

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Appeal No 18 of year 2022

(Muhammad Salik Nukhrich Versus The State)

and

Criminal Accountability Appeal No 19 of year 2022

Shakil Sultan Versus The State

## **PRESENT**

**Mr. JUSTICE MUHAMMAD FAISAL KAMAL ALAM**

**Mr. JUSTICE NISAR AHMED BHANBHRO**

Appellant Muhammad Salik Nukhrich	Through M/s Nazar Hussain Leghari, Zakir Hussain Leghari, Metharam Dharrani and Mohammed Abubakar Advocate(s)
Appellant Shakil Sultan	Through Mr. Ahmed Ali Hussain, Advocate
The State	Through Mr. Afzal Ahmed, Special Prosecutor NAB, assisted by Mr. Dr. Raja Muhammad Ali Learned Counsel for the Complainant Society

Dates of Hearing: 10.03.2025 and 17.03.2025

Date of Judgment .03.2025

## **JUDGMENT**

**Nisar Ahmed Bhanbhro J.** Mohammed Salik Nukrich and Shakil Sultan (**the Appellants**) were tried by the Learned Accountability Court IV Karachi, in References No 02/2010 and 03 of 2011, filed by National Accountability Bureau [**NAB**], Karachi. The Learned Trial Court vide Judgment dated 06.07.2022, convicted and sentenced **the Appellants** to suffer Rigorous Imprisonment for ten [10] years and pay fine of Rs. 11 million (each convict to pay fine of Rs. 5.5 million); in case of non-payment of fine, they shall suffer R. I [rigorous imprisonment] for six months and fine amount shall be recovered as arrears of Land Revenue, in terms of section 33-E of the National Accountability Ordinance, 1999 (**the Ordinance**), with a benefit available under section 382-B CrPC. **The Appellants/ Convicts** would forthwith cease to hold public office, if any, held by them and further stand disqualified in terms of Section 15 of **the Ordinance** for a period of ten years to be reckoned from the date of release after serving out sentence awarded to them and also from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or any Province, they shall not be allowed to obtain any financial

facility in the form of loan or advances from any financial institutions controlled by Government for a period of ten years. The Appellants have challenged the conviction and sentences through separate appeals, which are being disposed of through this single judgment.

2. The facts leading to the Appeals against conviction are that the National Accountability Bureau (NAB) Karachi filed the above References before the Learned Administrative Judge Accountability Court [Karachi] regarding fraudulent transfer of 34.11 acres of Land owned by Pak Ideal Cooperative Housing Society Limited (**the Society**) by misuse of authority and in violation of Revenue Laws and cheating Public at Large by selling the plots to the public in the name of Shehr e Sultan Housing Society.

3. It is alleged in the Reference No 03/2011 that the **Land measuring 34.11 acres in Survey No. 68, 69, 79, 80, 81 and 82 of Deh Safooran** belonged to Morio Family to the extent of 04 aana share. Upon death of Morio Khan Dagar, the Land was transferred in the names of his Legal heirs Mst. Maryam, daughter of Morio, Bachal, son of Morio, Mst. Aminat, daughter of Morio, Mst. Fati, daughter of Morio, Mst. Samani, daughter of Morio, Mst. Amina, widow of Morio. The descendants of Morio sold out their 04 Aana share to **the Society in the year 1968** through oral statement as per practice at that time. The mutation in favor of **the Society** was affected in record of rights vide entry No. 145/157 dated 18th November, 1968. The Munshi Sheruddin Lashari while working as Tapedar, Deh Safooran, Malir, caused fake and forged entries in the revenue record of rights, including the fake entry pertaining to Ashraf Muhammadi and further interpolated four new bogus entries in the Foti Khata Badal of Morio Khan to benefit the Appellant Shakil Sultan and intentionally mutated the Land of the Society [Complainant] in favour of Mahpara Shakeel and Shabana Ali. Accused Asadullah Abbasi the then Assistant Mukhtiarkar Malir deliberately failed to check the record of rights and rather relied on interpolated entries of Foti Khata Badal of Morio Khan and Sub-Power of Attorney of a fake General Power of Attorney. He deliberately inserted fake entry No. 213/36 and paved the way of making subsequent entries 126, 127, 134 for the benefit of the Appellant Shakeel Sultan; whereas, the other Appellant Muhammad Salik Nukrich the then Mukhtiarkar Malir Town, deliberately authenticated the **Entries No. 213, 36/126** and **213, 36/127** dated 26th May, 1997 and **Entry No. 126/134** dated 25th Oct, 1997 and issued Fard copy to newly created Khatedars, viz. Mahpara Shakil, Shabhana Ali and Khalid Masud in respect of said Survey numbers. The accused Muhammad Ashraf the then Survey Superintendent, Karachi Division executed fake and forged documents submitted directly by the Appellant [Shakeel Sultan] showing Sub-Irrevocable General Power of Attorney of fake Irrevocable General Power of Attorney with fake NIC [*National Identity Card*] and address. The same Application, in legal way, should have

