

**IN THE COURT OF MR. MUHAMMAD BASHIR, JUDGE  
ACCOUNTABILITY COURT-I, ISLAMABAD.**

**Reference No.20/2017 (Avenfield  
Apartments N.o 16, 16A, 17,  
17A).**

**STATE**

**VS.**

1. **Mian Muhammad Nawaz Shahrif** son of **Mian Muhammad Sharif**, aged about 69 years, resident of Shamim Farms, Jati Umrah, Raiwind Road, Lahore.
2. **Maryam Nawaz (Maryam Safdar) Daughter of Mian Muhammad Nawaz Sharif**, aged about 43 years, resident of Shamim Farms, Jati Umrah, Raiwind Road, Lahore.
3. **Captain (Retd.) Muhammad Safdar**, son of Muhammad Ishaq, aged about 54 years, resident of Shamim Farms, Jati Umrah, Raiwind Road, Lahore.
4. **Hussain Nawaz Sharif s/o Mian Muhammad Nawaz Sharif**, aged about 45 years, resident of Shamim Farms, Jati Umrah, Raiwind Road, Lahore (absconding accused).
5. **Hassan Nawaz Sharif s/o Mian Muhammad Nawaz Sharif**, aged about 41 years, resident of Shamim Farms, Jati Umrah, Raiwind Road, Lahore (absconding accused).

**JUDGEMENT.**

**THE SUBMISSION OF LEARNED PROSECUTOR ARE GIVEN BELOW:**

Brief facts of the case are that interim reference u/s 18 (g) read with section 24 (d) of NAO, 1999 is filed against five accused described in title above. Two of them namely Hussain Nawaz and Hassan Nawaz did not appear before this court despite summonses, warrants and ultimately proclamation issued u/s 87/88 Cr.P.C. After completion of requisite processes, they were declared as absconding / proclaimed offender in this case.

2. Allegedly, documents PANAMA Papers were leaked from the record of PANAMA based Law Firm namely Mossack Fonseca wherein members of the then First family of Pakistan were 01 to 05 accused namely Mian Muhammad Nawaz Sharif, Maryam Safdar (Nawaz), Capt Retd. Muhammad Safdar, Hussain Nawaz Sharif, and Hussain Nawaz Sharif were alleged to have connection with offshore companies. The matter was taken up by Hon'ble Supreme Court of Pakistan. During the proceedings before Hon'ble Supreme Court of Pakistan, the accused persons introduced their stances and submitted letters alongwith other documents.

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3. Hon'ble Supreme Court of Pakistan framed questions and constituted Joint Investigation Team (JIT) to investigate the case and collect evidence in that regard.

4. JIT was given all the powers relating to investigation including those available under the Code of Criminal Procedure 1898, National Accountability Ordinance 1999 and Federal Investigation Agency Act, 1975 vide order dated 05-05-2017 passed in CMA No. 2939 of 2017 in the Constitution Petition No. 29/2016 etc.

5. JIT conducted investigation and submitted its investigation report before Hon'ble Supreme Court of Pakistan in shape of ten plus two volumes.

6. The Hon'ble Supreme Court of Pakistan directed NAB to prepare and file following References within six weeks against the accused persons related to Avenfield Flats bearing no. 16, 16A, 17, 17A situate at Avenfield House, Park Lane, London on the basis of material collected and referred to by the JIT in its report and such other material as may be available with the Federal Investigating Agency (FIA) and NAB having any nexus with the assets or which may subsequently become available including material that may come before it pursuant to the mutual legal assistance (MLA) requests sent by the JIT to different jurisdictions. a. Reference against Mian Muhammad Nawaz Sharif (Respondent No. 1), Maryam Nawaz Sharif (Maryam Safdar) (Respondent No. 6), Hussain Nawaz Sharif (Respondent No. 7), Hassan Nawaz Sharif (Respondent No. 8) and Capt (Retd) Muhammad Safdar (Respondent No. 9) relating to the Avenfield Properties (Flats No. 16, 16-A, 17, and 17-A, Avenfield House, Park Lane, London, United Kingdom). In preparing and filing this Reference, the NAB shall also consider the material already collected during the course of investigations conducted earlier.

b. ....

c. ....

d. ....

e. NAB shall also include in the proceedings all other persons including Sheikh Saeed, Musa Ghani, Kashif Masood Qazi, Javed Kiani and Saeed Ahmed, who have any direct or indirect nexus or connection with the actions of respondent no. 1,6,7,8 & 10 leading to acquisition of assets and funds beyond their known sources of income.

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f. NAB may file supplementary reference(s) if and when any other asset which is not prima facie reasonably accounted for is discovered.

g. ....

h. In case, the Accountability court finds any deed, document or affidavit filed by or on behalf of the respondent(s) for any other person to be fake, false, forged or fabricated, it shall take appropriate action against the concerned person(s) in accordance with law.

7. Previously investigation was authorized against the accused no 1 and others on the same allegations in year 2000 but fresh investigation was authorized after above directions of the Hon'ble Supreme Court of Pakistan vide letter dated 03-08-2017 and Mr. Muhammad Imran Assistant Director NAB Lahore was authorized in this regard.

8. It is further alleged that accused person(s) were duly summoned during the investigation but they took the plea that a review petition has been filed in the Hon'ble Supreme Court of Pakistan against its order dated 28-07-2017 and sought postponement of NAB investigation till outcome of the review petition.

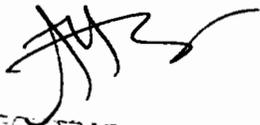
9. Interim reference dated 07-09-2017 has been filed. While leveling allegations against the accused that they have committed corruption and corrupt practices as defined under sections 9(a)(iv)(v) & (xii) and offence at serial no. 2 of the schedule which are punishable under sections 10 of National Accountability Ordinance, 1999 read with schedule attached thereto.

10. This court issued processes against accused in accordance with law. Two accused namely Hussain Nawaz and Hassan Nawaz did not turn up and they were declared as proclaimed offenders however, copies of reference all documents were supplied to the remaining three accused who appeared before the court.

11. A joint charge for three accused was framed. Subsequently it was amended while accepting the application filed by accused no. 2 & 3. The relevant portion of last charge framed against the accused is reproduced below.

"You accused Mian Muhammad Nawaz Sharif were holder of public office. You and your family dependants are owner in possession of Avenfield Mayfair Properties namely Apartment No. 16,16A, 17 & 17A Park Lane London and those flats were in possession of you and your family since 1993. Source of investment for purchase of said properties through offshore companies M/s Nielsen Enterprises Ltd and M/s Nescoll Ltd which owned the said Avenfield

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Apartment is not justified and bearer shares of said companies were crystallized into the said property.

You accused Mian Muhammad Nawaz Sharif, Maryam Nawaz and absconding accused Hussain Nawaz, and Hassan Nawaz failed to justify legal bonafide sources means for purchase of said property.

You accused Maryam Nawaz was beneficial owner of above mentioned companies which owned Avenfield Properties. A false, fabricated trust deed dated 02-02-2006 in Calibri Font was filed whereas no such Font was available for such purposes of that deed in that year. That deed was signed by you accused Maryam Nawaz as well as you co-accused Capt Retd. Muhammad Safdar, signature of you accused Capt (Retd) Muhammad Safdar was as a witness. By filing such declaration, you both allegedly tried to mislead the investigation agency.

You Maryam Nawaz Sharif accused consciously concealed the actual facts regarding history of ownership of the said assets and the companies and there is failure on part of you all accused including absconding accused to account for sources means availability of fund and its lawful transfer abroad. Absconding accused had also no source of income at relevant time.

Thereby you accused Mian Muhammad Nawaz Sharif, Maryam Nawaz Sharif and Capt. (Retd.) Muhammad Safdar committed offences as defined under section 9 (a)(iv)(v)&(xii) as per details given above and offences cited at serial No. 02 of the schedule and punishable under section 10 of NAO 1999 read with schedule attached thereto.

12. The order in respect of the offence cited at serial no. 3(a) of schedule attached to NAO 1999 was made at such that this court shall take cognizance of that offence cited at 3(a) of schedule to NAO 1999 on pronouncement of judgment.

13. The accused facing trial pleaded not guilty to the charge.

14. Prosecution produced as many as 08 witnesses when supplementary reference dated 18-01-2018 was filed on 22-01-2018.

15. Statements of total 18 witnesses have been recorded in this case. Prosecution closed its evidence as concluded on 08-05-2018.

16. The statements of the accused facing trial (three in number) were recorded u/s 342 Cr.P.C. They opted not to produce defence witnesses. They also not opted to be examined u/s 340(2) CrPC.

17. I have heard the arguments and perused the record.

18. A resume of prosecution evidence is given below:-

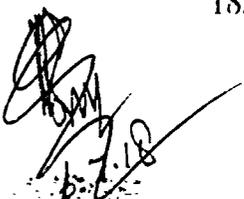
PW-1 Mst. Sidra Mansoor Joint Registrar of Companies Company Registration Office Lahore SECP deposed that in compliance with the NAB letter dated 15-08-2017 addressed to Chairman SECP, she

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appeared before I.O NAB Lahore on 23<sup>rd</sup> August 2017 and produced the certified copies of record. The record was seized by the I.O through a seizure memo which was signed and thumb impressed by her. Her signature & thumb impression thereon are Ex.PW-1/1 (pg: 62). The documents produced by her are:-

- i. Covering letter dated 18-08-2017 alongwith report of annual audit accounts for the year 2000-2005 regarding long term loan. Same is Ex.PW-1 2 (pg 63 and pg 64). Folder No. I.
- ii. Certified copies of annual audited accounts of Hudaybia Papers Mills Ltd for the year ended on 30-06-2000. which are Ex.PW-1/3 (pg 65 to pg 72).
- iii. Certified copies of annual audited accounts of Hudaybia Papers Mills Ltd for the year ended on 30-06-2001. which are Ex.PW-1/4. (pg 76 to pg 82).
- iv. Certified copies of annual audited accounts of Hudaybia Papers Mills Ltd for the year ended on 30-06-2002. which are Ex.PW-1/5. (pg 83 to pg 89).
- v. Certified copies of annual audited accounts of Hudaybia Papers Mills Ltd for the year ended on 30-06-2003. which are Ex.PW-1/6. (pg 90 to pg 96).
- vi. Certified copies of annual audited accounts of Hudaybia Papers Mills Ltd for the year ended on 30-06-2004. which are Ex.PW-1/7. (pg 97 to pg 103).
- vii. Certified copies of annual audited accounts of Hudaybia Papers Mills Ltd for the year ended on 30-06-2005. which are Ex.PW-1/8. (pg 104 to pg 110).

She has brought original record. again said copies of the above mentioned record as furnished by the company for perusal of this court (seen returned). A long term loan was amounting to Rs. 494,960,000 -.Status of the long term loan remained the same from 30-06-2000 to 30.06.2005. I.O also recorded her statement u/s 161 Cr.P.C.

PW-2 Muhammad Rasheed S o Muhammad Maskeen Court Clerk Orr Dignam & Company Marina Heights, 2<sup>nd</sup> floor 109. East Jinnah Avenue Blue Area Islamabad deposed that a letter dated 05-09-2017 addressed to Mr. Zaheer Riaz Sr. Partner Orr-Dignam & Co was

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*[Handwritten signature]*  
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received from NAB Lahore. Some documents were requisitioned through said letter. He went to NAB office Lahore with documents on 06-09-2017. Mr. Muhammad Imran Dogar I.O met to him in the NAB Lahore. He handed over the documents wrapped in an envelope. I.O opened that envelope where in following documents were available.

(i). A covering letter dated 05-09-2017 which is Exh PW 02/1 (at page 112 Vol-1) (under objection that the witness is neither executant nor scribe of the document).

(ii). Photocopies of order of Queen's bench, comprising on four pages available as pages 113 to 116 of the reference which is mark A (as original or certified copies of the same are not with the witness).

(iii). Photocopies of Affidavit of Mr. Mazhar Raza Khan Bangash available on the reference as pages 117 to 122 which is mark B (not exhibited due to non availability of original or certified copies of the same with the witness).

The above said documents were taken into possession by Muhammad Imran Dogar I.O through a seizure memo whereon, his signature and thumb impression were obtained in the presence of witnesses. His signature and thumb impression are Exh.PW-02/2. I.O recorded his statement u/s 161 Cr PC.

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PW-3 Mr. Mazhar Raza Khan Bangash, Advocate Riia Barker Gillette Advocates R o H.No. 68, Nazim-ud-Din Road, Sector F-8/4, Islamabad deposed that on 30-08-2017 he appeared before I.O Imran in NAB Lahore. I.O showed him photocopies of certain documents which included photocopies of Order of Queen's bench of 1999, Affidavit of service, and statement of Mr. Shezi Nackvi. The above said affidavit of service was relating to him. He owned the affidavit of service which was photocopy however, it was not original. He was serving in Orr-Dignam & Co. He submitted that affidavit of service to his company however, he do not know what further process was adopted by his company employer. The affidavit was prepared by him, and photocopies available at pages 117 to 122 (mark B) are evidently the same. The original of the same is lying with the Orr-Dignam & Co.

Same may be requisitioned then. he will be in a position to confirm that photocopies are of the same. I.O recorded his statement u/s 161 Cr.P.C.

PW-4 Then Mr. Mukhtar Ahmad Sub Inspector Police Station NAB. Lahore deposed that he was entrusted with five call up notices given by Imran Afzal I.O of the case reference No. 20.2017 and he went to Shamim Farms Raiwand Road, Jati Umrah Lahore. The call up notices were for accused Mian Muhammad Nawaz Sharif, Capt Safdar, Bibi Maryam, Hussain Nawaz and Hassan Nawaz. He met with one Ata Ullah who was security officer of Jati Umrah, who received three call up notices of accused Mian Muhammad Nawaz Sharif, Maryam Safdar and Capt Muhammad Safdar while two call up notices of Mr. Hassan Nawaz Sharif and Hussain Nawaz Sharif were returned to him by saying that they were residing abroad. (Learned defence counsel has raised objection that this portion of statement is hearsay. (Overruled, reasoning is given herein discussion). He return the two call up notices to I.O. I.O also recorded his statement u/s 161 Cr.P.C.

PW-5 Muhammad Adeel Akhtar, Assistant Director NAB, Lahore deposed that he was marginal witness of seizure memos available at pg 62 and pg 111 and his signature thereon is Ex.PW-5/1 (pg 62) & Ex.PW-5/2 (pg 111).

He further stated that on 23<sup>rd</sup> August, 2017, joined the investigation. Muhammad Imran was Investigating Officer in a case against Mian Muhammad Nawaz Sharif, Sidra Mansur Joint Registrar of the company appeared and provided certified copies regarding audit accounts of Hudaibiya Paper Mills case. The seizure memo available at pg 62 was prepared in his presence and it was signed by said Sidra Mansur and I.O. He also signed the same. The record produced, was comprising of 48 pages. His statement was recorded on 23-08-2017.

On 06<sup>th</sup> September, 2017 Muhammad Rasheed Court Clerk of Orr Dignam produced the record before I.O Muhammad Imran. The record included affidavit High Court Order of Justice Queen's Bench and a covering letter. I.O prepared the seizure memo and obtained his signature thereon. That I.O also obtained signature of Muhammad Rasheed and others. The record was consisting of 11 pages. His statement u/s 161 Cr.P.C was also recorded on 06<sup>th</sup> September, 2017.

PW-6 Mr. Shakeel Anjum Nagra, Additional Director (Coordination Operations Divisions NAB Head Quarter), Islamabad deposed that on

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10.08.2017, an application was written by Additional Director Coordination Prosecution Wing, addressed to Registrar Hon'ble Supreme Court of Pakistan for provision of certified, attested record of JIT (Joint Investigation Team). In that application a request was made in respect of volume I to IX. Another application was written for provision of attested certified copies of volume- X on 15.08.2017. On 17.08.2017, Assistant Registrar Mr. Muhammad Mujahid, Hon'ble Supreme Court of Pakistan gave three sets of attested copies of volume I to XI of JIT Report and four sets of attested copies of Volume X. On the same day i.e. 17.08.2017, he handed over one set of attested copies of Volume I to X to NAB Lahore through a covering letter. On 25.08.2017, he appeared before I.O of NAB Lahore and recorded his statement there.

PW-7 Statement of Zavar Manzoor, Assistant Director NAB Lahore deposed that on 23<sup>rd</sup> August, 2017 he joined investigation being carried out against accused Mian Muhammad Nawaz Sharif before I.O Muhammad Imran, when Mst. Sidra Mansoor Joint Registrar of Companies appeared and produced covering letter of two pages, 46 pages of annual auditing account of different years. Those documents were seized by the I.O in his presence and he also signed the seizure memo as its witness. His signature thereon is Ex.PW-7/1 (pg 62 Folder 1). I.O also recorded his statement.

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PW-8 Mr. Umar Daraz s/o Ghulam Rasool caste Gondal presently posted as Sub Inspector Police Station NAB Lahore deposed that on 16.08.2017, he went to House No. 179-H Model Town Lahore, which is residence of Tariq Shafi with purpose to serve call up notices, where he met with one Abdul Latif Security Guard and he inquired from him about the Tariq Shafi. Security Guard told him that the said Tariq Shafi alongwith his family had gone abroad since 20.07.2017. Security Guard Latif refused to receive the call up notices hence, he brought call up notices without any service.

On the same day i.e 16.08.2017, he went to House No. 7-H Gulberg III, Lahore which was residence of one Musa Ghani where, Amir Head Constable met to him. He asked HC about the Musa Ghani, he told him that he had been deputed there since 2013 as

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Incharge Police Guard. The person of name Musa Ghani had not been residing therein and that the above said residence was belonging to Muhammad Ishaq Dar Federal Finance Minister, and said Muhammad Ishaq Dar had been residing in Islamabad. (learned defence Counsel objected to it that this portion is hearsay and not admissible in evidence. (Overruled, reasoning is given herein discussion)

His statement u/s 161 Cr.P.C was recorded by the I.O on the same day.

