to suggest that I have not produced any document/file to the I.O. at the time of my statement and all documents/files were delivered to me by the I.O. to produce in Court at the time of recording of my first evidence before the Court. It is correct to suggest that Exhs.55/7, 55/22, 55/57 and 55/72 were not produced by me before the Court at the time of earlier trial.

11. P.W-12 Ghulam Abbas was examined as Exhibit 29. He was also earlier examined as Exhibit 76. He also adopted the same procedure and so also cross examined wherein, he stated that:-

> **"It is correct to suggest that names of accused Syed Ali Nawaz Shah, Khadim Ali Shah and Syed Imtiaz Ali Shah are not mentioned in Exhibit 76/1 and Exhibit 76/2.**
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> **It is correct that inquiry committee of inquiry produced at Exhibit 76/3 has also found and recommended that more land has been acquired than the land required for construction of LEBOD and RBOD projects.**
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> **It is correct that accused Syed Ali Nawaz Shah, Khadim Ali and Syed Imtiaz Ali Shah are not named in the inquiry report produced at Exhibit 76/3.**
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> **It is correct that the award of land acquisition was not challenged by the Project Director LBOD under Section 18 of Land Acquisition Act 1894.**
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> **It is correct to suggest that N.A. Ordinance 1999 or Ehtesab Act were not holding the field in 1993 to 1996 and only law enforced was Land Acquisition Act 1894. It is correct to suggest that Land Revenue Officer, Land Acquisition officer and Survey teams of the districts in which land was acquired have prepared the Deh Form VII and 'B' forms and approved the award.**
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> **I cannot give the date of forgery or fraud committed by each khatedar in connivance and collusion with government officials but their details are mentioned in their award files.**
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> **It is correct to suggest that Tapedar used to prepare five copies of 'B' forms. He also prepared sketch of sketch of land surveyed along with 'B' form. Copies of 'B' forms are forwarded to the Land Acquisition Officer, District Officer Kara(Revenue), Settlement department, Project Director LBOD and Award file. *I have not seized all the five copies of 'B' forms prepared by Tapedar.* Voluntarily says that I have sent only one 'B' form each, award file to the Settlement department for verification and on the basis of their reports, the difference of award amount is worked out. *It is correct to suggest that I have not physically verified the land in question with the 'B' forms prepared by the Survey Tapedar*, during investigation but the verification was done by the Settlement and Survey departments on my directions.**
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> ***I have not sent 'B' forms actually prepared by the Survey Tapedar and 'B' forms on the basis of which Awards were received to the handwriting expert for verification of writing and signature thereon.* It is incorrect to suggest that I have not collected any direct evidence against the accused persons. Voluntarily says that report of Survey department regarding fakeness and forgery of 'B' forms is direct evidence against the accused persons."**

12. On perusal of the aforesaid evidence, in our considered view, the prosecution has miserably failed to being any convincing material before the trial Court so as to fully implicate the present Appellants, whereas, the evidence as above is full of doubts and cannot be made basis to convict the present Appellants. It is also a matter of record that, if at all, any proceedings which could have been initiated were to be done under the Land Acquisition Act, 1894, which the Government Officials failed to pursue and avail; rather the Appellants initiated civil proceedings and were successful against which no further remedy was availed by the

Government and therefore, the Appellants could not have been convicted and sentenced in the manner as has been done by the learned trial Court.

13. In view of hereinabove facts and circumstances of this case, it appears that the prosecution has miserably failed to prove its case and to fully implicate the present Appellants, whereas, the evidence so led by the prosecution besides inadmissible in peculiar facts as above is otherwise not convincing and in the absence of proof beyond doubt, it would be unsafe to maintain the convictions; therefore, the impugned Judgment dated 10.09.2015 passed by Accountability Court No.IV in Reference No. 01 of 2010/ Old Reference No.28-A of 2001 (*The State Vs. Hasan Zaeem Aftab & Others*) to the extent of present Appellants was set-aside and Appeals were allowed by way of a short order dated 13.09.2022 in the following terms and these are the reasons thereof:-

> "Heard learned Counsel for the Appellants as well as Special Prosecutor NAB. For the reasons to be recorded later on, Criminal Accountability Appeal No.09 of 2015 is allowed; the impugned Judgment dated 10.09.2015 passed by Accountability Court No.IV in Reference No. 01/2010/ Old Reference No.28-A of 2001 (The State Vs. Hasan Zaeem Aftab & Others) to the extent of present Appellants is hereby set-aside; and they are acquitted from the charge under Section 9(a) (iv) & (ix) punishable under Section 10 of the NAO, 1999 and their conviction and sentence stands set-aside, whereas, the surety and bail bonds furnished pursuant to suspense of judgment vide order dated 21.09.2015 stand discharged. Office to act accordingly.
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> In view of the above, Criminal Accountability Appeal No.30 of 2015 filed by NAB for enhancement of sentence has become infructuous; hence, the same is hereby dismissed. Office is directed to place a copy of this order in the connected matter as mentioned above."

J U D G E

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Arshad/