been forwarded through Mukhtiarkar (Revenue) to Deputy District Officer (Revenue) and subsequently Survey Superintendent, Karachi requesting demarcation and merger of the two Survey numbers 79 and 82. Then Survey Superintendent was to order his subordinate City Surveyor for Survey merger and demarcation layout plan. The accused in connivance with each other made just paper work to cover this illegal act of demarcation without serving notice to parties. In this demarcation, Tapedar and Mukhtiarkar actively prepared forged documents showing merger of two Survey numbers into other Survey numbers, and necessary correspondence to formalize fraudulent act of demarcation. The Appellant [ Shakeel Sultan] a private person, worked as Builder through fake Irrevocable General Power of Attorney of Muhammad Adel, son of M. Sadiq, dated 5<sup>th</sup> December, 1994 having fake NIC number and address, became a Sub-Attorney on 27<sup>th</sup> July 1995 for the above legal heirs of Morio Khan, purchased a land measuring 34.11 acres in papers in the name of his front women, one his wife Mahpara Shakeel and the other his so-called relative Mrs. Shabana Ali by making **the Indenture of Lease dated 28th February 1996** on the basis of untraceable entries No. 100-17/213 dated 24th Feb, 1974. He manipulated Foti Khata of Morio Khan and got interpolated Entry No. 213/36 dated 7th May, 1981, manipulated Foti Khata of Mst. Aminat in the Revenue Record of Rights. The Appellant [Shakeel Sultan] on the basis of Entry No 213/36 got the land mutated vide entries No. 213, 36/126 and 213, 36/127 dated 26th May, 1997 whereas this land was purchased by **the Society** from the same Family Members (descendants of Morio Khan) on 18<sup>th</sup> November 1968 and on 28th September 1968. As per the investigation, above Shakeel Sultan in connivance with the accused Revenue Officials got the record tampered, forged, interpolated and got the privately owned Land measuring 34-11 acres, transferred, illegally and unlawfully, in the names of his wife Mahpara Shakeel and Shabana Ali.

4. It is alleged in Reference No. 02 of year 2010 that Abdul Razak Gatta, Secretary of **the Society** filed complaint with NAB against the Appellant [Shakeel Sultan] regarding fraudulent transfer of **the Society** land in Deh Safooran and launching of a housing project thereon in the name and style of Shehr-e-Sultan and thereby cheated public at large. Investigation was authorized by the Director General NAB Sindh Karachi against Shakeel Sultan and others for their involvement in commission of scheduled offence of corruption and corrupt practices. It transpired during investigation that from year 1996 to 2006, M/s ESS ESS Construction Builders and Developers after obtaining conditional approval of layout plan dated January 01, 1996 from Malir Cantonment Board in the name of Red Lines Construction for booking of house units in Project "Shehr-e-Sultan". For this purpose, the Convict Shakeel Sultan generated two construction companies one "Red Lines Construction" for obtaining approval of layout plan from Malir Cantonment Board and another "ESS ESS Construction Builders and Developers" for booking of housing project "Shehr-e-Sultan". The project was launched

on the land owned by **the Society** since 1968. The Secretary of **the Society** filed an application to Malir Cantonment Board for cancellation of layout plan. The Malir Cantonment Board, after verification of title of **the Society** from Deputy Commissioner East and Mukhtiarkar Revenue Malir, cancelled layout plan. The Convict Shakeel Sultan filed Constitution Petition No D-1451/2005 before this Court, which was dismissed on September 04, 2007 in favour of Malir Cantonment Board. In all 17 affectees/claimants filed their claims who provided the receipts of booking issued by M/s ESS ESS Construction Builders and Developers amounting to Rs. 10.949 million. That the accused Shakeel Sultan launched a housing project in the name and style of Shehr-e-Sultan on the land of **the Society** in Survey No. 68, 69, 80 & 81 Deh Safooran, the accused has committed an offence of corruption and corrupt practices as defined under Section 9(a) and punishable under Section 10 of **the ordinance**.

5. Initially both the References proceeded separately, after supplying of documents in Reference No. 2/2010, the charge against Shakeel Sultan was framed on 14.07.2010 to which he pleaded not guilty, while the charge in Reference No. 03/2011 was framed on 28.09.2012 against accused Munshi Sherudin Lashari, Asadullah Abbasi, Muhammad Ashraf, Muhammad Salik Nukrich and Shakeel Sultan. After framing of charge in Reference No. 03/2011, the statements of two witnesses were recorded. Then an application under section 235 and 239 CrPC was filed before Learned Trial Court in Reference No. 03/2011 for consolidation of Reference No 02/2010 with Reference No. 03/2011, which was allowed vide order dated 23.01.2015. The accused Asadullah Abbasi, Muhammad Salik Nukrich, Muhammad Ashraf Bhutto and Shakeel Sultan in both references were indicted for a consolidated charge on 02.02.2015 to which they pleaded not guilty and claimed to be tried. During the trial accused Munshi Sheruddin absconded away, he was proceeded under section 512 CrPC, Asadullah Abbasi passed away, therefore proceedings against him were abated vide order dated 16.09.2019.

6. To prove the Charge, Prosecution examined in all 26 Witnesses, namely, PW-1 Abdul Razaq, the Complainant of the case. He produced Approval letter, Copy of fake entries No. 213 dated 24.02.1974 and subsequent fake entry No. 213/36 dated 09.05.1981 order of Land Utilization Department and other documents to show that the land was owned by Society and fraudulently transferred in the names of Mahpara Shakil, Shabana Ali, PW - 2 Muhammad Bachal Supervising Tapedar produced record of rights (examined in the earlier round, he passed away after consolidated charge), PW – 2 Muhammad Achar then Mukhtiarkar Malir, PW- 3 Ganhwar Ali Laghari produced record, PW-4 Abdul Hakeem, PW-5 Rafiq Qureshi, PW- 6 Muhammad Amir Sabbir, PW-7 Muhammad Younus NADRA Officer, PW-8 Muhammad Ishaq produced relevant entries under dispute, PW-9 Muhammad Hassan, PW-10 Yousuf Mirza, PW-11 Abdul

Aleem, PW-12 Muhammad Saleem, PW-13 Anwar Ali, PW-14 Muhammad Shafiq, PW-15 Abdul Hadi, PW-16 Shahid Mehmood, PW-17 Kishwar Jahan, PW-18 Syed Muhammad Zia Abbas, PW-19 Muhammad Khalid Arshad Lari, PW-20 Shabana Ali, PW-21 Shazia Bano, PW-22 Nadeem Mukhtar, PW-23 Syeda Rukhsana Hanif, PW-24 Mst. Khalida Noor and PW-25 Syed Iftikhar Ahmed, the Court also examined CW-1 Abdul Hadi, CW-2 Syed Muhammad Rizwanullah, CW-3 Syed Muhammad Rizwanullah, CW-4 Muhammad Adeel Khan, CW-5 Muhammad Adeel Khan as court witnesses. The prosecution side was closed by the Learned Special Prosecutor NAB.