On 06-09-2017, he appeared before I.O namely Muhammad Imran during investigation against accused Mian Muhammad Nawaz Sharif, when Muhammad Rasheed Clerk Orr Dignam appeared and he produced documents including covering letter comprising on 01 page order of Queen's Bench comprising on 04 pages and affidavit of Mr. Mazhar Raza Khan Bangesh comprising on 06 pages. Those documents were taken into possession vide a seizure memo, which was signed by him as a witness. His signature thereon is Ex.PW-7/2 (pg 111). His statement was recorded by the I.O u/s 161 Cr.P.C.

PW-9 Then Mr. Muhammad Abdul Wahid Khan, Director General, Directorate of Electronic Media & Publications, Islamabad Benevolent Fund Building, Zero Point, Islamabad deposed that on 05.01.2018, two officers of the NAB came to him namely Muhammad Imran and Muhammad Nazeer Sultan. They came with all things which were already sent to them in response to their letters. They showed him all the said things which were:-

- i. Forwarding letter dated 26.12.2017, through which CD of interview of Hassan Nawaz in shape of CD received from Express News, which is Ex.PW-9/1 (pg 21, Supplementary reference). (Under objection that the witness is not the scribe nor the executant of said document nor the addressee of the same, so inadmissible in evidence). (Overruled, reasoning is given herein discussion).
- ii. Letter dated 28.12.2017, vide which transcription of CD of interview in program KALTAK, that letter is Ex.PW-9/2 (pg 22), it bears his signature.

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- iii. Forwarding letter dated 29.12.2017 vide which CDs and transcripts of program Capital Talk and Lekin in which program interviews of Hussain Nawaz and Maryam Nawaz Sharif were conducted respectively, were sent to NAB Lahore. That letter is Ex.PW-9/3 (pg 23).
- iv. Forwarding letter dated 30.12.2017, vide which two CDs containing address to Nation and addressed to National Assembly of Muhammad Nawaz Sharif and two transcripts were sent to NAB Lahore, that letter is Ex.PW-9/4 (pg 24).
- v. Letter dated 28.12.2017, of my Director Asim Khichi which was a reminder sent to Geo and PTV for provision of video clips and transcriptions. That letter is Ex.PW-9/5 (pg 25). (Under objection that the witness is not the scribe nor the executant of said document nor the addressee of the same, so inadmissible in evidence). (Overruled, reasoning is given herein discussion).
- vi. Letter dated 27.12.2017, addressed to External Publicity Wing sent to Mr. Harron Ur Rasheed Bureau BBC by my Director Muhammad Asim Khichi, that letter is Ex.PW-9/6 (pg 26). (Under objection that the witness is not the scribe nor the executant of said document nor the addressee of the same, so inadmissible in evidence). (Overruled, reasoning is given herein discussion).
- vii. Transcription of address of Nawaz Sharif to Nation comprising on four pages, which is Ex.PW-9/7 (pg 27 to pg 30).
- viii. Transcription of address of Muhammad Nawaz Sharif in National Assembly, which is Ex.PW-9/8 (pg 31 to pg 36). (under objection that it pertains of address of Muhammad Nawaz Sharif in National Assembly therefore inadmissible in evidence by virtue of Article 66 of the Constitution of Islamic Republic of Pakistan. (Overruled, reasoning is given herein discussion).

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- ix. Transcript of interview of Hussain Nawaz Sharif in program Kal Tak in express news comprising on 22 pages. is Ex.PW-9/9 (pg 37 to pg 58). (Under objection that Hussain Nawaz Sharif is neither a witness in this case nor he is accused present before this court in the trial). (Learned prosecutor has contended that Hussain Nawaz Sharif is absconding accused and no objection can be raised by defence counsel). (Overruled. reasoning is given herein discussion)
- x. CD of program Kal Tak mentioned above is Ex.PW-9/10. while CD pertaining to address to Nation is Ex.PW-9/11. and CD of address to the National Assembly is Ex.PW-9/12. (Under objection that this CD is inadmissible in evidence by virtue of Article 66 of the Constitution of Islamic Republic of Pakistan) (Learned prosecutor has contended that it was address to Nation and no privilege under said article to that document and admissible in evidence). (Overruled. reasoning is given herein discussion).

All the said material was taken into possession by I.O Muhammad Imran Deputy Director NAB Lahore. in presence of Muhammad Nazeer Sultan and he signed a seizure memo. his signature thereon is Ex.PW-9/13 (pg 20 Supplementary reference) and I.O also recorded his statement.

PW-10 Then Syed Mubashar Taquir Shah. Director External Publicity Wings Information & Broadcasting Division. Ministry of Information & Broadcasting. National History & Literary Heritage. Benevolent Fund. Zero Point. Islamabad deposed that on 05.01.2018. he joined the investigation relating to Avenfield. Investigating officer came to his office at Benevolent Fund. Zero point. Islamabad. He produced:-

- i. Acknowledgement letter issued by him. issued in the name of I.O. same is Ex.PW-10/1 (pg 60).
- ii. Letter of the NAB. which is Ex.PW-10/2 (pg 61).  
(Under objection).

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- iii. E-mail sent by Harron Rasheed for copy of interview in hard talk. same is Ex.PW-10:3 (pg 62). (Under objection).
- iv. CD and transcript of interview of Hassan Nawaz with Tim Sebastian in Hard Talk. same is Ex.PW-10 4, while transcript of the interview is Ex.PW-10/5 (pg 63 to pg 74).

A seizure memo regarding documents and articles mentioned above was prepared by I.O. same was signed by him. His signature thereon is Ex.PW-10 6 (pg 59 Supplementary reference).

PW-11 Then Mr. Waqas Ahmed, Senior Coordinator, GEO News, Islamabad Office, 40-Jang Building, Fazal-e-Huq Road, Blue Area, Islamabad deposed that on 08.01.2018, a letter was received from NAB wherein provision of information about two programs Capital Talk, and Lekin. That on 10.01.2018, he joined the investigation he produced verified transcripts of said programs one DVD and a covering letter to I.O. A seizure memo was prepared which was signed by him in presence of witness. His signature on that seizure memo is Ex.PW-11 1 (pg 75). Covering letter is Ex.PW-11/2 (pg 76). Transcript of Capital Talk comprising on 13 pages, which is Ex.PW-11 3 (pg 77 to pg 89), while transcript of program Lekin comprising on two pages is Ex.PW-11 4 (pg 90 and pg 91), while DVD having both the programs is Ex.PW-11 5. I.O recorded his statement.

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PW-12 Mr. Zavar Manzoor, Assistant Director, NAB Lahore. Previously statement in interim reference and after that his was recorded in supplementary reference, deposed that on 10.01.2018 he joined the investigation, in his presence Waqas Ahmad Senior coordinator GEO News Islamabad appeared and submitted record. That record was taken into possession through a seizure memo. That seizure memo was signed by him as a witness. His signature thereon is Ex.PW-12 1 (pg 75 Supplementary reference). I.O recorded his statement on the same date.

PW-13 Mr. Muhammad Sultan Nazir, Deputy Director, NAB Lahore deposed that on 05.01.2018, Abdul Wahid Khan DG Directorate Electronic Media & Publication produced letters, transcriptions, three CDs. I.O took into possession those documents as mentioned in

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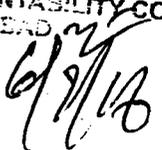
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seizure memo in his presence. He has seen his signature on that seizure memo, same is correct and is Ex.PW-13/1 (pg 20). I.O recorded his statement.

Similarly, on same date i.e. 05.01.2018 I.O took into possession record, three letters, transcription comprising on 12 pages and one CD produced by Syed Mubassar Tauqeer Shah Director External Publicity Wing, vide a seizure memo which was signed by him as a witness. His signature thereon is Ex.PW-13 2 (pg 59). I.O recorded his statement.

PW-14 Mr. Robert William Radley, Forensic Handwriting Document Examination Expert, Principal of Radley Forensic Radley Laboratory deposed that he has been working in this field since 1976. His services were engaged by Quist Solicitors. Initially he was contacted on 29-06-2017 and his services were effectively engaged on 30.06.2017. He received copies of two Trust declarations from Quist Solicitors on 30.06.2017. He received those copies for the comparison of the documents and also to consider the apparently altered dates under the signatures of Mr. Jeremy Freeman. He prepared the report on 4<sup>th</sup> July 2017 after examination of these documents. He has seen his first original report dated 4<sup>th</sup> July 2017, copy of which is Ex.PW-14/1 (pg 93 to pg 121). (Witness also recognizes his signature thereon). His finding in respect of said two declarations was

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From the comparison of two declarations, second and third page of both the declarations were identical. As a result one set of these pages were seen to be a copy of the other or alternatively they are both copies of further document. In other words they were not separately executed documents but the second and third pages were reproduced in both the declarations. From the copies, he was unable to say, which was not possible to determine, which one the two copies is a true copy of original and which one has the two pages substituted. On the second and third pages, the date against the signature of Solicitor, last digit of the year was altered. The alteration of page shows that it was 2006 but six appears that the last digit was over written then 4. That can apply for the second and third pages of both the documents.


On 6<sup>th</sup> July 2017, he also received two sets in his laboratory containing in sealed envelope, what he refer to certified declarations. These were certified by Solicitor. Each documents had a cover pages, which certified the contents as the true and exact copy of the original and that was certified by Michal Lindsley Notary Public. The two documents were the declarations of trust and copy of Nescoll and Neilsen and second declaration was certified Coomber declaration. These documents were bound together with a green corner piece. He has seen these said two certified copies of declarations of trust relating to Nescoll and Neilsen and certified copy of Coomber declaration of trust (the said declaration were shown through video link by zooming). Photocopies of declarations of trust of Nescoll and Neilsen are Ex.PW-14 2 (pg 123 to 127) while photocopies of declaration of trust pertaining to Coomber are Ex.PW-14/3(pg 128 to pg 131) as he has also annexed those copies with his report. He also prepared his report in that regard, on 8<sup>th</sup> July, 2017. Original report is shown to him, he recognize it as his report, attested copy of which available on reference is Ex.PW-14 4 (pg 137 to pg 147 including other exhibits PW-14 2 and Ex.PW-14 3 as annexure are already exhibited). He also recognize his signature on original report shown to him.

He compare certified copies with a copies previously examined by him and find that certified Nescoll and Neilsen declaration corresponds with the copies previously examined, however, with respect to certified copy to Coomber declaration, the certified copies contain, as supposed to 03 copies of the pages, and the second copy of the certified declaration of Coomber is obviously different from signature page on the certified declaration is a different page to that which appears in the copy Coomber declaration previously presented. Both of the certified copies were bound together with a green corner piece through which brass eyelets had been appended. These are illustrated from colour photographs in his report. Comments on binding of the pages 4, 5 & 6. The brass eyelet has been effectively undone, which damaged the eyelet and some portions of which was broken off. There is evident on reverse of both the documents that the eyelets were initially binding properly and were splayed out as shown on the illustration at pg 04 of his report. There is also evident on

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reverse where some form of tools was used to lever up the splayed end of the eyelet. Both the documents currently containing a staple as illustrated in pg 4 & 5. They can also be seen on both of these documents. it have been driven through the corner of these documents and then having been removed. There are two staples holes in declaration of Coomber and four sets staples holes in the Nescoll and Nielsen declaration. He pointed out at paragraph No. 24 & 25 of his report (pg 06 of the report), he pointed out vacant staple holes because as forensic examiner he was not allowed to interfere with the documents of potential. He did not remove the bindings, not even the corners. He potentially issued could be whether or not the documents sandwiched by the corner also bears the staples holes. That could be relevant (and obviously if the court wishes, they can unbind the documents). It seems that the corner piece has been undone on each document and there is clearly the eyelet has been removed and documents have been substituted on page 05 & 06 of his report.

He made general examination of the document presented. He looked to say copies of the original in this case, they are colour copies of good qualities. He also considered the general lay out of the documents and the type font of the documents. The general appearance of the documents typing is amateur and type font is considered and identified what is known as Calibri. This type font is developed primarily for the VISTA Windows program. This was not commercially available until the 31.01.2007. Infact the VISTA use this font as its default font. In other words one if uses VISTA machine the computer would automatically use Calibri unless the Font is actually changed. He summarized his opinion as such that the documents in question commercially have to be prepared after 31<sup>st</sup> July 2007. After completion of the second reports copies of those were returned alongwith the questioned documents to the representative who attended the office on 9<sup>th</sup> July 2017. Two gentlemen, who he assumed, were responsible for bringing the documents and one gentlemen from Quist Solicitors. Two copies of first report and second report alongwith the question documents were sealed in envelopes and handed over the report to these gentlemen. His statement was recorded on 15<sup>th</sup> December 2017.

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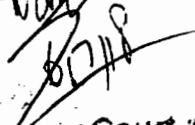
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PW-15 Mr. Akhtar Riaz Raja Solicitor. Quist Solicitors. London England Principal Quist Solicitors at 12<sup>th</sup> floor the broadgate Primrose Street London EC2A. 2EW UK deposed that he was Solicitor. The law firm Quist Solicitors was established in 1994. He was engaged by JIT on 12<sup>th</sup> May 2017. He was engaged by JIT to provide professional legal services in relation with the Supreme Court proceedings the various petitions brought by various parties against Former Prime Minister and his family. After he was engaged, he received, copies of Bundles of papers submitted in the Supreme Court proceedings in order to carry out my instructions when he reviewed the papers he discovered a letter dated 05.01.2017 from an English Firm of Solicitors Freeman Box. That letter was written by a Solicitor called Jeremy Freeman. MR. Freeman referred to two trust declaration documents the first trust declaration related to two companies namely Nescoll and Nielsen and second trust declaration related to a company called Coomber Group Inc. Mr Freeman stated that Mr. Hussain Nawaz Sharif attended his offices bearing those declarations and that he signed them and they were witnessed by Mr. Freeman on 04.02.2006. (At this stage learned defence counsel raised an objection that this portion is hearsay as Mr. Freeman is not witness in this case. (Overruled, reasoning is given herein discussion). He confirmed the letter that shown to him is the same letter. Photocopy of which is Ex.PW-15 1 (pg 106 of CMA 432). (Attested copy is also shown which is placed on file, exhibited under objection that attested copy is in fact is not the copy of original and it is also not certified lying with article 87 Qanoon-e-Shahadat. (Overruled, reasoning is given herein discussion). He also found copies of both the declarations in bundles of papers. He looked at the documents carefully and also at the same time JIT were inspecting the documents too. We discovered that there were numerous irregularities. These documents appeared to be forgery. (Learned-Defence Counsel has raised the objection that his opinion is not admissible in evidence). The forgery and irregularities in the documents were so many that they appeared to be a Frankenstein version. Having discovered these Frankenstein forgeries, the JIT instructed him to proceed and appoint and search for an expert. These forgeries were apparent to the lay eye and they deserved expert

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examination also. With regard to the first declaration, on behalf of JIT he wrote to Mr. Jeremy Freeman of Freeman Box on 27<sup>th</sup> June 2017. Copy of his that letter which is shown to him today through video link is actually copy of his letter but his letter had the letter of Jeremy Freeman attached to it, and also the two declarations of trust were attached to the same. (First annexure was 05<sup>th</sup> January 2017 letter which is already exhibited as Ex.PW-15-1. (Overruled, reasoning is given herein discussion). The documents at pg 106 to 111 seems to be appeared as the copies of the same as he annexed the same with his letter. The letter Ex.PW-15-1 was sent through e-mail. He did not receive a reply and he sent a chaser on the very next day by hand. His chaser has a full copy of email letter dated 27.06.2017. On the next day i.e 29.06.2017 he received an email reply from Jeremy Freeman from Freeman Box. In that letter Mr. Freeman stated that Mr. Hussain Nawaz Sharif attended his office with the original documents at that those documents the trust declaration were the same as the one attached to his one 27.06.2017 letter. As copy of which is at pg 89 of Volume 4, which is Ex.PW-15-2. In that letter Mr. Jeremy Freeman confirmed the signature of Mr. Hussain Nawaz Sharif and Mr. Waqar as witnessed the signatures. He also confirmed that contents of letter 05.01.2017 were correct. Around that time 29.06.2017 he also upon the authorization and direction of JIT approached the expert Mr. Robert Radley. He had recommended Mr. Radley to JIT. He began making inquiries as to his suitability to act as witness as an expert. Those communication continued into the next date i.e 30.06.2017. He provided Mr. Radley with the copies of two trust declarations the Nielsen and Nescoll declaration and Coomber Declaration. He also having confirmed his instruction from JIT he provided Mr Radley with his instructions and those instructions are confirmed in his first report dated 04.07.2017. He provided a copy of report dated 04.07.2017 to JIT. On 05.07.2017 he was informed by JIT that they are sending further version of two declarations. Those further versions arrived in London on 06.07.2017. They were delivered directly from Heathrow Airport to Mr. Radley's Laboratory. Following further examination of those documents Mr. Radley produced report dated 08.07.2017. The two reports two original copies signed by Mr. Radley were sealed in

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his lab and taken back are delivered in Pakistan. He was present in the Lab when the two reports and the second sets of declarations were sealed and sent back. He prepared some commentary on litigation commenced by a company Al Toufiq. (Overruled, reasoning is given herein discussion). He produced the same commentary at the instructions of JIT. He has seen pages 227 to 235 and those seem to be the copies of the same commentary, which is Mark PW-15/A. His commentary refers to further documents. It refers to a judgment made in March 1999 against the defendants Hudaybia, Mr. Shahabaz Sharif, and two other gentlemen from Sharif Family. The March Judgment which is for over 20 million Dollars was subsequently the subject of a charging order Nisi make on 05.11.1999, the photocopies of which are available at pg 201 to 226 Volume 4 of the reference, which are Mark PW-15-B. On page 186 to pg 188, of the same volume copy of order is available which is included in already Mark PW-15/B. At pg 205 to pg 211 is a copy of draft prepared by a lawyer and photocopies of draft consent order at pg 189 to pg 191 can be seen. His commentary in it refers to articles published in Dawn at pg 236 to pg 240 and it is inherent part of his commentary and cannot be divorced from his commentary.