7. The statements under section 342 Cr.P.C of the Appellants/Convicts were recorded, wherein they denied the prosecution allegation and prayed for justice. Appellant/Convict Shakeel Sultan examined eight witnesses in defence, while Appellant/convict Muhammad Salik Nukrich did not examine any witness in defence. Both the Appellants /Convicts did not examine themselves on oath.

8. The defence witnesses of the Appellant Shakeel Sultan were examined as DW-1 Suhail Memon, DW-2 Wazir Chand Oad, DW-3 Asma Batool, DW-4 Ajaz-ul-Hassan Khan, DW-5 Muhammad Anwar, DW-6 Salman Farsi, DW-7 Fazal Hussain, DW-8 Asif Zaman, thereafter the defence closed its side for defence.

9. Learned Trial Court after hearing Special Prosecutor for NAB, Learned Defence Counsels convicted and sentenced the Appellants as aforementioned hence these accountability appeals.

10. Mr. Nazar Hussain Leghari, learned Counsel for the Appellant Muhammad Salik Nukrich, contended that allegation against his client was that he misused the authority by attesting the further entries in respect of original entry No 213/ 36 which appeared to be bogus. He contended that the NAB filed this reference on the complaint of **the Society** claiming ownership over the disputed land. The title of the land in question is disputed and Civil Suits between the parties are pending adjudication before this Court. He argued that the accusation of the misuse of authority is based upon the Order of the Assistant Commissioner Malir, through which the disputed entries were directed to be cancelled, but the said Order was set aside by the Additional Commissioner -II, Karachi, which was maintained by the Member Land Utilization of Board of Revenue, with the result, the Entries kept by the above Appellant [Mohammed Salik] were restored. He argued that Mst. Maryam and Mst. Fatima, the original Owners of the Land appeared before the Investigation Officer [ **IO** ] and recorded their statements under section 161 of Cr. PC, denying the sale of land to the Society and to the wife of accused Shakeel Sultan [the Appellant]. He argued that the Appellant [Muhammad Salik Nukrich] kept entry on the

basis of registered document [SALE DEED] in the record of rights in accordance with law for which he was bound to do so under Section 42 of the Sindh Land Revenue Act [1967], which did not constitute an offence of corruption or corrupt practices; argued that there was no evidence of misuse of the authority and forgery in the record against the said Appellant - Mohammed Salik Nukrich, who acted in good faith while maintaining the record of rights by implementing the mandatory provisions of the Sindh Land Revenue Act, and his prosecution was barred under Section 181 whereof; argued that there was dispute between the Private Parties over the Title of the Land in question and no loss was caused to the Public Exchequer. Prayed for setting aside the impugned Judgment as prosecution failed to prove charge against Muhammad Salik Nukrich beyond reasonable doubt.

11. Mr. Ahmed Ali Hussain, the learned Counsel for the Appellant Shakeel Sultan contended that the allegation against his client was that he in connivance with the officials of Revenue Department, fraudulently transferred 34.11 acres of the Land bearing survey numbers 68, 69, 79, 80, and 81 of Deh Safooran Tapo Songal District Malir Karachi belonging to the Society, in the names of his Wife Mahpara Shakeel and relative Shabana Ali. He argued that the said Appellant Shakeel Sultan had better title in the Properties in the shape of registered Sale Deed and such document is more authentic and valid than a revenue entry based upon oral statement [which is the Case of the Complainant Society]; argued that the entries in favor of Shakeel Sultan were cancelled by the Assistant Commissioner Revenue, but, the said Order was set aside in Appeal by the Additional Commissioner II Karachi and maintained by the Member Board of Revenue [as stated above], as such the status of record of rights presently existed in favor of Shakeel Sultan as the disputed entries No 213, 36/126 and 213, 36/127 have been restored and in absence of any further challenge to the Orders of the Revenue Authorities by the Society, the entries attained finality. Stated that the Parties were under litigation in respect of the Property and Respondent NAB had no jurisdiction to intervene into such matters as no offences of corruption and corrupt practices as defined under Section 9 of the Ordinance has been committed. The NAB cannot indulge into deciding the question of title which is within the jurisdiction and domain of the competent Court of law; contended that the IO recorded the statements of the Original Owners Mariam and Fatima who denied the sale of land to the Society and Mahpara Shakeel and Shabana Ali the alleged front women of convict Shakeel Sultan, but both of them were not produced before the Trial Court, which prima facie gives an inference that they would not support the prosecution case. That all the Witnesses including the Complainant Abdul Razak and IO while recording their evidence before the Trial Court have conceded that the Order of the Assistant Commissioner was set aside and entries in favor of the family of convict Shakeel Sultan stand restored. The learned Trial Court failed to make appraisal of the

evidence in true perspective and recorded finding of the guilt of the convict in violation of the principles laid down by the Honourable Apex Court for the appraisal of the evidence. Prayed for setting aside the impugned Judgment and for acquittal of the **Appellants/ Convicts.**