He was not a part of NAB Investigation. Mr. Inran recorded his statement.

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PW-16 Mr. Wajid Zia acting Addl. Director General of Immigration FIA on 20<sup>th</sup> April, 2017, deposed that the Hon'ble Supreme Court of Pakistan issued an order of the court whereby a Joint Investigation Team (JIT), was announced, he was to be headed by a Senior Officer of Federal Investigation Agency not below the rank of Addl. Director General who shall head the JIT team having the first hand experience of white collar crime. The other members were to be drawn from National Accountability Bureau (NAB), Securities and Exchange Commission (SECP), State Bank of Pakistan, ISI, and Military Intelligence (MI). The heads of the organization were to submit the names of their representatives. His name was in a panel of three officers which was sent to Hon'ble Supreme Court of Pakistan for final selection. The court order also illuminated the questions that

  
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were to be addressed by the JIT which were:-

How did Gulf Steel Mills came into being?

What led to its sale?

Whats happened to its liability?

Where did its sale proceeds end up?

How did they reach Jaddah, Qattar and UK?

Whether respondents No. 7 and 08 (Hussain Nawaz and Hassan Nawaz, respectively), in view of their tender ages had the means in the earlier nineteen's to possess and purchase the flats?

Whether sudden appearance of the letter of Hammad Bin Jasim Bin Jabbir Athani S.A is a Myth or reality?

How their shares crystallized into the flats?

Who in-fact is the real and beneficial owner of Ms Nielsen Enterprises Pvt. Ltd and Nescoll Ltd?

How did hill Metals Establishment come into existence?

How did the money for Flagship Investment Ltd and other companies setup taken over by respondent No. 8 (Mr. Hassan Nawaz) come from and where did the working capital for such companies come from and where do the huge sums running into Millions gifted by respondent No. 7, (Mr. Hussain Nawaz) to Respondent No. 1 (Mr. Nawaz Sharif), which go to the heart of the matter and need to be answered?

The court order continues to state in para 3, the JIT shall investigate the case and collect evidence, if any, showing that Respondent No. 1 Mr. Nawaz Sharif or any of his dependants or benamidar owns, possesses or has acquired assets or any interest therein disproportionate to his known means of income. Another relevant direction of the court in the same para is that the JIT may also examine the evidence and material, if any already available with NAB and FIA relating to or having any nexus with the possession or acquisition of the aforesaid flats (Avenfield Flats No 16, 16-A, 17 & 17-A), or any other assets or pecuniary resources and their origin. The JIT was to complete its work within 60 days.

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He produced certified copy of that order of the court, which is Ex.PW-16 1. (Under objection on behalf of the accused that this order is not available on the record of the court, nor its copy has been supplied to the accused in terms of section 265-C Cr.P.C).

The Hon'ble Supreme Court of Pakistan in its order dated 5<sup>th</sup> May, 2017, setup the composition of the JIT, and the composition was Mr. Amir Aziz who is an officer of BS-21 from SBP, Mr. Bilal Rasool from SECP, he is the Executive Director in SECP, Mr. Irfan Naeem Mangi Director BS-20 from NAB, Brig Noman Saeed from ISI, Brig. Kamran Khursheed from MI, and himself Wajid Zia to head the JIT. The court further directed and enumerated the different powers that were given to the JIT for its functioning, in para 3(i) to para 3 (ix), he produced certified copy of order dated 05.05.2017, which is Ex.PW-16 2. (Under objection on behalf of the accused that this order is not available on the record of the court, nor its copy has been supplied to the accused in terms of section 265-C Cr.P.C in this regard).

The JIT commenced its working on 8<sup>th</sup> May, 2017 and submitted its final report consisting of ten volumes but two volumes having two parts i.e. volume 8 and Volume 9 of JIT Report. The JIT collected all the documents that were filed by the petitioners of Constitution Petition 29 and others, concise statements and documents filed by respondents of that petition, the court order itself and analyzed these documents. JIT then also started collecting material from different institutions like SECP, Banks, FIA, NAB and many others. The JIT also realized that since many of the documents, incidence and assets were located in foreign jurisdiction, therefore the JIT requested and got the notification issued for the powers conferred by section 21 of NAO, that notification is Ex.PW-16 3 (pg 28 interim volume I), (Original is seen and returned), which authorized himself being head of JIT to exercise the powers conferred under section 21 of NAO. The JIT initiated a number of MLAs (Mutual Legal Assistance), letters of request to United Kingdom, British Virgin Island (BVI), Kingdom of Saudi Arabia, United Arab Emirates and others. JIT also started recording the witness statements of persons who were acquainted with the facts of the case including Mr. Nawaz Sharif, Mr. Shahbaz Sharif,

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Mr. Tariq Shafi, Mr. Hussain Nawaz, Mr. Hassan Nawaz, Ms Maryam Safdar, Capt. Retd Safdar, among others. The volume II of the JIT Report has statements of the witnesses and analysis. The whole file of the witness statements, summons, the material that was produced by the witnesses etc. were also placed in separate folders and submitted to the Registrar, Hon'ble Supreme Court of Pakistan. He has brought those sets folders No. Volumes 1,2,3,4,5,9,9-A and 10 from Hon'ble Supreme Court of Pakistan as directed by this court. The JIT after going through the constitutional petition 29 and the CMAs found that the questions relating to Avenfield Apartment which were raised by Hon'ble Supreme Court of Pakistan were related to the Avenfield Apartments 17,17-A, 16, &16-A and the whole case had been defended by the respondents now accused in this case through different CMAs. The most important ones that provided the explanation to the possession and acquisition of these apartments were contained in CMA 7531 dated 15.11.2017 which contains supplementary concise statements on behalf of Respondents No. 6,7,8, now accused Maryam Safdar, Hussain Nawaz Sharif and Hassan Nawaz Sharif respectively. In the above said CMA it was explained that a Steel Factory by the name of Gulf Steel was established by the late Mr. Muhammad Sharif the father of accused Muhammad Nawaz Sharif in 1974. That the said Steel Mill was run by Mr. Tariq Shafi as its owner whereas the real owner was Mr. Muhammad Sharif. That 75% of shares of Gulf Steel Mills were sold for a consideration of 21 million Abu Dhebi Dhiram (AED), which were paid directly to BCCI for settlement of the loan liability and another agreement was signed with the purchaser Mr. Abdullah Ahli who became a partner of 75% whereas Mr. Tariq Shafi became the partner of 25% of the shares in Ahli Steel Mills (previous name Gulf Steel Mills). In 1980 Mr. Tariq Shafi on behalf of Mr. Muhammad Sharif sold 25% shares that he own to Mr. Ahli for a consideration of 12 million AED which were invested with the Qattery Royal Family. The Qattery Royal Family had purchased the above said Apartments in question through companies Neilsen and Nescoll and the sons of accused Mian Muhammad Nawaz Sharif started living in those apartments, paying the ground rent and services charges. That in year 2006 a settlement

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between Mr. Hussain Nawaz Sharif and the Qattery Royal (Prince Hammad Bin Jasim Althani) resulted in the change of the ownership of the flats in question through handing over the bearer shares to Mr. Hussain Nawaz accused, who has since then been the beneficial owner of these apartments in question. That accused Maryam Safdar became a trustee for Mr. Hussain beneficiary in pursuance of a trust deed that was signed in 2006. They were a number of documents that were also submitted with this CMA. CMA 432 basically elaborated on the money trail that already had been provided in the previous noted CMA and more documents relating to the sale of Gulf Steel, the investment with the Qattery Family and the transfer of ownership through the handing over of bearer shares were provided and explanations of the gaps in the money trail were provided. This CMA was filed by Respondent 7 & 8 Hussain and Hassan Nawaz on 26.01.2017. (under objection that that this portion is hearsay). CMA No. 7531 is available at pages 1 to 7. (Volume CMA-7531/2016), which is Ex.PW-16/4. (Certified copy is seen and returned). (Under objection that the witness cannot prove the contents of this CMA he is not the scribe, witness or executants of the document. Learned prosecutor has contended that objection is not entertainable under article 85 (3) read with article 88 of Qanoon-e-Shahadat 1984. The witness has read and examined the documents. (Overruled, reasoning is given herein discussion). He also produced attested copy of an Affidavit of Mr. Tariq Shafi dated 12.11.2016 annexed with he above said CMA, photocopy of which is available at page 59 to pg 62 of Volume CMA No.7531, and is Ex.PW-16 5. (attested copies returned). (Under objection that the witness is not executant, scribe and subscriber of the document and the deponent is not cited as witness in the case). Learned prosecutor has contended that objection is not entertainable under article 85 (3) read with article 88 of Qanoon-e-Shahadat 1984. The witness has read and examined the documents. (Order lateron). The other document affidavit of Tariq Shafi is also annexed as annexure B of concise statement CMA-432, photocopies of which are available on pages 20 to pg 21 ( Volume CMA-432), which is Ex.PW-16 6. Attested copy is return). Under objection that the witness is not executant, scribe and subscriber of the document and the deponent is

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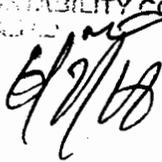
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not cited as witness in the case). Learned prosecutor has contended that objection is not entertainable under article 85 (3) read with article 88 of Qanoon-e-Shahadat 1984. The witness has read and examined the documents. (Overruled, reasoning is given herein discussion). In these affidavits, the setting of a Gulf Steels, its sale in 1978 and 1980 sale of Ahli Steel in 1980 and the handing over of the 12 million AEDs to the Qatari. (Under objection of hearsay). The JIT has analyzed in depth both the affidavits in its report from pg 05 to pg 21. Volume 3 Gulf Steel Mills and found contradictions and anomalies in them, and such contradiction and anomalies were also found when Tariq Shafi was examined before JIT. (Under objection that it is opinion of the witness inadmissible in evidence. Deponent is not witness in the case). The Hon'ble Supreme Court of Pakistan have asked specifically the JIT in one of the questions that how Gulf Steel was setup. The answer to the question appears in para 7 of the affidavit Ex.PW-16 5. It was setup with zero equity and 100% loan while para 3 of the said affidavit clearly stated that there was another partner Muhammad Hussain who lived in UK British National and was never a part of Gulf Steel Mills actively. Mr. Tariq Shafi and other witnesses had failed to explain that there was no equity involved and he was not a working partner then, what was his role in setting of Gulf Steel Mills. Mr. Tariq Shafi as well as the other witnesses i.e. Mr Hussain was asked by the JIT to provide any corroborative documents like Articles of Memorandum of Association, Bank Loan Documents to substantiate their position but no such record was provided. He produced attested copy of shares sales contract, photocopies of which are at pg 20 to pg 39 Volume

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CMA 7531 2016 and is Ex.PW-16:7 wherein there were three parties Muhammad Shafi, Ahli and BCCI. All the proceeds of 21 million AED were to go to BCCI. The company had a total of 36 million of AED approximately and after payment to BCCI still about 14 million of liabilities were outstanding against Gulf Steel Mill. These liabilities were the responsibility of Mr. Tariq Shafi who was running this under the real ownership of Mr. Muhammad Sharif. These included another about 06 million AED owed to BCCI while the remaining two utility companies like Water and Electricity Court-Charges. A partnership agreement of year 1978 between Mr. Tariq



Shafi and Mr. Abdullah Ahli was signed, which provided for 25% shares to Mr. Tariq Shafi and remaining 75% to Mr. Ahli. Photocopies of which are available at page 40 to pg 51 of Volume CMA 7531 2016, same is Ex. PW-16 8. Another agreement dated 14<sup>th</sup> April, 1980 placed at pg 52 to pg 55 of Volume CMA No. 7531/2016 was signed purportedly between parties Mr. Tariq Shafi, represented by his authorized representative Mr. Shahbaz Sharif and Mr. Muhammad Abdullah Ahli, same is Ex.PW-16/9. The signature block of this agreement states Tariq Shafi by his authorized representative Mr. Shahbaz Sharif whereas the signatures on the signature block read for Tariq Shafi. When confronted with this anomaly both Mr. Tariq Shafi and Mr. Shahbaz Sharif denied that they had signed this document. The agreement dated 14.4.1980 which contains clauses specifically referred to bank guarantee to be provided by Mr. Abdul Rehman Ahli. These guarantees in banking terms are only discharged once payment had been received by Mr. Tariq Shafi. He has collected Constitution petition No. 29 2016 already exhibited as Ex.16/4.

1. CMA No. 432 already exhibited as Ex-PW-16/6.
2. Share sale contract already exhibited as Ex.PW-16/7.
3. Photocopies of letter of credit as annexure E, available at pg-36 to pg-39 CMA no. 432/2017 which is Ex.PW-16 10.(under objection that this is not a certified copy of the original witness is not a scribe, and executants not witness of this document) (learned prosecutor contend that this is public document and is admissible under article 85 of Qanoon-e-Shahadat). (Overruled, reasoning is given herein discussion)
4. Photocopy of letter of Hamad Bin Jasim Bin Jabir Al-Sani is submitted in CMA No. 7638/2016 (attested copy is seen and returned). Attested copy of which is also available at page 25 volume-V, same is Ex.PW-16/11.
5. Letter dated 22.12.2016 written by Sheikh Hamad Bin Jasim Bin Jabir Al-Thani same is Ex.PW-16/12 (pg.22 CMA 432 2016).

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6. Photocopy of worksheet alongwith supporting documents annexed with CMA 432/2016. same is Ex.PW-16 13 (pg-63 to pg-74). (Attested copies are shown and returned).
7. Photocopy of order of Queen Bench dated 10<sup>th</sup> day of March 1999. annexed with Constitution Petition No. 29-2016 (pg-113 volume 10). Which is available on volume 4 as Mark PW-15/B. at page 201). Attested copy of same is shown and placed on file.
8. Correspondence between JIT and Prince Hamad Bin Jasim through Ministry of Foreign Affairs. Photocopy of that letter written by me to Secretary Ministry of Foreign Affairs available at page 60 of Volume 5 interim reference. which is Ex.PW-16/14 (original office copy is shown and returned).
9. Photocopy of other letter dated 13.5.2017 sent by me to H.E Sheikh Hamad Bin Jasim. which is Ex.PW-16/15 (pg-61 volume 5). (Original office copy is shown and returned).
10. Attested copy of Affaq Ahmad Director SSP. Ministry of Foreign Affairs Islamabad addressed to JIT which is Ex.PW-16 16 (pg-65 volume 5) (Original is shown and returned).
11. Photocopy of enclosed letter mentioned in Ex.PW-16 16, same is Ex.PW-16/17 (pg-62 volume V) under objection that witness is not scribe, witness, executants or addressee nor is the documents attested according to law).
12. Photocopy of letter dated 16.5.2017 issued by me addressed to Secretary of M/o Foreign Affairs Islamabad. same is Ex.PW-16/18 (pg-63).
13. Photocopy of Fax message showing delivery of sealed enclosed letter of 13<sup>th</sup> May 2017 (letter exhibited as Ex.PW-16 15). same is Mark PW-16/A pg-64).

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14. Photocopy of letter dated 24.5.2017 issued by me to HE Sheikh Hamad Bin Jasim Bin Jabar Al-Thani. is Ex.PW-16/19 (pg-66). (Office copy shown and returned). The above said letter was sent to Ministry of Foreign Affairs. The letter written in this regard to Secretary Foreign affairs. Same is Ex.PW-16/20 (pg 67) (Office copy shown and returned).

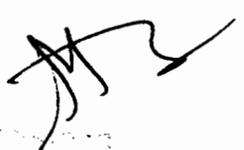
15. Photocopy of letter received from office of Affaq Ahmad, Director SSP where with sealed envelope was enclosed. That letter is Ex.PW-16/21 (pg-68) (original is seen and returned).

He produced that envelope which is in open state. While photocopy of that letter which was taken out from that envelope is produce. same is Ex.PW-16/22 (pg 84) (original is seen and returned). Photocopy of front page of sealed envelope is Ex.PW-16/23 (pg 92) (original is seen and returned).

Seizure memo vide which attested copy of covering letter etc were taken over and handing over by the one member of JIT in his presence. Photocopy of that seizure memo is available at page 85 volume v same is Ex.PW-16/24 (original seen and returned).

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Photocopy of letter dated 23.6.2017 addressed to JIT Chairman from Affaq Ahmad Director (SSP) enclosed herewith. which is a delivery report of the fax transmission and the dispatched receipt of the courier. same is Ex.PW-16/25 (pg-76 volume V).



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Photocopy of letter which was sent to H.E Sheikh Hamad Bin Jasim Bin Jabir Al-Thani dated 22.6.2017 is Ex.PW-16/26 (pg-74). (Office copy is shown and returned).

Photocopy of Fax report received in our office regarding delivery of letter dated 22.6.2017 as enclosure of letter Ex.PW-16/25. That fax report is Ex.PW-16/27 (pg-77) (under objection it is photocopy of the photocopy it is not attested in accordance with law. the witness is neither addressee. nor the recipient of the document).



Photocopy of DHL report regarding transmission of documents on 22.6.2017 same is Mark PW-16/B (pg 73).

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Photocopy of letter of Affaq Ahmad, addressed to Head of JIT Wajid Zia alongwith sealed envelope received through Embassy in Doha (Qatar) addressed to head of the JIT and confirmation of that the letter was delivered to Abdul Hamad Abdul Rashid Al-Buredha secretary to HE Sheikh Hamad Bin Jasim, same is Ex.PW-16/28 (pg-69) (original is seen and returned).