12. Mr. Afzal Ahmed, the learned Special Prosecutor NAB, assisted by the learned Counsel for the Complainant, Dr. Raja Mohammed Ali, contended that the Appellant Shakeel Sultan in collusion, connivance and collaboration with the officials of Revenue Department namely, the Appellant Muhammad Salik Nukrich [Mukhtiarkar], Deceased Accused Assistant Mukhtiarkar Asadullah Abbasi and absconding Accused Survey Superintendent Muhammad Ashraf Bhutto and Tapedar Munshi Sheruddin Lashari launched a Housing Project- Shahr-e-Sultan on the Land of the Society, in Survey No. 68, 69, 80 & 81 in Deh Safooran Tapo Songal District Malir Karachi and illegally got transferred the Land measuring 34-11 acres of the Society in the name of his wife Mahapara Shakeel and relative Mst. Shabana Ali and cheated public at large and received Rs.10.949 million from 17 affectees / claimants on the basis of forged/fake documents. Argued that the criminal proceedings are not barred if the civil proceedings in respect of same subject matter were pending in the court of law. Contended that the Convict/Appellant Muhammad Salik Nukrich has violated Section 14-B of Sindh Village Account Manual, while attesting the subsequent entries of disputed Entry, viz. 213/36, which was marked with red ink; that Prosecution has established its case through oral and documentary evidence against the above Convicts Shakeel Sultan and Muhammad Salik Nukrich, therefore, they were correctly convicted by the Learned Accountability Court. Prayed to maintain the impugned Judgment.

13. We have heard Learned Counsel for Parties, perused the material available on record and reappraised the evidence with their able assistance.

14. Before appreciating the evidence adduced by the prosecution and defence, it would be pertinent to mention that since the filing of instant References, the Convicts / Appellants raised a plea that the Reference filed by the NAB was not maintainable as NAB lacked jurisdiction to investigate the issue of immovable property between the Private Parties, who were seeking adjudication of their rights as to the title before the competent Court of law. The matter went to the Honourable Supreme Court, which through its Order passed in Civil Petition No 651 – K of 2017, directed the Learned Trial Court to deal with the issues agitated by the Appellants in accordance with law. For the sake of convenience the Order is reproduced below:

*"It is contended by the learned counsel for the petitioner that a reference has been filed with regard to the property in question. Admittedly, the*

*property in question is a private property. He further contends that there is a dispute of title to the property between the petitioner and the complainant society and such dispute is pending in the learned High Court of Sindh at Karachi in its civil jurisdiction. It is also added by the learned counsel that the petitioner after developing the said property has further transferred the rights in the said property only to 17 others persons by receiving booking charges. In the above context, it is his case that no case under Section 9 of the NAB Ordinance has been made out and this aspect of the matter has been agitated by the petitioner before the Accountability Court as well as before the learned High Court but without considering all aspects of the matter, his contentions have been brushed aside.*

- 2. The learned counsel for the complainant vehemently disputes the claim of the petitioner as to the title of the property.*
- 3. However, the learned Special Prosecutor, NAB informs us that the trial is almost completed and only the statement of the I.O remains to be recorded.*
- 4. In the above backdrop, with the consent of the parties, this Civil petition is disposed of in the terms that the Accountability Court seized of the matter shall decide all the legal and factual objections raised by the petitioner including the question of its jurisdiction as well as whether any offence at all is made out, which can or should be tried by the learned Accountability Court. Such objections, if raised, will be decided by the learned Accountability Court being uninfluenced by any observation earlier made by the leaned Accountability Court or the learned High Court by way of the impugned judgment."*

15. The Learned Trial Court while dealing with the questions framed by the Honourable Apex Court, set the controversy of Reference No. 02 of 2010 at rest by observing that the Standard Operative Procedure (SOP) of NAB covers the offence of Cheating Public at Large when the number of affectees or defrauded persons exceed 50 and amount involved is above one hundred million; since in the instant Reference the number of affectees was 17 out of which only 10 were produced to record evidence and amount involved was about 11 million, therefore, no scheduled offence of cheating Public at large was made out from the facts of Reference/case. The affectees were left at liberty to avail the civil as well as ordinary criminal remedy provided by the law.



16. The Learned Trial Court acquitted the Appellant Shakeel Sultan of the charge in Reference No 02 of 2010, and no Appeal is preferred by the Respondent NAB, as such the acquittal of Shakeel Sultan in the above Reference attained finality.

17. The Appellants since have been convicted and sentenced in **Reference No. 03 of 2011**, therefore, relevant evidence is considered [relating to the above Reference]. The Prosecution alleged that accused / Convict Shakeel Sultan in collusion and connivance with Revenue Officials including accused / convict Mukhtiarkar Muhammad Salik Nukrich, deceased accused Assistant Mukhtiarkar Asadullah Abbasi and absconding accused Survey Superintendent Muhammad Ashraf Bhutto and Tapedar Munshi Sheruddin Lashari manipulated revenue record in respect of Survey Number. 68, 69, 80 & 81 in Deh Safooran Tapo Songal District Malir Karachi and illegally got transferred the land measuring 34-11 acres of the Society in the name of Maha Para Shakeel (wife of convict Shakeel Sultan), Mst. Shabana Ali, thus committed an offence of misuse of authority and rendered unlawful gains to the convict Shakil Sultan, caused loss to a Co-Operative Society which in terms of Section 65 – B of the Cooperative Societies Act is a loss caused to Public Exchequer. Had the accused officials acted diligently this loss could have been prevented. The criminal negligence of accused officials advanced the cause of convict / accused Shkeel Sultan to cheat public at large who received Rs 10.949 million from 17 affectees/claimants based on forged/fake documents.