Photocopy of letter of Hamid Bin Jasim Bin Jabir Al-Thani addressed to JIT, which is Ex.PW-16/29 (pg. 87) (original is seen and returned).

Photocopy of letter of Shehzad Ambassador of Embassy of Pakistan in Doha Qatar addressed to Director FSO Ministry of Foreign Affairs Islamabad, showing that enclosed letter was delivered by Abdul Hamid Abdul Rashid Al-Braida same is Mark PW-16/C (pg-86) and this letter was received as enclosure of other letter already exhibited as above.

Photocopy of letter dated 28.6.2017 written by Shahzad Ahmad ambassador to Mr. Sulman Sharif Ministry of Foreign Affairs Islamabad. That letter is Ex.PW-16/30 (pg88). (Overruled, reasoning is given herein discussion).

Photocopy of letter dated 26.6.2017, addressed to JIT written by Hamad Bin Jassim bin Jabr Al Thani same is Ex.PW-16/31 (pg 89), that letter was enclosure of the other letter Ex.PW-16/30.

Photocopy of letter written by Affaq Ahmad Director SSP to Ministry of Foreign Affairs addressed to head of JIT regarding seal envelope received through our Embassy in Doha (Qatar) addressed to Mr. Wajid Zia head of JIT, same is Ex.PW-16/32 ( pg 78) .

Photocopy of letter dated 4.7.2017 written by head of JIT addressed to Hamad Bin Jassim bin Jabr Al Thani, Doha Qatar same is Ex.PW-16/33 (pg-79 to 82) (original is seen and returned), that letter was sent through Ministry of foreign Affairs that covering letter is Ex.PW-16/34 (pg-97). (Original office copy seen and returned).

Photocopy of letter dated 6.7.2017 of Hamad Bin Jassim bin Jaber Al Thani addressed to JIT which is Mark PW-16/D (pg. 93). (as

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original is not with the witness) that letter was received through covering letter which is Ex.PW-16/35 (pg-95). an e-mail was also annexed with said covering letter same is Mark PW-16/E (pg 94). He produced original letter which is given to him in sealed envelope by learned Registrar of Hon'ble Supreme Court of Pakistan. That envelope is opened in court. An open envelope, covering letter and another envelope whereon it is written that "seen by the Honourble court be kept in safe custody and to be subject to the order of the court, announced today i.e 28.7.2017". That envelope is closed with tape. That envelope is open a letter and English and Arabic, which is different from Mark PW-16 D (witness clarified that he had received letter from foreign office, and that letter is in English script. However, the letter which is recovered from envelope stated above is different from mark PW-16 D and the witness has contended that he was under the impression that it was the same letter which is already available on file. (At this stage learned prosecutor has contended that he is going to file an application for placing that document on record). (All the envelopes are seen and returned). Copy of draft consent order between Al-Towfeek Company and Hudabia Paper Mills, which is Mark PW-16 F, (under objection that the document is not admissible in evidence at page 189 to 191). Photocopies of "without prejudice draft-2" as furnished by NAB to me bearing stamp and signature of one NAB Assistant Director. Photocopies of which are annexed with the reference No. 20/2017 volume IV as pages from 205 to pg 211. Copies of Directors' report of Hudaybia Paper Mills ltd as annexed with CMA No. 432 of 2017 available at reference volume CMA 432 17 at pages from 93 to pg 102. Attested copies of the same are Ex.PW-16 36 (under objection that copy of this document has been prepared from photocopy, same is also inadmissible as irrelevant and also not attested in accordance with law). He produced attested copies of two incorporation certificates obtained from Hon'ble Supreme Court of Pakistan from constitution petition No. 29/2016. Photocopies available at pages 63 and pg 64 of volume CMA No. 7531/16 which are Ex.PW-16/37 and Ex.PW-16 38. (under objection that the attested copy produced by the witness is attestation of a photocopy). He produced attested copy of official

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copy of register of title of 17- Avenfield properties. Photocopy of which is already available at page 75 to pg 76 of CMA 7531 /16 which is Ex.PW-16/39. (Under objection that the attested copy produced by the witness is attestation of a photocopy).

He also produced attested copy official copy of register of title dated 23.7.1996 regarding 17-A Avenfield Properties. photocopy of said document is Ex.PW-16 40 at pg. 77-78 of CMA 7531/16(under objection that the attested copy produced by the witness is attestation of a photocopy ).

He also produced attested copy official copy of register of title dated 31.7.1995 regarding 16-A Avenfield properties. photocopy of said document is Ex.PW-16 41 at pg. 79 to pg 80 of CMA 7531/16.

He also produced attested copy official copy of register of title dated 31.7.1995 regarding 16 Avenfield properties. photocopy of said document is Ex.PW-16 42 at pg. 81 to pg 82 of CMA 7531/16.(under objection that the attested copy produced by the witness is attestation of a photocopy).

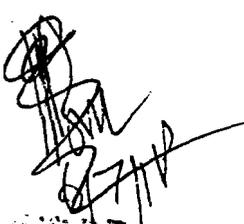
Photocopies relating to declaration of trust of Coomber Company between accused Maryam Safdar and Hussain Nawaz which are Ex.PW-16 43 pg 83 to pg 86 of CMA no. 7531/16. (Attested copies are produced seen and returned). (under objection that the attested copy produced by the witness is attestation of a photocopy, same are in admissible as irrelevant).

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Photocopies relating to declaration of trust of Nescoll and Nielsen between accused Maryam Safdar and Hussain Nawaz which are Ex.PW-16 44 (pg 3 to pg 6) of CMA No. 7661/16. Attested copies are produced, seen and returned). (under objection that the attested copy produced by the witness is attestation of a photocopy).

He produced attested copy of opinion of Stephen Moverley Smith. QC dated 12.1.2017. Photocopies of the said opinion available in volume CMA 432 17 at page 107. same is Ex.PW-16/45. (under objection that the attested copy produced by the witness is attestation of a photocopy, and opinion of expert is not admissible without formal proof).

  
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He considered two experts opinion one stated above as Ex.PW-16-45 and other (at pg 68 to pg 88 of volume IV) annexed through CMA No. 896/2017, which is Ex.PW-16/46. Attested copy seen and returned. (under objection that the attested copy produced by the witness is attestation of a photocopy, and opinion of expert is not admissible without formal proof).

He produces attested copies of mortgage deed Deutsche Bank. Photocopies of which are available at pages 130 to pg 132 of volume CMA 432 2017, and are Ex.PW-16-47. (Attested copy is returned after perusal). (under objection that the attested copy produced by the witness is attestation of a photocopy, the document is not attested in accordance with article 89(5) of Qanoon-e-Shahadat order 1984, the witness is neither privy to the mortgaged deed nor is the witness to the same).

He produces attested copy of letter of Financial Investigation Agency. Photocopies of which are available at pg-8 and pg 9 on volume CMA No. 7511-16(A) which are Ex.PW-16/48. Attested copy is returned to witness. (under objection that the attested copy produced by the witness is attestation of a photocopy, the document is not attested in accordance with article 89(5) of Qanoon-e-Shahadat order 1984).

He produces attested copy of letter relating to Nescoll Ltd addressed to Financial Investigation Agency from Mossack Fonseca and company Ltd, dated 22.6.2012. Photocopy of which at pg. 37 on volume CP No. 29/2016 Pt-I, which is Ex-PW-16/49. (Under objection that this is unsigned document of which the witness is neither scribe nor executant or witness, the attestation on the document is attestation of photocopy, the document is not certified in accordance with Article 89(5) of the QSO 1984).

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He also produces attested copy of letter relating to Nielsen Enterprises addressed to Financial Investigation Agency from Mossack Fonseca and company Ltd, dated 22.6.2012. Photocopy of which is at pg. 38 CP No. 29/2016 Pt-I, which is Ex-PW-16/50. (Overruled, reasoning is given herein discussion). He produces

attested copies of CMA No. 394/2017 in Constitution Petition No. 29 2016. Photocopies are available in volume CMA No. 394/17 Court Observation. "without noting and CMA No. at first page and without signature at last page" as available on attested copy produced by the witness. (Learned prosecutor has contended that office copy was delivered to them). Same is Ex.PW-16/51. (under objection that CMA consists of pleadings which are inadmissible in evidence). He produces attested copy of letter addressed to Minerva financial service ltd. written by Assistant General Manager Samba financial group dated 3.12.2005. photocopy available at pg 18 of volume CMA No. 7511 2016. same is Ex.PW-16/52. (under objection that the witness is neither scribe nor executant or witness or addressee. the attestation on the document is attestation of photocopy. the document is not certified in accordance with Article 89(5) of the QSO 1984). He produces attested copy of affidavit of one Shazi Naqvi. photocopies of which are on volume CMA No. 432/2017 (at pg from 75 to pg 77). same is Ex.PW-16/53. (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe. nor executant or witness of the document). He also collected letter of Jeremy Freeman. that letter is already exhibited as Ex.PW-15/1 (at pg 106 of CMA 432/2017). Attested copies of notes to the Financial Statements (Continued for the year ended 31<sup>st</sup> March. 2007) Que Holdings Ltd. same is Ex.PW-16/54 (pg 261). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe. nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March. 2008 Que Holdings Ltd. same is Ex.PW-16/55 (pg 278). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe. nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March. 2008 Flagship Securities Ltd. same is Ex.PW-16/56 (pg 279). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe.

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nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2008 Quint Paddington Ltd. same is Ex.PW-16/57 (pg 282). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2009 Que Holdings Ltd. same is Ex.PW-16 58 (pg 291). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2009 Flagship Securities Ltd. same is Ex.PW-16/59 (pg 300). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2009 Quint Paddington Ltd. same is Ex.PW-16/60 (pg 302). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2010 Que Holdings Ltd. same is Ex.PW-16 61 (pg 305). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2010 Flagship Securities Ltd. same is Ex.PW-16/62 (pg 311). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the

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Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2010 Quint Paddington Ltd. same is Ex.PW-16/63 (pg 313). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2011 Que Holdings Ltd. same is Ex.PW-16 64 (pg 325, Volume VII). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2012 Quint Paddington Ltd. same is Ex.PW-16 65 (pg 328, Volume VII). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2012 Que Holdings Ltd. same is Ex.PW-16 66 (pg 339, Volume VII). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copies of notes to the Financial Statements (Continued) for the year ended 31<sup>st</sup> March, 2012 Flagship Securities Ltd. same is Ex.PW-16/67 (pg 336, Volume VII). (Under objection that the document is an attestation of photocopy which is not admissible in evidence. The witness is neither the scribe, nor executant or witness of the document. The document is inadmissible as it is irrelevant). Attested copy of chart showing a lot of things including flow of money, funds, also the profit and loss of the company etc. Attested copy of which is Ex.PW-16/68 at pg 400 Volume VII. (Original chart is shown and returned). (Under objection that the chart is purportedly prepared by the JIT, which is inadmissible under the law as it forms part of the investigation report, which is inadmissible in evidence.) (Witness has shown the original chart in Volume VII, of JIT Report, which was submitted before Hon'ble

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Supreme Court of Pakistan. Witness is directed to provide copy of the same in the same size to this court and for accused). Letter dated 28.06.2017 received from United Arab Emirates M/o Justice. attested copy of which is Ex.PW-16/69 (pg 236 and pg 237. Volume III). (Original is seen and returned back). (Under objection that copies provided to accused u s 265- C. Cr.P.C as volume III. such pages are not available in their volume which ended at pg 235 and it is not mentioned in Index of said volume). Meanwhile it is pointed out that copies of the same are available at pg 80 and pg 81. Volume III. in response to it learned defence counsel did not raise objection as stated above). (Further objection that the letter in response to which the above letter is allegedly received is not on record. copy of which has not been provided to the accused. The document does not comply with the requirements of section 21 of NAO. 1999. Furthermore. it is not admissible under Q.S.O 1984). He produces the annexure of that letter as received. attested copies of which are at pages 118 to 121. same is Ex.PW-16/70. (Under objection that this witness is neither the author nor the executant of the letter. the letter is in Arabic and the translation of the same is not available on record. the document does not meet the requirement of section 21 of the NAO. 1999 and the provision of Q.S.O 1984). He produces original letter in Arabic Script. while English version of the same letter is already exhibited as Ex.PW-16/70 and attested copies of Arabic Version is Ex.PW-16/71 (pg 78 to pg 79 volume III). (Under objection that copy of the letter of request in response to which Ex.PW-16/69 and Ex.PW-16/71 are claimed to have been received is not provided in addition to that these exhibits do not fulfill the requirement of section 21 of NAO 1999 and mandatory requirements of QSO 1984). He produces original reports of Robert W. Radley. copies of which are already exhibited in statement of Robert W. Radley as Ex.PW-14/1 to 4 and Ex.PW-14/2. Ex.PW-14/3 and Ex.PW-14/4 (Volume IV). (Original seen and returned). He produces two Trust Deeds as produced by the accused Maryam Safdar on 05<sup>th</sup> July, 2017. claiming as original. Photocopies of which are already exhibited as Ex.PW-14/2 (pg 122 to pg 127) and Ex.PW-14/3 (pg 128 to pg 131. Volume IV of JIT Report). (Under objection that saying claiming as original is hearsay). He produces

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original letter dated 12.06.2012 addressed to JIT from Director Financial Investigation Agency in British Virgin Island. Attested copy of which is Ex.PW-16 72 (pg 52 volume IV). (Under objection that the letter which above letter is response of is not available on record and copy has not been provided to the accused. Furthermore. the letter does not meet the requirement of section 21 of NAO 1999 or the requirement of QSO 1984. Witness is neither the scribe. nor executant or witness of the letter). He produces original enclosure of the above said letter. attested copy of which is Ex.PW-16/73 (pg 53 to pg 54. Volume IV). (Under objection that the witness is neither the scribe. nor executant or witness of the letter. Furthermore. the letter does not meet the requirement of section 21 of NAO 1999 or the requirement of QSO 1984). He also produced letter dated 22.06.2012 from Mossack Fonseca (Nescoll). same is Ex.PW-16/74 (pg 55 to pg 56). (Under objection that the witness is neither the scribe. nor executant or witness of the letter. Furthermore. the letter does not meet the requirement of section 21 of NAO 1999 or the requirement of QSO 1984. The letter in response to which the above letter is claimed to be received is not on record and copy of the same has not been provided to the accused). He also produced letter dated 22.06.2012 from Mossack Fonseca (Nielsen Enterprises Pvt. Ltd). same is Ex.PW-16 75. (Original seen and returned). (Under objection that the witness is neither the scribe. nor executant or witness of the letter. Furthermore. the letter does not meet the requirement of section 21 of NAO 1999 or the requirement of Qanoon-e-Shahadat Ordinance (QSO) 1984. The letter in response to which the above letter is claimed to be received is not on record and copy of the same has not been provided to the accused). He produces the original certificate regarding Capital FZE. attested copy of which is at pg 312 Volume VI. which is Ex.PW-16 76. (Under objections that it is not a public document. moreover it is not certified within the meaning of section Article 89(5) of QSO. 1984 and it is not addressed to JIT or any other court of Pakistan. Certificate has not been procured in accordance with section 21 of NAO 1999). Copy of Form 9 JAAFZA and employment record annexed with said certificate available at pages 318. pg 316 and pg 317 is Ex.PW-16 77. (Under objections that it is not a public

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document. moreover it is not certified within the meaning of section Article 89(5) of QSO. 1984. it is not being produced from proper custody and it is not addressed to JIT or any other court of Pakistan. Document is undated and has not been procured in accordance with section 21 of NAO 1999). Screenshots annexed with the said certificate attested copy which are available at pages 313, pg 314 and pg 315. which are Mark PW-16 G. (witness is directed to provide better copy of the same. The JIT analyzed the documents collected from CMAs pending before Hon'ble Supreme Court of Pakistan. He has referred in his statement above about the bank guarantees. This agreement dated 14<sup>th</sup> April 1980. was submitted as annexure to the concise statement of CMA 432. This concise statement explained that twelve millions AED were made available as a result of this agreement to Mr. Tariq Shafi and subsequently handed over to the Qattari Royal Mr. Fahad Bin Jasim Al-Thani in cash. This investment as per the concise statement provided for the funding of not only the Aventfield Apartments through a settlement in 2006 but also for the establishment of a Steel Factory by the name of Al Azizia in Kingdom of Saudi Arabia as well as the settlement of loan of Al Taufiq Investment Fund of USS eight million which had to be paid due to litigation in UK. and similarly, the setting of companies by accused Hassan Nawaz in the UK was also started with the provision of funds by the Qatari Royals to Hassan Nawaz Sharif from this investment. (Under objection that contents of documents are inadmissible). Therefore the subject agreement tried to provide the only documentary proof that this amount as sale proceeds of Ahli Steel did take place. (Under objection that it is opinion/inference of the witness not admissible in evidence). The agreement itself is stamped on each page showing the stamp of Dubai Court Notary Public. dated 30<sup>th</sup> May. 2016 with true copy written underneath. (Under objection that contents of documents are inadmissible). The response from the United Arab Emirates regarding an MLA (already exhibited under objection as Ex.PW-16 69). on page 02 responded to the question about this agreement after search in the record of Dubai Courts, they certified that this agreement dated 14-04-1980 of share sale of 25% agreement of Ahli Steel Mills does not exist and also that there was no