18. To establish the charge of misuse of authority the prosecution examined 16 witnesses including IO, but for the purposes of determination of culpability and criminal liability of the accused persons the evidence of Six witnesses namely PW -1 Abdul Razak who lodged complaint before NAB regarding fraud, PW-2 Mohammed Bachal the then supervising Tapedar (**Mohammed Bchal since died his evidence was not recorded after consolidated charge, therefore, his evidence would be considered as the same was recorded in presence of both the convicts**) , PW-2 Mohammed Achar [the PW – 2 number so repeats as the witness Mohammed Bachal was recorded during first round of trial, when consolidated charge was not framed] then Mukhtiarkar Malir, PW-3 Ganhwar Ali then Assistant Commissioner Revenue Malir, PW- 8 Mohammed Ishaq and PW -15 Abdul Hadi Investigation Officer was relevant and would be considered for reappraisal. The remaining witnesses deposed about the procedure for making revenue record and process of survey and demarcation thus of no material significance for determination of criminal liability relating to misuse of authority. The Witnesses numbers 16 to 25 relate to the Reference No. 02 of 2010 regarding cheating public at large and since that Reference has been declared to be not maintainable under the law, thus, the evidence of these Witnesses have no relevancy for the purposes of deciding these Appeals. The Court witnesses are also not much significance as they did not allege any misuse of authority

and the Defence Witnesses produced revenue record without saying anything about the case excepting the official from NADRA who made a clarification regarding existence of NIC record of Mohammed Adel.

19. The scanning of the evidence of the material witnesses reveals that the Complainant **PW – 1 Abdul Razak Secretary of the Society** deposed that the Land under dispute, viz. survey number 68, 69, 79, 80, 81 and 82 of Deh Safooran admeasuring 34 – 11 acres was purchased by the Society in year 1968 from its original owners Bachal and others through Oral Statement before Mukhtiarkar. The entry No 145/157 dated 18.11.1968 was kept in favor of the Society. He deposed that Revenue Officials kept bogus entry No 145 in the name of Ashraf Mohammed and then accused Shakeel Sultan manged a fictitious Power of Attorney and transferred the lands in favor of his benamidars - Mahpara Shakeel and Shabana Ali. Accused [Appellant] Shakeel Sultan also defrauded public at large by launching a Project, namely, Shahr e Sultan, which was subsequently cancelled by the Cantonment Board Malir. He deposed that entries in favor of Mahpara Shakeel and Shabana Ali were also declared bogus. In Cross Examination available at Page 645 of the paper book he replied to the questions of Learned Defence Counsel in admission, **“It is correct to suggest that entry 213/35 and 213/36 were cancelled by the Assistant Commissioner. It is correct to suggest that Mahpara and 6 others filed Revision Application before Additional Commissioner II Karachi who set aside the order dated 23.02.1989 passed by Assistant Commissioner. It is correct to suggest that we challenged the order of Additional Commissioner before Member Land Utilization in Review Application No 246 of 1999 which was dismissed. It is correct to suggest Civil Suit No 631 of 1996, 733 of 1997, 618 of 2000 and 1078 of 2003 are pending adjudication before High Court of Sindh.”**

**PW-2 Mohammed Bachal** (Page 825 of the Paper Book) deposed that in year 1994 he was posted as Supervising Tapedar in Deh Safooran and he found from the record that the original entries No 213/33/23/34 and 213/35 were manipulated and renumbered as manipulated as Entry No 213/34, 213/35 and 213/36 regarding survey numbers 68, 69, 79, 80, 81 and 82 of Deh Safooran admeasuring 34 – 11 acres; he prepared his Report and forwarded the same to Mukhtiarkar Malir on 16.07.1995. In **cross examination** he made admission to the extent that **“I do not know accused Mohammed Salik Nukrich was Mukhtiarkar at the time of issuance of No Objection Certificate. It is correct to suggest that the land in question is a private land and not government land. It is correct to suggest that entries cancelled by Assistant Commissioner Malir were restored by Additional Commissioner Karachi”**

**PW – 2. Muhammad Achar** (Page 2235 of Paper Book) deposed in examination in chief that in July 1995 Supervising Tapedar Muhammad Bachal submitted a report disclosing that Bogus entry in VF-VII B of Deh Safooran were detected and he further deposed that entry No. 213 dated 24.02.1974 and entry No. 213/36 dated 07.05.1981 were inserted and a foti khata badal in favour of Bachal son of Morio, Amina wife of Morio, Aminat, Samani, Phaphi and Marium all daughters of Morio was recorded in respect of survey Nos .68,69,79,80,81,82,143,144,145,146 and 151 of Deh Safooran; he disclosed the entries of other persons which were also bogus and inserted. He examined the said Report of Supervising Tapedar and sent the same to the Assistant Commissioner Malir. He made admissions in the cross examination that **“It is correct to suggest that order of Assistant Commissioner was set aside by Additional Commissioner Karachi. It is correct to suggest that entries were recorded by accused Salik Nukrich on the basis of the registered document. It is correct to suggest that Revenue Officer is bound to record entry. The Land in question was a Kabuli land. I cannot say if no loss was caused to the Public Exchequer”**

**PW- 3 Ganhwar Khan Leghari** (Page number 2045 of Paper Book) deposed that he was posted as Mukhtiarkar in Malir District when the party of entry No. 213/36 namely purchaser Mrs. Shabana W/o Ali Ahmed approached him for making mutation entry in the revenue record in respect of survey Nos. 68,69,80 and 81 Deh Safooran on the basis of a sale deed, the record pertaining to entry No. 213/36 was examined by him and found that there was a noting on that entry disclosing that entry No. 213/36 appears to be bogus and report has been sent, till the decision of report no further entry should be made in respect of the said entry, since there was a noting on entry No. 213/36 therefore he refused to record mutation entry in favour of Mrs. Shabana W/o Ali Ahmed. He made admission that **“He forwarded the order of Member Land Utilization to the Mukhtiarkar Office for further action.”**

**PW-8 Muhammad Ishaq** (Page No. 2371 of Paper Book) who was posted as Mukhtiarkar during period of investigation, has produced record of entry No. 213/36 and other subsequent entries incorporated in the record of rights. In cross examination he acknowledged that **“It is correct to suggest that entry No 36, 126, 127, 134 and 139 were cancelled by Assistant Commissioner Malir. It is correct to suggest that Additional Commissioner II Karachi restored the above entries. It is correct to suggest entry No 126 was made on the basis of registered sale deed bearing No 798 dated 29.01.1996. It is correct to suggest that u/s 42 of the Sindh Land Revenue Act Mukhtiarkar is bound to make entry in the record of rights subject to the genuineness of the document.”**

**PW -15 Abdul Hadi** (Page No 2643 of the Paper Book) Investigation Officer of the case deposed that the finding of the investigation proved the genuineness of ownership of Pak Ideal Society, which obtained the Land in the year 1968 through oral statement from Morio Family. The entries in favor of accused / Appellant Shakil Sultan were cancelled by the AC Malir on the Report of Mohammed Achar Khaskhelli. The Entries No. 213/36, 36/126 and 127 were recorded by the absconding accused Munshi Sheruddin and verified by the Appellant Muhammad Salik Nukraich. While admitting that Civil Suits are pending between the Parties in this Court [at the relevant time], he made admission that **I see entry No 213/36/127 dated 26.05.1997 whereby Mrs Mahpara Shakil purchased the land from Morio family through registered sale deed. I see Exh. 56/4 and say that it is an order passed by Additional Commissioner II whereby he restored the said entries on the basis of jurisdiction of the Assistant Commissioner.**

20. The Marginal note recorded by then Mukhtiarkar Muhammad Achar on the Entries, and subsequent Orders passed by the Assistant Commissioner Revenue Malir, cancelling the Entry No. 213 along with the other disputed Entries, apparently has been made the basis of the criminal liability to constitute an offence of misuse of authority against the Appellants. *The Assistant Commissioner Revenue Malir in its order dated 23.02.1999 (available at page number 2447) observed that the entries No 213 and 213/36 having already been treated as fraudulent and bogus, there is no reason that the same should remain in the record and the subsequent entries based on these bogus entries viz. 126, 127, 134 and 139 should also be cancelled. I hereby order that the said entries should be removed from record of rights form VII.* All the Prosecution Witnesses in their cross examination conceded to the fact that the Order of the Assistant Commissioner was challenged by Mahpara Shakeel and others in Revision before the Additional Commissioner II Karachi, who set aside the Order passed by Assistant Commissioner Malir and restored the disputed entry in favor of Mahpara Shakil and Shabana Ali, vide Order dated 22.05.1999, available at Page number 2551 of the Paper Book. For sake of convenience the operative part of the order is reproduced below.

***“For the above reasons I am of the firm view that the order No Rev/Malir/161/99 dated 23.02.1999 is quite illegal, ultra vires, and void ab initio having no legal binding force and is hereby set aside. The entries No 213, 213/36, 126, 127, 13 and 139 of Deh Safooran VF VII stand restored.”***

It appears from the record that complainant Pak Ideal Society filed an Appeal before Board of Revenue Sindh which was also dismissed vide Order dated 30.01.2001(available at Page No 2563 of Paper Book) maintaining the Order passed by Additional Commissioner II Karachi.

21. The record of landed property is maintained by the Revenue Authorities in terms of the provisions contained in the Sindh Land Revenue Act 1967. Section 42 of the said Act being relevant for the purposes of maintaining record of rights is reproduced below for ease of Reference:

**42. Procedure for making record:** (1) The Board of Revenue may, for exclusively doing the work connected with the maintenance of the record of rights and register of mutation of such rights create a cell in the office of Mukhtiarkar, consisting of such officials as may be determined by it.

(2) The record of rights and the registration of mutations shall be in three sets, one each with the cell, the office of the Union Council or the Council concerned, constituted under the Sindh Local Government Ordinance 1979 and Tapedar.

(3) Where a person has acquired any right or interest in a holding otherwise than by easement or charge not amounting to mortgage within the meaning of of Section 100 the Transfer of Property Act 1882, he shall orally or in writing, inform the Mukhtiarkar or such other officer as may be appointed by the Board of Revenue, hereinafter called as authorized officer of such acquisition within three months thereof;

Provided that where the person acquiring the right is a minor or is otherwise disabled to give information, his guardian or other person having charge of his property shall give the information.

*Provided further that it shall not be necessary to give the information if the right or interest has been acquired by a registered document in which case it shall be the duty of the Sub-Registrar concerned to inform the Mukhtiarkar or the authorized officer, within three months of the registration of the documents.*

(4) .....

22. Second proviso to sub section 3 of the Section 42 makes it clear that the registered document shall automatically be sent to the concerned Mukhtaiarkar for making of the record of rights. The incorporation of an entry in the record of rights based upon a registered document is an obligation upon the concerned Mukhtiarkar. Revenue Entry in the corresponding book is an information and by no means it confers right or title in favour of any person. However, presumption of truth is attached to the Revenue Record until the contrary is proved as envisaged under section 53 of the Sindh Land Revenue Act 1967. The village Forms are subordinate legislation, and they will not override the statute itself.

23. The Prosecution alleged that the Appellant Shakil Sultan used a forged power of attorney in the name of a person Mohammed Adel who did not exist in NADRA record. The convict Shakil Sultan examined DW – 8 Asif Zaman [NADRA Officer] who produced the data record of CNIC issued in favour of Muhammad Adel having NIC number 517-87-407953, which was written in the Irrevocable Sub-general Power of Attorney as 519-87-407953. It appears that there is a typographical mistake of 9 in Sub General Power of Attorney which in fact should have been 7. The prosecution case to that allegation even stands shattered as the existence of said Mohammed Adel has been established contrary to the claim of NAB that he was a fictitious person.