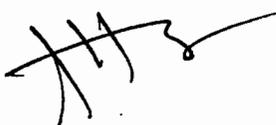
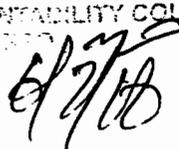
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transaction worth 12 million AED as sale proceed of 25% of share of Ahli Steel Mills ever took place in the name of Mr. Tariq Shafi. also that no record could be found which indicate that notarization of this document was ever done by the Notary Public of Dubai Courts on 30.05.2016. (Under objection that contents of documents are inadmissible. witness is reading out the contents from the documents hence not admissible). This showed that the said agreement of 14<sup>th</sup> April 1980 submitted with the CMA is a fake and falsified document. (Under objection that it is opinion inference of the witness not admissible in evidence). Another document filed with CMA No. 432 (which have already been exhibited under objection as Ex.PW-16/10) is the LC for the transportation of Scrap Machinery of Ahli Steel Mills from Dubai to Saudi Arabia. The response of the MLA from the United Arab Emirates also showed that according to their record, there was no such transportation. (Under objection that contents of documents are inadmissible). The JIT has concluded that the respondents have misstated about the LC. (Under objection that it is opinion inference of the witness not admissible in evidence). The concise statement in CMA 432 and 7531 have also contended that the amount of twelve million AED was collected from Mr. Ahli in cash and deposited with Mr. Fahad Bin Jasim Al-Thani also in cash by Mr. Tariq Shafi. (Under objection that contents of documents are inadmissible). No document to support this contention i.e. any receipt from Mr. Ahli, Mr. Fahad Bin Jasim Al-Thani and Mr. Tariq Shafi was provided to the JIT. (Under objection that it is opinion/inference of the witness not admissible in evidence). (Learned prosecutor has contended that witness is saying fact). JIT have also analyzed cash payment by Mr. Tariq Shafi in our report at pg 26 of Volume III. (Under objection that it is the part of the JIT report therefore not admissible in evidence). The liabilities of Gulf Steels Mills as per the agreement of 1978 were to the tune of 36 million out of which 21 million approximately had been paid as the full sale proceed of 75% shares according to the agreement. (Under objection that contents of documents are inadmissible). The liabilities to the tune of 14 million AED were responsibility of Mr. Tariq Shafi who was working on behalf of Mr. Muhammad Sharif as per the concise statement of

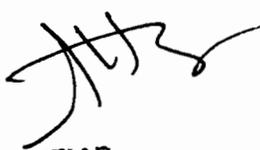
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CMA's. (Under objection that contents of documents are inadmissible). The Hon'ble Supreme Court of Pakistan had specifically asked the question about what happened to the liabilities. (Under Objection that What the Hon'ble Supreme Court of Pakistan had asked was for the purposes of facilitating to Hon'ble Supreme Court of Pakistan under article 184(3) of Constitution of Pakistan and the same is not admissible in these proceedings). No document was produced by Mr. Tariq Shafi or any of the accused Mr. Mian Muhammad Nawaz Sharif, Mr. Hussain Nawaz Sharif, Mr. Hassan Nawaz Sharif and Miss Maryam Safdar about how these liabilities were clear. The UAE Authorities vide their response to the CMA already exhibited under objection as Ex.PW-16 69 pg 80 to pg 81 Volume 3) have also confirmed that Mr. Tariq Shafi was sentenced for defaulting a loan of BCCI. (Under objection that this portion is inadmissible as irrelevant). Mr. Tariq Shafi obtained this loan from the same bank i.e. BCCI to which he had owed about six million AED in the 1978 agreement of 75 % of share sale of Ahli Steel Mills. (Under objection that he is not witnessed to this fact). This clearly shows that liabilities were cleared as a further loan is never provided to someone who has not cleared previous loans and the liabilities. (Under objection that this is inference and speculation). The JIT has provided the answers to the questions raised by Hon'ble Supreme Court of Pakistan (on page 33 to pg 38. Volume 3) of our report and the finding by the JIT from (pg 38 to pg 40). My signatures as well as the signatures of all JIT Members appear on page 40 of volume 3, which I recognize. (under objection that those answers were meant for the consideration of Hon'ble Supreme Court of Pakistan in proceeding under article 184(3) of the Constitution of Pakistan and are not admissible in the instant proceedings being inference drawn by the JIT, and same is the objection applies regarding the findings of JIT deposed to by the witness and further more this portion of the statement of witness is part of the JIT report which is not to admissible in evidence). He produces the original volume 3 of investigation report of JIT, attested copies of the report are available in Volume 3 from pages 01 to pg 40. (original seen compared and returned). (Under objection that this portion of statement cannot come on record being part of the

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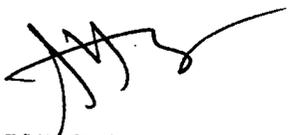


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investigation report). (Under objection that contents of documents are inadmissible in evidence). Respondents namely accused Maryam Safdar, Hussain Nawaz Sharif and Hassan Nawaz Sharif had submitted a letter dated 05.11.2016 from Prince Hamad Bin Jasim Al-Thani (already exhibited as Ex.PW-16/11 at pg 25 of Volume V) vide CMA No. 7638. Another letter dated 22.12.2016 (already exhibited as Ex.PW-16 12 at pg 26 of Volume V) was submitted by accused Hassan Nawaz Sharif and Hussain Nawaz Sharif vide CMA No. 432 of year 2017(dated 26.01.2017). JIT Report Volume V contains the contradiction and observation of the two letters at pg 03 to pg 05. (Under objections that this is part of JIT Report, and not admissible in evidence). Both the letters at the end provide for use of these letters by the Pakistani Court. The second letter dated 22.12.2016 mentions that it is for the clarification of certain issues that have been raised. (Under objection that contents of documents are inadmissible in evidence). It is contended in these letters that Mr. Tariq Shafi handed over twelve million AEDs to the Qatari Royals in cash and without any receipts. (Under objection that contents of documents are inadmissible). No documentation regarding the investment of twelve million AED by the Sharif Family through Mr. Tariq Shafi with the Qatari Royal Family was provided by Mr. Tariq Shafi or any other accused. The second letter also provided for some payments that were made by the Qatari Royals on the direction of Mian Muhammad Sharif. (Under objection that witness is deposing on contents of documents which is not admissible in evidence). It also refers to the settlement in 2006 between accused Hussain Nawaz Sharif and the Qatari Royals resulting in handing over the bearer shares of Neilsen and Nescoll the companies owning the Avenfield Mayfair Apartments. (Under objection that witness is deposing upon the contents of the documents, it is not admissible in evidence). No record of any agreement between the Sharif Family and the Qatari Royals regarding investment in 1980 was provided nor any agreement or document between Hussain Nawaz Sharif accused and the Qatari Royals at the time of settlement of 2006 resulting in claimed change of ownership to the JIT. The annexure of CMA 432 at pg 63 (already exhibited as Ex. PW-16/13). is a worksheet which the concise statements explains shows the details

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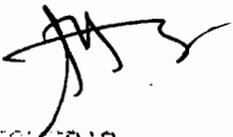
  
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of the investment of 12million AED converted into Dollars. the profit earned year on year and the disbursement made by the Qatari Royals on the instructions of Mian Sharif from time to time. (Under objection that witness is deposing as to the contents of documents. which is not permissible in evidence). The disbursements made include four payments to Hassan Nawaz Sharif accused. which the CMA contend. were used for setting up of his companies including Flagship Investments. (Under objection that witness is deposing as to the contents of documents. which is not permissible in evidence). No documentary evidence for transfer of these four transactions or receipt was provided by accused Hassan Nawaz Sharif or other accused. Similarly. there are three transactions shown to have been made to Mr. Hussain Nawaz Sharif accused. which the CMA explains. were used to set-up the Al Azizia Steel Mills in Kingdom of Saudi Arabia by that accused. (Under objection that witness is deposing as to the contents of documents. which is not permissible in evidence). No documentary evidence for transfer of these funds from Qatari Royals to Mr. Hussain Nawaz Sharif accused was provided to the JIT. Another transaction of eight Million Dollars made in year 2000 for the payment to Al Towfeeq Company for investment funds is shown in the worksheet and it is explained in the CMA that this disbursement was made on the instruction of Mian Sharif by the Qatari Royals. (Under objection that witness is deposing as to the contents of documents. which is not permissible in evidence). At page 71 to pg 74 of CP No. 29 and same is available at pg 201 Mark PW-15 B while charging order nisi dated 05-11-1999. at pg 202 to pg 204. Volume IV. which pages are Mark PW-16 H. The High Court placed a caution on the Avenfield Apartments which were specifically referred to schedule which was attached against defendants which were Hudaybia Paper Mills, Ltd. Mian Muhammad Shahbaz Sharif. Mian Abbas Sharif and Mian Sharif for having beneficial interest in these properties. and this caution was placed in the litigation for payment of Debt by the defendants to the plaintiff which was the Al Towfeeq Company for investment funds. (Under objection that witness is deposing as to contents of document and this to which is not exhibited but merely mark). The accused Hussain Nawaz Sharif and Hassan Nawaz Sharif have annexed two

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further documents in CMA 432/2017. The first one is the affidavit as annexure J (already exhibited under objection as Ex.PW-16/53 pg 75 to pg 77), while the second is the Directors Report of Hudaybia Paper Mills, Ltd (already exhibited under objection as Ex. PW-16/36 at pg 93 to pg 102), which is Annexure J-2. In this report on page 98 the long term loan is shown settled against a payment of USS eight million on 05.01.2000 which is shown as a Long Term Loan, and it is not indicated who has provided this loan for settlement of the debt. (Under objection that witness is deposing as to contents of document, hence not permissible in evidence). Both these documents, the worksheet already referred as above as well as the concise statements clearly show that this loan settlement against the caution was made by the Sharif Family. (Under objection that it is opinion/inference based on speculation of the witness not admissible in evidence). On the other hand there is no document provided to JIT which could show that the Qatari Royals had anything to do with the settlement of this litigation. The said charging order nisi alongwith the statement of Shazi Naqvi was served upon the defendants in Pakistan by Orr Dignum. (Under objection that witness is not witness to this fact, hence inadmissible in evidence). The JIT observed that the Qatari Royals had nothing to do with these apartments and were not the owners, this is because if the apartments have belonged to the Qatari Royals Family, who had nothing to do with the debt of Al Towfeeq Company for Investment Fund, the subject of the litigation, they would have gone to the court stating that the charging order nisi has being wrongly imposed on the properties which belong to them and not to the Sharif Family. (Under objection that it is opinion/inference of the JIT as well as speculative and argumentative hence, not admissible in evidence). The JIT concluded that at the time of Al Towfeeq settlement in 1999 the true owners of the apartments were members of the Sharif Family including Mr. Nawaz Sharif accused who seems to have employed his children and the BVI Companies to conceal the ultimate true beneficial ownership. (Under objection that it was opinion /inference and moreover forms part of the JIT Report, hence not admissible in evidence). These disbursements shown in the worksheet (already exhibited under objection as Ex.PW-16/13 pg 63 CMA-432) are as

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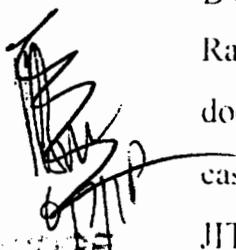
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observed by the JIT are for filling the gaps which came to light during the proceedings of Hon'ble Supreme Court of Pakistan between the first and second letter. (Under objection that it is opinion/inference of the JIT as well as speculative and argumentative hence, not admissible in evidence). The worksheet itself is unsigned without any notarization or authentication. It was also observed that according to the concise statement in the said CMA the bearer shares of the companies Neilsen and Nescoll which own the apartments, were said to have been transferred from the representative of Mr. Hamad Bin Jasim Al-Thani to the representative of Mr. Hussain Nawaz Sharif accused. (Under objection that contents of documents which is not admissible in evidence). No receipt or document for handing over these bearer shares of the two companies and assets worth 08 million dollars was provided to the JIT to support this claim. (Under objection that this is argumentative not admissible in evidence). The JIT made efforts to record the statement of Mr. Hamad Bin Jasim Al-Thani and a brief of the efforts made by showing the letters /summons sent to Mr. Al-Thani and his response are mentioned at pg 20 to pg 22 of JIT Report, volume V. (Under objection that this is part of JIT Report hence not admissible in evidence). The correspondence between the JIT and Mr. Hamad Bin Jasim Al-Thani has already been exhibited above. The correspondence shows that the JIT made all the possible efforts to record his statement but Mr. Hamad used delaying tactics at first by not responding promptly and then raising the issue of legality especially the issue of appearance before any Pakistani Court and ultimately refusing to accede to the jurisdiction of any Pakistani Court and asking for reassurance from JIT that he would not be asked to appear in any court. (Under objections that it is partly inferential and also referred to contents of documents which is not admissible in evidence). The JIT however, assessed the evidence and material before it and found that the response of the UAE Government, the BVI Attorney General Office, the Reports of the Forensic Experts Mr. Radley and the observation on worksheet (non-production of any documents) observed that the testimony of Prince Hamad was in any case not of much value. (Under objection that it is opinion/inference of JIT, hence not admissible in evidence). The JIT Volume V page 18

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answers the specific questions raised by the Hon'ble Supreme Court of Pakistan and the conclusive finding by JIT at pg 19. (Under objection that witness is deposing with respect of JIT and also respect of report of JIT and also admissible in evidence). I produce the original volume V submitted before Hon'ble Supreme Court of Pakistan bear on my signatures, and signatures of JIT members are at page 24. (Attested copies of the report are available at pages 1 to pg 24) (original seen and returned) (under objection that neither the JIT report nor the signatures referred to by this witness are not admissible under any provision of law). As regards the possession and acquisition of the Avenfield Apartments. The respondents 6, 7 & 8 i.e. accused Maryam Safdar, Hussain Nawaz Sharif and Hassan Nawaz Sharif have submitted their versions (already exhibited) through CMA No. 7531, CMA 432 and CMA 394. Very briefly it was stated that the apartments were purchased by the Qatari Royals through the BVI Companies and as a settlement in 2006, the bearer shares of companies were transferred to the representative of Mr. Hussain, two trust deeds one for the two BVI Companies Neilsen and Nescoll and the other for Coomber. (Under objection that witness is deposing as to contents of documents which are not admissible in evidence). The Trust Deeds were signed by accused Maryam Safdar as Trustee, accused Hussain Nawaz as Beneficiary and accused Capt. Safdar as a witness. The CMA 7531 pg 75 is already exhibited as Ex.PW-16/39. is the land registry record of apartment 17 owned by Nescoll on 01-06-1993. On pg 77 is a document Ex.PW-16/40 is for Nescoll for apartment 17-A showing date of 23-07-1996, pages 79 & 81 relates to the title of Apartment 16 and 16-A, both showing date of 31-07-1995. (Under objection that witness is deposing as to contents of documents which are not admissible in evidence). The accused in their CMAs filed have stated to have taken possession of these apartments at the time Mr. Hussain Nawaz was a student i.e. between 1993 to 1996 studying in U.K. (Under objection that witness is not witness to this fact and witness is deposing as to contents of documents which are not admissible in evidence). His chronology of taking possession of these apartments matches closely to these dates while he gave statement to JIT. (Under objection that this portion of the statement is not

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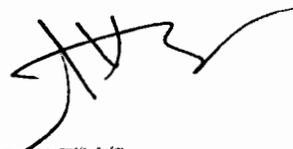



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admissible being statement of the I.O). Both Mr. Hassan and Mr. Hussain accused and Mr. Nawaz Sharif in their statements have stated that Apartment No. 16 has been in exclusive use of Mr. Nawaz Sharif accused except for a brief period when it was used by his father Mian Sharif while he was under treatment in London for a few months in early 1990s. (Under objection that this portion of the statement is not admissible being statement of the I.O/JIT). The accused have also through their CMAs filed have stated that they were paying the ground rent and services charges of the Apartments from that time. (Under objection that witness is deposing as to contents of documents which are not admissible in evidence). In CMA 7531 at pages 83 to pg 86 are documents of their trust deed regarding Coomber. Page 84, 85 & 86 are the Trust Deed Documents itself. The second trust deed regarding Neilsen and Nescoll is filed with CMA 7661 of 2016 at pg 02 to pg 06 whereas trust deed itself is at pages 04, 05 & 06. The JIT found that the second and third page of these two Trust Deeds was very similar to each other and that on both the second and third page there was a cutting of the date under the signature of the Solicitor Jeremy Freeman which was an alteration made which could be read as either the year 2006 or 2004 because of the over writing. (Under objection the witness is deposing as to the contents of the documents moreover, it is opinion inference of the witness which is not admissible in evidence). The JIT also observed that the year 2006 was a vital year as because of change in legislations i.e. BVI Company Act 2004, the bearer shares had to be deposited with a custodian by the year 2006 providing details of the owner to the custodian, this meant that the identity of the holder of bearer shares was no longer possible to remain anonymous. (Under objection that witness is deposing as to contents of documents and the statement is based on speculations and is argumentative). The JIT keeping in view the importance of this year took two actions. The JIT through its Solicitors Firm, Quist Solicitors which it had engaged solicited the response of Freeman Box Solicitors on the two trust deeds with relation to their letter at page 107 CMA 432, which is already exhibited as Ex.PW-16/45. The letter of Quist Solicitors is at pages 90 to pg 92 of volume IV, which is Ex.PW-16/78. (Under objection that document is not admissible for want of formal proof).