24. The Appellant Muhammad Salik Nukrich allegedly kept an Entry in the revenue record on the basis of the registered sale deed in favour of Mahpara Shakeel and Shabana, which per the observation of the Learned Trial Court was recorded in violation of Village Manual. The Learned Trial Court in Para No 58 of the Judgment dealt with this issue in the following manner:

*“PW-3 Ghanwar Laghari was posted as Mukhtiarkar Malir in the year 1996-97 when accused Shakeel party approached for mutation in the revenue record and the entry No.213/36 was examined by him and found that there was above referred noting with red ink written by supervising tapedar Muhammad Bachal, therefore, he refused to record mutation entry in favour of Mst. Shabana/accused Shakeel Sultan party. Surprisingly, accused Muhammad Salik Nukrich who was subsequently posted as Mukhtiarkar in the year 1997 but he did not bother to follow the Sindh Village Accounts Manual. In the present matter previous Mukhtiarkar Muhammad Aachar had already referred the case of bogus entry No.213/36 to AC Malir for legal action and there was clear bar to mutate/attest further entry till decision under the Sindh Village Accounts Manual but accused Muhammad Salik Nukrich acted contrary to the law of Sindh Village Accounts Manual referred above. No further entry can be made till decision on the red ink note but accused Muhammad Salik Nukhrch flagrantly violated the Sindh Village Accounts Manual and illegally and in violation of above manual attested/mutated the subsequent entries No. 213, 36/126 & 213, 36/127. From the above evidence, it has come on record that accused Muhammad Salik Nukrich violated the law and ignored the red ink entry on entry No.213/36 while attesting the further entries in the name of Mst. Shabana and finally in the name of wife of accused Shakeel Sultan. It means accused Muhammad Salik being Mukhtiarkar has misused authority by attesting/mutating the subsequent entries No. 213, 36/126 & 213, 36/127.*

25. The conclusion drawn by the Learned Accountability Court does not appear to be correct as the Revenue Entries are kept in corresponding Village Form in accordance with the procedure laid down under the Sindh Land Revenue Act. The entry kept by the Appellant Mohammed Salik Nukrich though was declared by the Assistant Commissioner Malir to be bogus through order dated 23.02.1999 but the said order of the Assistant Commissioner was declared illegal by the Additional Commissioner in revision application filed by Ms Mahpara and entries kept by convict Mohammed Salik Nukrich were restored. The Order of the Additional Commissioner was maintained by the Member Land Utilization Board of Revenue Sindh by dismissing the appeal filed by the Society [the Complainant]. Since the Order passed by the Assistant Commissioner did not exist, then to rely upon such an Order for fixing the criminal liability of misuse of authority is unreasonable, illogical and unlawful.

26. The above aspects of the case tilt balance in favour of the Appellants, coupled with the fact **that no loss has been caused to the National Exchequer.** For all means and purposes it was a dispute of civil nature which has been converted into criminal proceedings by the NAB through colourful exercise of the powers. As mere procedural irregularity in the exercise of jurisdiction may not amount to misuse of authority so as to constitute an offence under section 9(a)(vi) of the National Accountability Ordinance 1999. Charge of misuse of authority under such law may be attracted where there was a wrong and improper exercise of authority for a purpose not intended by the law; where a person in authority acted in disregard of the law with the conscious knowledge that his act was without the authority of law; where there was a conscious misuse of authority for an illegal gain or an undue benefit and where the act was done with intent to obtain or give some advantage inconsistent with the law-Misuse of authority meant the use of authority or power in a manner contrary to law or reflecting an unreasonable departure from known precedents or custom. *Mens rea* or guilty mind, in the context of misuse of authority, would require that the accused person had the knowledge that he had no authority to act in the manner he acted or that it was against the law or practice in vogue but despite that he issued the relevant instruction or passed the offending order.

27. The Honorable Supreme Court of Pakistan in the Case of the **State V/s Muhammad Idrees** and others reported in **2008 SCMR 1118**, *dealing with the issue of misuse of authority held* in paragraph No 13 to 15 as under:

***13. The allegation without specific evidence that appellant in connivance with his co-accused acted for a dishonest or unlawful purpose or the land in question was allotted to the persons who were not entitled for such allotment under the law, would seriously reflect upon the truthfulness of the allegation and learned DPG has not been able to satisfy us that in such a case, mere use of***

*authority contrary to law, is a wrong of the nature, which would necessarily entail the penal consequence under NAB Ordinance. The prosecution also has not been able to bring on record any evidence direct or circumstantial in proof of the fact that the appellant in collusion with his co-accused or in connivance with the allottees of the land by indulging in corruption and corrupt practices, extended undue favour to them for some personal gain or pecuniary advantage, therefore, the mere jurisdictional defect in the allotment without any motive, illegal gain or undue benefit, would not constitute an offence of corruption and corrupt practices within the meanings of section 9(a)(vi) read with section 10(a) of the NAB Ordinance, 1999.*

*14. The prosecution of a person without distinction of criminal and civil liability in a transaction, is misuse of process of law and similarly stretching the law in favour of prosecution is unjust and unfair, therefore, the Courts without ascertaining the true character of the transaction and drawing the distinction in the civil and criminal liability, must not proceed to raise a presumption of guilt in terms of section 14(d) of the NAB Ordinance. This Court in Khan Asfandyar Wali v. Federation of Pakistan PLD 2001 SC 607, observed as under:-*