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 SLAMANG-3

The response of Mr. Freeman Box is at pg 89 (already exhibited as Ex.PW-15/2). In their response they have indicated that they had seen the original of the documents which were same as the copies sent by Quist as Enclosures. (Under objection that witness is deposing as to contents of documents which are not admissible in evidence). The JIT also decided to get the documents examined by Robert Radley a Forensic Document Expert who was hired through the Quist Solicitors. The Report of Mr. Radley regarding these trust deeds documents submitted with the CMAs has already been exhibited, as Radely Report 1. The JIT based on report concluded that the trust deed documents had been falsified. (Under objection the witness is deposing as to the contents of the documents moreover, it is opinion inference of the witness which is not admissible in evidence). The JIT keeping in view the importance of the documents issued summon to accused Maryam Safdar to produce the original trust deeds while appearing before the JIT on 05.07.2017. She on the said date handed over to the JIT the two Trust Deeds which she said were the originals. (copies of which are available at reference at page 122 to pg 127. Ex.PW14 3 at pg 128 to pg 131). Under objection that statement being before the LO JIT is not admissible in evidence). The JIT also sent them to the Forensic Expert Mr. Radley for opinion. His report Radley Report 02 has already been exhibited. The JIT concluded that accused Maryam Safdar have submitted a falsified / fake document to the JIT. (Under objection that it is opinion/inference of the witness which is not admissible in evidence). Accused Hussain Nawaz Sharif, Maryam Safdar and Capt Safdar had signed a falsified document and presented it before the Hon'ble Supreme Court of Pakistan as well. (Under objection that witness is not a witness to this fact moreover this is opinion based on speculations). Accused Hassan Nawaz had also submitted the copies of these trust deeds which was falsified through the CMA filed before the Honourable Supreme Court to mislead it. (Under objection that witness is not a witness to this fact and he is deposing as to the contents of documents, moreover this is his opinion inference which are not admissible in evidence). The accused Hassan and Hussain vide CMA 432 at page 107 already exhibited as Ex.PW-16 45. have submitted an opinion of Expert

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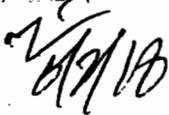
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Stephen Moverly. The JIT observed that it was a short opinion without consulting him trust deeds or other related documents and stated that there was no requirement under the laws of England and Wales and British Virgin Island to Register a trust deed. (Under objection that this portion of the statement is an opinion over the opinion of an expert so inadmissible in evidence). Another Expert Opinion already exhibited under objection at pg 68 to pg 88 Volume IV is the opinion of GILAEED Cooper which is detailed and given after considering the trust deeds and related documents. (Under objection that witness is not a witness of this fact). This opinion states that the trustee in case of a bearer share had to hold that shares so as to make it a valid trust. (Under objection that witness is deposing as to opinion of an Expert who is not witness in this regard) the JIT observed that none of the CMAs filed or the statement of the accused Maryam Safdar and Hussain Nawaz ever stated that Maryam Safdar accused ever seen let alone held these shares (under objection that witness is deposing as to contents of documents moreover he has referred to the statement of accused before JIT I.O. which is inadmissible in evidence). The second opinion of GILAEED Cooper is that the bearer shares once deposited with the Authorities terminated the trust. (Under objection that witness is deposing as to the opinion of Experts, who is not a witness in this case). Vide CMA 895 a Deutsche Bank document which provided for a charge on the Mayfair Apartments to provide loan to Coomber has been submitted. at pg 261.278.279.282.291.300.302.305.311.313.325.328.339 & 336 of Volume VII. are the financial statements of Hassan Nawaz's Companies "Que Holding, Flagship Securities and Quint Paddington" for the years 2007 to 2012. These documents are the basis for the chart already exhibited as Ex.PW-16'68 at pg 400 Volume VII. The documents show that loans from Coomber was provided to Que Holdings Ltd. a company also owned by Hassan which further provided funding to Quint Paddington in the year 2008. (Under objection that witness is deposing as to the contents of the documents, which is not admissible). The same Company i.e. Quint Paddington was also provided with a loan of 614,000 Pounds by Capital FZE a company based in Dubai where accused Hassan Nawaz is the owner

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and accused Nawaz Sharif is an employee according to the documents procured by a JIT Team. (Under objection that witness is not a witness to this fact and he is deposing as to the contents of the documents). Another document in CMA 7511 at page 08 and pg 09 already exhibited as Ex.PW-16 48 is a letter dated 12.06.2012 from Director of Financial Investigation Agency Mr. Errel Jeorge addressed to Money Laundering Reporting Officer Mossack Fonseca and Company seeking information about Nescoll and Neilsen Ltd. (Under objection he is deposing about contents of document of which he is not the author or addressee the same is inadmissible in evidence). In CP-29 2016 at pg 37. (Ex.PW-16 49) is the response of Mossack Fonseca dated 22.06.2012 regarding Nescoll Ltd whereas at pg 38 (Ex.PW-16 50) is their response regarding Neilsen Enterprises. (Under objection he is deposing about contents of document of which he is not the author or addressee the same is inadmissible in evidence). In response to the MLA the BVI Authorities have responded vide their covering letter, which is Ex.PW-16/79 (Original seen and returned back). (Under objection that the document does not fulfill the requirement of section 21 of NAO 1999, moreover the LOR for mutual legal assistance in response of which this letter has been written has not been supplied to the accused), has enclosed the response of Financial Investigation Agency which is placed at pg 52 to pg 56 Volume IV (already exhibited under objection as Ex PW-16/72 to Ex.PW-16-75) which confirmed and certified the copies of documents attached i.e. from Director FIA to Mossack Fonseca dated 12.06.2012 regarding Neilsen and Nescoll and the response from Mossack Fonseca dated 22.06.2012 responding to queries raised by FIA (Financial Investigation Agency), it also confirmed that the FIA received the reply from Mossack Fonseca regarding Nescoll Ltd through its letter dated 22-06-2012. (Under objection that witness is not witness to the fact he is deposing from the document which is not admissible). The response from Mossack Fonseca regarding Nescoll Ltd duly certified by FIA states that basing on their due diligence record, the beneficial owner of the company is Maryam Safdar and provides the address of Saroor Palace Jeddah. (Under Objection that the due Diligence record is not available on the court file, moreover

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witness is deposing to the contents of the documents under objection if it is inadmissible in evidence). It also states that they did not have any names of trustees, beneficiaries of any trust concerned with this company. Similarly, the response from Mossack Fonseca regarding Neilsen Ltd duly certified by FIA states that basing on their due diligence record, the beneficial owner of the company is Maryam Safdar and provides the address of Saroor Palace Jeddah. (Under Objection that the due Diligence record is not available on the court file, moreover witness is deposing to the contents of the documents under objection it is inadmissible in evidence). It also states that they did not have any names of trustees, beneficiaries of any trust concerned with this company. Letter of Financial Investigation Agency dated 12.06.2012 refers to two legal instruments, the BVI anti money laundering regulations 2008 and the BVI money laundering and terrorist financing code of practice 2008 which provide for detailed procedures for customers due diligence and verification of the identity of the customers introduced business. (Under objection that witness is deposing about the contents of the document, moreover he also deposing as to foreign law which he is not competent to depose too). Based on the BVI's response to the MLA, the JIT concluded that Maryam Safdar is the beneficial owner of the BVI Companies Neilsen and Nescoll which owned the Avenfield Apartments. (Under objection that this is opinion of the witness and it is not admissible in evidence). Also that, the trust deeds presented were not only fake but also were never registered or presented to the relevant company. (Under objection that this is opinion of the witness and it is not admissible in evidence). The JIT had responded to the specific questions raised by the Hon'ble Supreme Court of Pakistan, on page 35 and pg 36 Volume IV, of the JIT Report is having answer of relevant those questions. (Under objection that what the Hon'ble Supreme Court of Pakistan asked for the purposes of facilitating the Hon'ble Supreme Court of Pakistan under Article 184 (3) of the Constitution and the same is inadmissible in this proceeding). The JIT has also analyzed in Volume IX-A of JIT Report (and the same volume of the present reference), the income tax and wealth tax statement of accused Maryam Safdar from pages 02 to 04 and a chart at page 29 which is Annexure B, the

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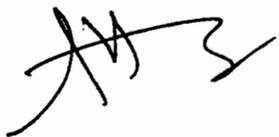
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chart is Ex.PW-16/80 (two pages 29 & 29-A). (Original is seen and returned with the direction to provide copy of the same to accused as well as this court). (Under objection that it is being part of the JIT Report and is not admissible in evidence). Assets of Hussain Nawaz Sharif from page 06 & pg 07 of the Volume IX-A and a chart based on Income Tax and Wealth Tax Filing at pg 227 Annexure L. the chart is Ex.PW-16/81 (two pages 227 & pg 227-A). (Original is seen and returned with the direction to provide copy of the same to accused as well as this court). (Under objection that it is being part of the JIT Report and is not admissible in evidence). Also the analysis of assets based on Income Tax and Wealth Tax and other record of Hassan Nawaz at pg 08 to pg 14 and a char based on Wealth and Income Tax at Annexure O. at page 280. the chart is Ex.PW-16/82 (two pages 280 & pg 280-A). (Original is seen and returned with the direction to provide copy of the same to accused as well as this court). (Under objection that it is being part of the JIT Report and is not admissible in evidence). All the three accused did not have income that could justify the acquisition and possession of these Apartments in the early 1990's. (Under objection that this is opinion of the witness which is inadmissible in evidence). This letter from Saamba to Minerva Financial Service Ltd is dated 03.12.2005 (available at pg 18 as Ex.PW-16/52 CMA 7511 (A). which links Maryam Safdar accused with Minerva before 2006. the said document has been acknowledged by Maryam Safdar in CMA 394.( Under objection that witness is deposing to the contents of a document already exhibited under objection and also referring to contents of CMA which is not competent proof. hence this portion is not admissible in evidence). He owns JIT Report from pg 01 to pg 36. his signature as well other members of JIT are available at last pg 36. original report is seen and returned.(Under objection that neither the report nor the signature are admissible under any provision of law). He produces Volume I of JIT Report. Final Investigation Report is available at pages (i) to (viii) which contains his signatures as well as other members of JIT at last page attested copies of which are available at pg (i) to (viii) of Volume I. (Under objection that neither the report nor the signature are admissible under any provision of law). Summary of investigation

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(at pg 1 to pg 254 volume I), which contains narrative part of each volume of JIT Report except Volume (x). Each of the detailed volume contains not only the narrative report but also full annexure of that particular volume. Volume II of JIT Report (volume II of the reference), statement of the witnesses and analysis is not part of summary of investigation mentioned above. (Under objection that this part of the JIT Report is not admissible in evidence under any provision of law). He produces the original letter brought by him from Hon'ble Supreme Court of Pakistan, with its covering letter and letter of foreign office, of Hamad Bin Jasim Bin Jaber Al Thani, dated 17<sup>th</sup> July, 2017 addressed to JIT PANAMA Case, scanned copy of which is Ex.PW-16.83 (separately placed). (Original is seen and returned). He also produces original authorization letter dated 19.06.2017, scanned copy of which is Ex.PW-16.84 (separately placed). (Original is seen and returned). (S.T.O). He appeared before NAB Investigator Mr. Imran Doggar at Lahore NAB on 30<sup>th</sup> of August 2017, and got his statement recorded.

PW-17 Mr. Zahir Shah, Director General Operation at NAB HQ and looking after the matters of international cooperation deposed that the documents pertaining to Avenfield Properties / Reference No. 20/2017 were received from UK High Commission through representative Mr. Osman Ahmad on 27.03.2018. Mr. Osman Ahmad handed over the documents on behalf of UK Central Authority with which the request for Mutual Legal Assistance (MLA) were forwarded by the JIT and subsequently the jurisdiction was changed to National Accountability Bureau. (under objection of hearsay regarding handing over the documents "on behalf of UK Central Authority", because Osman Ahmad is not a witness in this case). (Overruled, reasoning is given herein discussion). He produced the original letter of 20<sup>th</sup> March, 2018 of Paul Crome UK Central Authority, photocopy of which is Ex.PW-17.1 (02 pages). (Under objection that the witness is neither the recipient nor the scribe or the executant of the document). (Learned prosecutor contended that the said covering letter is addressed to witness and the original record was handed over as mentioned in said covering letter). (Overruled, reasoning is given herein discussion).

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He produced original official copy of register of title regarding House No. 16. Avenfield House. edition date 04.04.2016, same is Ex.PW-17/2 (consisting upon 02 pages). (Under objection that it is neither original nor attested as required by law). (Learned prosecutor contended that the witness has produced original document of official copy of register received in response to MLA Requests, moreover there is no requirement of attestation of the document received through MLA in view of section 21 (g) of NAO, 1999). (Overruled, reasoning is given herein discussion).

He produced official copy of register of title regarding House No. 16-a. Avenfield House. edition date 01.04.2016, same is Ex.PW-17.3 (consisting upon 02 pages). (Overruled. reasoning is given herein discussion).

He produced official copy of register of title regarding House No. 17. Avenfield House. edition date 01.04.2016, same is Ex.PW-17.4 (consisting upon 02 pages). (Overruled. reasoning is given herein discussion).

He also produced original official copy of register of title regarding House No. 17-a. Avenfield House. edition date 29.11.2016, same is Ex.PW-17/5 (consisting upon 02 pages). (Overruled, reasoning is given herein discussion)

He produced original record pertaining to Water Bills of Flat No. 16.16-a. 17 and 17-a. Avenfield Houses which is Ex.PW-17/6. (consisting upon four pages). (Overruled. reasoning is given herein discussion).

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He produced original record received by him. pertaining to Council Tax Statement for flat No. 16 Avenfield House, which is Ex.PW-17/7 (consisting upon 11 pages).. (Overruled, reasoning is given herein discussion).

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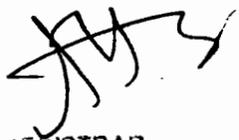
He produced original record received by him. pertaining to Council Tax Statement for flat No. 16-a Avenfield House, which is Ex.PW-17/8 (comprising on 02 pages). (Overruled, reasoning is given herein discussion).

He produced original record received by him, pertaining to Council Tax Statement for flat No. 17 Avenfield House, which is Ex.PW-17/9 (comprising on 08 pages). (Overruled, reasoning is given herein discussion).

He also produced original record received by him, pertaining to Council Tax Statement for flat No. 17-a Avenfield House, which is Ex.PW-17/10 (comprising on 08 pages). (Overruled, reasoning is given herein discussion).

**PW-18** Mr. Muhammad Imran was serving as Assistant Director/Investigation Officer in NAB Lahore deposed that during the authorization of investigation of the instant case, in the light of judgment of Hon'ble Supreme Court of Pakistan dated 28.07.2017, competent authority has authorized an investigation against the accused Mian Muhammad Nawaz Sharif, Hassan Nawaz Sharif, Hussain Nawaz Sharif, Maryam Nawaz Safdar and Capt Retd Muhammad Safdar relating to Avenfield Properties which are Flat No. 16.16-a, 17, & 17-a Avenfield House Park Lane London. The said investigation was authorized vide authorization letter No. 1(61)/HQ/911/NAB Lahore dated 03<sup>rd</sup> August, 2017, same is Ex.PW-18/1 (pg 24 of interim reference). (Overruled, reasoning is given herein discussion).

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ISLAMABAD



During the course of investigation, complete JIT Report was collected from Hon'ble Supreme Court of Pakistan and volume I to IX-A are integral part of this reference and were also submitted in this court along-with reference. (At this stage learned prosecutor contended that Volume I to IX-A of the JIT Report may be exhibited. Both sides want to argue it in detail. Time 30 minutes was granted to prepare their arguments as per their request).

Record regarding Panama Case before Hon'ble Supreme Court of Pakistan was also collected which includes CMAs through which accused persons submitted their stance regarding acquisition of Avenfield Properties before Hon'ble Supreme Court of Pakistan and also provided money trail in this regard. Same record of proceedings of Panama Case before Hon'ble Supreme Court of Pakistan was also submitted before this learned court alongwith the reference. Miss



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Sidra Mansoor Joint Registrar SECP joined investigation on 23<sup>rd</sup> August 2017. and produced record regarding annual Audited Accounts of Hudaybia Paper Mills from year 2000 to 2005 alongwith the report and a covering letter. already exhibited as Ex.PW-1/2 to Ex.PW-1/8 (pg 62 to pg 110 Interim Reference). (Learned Defence Counsel contended that already subjected to objection). Same record was seized through seizure memo dated 23-08-2017 in presence of witnesses and statements of Miss Sidra Mansoor and witnesses of seizure memo were recorded u/s 161 Cr.P.C. the said seizure memo is Ex.PW-18/2 (pg 62. Interim Reference).

Mr. Shakeel Anjum Nagra (PW-6), Addl Director (Coordination) of Operations Divisions, NAB HQ, Islamabad joined investigation on 25-08-2017 and his statement was recorded u/s 161 Cr.P.C.

Mr. Wajid Zia. Head of JIT (PW-16) joined investigation on 30.08.2017. and his statement u/s 161 Cr.P.C was recorded.

Mr. Mazhar Raza Khan Bangesh (Pw-03) joined investigation on 30.08.2017. and his statement was recorded u/s 161 Cr.P.C.

Mr. Muhammad Rasheed (PW-02). Orr Dignam and Co. joined investigation on 06<sup>th</sup> September. 2017, and produced record pertaining to photocopies of order of Queen's Court London and affidavit of Mr. Mazhar Raza Khan Bangesh along-with a covering letter (already marked as Mark A and B and Ex.PW-2/1 pg 112 to pg 122 of Folder I, Interim Reference). (already subjected to objection), and same was seized through a seizure memo dated 06<sup>th</sup> September, 2017 in the presence of witnesses. that seizure memo is Ex.PW-18/3 (pg 111. Interim Reference Volume I) and statements of Mr. Muhammad Rasheed and witnesses of seizure memo dated 06<sup>th</sup> September, 2017 were recorded u/s 161 Cr.P.C.

Call-up notices were issued to Mousa Ghani and Tariq Shafi and same were handed over to Umar Daraz Gondal Sub Inspector Police Station NAB. Lahore. and his statement u/s 161 Cr.P.C was recorded on 16<sup>th</sup> August 2017. Call-up notices to accused Mian Muhammad Nawaz Sharif. Hassan Nawaz Sharif. Hussain Nawaz

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Sharif. Maryam Nawaz Safdar and Capt Retd Muhammad Safdar were issued and handed over to Mukhtar Ahmad Sub Inspector. (PW-04) P.S NAB Lahore and his statement u/s 161 Cr.P.C was recorded on 18-08-2017. It was also written in the above said call-up notices addressed to the accused persons that in case of their non-appearance it would be construed that they have nothing more to offer in their defence. (Learned Defence Counsel contended that this portion of statement pertains to contents of the document, moreover that document is not even part of the record and this witness is not competent to draw any inference as stated by him). Accused persons did not join investigation proceedings however on behalf of accused Mian Muhammad Nawaz Sharif. Maryam Nawaz. Capt Retd. Muhammad Safdar, two letters from their counsel Mr. Amjad Pervaiz Advocate dated 22<sup>nd</sup> August, 2017, were received through his authorized representative Mr. Sultan. (Learned Defence Counsel contended that this portion of statement pertains to contents of the documents, moreover those documents are not even part of the record). He produce original those letters whose contents were noted at pg 05 & pg 06 of Interim Investigation Report. (At this stage Learned Defence Counsel contended that these are not appended with the reference, the witness is neither scribe nor executant of these three documents, the scribe and executants are not cited as a witness in this reference. As far as the reference of documents in investigation report is concerned same refers to only one letter and not to three documents. On the other hand learned prosecutor has contended that the letters are addressed to the witness and he is producing the said letter in original in the court, reference of letter is also given in interim report). (Court Order: The witness is producing original letters and hand written statement the contents of both the letters already reproduced in its report prepared u/s 173 Cr.P.C and the said letters are allegedly on behalf of accused through their counsel therefore, those letters as well as hand written statement of the counsel will be exhibited in his statement subject to objection if any on behalf of accused about their admissibility. Photocopies of the letters and hand written statement are handed over to both the counsel of the accused). Both the letters dated 22.08.2017 on behalf of accused Mian Muhammad Nawaz Sharif and

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on behalf of Maryam Safdar and Muhammad Safdar, and hand written statement of Mr. Sultan Mehmood Khan are Ex.PW-18/4, Ex.PW-18/5 and Ex.PW-18/6 respectively. (Photocopies of the same are handed over to Learned Defence Counsels). (Under objection that witness is neither scribe nor the executant, and no notice of the document was given to the accused).

On the basis of material collected and referred to by the JIT in JIT Report he prepared interim investigation report dated 06<sup>th</sup> September, 2017, which bears his signature, available at pg 20 to pg 22 of interim Reference) and recommended filing of reference against the accused persons namely Mian Muhammad Nawaz Sharif, Hassan Nawaz, Hussain Nawaz, Maryam Nawaz Safdar and Capt Retd Muhammad Safdar. Competent authority after the perusal of Interim Investigation Report and material available on record filed the interim reference against the accused persons on 08<sup>th</sup> September, 2017.

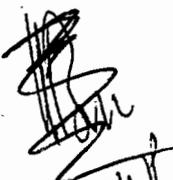
During the course of further proceedings He along-with case officer Mr. Sultan Nazir visited UK and recorded statement of Mr. Raja Akhtar (PW-15) Principal Quist Solicitors u/s 161 Cr.P.C on 14.12.2017 and recorded statement of Mr. Robert Radley (PW-14) on 15.12.2017 u/s 161 Cr.P.C as both were associated with the proceedings by the JIT. Mr. Sardar Abdul Wahid Khan (Pw-09) DG Directorate of Electronic Media and Publication joined investigation

On 05<sup>th</sup> January, 2018 he produced record regarding address and speech of accused Mian Muhammad Nawaz Sharif and Hussain Nawaz Interview with Javed Chaudhry, which include transcripts, CDs and relevant correspondence letters already exhibited as Ex.PW-9/1 to Ex.PW-9/13 at pages 21 to pg 58 of Supplementary reference. (Already subjected to objection as noted in statement of PW-09), which he seized through seizure memo dated 05-01-2018 in the presence of witness, that seizure memo is Ex.PW-18/7 (pg 20 of supplementary reference). and statements of Sardar Abdul Wahid Khan and witness of seizure memo were recorded u/s 161 Cr.P.C on 05.01.2018.

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Mr. Syed Mubasshar Tauqeer Shah (PW-10) Director External Publicity Wing M/o Information joined investigation on 05.01.2018, and produced transcript of interview of accused Hassan Nawaz in program Hard Talk of BBC along-with CD and other correspondence already exhibited as Ex.PW-10/1 to Ex.PW-10/5 (pg 60 to pg 74 of supplementary reference). (Already subjected to objection as noted in statement of PW-10) and same was seized through seizure memo dated 05.01.2018. in the presence of witness. that seizure memo is Ex.PW-18/8 at pg 59 of supplementary reference. and statements of Mr. Syed Mubasshar Tauqeer Shah and witness of seizure memo were recorded u/s 161 Cr.P.C on 05.01.2018.

Mr. Waqas Ahmad (Pw-11). Senior Coordinator Geo News Islamabad joined investigation on 10.01.2018. and produced transcripts and CDs containing conversation of accused Maryam Nawaz in program LEKIN and interview of accused Hussain Nawaz with Hamid Mir along-with a covering letter already exhibited as Ex.PW-11/2 to Ex.PW-11/5 (pg 76 to pg 91 of supplementary reference). And same were seized through seizure memo dated 10.01.2018. same is Ex.PW-18/9 (at pg 75 of the supplementary reference). in presence of witness. Statements of Mr. Waqas Ahmad and witness of seizure memo were recorded u/s 161 Cr.P.C on 10.01.2018.

Once again call-up notices were issued to accused Mian Muhammad Nawaz Sharif, Maryam Nawaz Safdar and Capt Retd Muhammad Safdar on 28-12-2017. however accused persons did not join investigation proceedings and a letter from their counsel Ch. Naseer Ahmad Bhutta dated 30.12.2017 was received. He produced original two letters. one is on behalf of Capt Muhammad Safdar and other is on behalf of Maryam Safdar which are Ex.PW-18/10 and Ex.PW-18/11 (Under objection that these documents have been available with the prosecution since 30.12.2017 and they did not even append these documents with the supplementary reference which was filed on 22.01.2018 and now it is being produced after five months during the course of recording of deposition of this witness. Furthermore. this witness is neither scribe nor executant of these

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documents. nor is the actual scribe or executant of these documents which have been cited as witness. No notice u/s 265-C of Cr.P.C has been given to the accused). (Overruled. reasoning is given herein discussion). It was written in the above said call-up notices that in case of their non appearance it would be construed that they have nothing more to offer in your defence. (Learned Defence Counsel contended that this portion of statement pertains to contents of the document, moreover that document is not even part of the record and this witness is not competent to draw any inference as stated by him). Then he prepared supplementary investigation report dated 12.1.2018 and which bear his signatures (available at pages 06 to 18 of supplementary reference) and recommended filing of supplementary reference against the accused persons. Competent authority after the perusal of supplementary investigation report and material available on record filed supplementary reference against the accused persons on 22.01.2018. On the basis of material collected and referred by the JIT. NAB also followed the MLA requests initiated by the JIT. On 27.3.2018. He received a call from Mr. Zahir Shah(PW-17) DG Operation NAB Headquarter Islamabad and he was informed that reply of MLA from UK Central authority has been received. On the next day on 28.3.2018 he visited the office of DG Operation and he handed over the photocopies of the record received from UK Central Authority to proceed further. The said record contained land registries of Flat NO. 16, 16-a, 17 and 17-a of Avenfield House London. Utilities bills and council tax and that record was placed on record of this court through an application. On the basis of material collected and referred to by JIT in JIT report. It is found during the investigation that accused Mian Muhammad Nawaz Sharif being public office holder owned and possessed Avenfield properties which are bearing No. 16, 16a, 17 and 17-a Avenfield House through offshore companies namely Nielson and Nescoll in the name of his benamidars, and has failed to account for sources for acquisition of said properties and these properties are in possession of accused Mian Muhammad Nawaz Sharif and other accused persons since 1993. (Learned defence counsel has objected to it that this entire portion constitutes inferences drawn by an opinion of the I.O which is not admissible in the eye of

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law. On the other hand learned prosecutor contended that the said portion of the statement of the witness is based on the facts/record, material collected, and analyzed /examined during the course of investigation). (Overruled, reasoning is given herein discussion). Accused persons Hassan Nawaz Sharaf, Hussain Nawaz Sharaf, Maryam Safder and Capt. Muhammad Safdar filed various documents including the trust deeds of Nielsen, Nescoll and Coomber before the Hon'ble Supreme Court of Pakistan, during the hearing of Panama Case in the support of stance taken by the accused persons regarding the acquisition of Avenfield Properties. Trust deeds of Nielson, Nescoll and Coomber were also submitted by accused Maryam Nawaz before the JIT as original however, later on these trust deeds found to be faked and fabricated in the light of forensic reports of Robert Radlay. (Learned defence counsel objected that this witness is not witness to whatever transpired before the JIT and to this extent this portion of the statement is not admissible. (Overruled, reasoning is given herein discussion). Accused persons Hassan Nawaz, Hussain Nawaz, Maryam Nawaz and Capt Muhammad Safdar being benamidars and associates aided, abetted, conspired and connived with accused Mian Muhammad Nawaz Sharif and were found involved in commission of offences of corruption and corrupt practices under NAO 1999 and schedule attached thereto. (Learned defence counsel objected that this portion is inference/opinion of the I.O., on the other hand learned prosecutor contended that the said portion of the statement of the witness is based on the facts/record, material collected, and analyzed, examined during the course of investigation). (Overruled, reasoning is given herein discussion).

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While relying upon the JIT Report and in addition to documents already produced by other PWs, He have also relied upon the following documents and material:

1. Family assets settlement agreement (available at pg 152 to 184 of volume IV of interim reference) which is Ex.PW-18/12 (Under objection that document is photocopy, the witness is neither scribe nor executant nor witness of this document, the scribe, executants or witnesses of this

document are not cited as witnesses nor the stamp of attestation is affixed as copy of the original, rather the original was not available with the Hon'ble Supreme Court of Pakistan. and this document was never received nor taken into possession by the witness/I.O.. on the other hand learned prosecutor has contended that the same is the attested copy and has been received and collected from Hon'ble Supreme Court of Pakistan by the witness to peruse, examine and relied on the same and the same is part of judiciary proceeding). (Overruled, reasoning is given herein discussion).

2. Analysis/chart of assets and liabilities of accused Mian Muhammad Nawaz Sharif prepared by JIT, available at pg 418 of volume IX. (consisting upon two pages), same is Ex.PW-18-13. (Under objection that firstly that this document is not prepared by this witness, secondly Mr. Wajid Zia appeared as head of JIT as PW-16. and he never stated that this document was prepared by JIT, nor did he get this document exhibited nor produce this document during his deposition. and therefore this document is not admissible in the statement of this witness). (Overruled, reasoning is given herein discussion).

(Witness is directed to provide better copies of the same).

3. Report of JIT available at pg 01 to pg 40 of Volume III. (Under objection that this is not admissible in evidence).
4. Report of JIT available at pg 01 to pg 36 of Volume IV. (Under objection that this is not admissible in evidence).
5. Report of JIT available at pg 01 to pg 24 of Volume V of JIT Report. (Under objection that this is not admissible in evidence).

#### ARGUMENTS OF LEARNED PROSECUTOR

19. Learned Prosecutor made interalia following submissions while summing up case of the prosecution.

➤ Mossack Fenseca is the fourth largest law firm of the world. The international consortium of investigative journalists ICIJ released certain information that had been hacked from the database of a Panama based law

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firm (Mossack Fonseca). Approximately eleven million documents were hacked. Those papers are known as Panama Papers.

- That information reveals the names of hundreds of persons who formed off-shore companies in various tax haven jurisdiction for obtaining secrecy and tax immunity of private property and wealth secured by means that interalia include fraud, money laundering and tax erosion. The list included names of heads of the states, their relatives, associates, public official, politicians, rich people etc. from all over the world.
- Members of the then First family of Pakistan was also alleged to have connection with off-shore companies. Sharif family owns off-shore companies and properties assets which never declared.
- After release of Panama papers, the Avenfield Apartments which are subject matter of this reference were also taken up by Hon'ble Supreme Court of Pakistan in constitution petition no. 29/2016, 30/2016 and 03/2017. Those apartments were never declared by the accused no.1. Certain documents/consite statements and affidavits were filed by the accused in their defence.
- While deciding the matter, Hon'ble bench of five members was split in their decision. Hon'ble three members of the bench formed JIT to probe into the allegations. Certain questions were enumerated for the JIT. Investigation was to be completed within 60 days. Order dated 20-04-2017 Exh. PW-16/1 is pertaining to announcement of formation of JIT while order dated 05-05-2017 speaks about composition of JIT which started its work on 08-05-2017. JIT submitted its final report consisting of ten volumes on 10-07-2017.
- JIT had all powers given by the law relating to investigation including those available in the Cr.P.C 1998, NAO 1999 and Federal Investigation Agency Act 1975. The JIT was also having the power to engage an associate local and/or foreign experts to facilitate the investigation and collection of evidence and line with the letter and spirit of the order dated 20-04-2017 of Hon'ble Supreme Court of Pakistan. He referred to order dated 05-05-2017 Exh PW16/5 in this regard.
- He has further contended that it was observed by Hon'ble Supreme Court of Pakistan that a prima facie tribal case was made out against the accused and NAB was directed to prepare and file the reference(s) on the basis of material collected and referred to by the JIT in its report and such other material as may be available with the FIA and NAB having any nexus with the assets or which may subsequently become available. NAB was directed to file reference within six weeks.
- Charge in the case was framed on 19-10-2017 and amended on 08-11-2017. Supplementary reference was

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disproportionate to his known sources of income to prove charge of corruption and corrupt practices under NAO 1999. Once such burden is satisfactorily discharged, onus is shifted to accused to prove the contrary and give satisfactorily account of holding properties. In case of failure of accused, court may raise presumption of a guilt.

- He has also referred to a case authority PLD 2017 SC 265 and contended that in para 10 and 11 of the judgment, it is held that where there is an allegation that a holder of public office or any of its dependants or benamidars owns or possesses any assets or pecuniary resources which are disproportionate to his known sources of income which cannot reasonably account for he can be convicted of an offence of corruption and corrupt practices. He has further contended that prosecution has succeeded to discharge its initial burden. Admittedly accused paid ground rent of avenfield apartments. ground rent is paid by owners. FIABVI documents, settlement in year 1999 in respect of Al Taufiq Company, concise statement Exh PW 16/4 also indicates ownership of the accused. Tariq Shafi is statedly benamidar of Muhammad Sharif, this family has been using benamidar since long time.
- The stance taken by the accused (respondent no. 6,7 & 8) in supplementary concise statement Exh PW 16/4 is that Muhammad Sharif was their grand father, who alongwith his family owned Ittefaq Foundries which manufactured heavy machineries. It was nationalized on 02-01-1972 by the then Government of Pakistan without any compensation. Additionally the owners and their families had kept their precious possessions like cash

and jewelry in safe deposit lockers of Ittefaq Foundries at the time of its forced and abrupt nationalization, which were also confiscated along there with.....

In the year 1973, late Mian Muhammad Sharif moved to UAE and had set up Gulf Steel Mills (The company) in the year 1974 in Dubai and he carried on this vary business through his nephew Tariq Shafi. Mr. Muhammad Hussain was a partner in the company. The steel factory belonging to the company was established by obtaining loans from domestic bank in Dubai. No amounts were transferred or remitted from Pakistan for the purpose of setting up, financing or running of this business. Mr. Muhammad Hussain (partner) passed away. His legal heirs through a cessation letter transferred their share including the rights and liabilities, in favor of Mr. Tariq Shafi who was holding the share on behalf of late Muhammad Shafi.

In year 1978, late Mian Muhammad Sharif decided to sell off 75% shares of the company to Mr.

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Abdallah Kayed Ahli, inter alia to settle the company's outstanding liabilities with the domestic bank in Dubai. Consequently in 1978, Tariq Shafi sold 75 % shares of the company through a try partite agreement. The money obtained from sale of 75% shares of the company was utilized exclusively to settle its outstanding liabilities. The business of the factory was run under the name of Ahli Mills company (The Ahli company) of AED 28,500,000 capital of the Ahli company, Mr. Abdallah Kayed Ahli subscribed to 75 %, while the remaining 25% were treated as having being contributed by Mr. Tariq Shafi in accordance with try-partite agreement. A fresh partnership agreement was executed between Abdallah Kayed Ahli and Tariq Shafi.

In year 1980, Mian Muhammad Sharif decided to disengage himself from his steel business in Dubai. 25% share in Ahli company were sold to Mr. Abdallah Kayed Ahli against a total sale consideration of AED 12 million. In the same year, the consideration of AED 12 million received from sale of 25% share was entrusted to Al-Thani family of Doha/Qattar to invest in the real estate business of the Al-Thani family. The Flats no. 16, 16-A, 17 & 17-A were purchased by the Al-Thani family and their ownership was secured through two companies namely Neilson Enterprises Limited and Nescoll Limited, the bare share certificates of which were kept by the Al-Thani family in Qattar. On account of the long standing business and personal relations of the Al-Thani family with late Mian Muhammad Sharif, Al-Thani family allowed late Mian Muhammad Sharif and his family to use properties whilst bearing all expenses relating to the properties including the ground rent and service charges.

After his exile from Pakistan on 10-12-2000 late Mian Muhammad Sharif advised Al-Thani family that the said investment, together with its cumulative return, would be for the benefit of his eldest grand son i.e, respondent no.7. Respondent no. 6 is trustee for the benefit of respondent no. 7 in pursuance of a trust deed of 2006, executed between respondent no. 6 and 7. Since the year 2006, the properties are owned by respondent no.7.

Learned prosecutor has referred to section 4 (1)(b) section 4 (2) d&g. section 4 (4) of Virgin Islands Financial Investigation Agency Act 2003 which are reproduced below:

4 (1) In the exercise of its functions under subsection (2), the Agency shall be responsible for receiving, obtaining, investigating, analyzing and disseminating information which relates or may relate to.

(a) .....

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(b) A request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests.

4 (2) Without limiting subsection (1) and notwithstanding any other law to the country the Agency

(a) .....

(b) .....

(c) .....