*"229. Viewed in the above context, although shifting of burden of proof on an accused in terms of section 9(a)(vi)(vii) read with section 14(d) may not be bad in law in its present form, but would certainly be counter productive in relation to the principle of good governance. If decision making level officials responsible for issuing order, S.R.Os. etc., are not protected for performing their official acts in good faith, the public servants and all such officers at the level of decision making would be 'reluctant to take decisions and/or avoid or prolong the same on one pretext or another which would ultimately lead to paralysis of State-machinery. Such a course cannot be countenanced by this Court."*

*15. The presumption of guilt under section 14(d) of the NAB Ordinance, in respect of an offence can only be raised after prosecution has established preliminary facts and succeeded in making out prima facie a reasonable case to charge an accused for an offence under section 9(a)(vi) of the Ordinance. Therefore, notwithstanding the provision of section 14(d) of NAB Ordinance, this is settled law that unless the prosecution to the satisfaction of Court succeeds in discharging the initial burden of proving the allegation, no presumption of guilt can be raised to shift burden of disproving the allegation to the accused.*

28. Apart from above, it has been brought on record that the original owners Mariam and Fatima were alive and Investigation Officer recorded their 161 CrPC statements. The



alleged sellers stated that they did not sell their lands either to the Society or to the above named Wife of the Appellant Shakil Sultan. The above Witnesses were important for the just decision of the case but they were not called by the Prosecution for recording of evidence, raising a presumption that had they appeared before the Trial Court, they would not have deposed in favour of prosecution, as envisaged in Article 129(g) of the Qanun e Shahadat Order 1984; this view finds support from the dicta laid down by Honourable Supreme Court in the case of **Sher Ayaz Khan alias Sheraz Khana Versus Gul Najeeb Khan** reported in **2025 SCMR 380**, wherein it has been held as under:

**“In this view of the matter, the best available evidence has been withheld by the Respondent. Therefore, the adverse presumption as enunciated under article 129(g) of Qanun e Shahadat, 1984 would arise against the Respondent that had the said witness appeared in the witness box, he would not have supported the stance of the Respondent.”**

.29. The careful examination of the record reveals that there are Two Entries in the Record of Rights regarding Survey numbers 68, 69, and others; one in favour of Muhammad Hashim and the other in favour of Morio family. The Appellant Shakil Sultan has purchased land from both the Parties through registered Sale Deed, while the society has purchased land through oral statement from Morio family. The Parties are under litigation before the Competent Civil Court for declaration of their rights. It appears that Appellant Shakil Sultan has succeeded in his Cases before the Revenue Court, a quasi-judicial forum to adjudicate the matters involving record of rights of lands. Such Orders passed by the Revenue Court are subject to the ratification by the Civil Court. Since it has come on record that about 5 suits are pending between the Parties, therefore it will not be proper to render deliberations on the said issue as it might prejudice the case of either side.

30. The Learned Special Prosecutor NAB and Counsel for the complainant painstakingly tried to convince this Court that loss to the Society was a loss to the public exchequer, but failed to support their version through any statutory backing.

31. There is no cavil to the proposition that it is the duty of the Prosecution to prove its case beyond shadow of reasonable doubt, and doubt if any appears in the prosecution case, it ought to be resolved in favour of the accused. This view finds support from the dicta laid down by the Honourable Supreme Court in the case of *Subha Sadiq Versus the State* reported in 2024 SCMR 1839, *inter alia*, ruling\_

***“If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up evidence to procure conviction then the court can come forward for the rescue of accused persons.”***

In the case in hand the prosecution has failed to discharge its initial burden of proving the charge against the accused / convicts [Appellants] beyond shadow of the doubt. In view of the above discussion, in our view, no case was made out, as envisaged in Section 9 read with the Schedule of the Ordinance; and investigation in the matter went into a wrong premise and Learned Trial Court did not attend this legal issue which was the moot point to resolve the entire controversy. The Prosecution failed to prove its case regarding the misuse of authority, corruption and corrupt practices against the Appellants beyond reasonable doubt, the benefit of which ought to go in favour of the Appellants.

32. In the present case from the facts and circumstance discussed herein above it gives a clear picture that the prosecution version suffers from major discrepancies which creates serious doubt in the prosecution case. The prosecution failed to establish the actus rea or mens rea on the part of convict Muhammad Salik Nukhrich, particularly when his actions were not over turned by the Higher Revenue Forum in the quasi-judicial proceedings. There is no allegation of personal gains or rendering gains to the other side. The case against convict Shakil Sultan has also not been established in peculiar circumstances when he was acquitted of the charge of/in Reference No. 02/2010 for the alleged cheating of Public at Large.

33. Before parting with the Judgment, it is observed that the National Accountability Bureau has been established to oversee mega corruption scams and the matter in hand appears to be a dispute between private parties and question of loss to public exchequer is not involved. The NAB should not have entertained the complaint filed by the Society for the reasons that a FIR already stood registered against the accused persons in the Anti- Corruption Establishment on the Complaint of the Society. The Parties are litigating over title and such matters are sub judice before the competent forum.

34. For what has been discussed herein above the prosecution has failed to prove the guilt of the convicts/ Appellants beyond reasonable doubt and Learned Trial Court has

failed to appreciate the evidence in its true perspective which occasioned injustice. Therefore, the Appeal No. 18 of 2022 filed by Mohammed Salik Nukrich and Appeal No .19 of 2022 filed by Shakil Sultan are accepted. The Judgment dated 06.07.2022 passed by the Learned Accountability Court No IV Karachi in Reference No 03/2011 titled The State Versus Munshi Sheruddin Lashari and others is set aside. The convicts Muhammad Salik Nukrich and Shakeel Sultan are acquitted of the charge. They shall be released forthwith if not required in any other case.

JUDGE

JUDGE