(d) May require the production of such information, excluding information subject to legal professional privilege, that the Agency considers relevant to the performance of its function.

(e) .....

(f) .....

(g) may provide information relating to the commission of a financial offence to any foreign financial investigation agency, subject to any conditions as may be considered appropriate by the Attorney General.

4 (4) Any person failing or refusing to provide the information required under subsection (2)(d) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both.

He has contended that the information of MLA request received through FIABVI due to the above said provision is reliable. The money was sent through money laundering. The bearer share certificate lost their utility due to BVI business companies act 2004, he referred to s 69 which is reproduced below for a ready reference:

**69 ISSUE OF BEARER SHARES AND CONVERSION OF REGISTERED SHARES**

(1) Where a company issues a bearer share or transfers a treasury share that is a bearer share, it shall not deliver the share to any person other than a custodian who has agreed to hold the share.

(2) A company shall not deliver a bearer share converted from a registered share to any person other than a custodian who has agreed to hold the share.

(3) The delivery of a bearer share to a custodian in accordance with this Division does not constitute te custodian as a share holder of the company, in relation to the bearer share, notwithstanding that the custodian may exercise voting and other rights on behalf of the beneficial owner of the bearer share.

(4) Where a company acts contrary to provision 1 or 2, it commits an offence and is liable on summary conviction to a fine of 50,000S.

S 70 of BVI business companies act 2004 provides bearer shares not held by custodian are disabled.

He has submitted that this was a compulsion that name of exact owner was to disclose in respect of bearer

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share/registered share. A registered share is a stock which is registered to the name of exact owner. If owner of such a share sells it, the new owner has to register it with his name and other personal information.

Under s. 71 of BVI business act 2004 full name of beneficial owner of the bearer share, the full name of any other person having an interest in that share, other information as required are to be provided. At the time when bearer shares are deposited with the authorized custodian or delivering the same to any person.

As per FIABVI letter accused Maryam Safdar is indicated as beneficial owner of the companies Neilson and Nescoll Ltd.

➤ The Avenfield Apartments were in the name of the said two offshore companies, the real identity of the ownership was concealed till 2006 when the British version island laws were changed and it became no longer possible to conceal the real identity of beneficial ownership as per legislation mentioned above. Learned Prosecutor also referred to anti money laundering regulation 2008 and anti money laundering and terrorist finance code of practice 2008. The bearer share certificates were converted into registered shares.

➤ To justify the acquisition of Avenfield Apartments accused has produced letters (Exh PW16/11 and Exh PW 16/12) of Hamad Bin Jasim Bin Jaber Al-Thani. Para 4 of Exh PW16/11 is about Avenfield Apartments which is reproduced below for a ready reference:

The properties Flat no. 17.17-A.16.16-A at Avenfield house, Park Lane, London were registered in the ownership of two offshore companies, bearer share certificates of which were kept during that time in Qatar. These were purchased from the proceeds of the real estate business.

On account of relationship between the the families, Mian Muhammad Sharif and his family used the properties whilst bearing all expenses relating to the properties, including the ground rent and service charges.

The said Hamad Bin Jasim did not appear before JIT even he is adamant to appear before the court and he avoided his appearance on different pretexts, even before any court of Pakistan. He referred the pages 20 to 22 of Vol-V. The letter is found myth by the JIT. The documents received through MLA and produced by Zahir Shah PW as well as previously available documents indicate that the apartments were purchased by Neilson and Nescoll Companies on 01-06-1993 (flat no. 17 by Nescoll), on 23-07-1996 (Flat no. 17a by Nescoll Ltd), on 31-07-1995 (flat 16,16a by Neilson Ltd). The sons (co-accused) of the accused no.1 had lived in Avenfield Apartments during the said years which indicate their possession of said apartments since then. Interviews of sons (co-accused) of the accused

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no.1 clearly manifest that those apartments were in their use. ground rents was paid which is the duty of actual owner.

- Trust deeds are also found bogus. Writing in Calibri font on those deeds indicates that those were not prepared in year 2006. Expert reports of Robert Radley already exhibited in evidence, falsified the deeds. The said expert has categorically stated that Calibri font was not commercially available before Jan 2017. The contents of trust deeds are not infact creating any trust. Some duty as per trust deeds was assigned to be performed after death of purported settler.
- The accused person had not produced any evidence in their defence whereas they had a chance to produce witnesses or documentary evidence to rebut the prosecution case. No witnesses were produced to verify the purported Trust deeds to confirm the signatures thereon. He further argued if the JIT as alleged intentionally did not record statement of Qatari Crown Prince then the defence had a chance to produce him with documentary evidence and accused did not even produce any document to show the ownership of London Apartments. Similarly evidence regarding companies could have been produced however it was not done intentionally.
- That the Mayfair Apartments were in possession of accused since 1993 and Maryam Safdar is beneficial owner of Neilson and Nescoll as per the documents presented by the prosecution in this case. It was also contended that the accused paid the ground rent since 1993 which is always paid by owners. It was also stated that accused Mian Nawaz Sharif, Maryam Safdar, Hassan Nawaz and Hussain Nawaz failed to prove source of income. Added that Maryam Nawaz hid actual facts and Capt (Retd) Safdar signed a fake trust deed as witness and both tried to misguide Investigation Agency and Hon'ble Supreme Court of Pakistan.
- The learned prosecutor also read the statement of absconding accused Hussain Nawaz given before the JIT wherein he stated that he was residing in said flats since 1993. and that the family took possession of other flats in 1995 and 1996.
- The prosecutor also added that the letters of Qatari Crown Prince were proved unsubstantiated. There was no documentary proof of investments made to the Qatari and that the bearer shares of Neilsen Enterprises and Nescoll Ltd never remained at Qatar and were handed over to Minerva service in 2006. It means that both companies and flats were already in possession of Sharif family since 1993. Added that there is record of transfer of bearer shares of flats to Hussain Nawaz from Qatari Crown Prince as claimed before the JIT so. statement of Hamad Bin Jasim is irrelevant however, even the JIT tried to record his statement. The JIT had summoned

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Hamad Bin Jasim on 24-05-2017 and 22-06-2017, however he did not appear before the JIT. He further added that JIT said that they can visit Doha for recording of statement however, he said that he will neither record statement at Embassy nor will appear in Court. The learned prosecutor argued that if the JIT did not record his statement then he could have appeared before the court as defence witness. Request for recording of his statement through video link can be made by the accused. The prosecutor contended that according to JIT findings his letter is a mere story. The prosecutor also added that the JIT analyzed affidavit of Tariq Shafi, however it did not find any proof of sale of 25% shares of Gulf Steel in 1980 in the Dubai Court System.

- The learned prosecutor argued that PW 14, Robert Radley confirmed his report and it was not rightly rebutted or contradicted through any expert produced as defence witness. It is important to understand the connection of letter of Samba Bank which connects Maryam Safdar to flats prior to 2006 as well, and further establishes that the Two Trust deeds were not only forged but also an after-thought. It was also argued that absconding accused Hussain Nawaz in his TV interview accepted that according to Sharia his father is owner of flats.
- According to trust deed, in case of death of Hussain Nawaz Maryam Nawaz will have the authority to divide the property. When the Trust deed was analyzed for sake of its legality the importance is to be given to the legal opinion provided by Gilead Cooper QC as he thoroughly examined the Trust deed and has concluded on issue of distribution as per Sharia that if the intention was only this matter then the same could have been achieved through a will. In documents however, the accused did not produce any documents, whereas prosecution case is made of a set of documents proving the guilt of the accused in this matter.

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Learned Defence Counsel Mr. Khawaja Haris Sr. Advocate on behalf of accused No.1 has made interalia following submissions during arguments.

1. The powers of the JIT are mentioned in order dated 05-05-2017 Exh PW16/5. Para vi is reproduced below:

The JIT shall have all the powers given by the law relating to investigation including those available in the Code of Criminal Procedure, 1898, National Accountability Ordinance 1999 and the Federal Investigation Agency Act, 1975.

According to s 4 (1) Cr.P.C investigation means collection of evidence. While according to s 3 of FIA Act 1974, subject to any

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order which the federal government may make in this behalf the members of agency shall, for the purpose of inquiry or investigation under this act, have such powers as the officers of the provincial Police have in relation to the investigation of offences under the code (Cr.P.C 1898) or any other law for the time being enforce. Cr.PC 1898 has been made mutatis mutandus applicable by NAO 1999 so for all intent and purposes JIT has conducted investigation and its report is also investigation report. The volumes filed by JIT is having title on first page at each volume as "Investigation Report of the Joint Investigation Team. Panama Case". He has further contended that vide order dated 20-04-2017 certain questions were formulated and it was noted that a thorough investigation in this regard is required. In para 3 of the order it was also directed that the JIT shall investigate the case and collect evidence.

Final order of the court dated 28-07-2017 also shows that NAB was directed to prepare and file before the Accountability Court Rawalpindi/Islamabad the references on the basis of material collected and referred to by the JIT in its report and such other material as may be available with the FIA and NAB. Therefore, the analysis, opinion, inference of JIT are not made basis for the filing of references. He has also referred order dated 14-06-2017 para 6 was read with the contention that statements were being recorded u/s 161, 162 Cr.P.C. He has also contended that application was filed by the accused before recording of statement of head of JIT as PW 16, the matter was kept open ended in that order. At present decision may be made in the judgment.

1. Review petition was filed by the accused the judgment is reported as PLD 2018 pg 1. Some portion as pointed out by learned defence counsel of para 14 of that judgment dated 15-09-2017 is reproduced below:

"The argument that this direction implies unambiguous approval of the material collected by the JIT whose probative worth is yet to be established is also misconceived as none of our observations projects any such impression. The trial court in any case would be at liberty to appraise evidence including the material collected by JIT according to the principles of the law of evidence without being

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influenced by any of our observations. Even otherwise, all the observations made in the judgment, being tentative would not bind nor would restrain the trial court from drawing its own conclusions from the evidence recorded before it in accordance with the principles and provisions of the law of evidence”.

2. Learned defence counsel referred to following authorities.

1. 1993 SCMR 550 titled Syed Saeed Muhammad Shah and another Vs. the State. para 10 is reproduced as below:

“Section 173 Cr.P.C is most important section in this Chapter for the reason that under this section final report of investigation is to be sent by the police officer to the Magistrate empowered to take cognizance of offence. This report is to contain names of the parties, nature of information and names of persons who appeared to be acquainted with the facts and circumstances of the case. Names of accused are to be mentioned whether in custody or not. Report of police officer under section 173 is merely an information of the police officer and the same is not admissible in evidence. Presumption of innocence of accused involved in it is not diminished by mere fact that the case has been sent up for trial or that particular witness or person formed opinion against the accused. In support of this proposition, reference can be made to the case of Raja Muhammad Afzal v. Ch. Muhammad Altaf Hussain and others 1986 SCMR 1736.

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P L D 2018 Supreme Court 178 titled Province of Punjab through Secretary Punjab public Prosecution Department and other Vs. Muhammad Rafique and others para 13 is reproduced as under:

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“The learned counsel has mainly relied upon the report of JIT and also read certain paragraphs there from but the said report is an opinion of the members of JIT, and it can be considered, at the most as a report under section 173 Cr.P.C. It is settled by now that report under section 173 Cr.P.C is inadmissible in evidence, as laid down by this court in the case of Syed Saeed Muhammad Shah and another V. the State (1993 SCMR 550). The trial Court will appreciate the same if supported by some admissible material/evidence because the Court has to see the material and cannot decide the case upon any opinion of

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Police Officer/s. even of a high rank of Inspector General of Police”.

3. P L D 2011 Supreme Court 350 titled Muhammad Arshad and others Vs. The State and others para 35 is reproduced below:

“We feel that the time is now perhaps ripe when we need to remind ourselves of the legal role of the police in the matter of investigations and the law regulating the admissibility and relevancy of evidence which could be recorded at a trial in the said context”.

4. 2003 M L D 676 (Karachi) title Asif Jameel and others Vs. The State

“ It is further pointed out that in several other cases it has been found that the Judges while recording the statements of Police Officer/I.O., recorded the statement of witnesses 4/5/6/GPO given to the Investigating Officer during the investigation period, without realizing the fact that statements under Section 161 Cr.P.C cannot be used by the prosecution for any purpose. It can be used by the defence for the purpose of corroboration or contradicting a witness. As such the statements of PWs given to the Investigating Officer during the course of investigation are not required to be recorded in the evidence through the Investigating Officer as it is inadmissible in evidence therefore, the same are not required to be tendered by the prosecution or recorded or brought on the record by Judges”.

5. 1999 P Cr. L J 1198 (Lahore) title Maqbool Ahmed Vs. Station House Officer, Police Station Changa Manga, District Kasur and another

6. 1991 M L D 2005 (Lahore) Title Munawar Ahmad Vs. The State.

7. 2007 M L D 372 (Karachi) title Attaullah alias Qasim and another Vs. The State.

8. 1991 P Cr. L J 62 (Peshawar) title Haji Muhammad Javed Vs The State and 2 others

9. 1998 P Cr. L J 56 (Lahore) title Mst. Masood Begum vs. Muhammad Maroof and 2 others. Para 6 D is reproduced under:

“ The admissibility of the evidence or credibility of the witnesses, the

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quality and the standard of evidence for decision of the case at trial is not adjudicateable by the agency discharging the function of collection of evidence to dig out the truth".

10. P L D 1958 (W.P) Lahore 300 titled Darghazi and others Vs. The State. Para 22 F & 23 F are reproduced as under:

Para 22.....We have carefully read the judgment of the learned Sessions Judge and have tried in vain to find out, if his decision requires the application of the principles laid down in the aforesaid ruling. The order of acquittal of the respondents is not based on any judicial determination of the points involved. The learned Sessions Judge felt as if he was helpless in the matter it is matter of regret that he allowed his mind to be influenced by the opinion of the Investigating Officer, which in our view was irrelevant and was not admissible under any of the provisions of the Evidence act. While investigating a case, an Investigating Officer is within his rights to hold any opinion about the guilt or innocence of an alleged offender, and he can either grant bail to such an offender in the exercise of his powers under section 169 of the Code of Criminal Procedure or can move in the matter to get him discharged. But after the challan is put in Court, then it is entirely the function of the Court to determine the guilt or innocence of the accused on the basis of legal evidence produced before it. We have not been able to find any provision of law or any authority under which the opinion of an Investigating Officer as regards the guilt or innocence of an accused could have been brought on the record. No opinion about the fact to be proved is relevant unless the opinion is of a person and is about the matter mentioned in sections 45 to 51 of the Evidence act. Surety, an Investigating Officer is not one of the persons mentioned in these sections, and his opinion regarding the guilt or innocence of an accused does not relate to any matter specified therein. The learned Sessions Judge ought to have realized that the opinion of the Investigating Officer was not legal evidence and no Court of law could have based its finding on it. We have already pointed out that in this case the Investigating Officer was allowed by the learned Sessions Judge to assume the role of a Public Prosecutor. The case appears to have been conducted and tried with

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little regard for the rules of evidence, and of procedure prescribed by law.”

Para 23: “ We wish to emphasize that we cannot permit our judicial officers to allow their judicial conscience to be moulded by the opinion of the Investigating Officers. The guilt or innocence of an accused must be judged according to accepted rules of law. It will be extremely hazardous to place reliance upon the opinion of police officers. And to make it a cornerstone of one’s decision is to allow oneself to be a tool in the hands of the police. This is likely to shake the very confidence of the people in the judiciary. We need not remind that the judiciary is under a solemn pledge to keep the fountain of justice pure and clear. We strongly hope that in future the learned Sessions Judge will act and judge, strictly in conformity with the law”.

11. P L D 2000 Lahore 216 titled Altaf Hussain and 4 others Vs. the State. Para 17 C is reproduced below:

“ The opinion of the Investigating Officer which is backed by supportive data, and qualifies, as observed above, like expert opinion, to be almost a statement of fact, can be given and should be given defence in appropriate cases, such an opinion may not provide a legal basis for conviction of an accused in a criminal case but it can create a small dent, a minor crack or a yawning gap in the prosecution case, depending on, and proportionate to weight of material behind it an due benefit of he same can also be extended to the accused. By tradition (and also by training), police officers are ruthless prosecutors and all their efforts are directed towards success of the prosecution case once the same is set up in certain terms. Giving of concession to accused is against the very nature of the traditional investigating officer and when one is forthcoming, and the giver of such opinion is also unbiased, non-partisan and impartial it would not be right to reject it by terming it as a mere word of mount of an individual”.

12. P L D 2013 Supreme Court 472 title Rao Abdul Jabbar Khan Vs. Lahore High Court. Lahore. Para 4 B is reproduced as under;

“ 27. It is a settled law that the opinion of the Investigating Officer regarding the innocence or guilt of the accused persons is not binding

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on the court. rather. the same is inadmissible in evidence but it has been settled by the Hon'ble Lahore High Court. Lahore in case-law PLD 2000 Lahore 261 that the evidence of police officials can be considered at the time of final judgment"

"28. It appears from the passage of the petitioner's judgment reproduced above that the petitioner was of the considered view that opinion of an investigating officer regarding guilt or innocence of an accused person is inadmissible in evidence being irrelevant but he was constrained to rely upon such opinion of the investigating officers appearing in the present case only on the basis of a judgment rendered by a learned Division Bench of the Lahore High Court, Lahore in the case of Altaf Hussain and others V. The State"

13. P L D 1992 Lahore 314 Title Haji Muhammad Hanif Vs. The State. Para 25 & 27 are reproduced as under:

"25.... therefore. the statement of an I.O. that according to his investigation. a particular person was innocent or guilty, as the case may be, is an expression of opinion which expression or statement is irrelevant and inadmissible in evidence"

"27....The function of drawing inferences from facts is a judicial function and has to be performed by a Court alone. If a witness was permitted to state not just the facts which he had perceived but also about the opinion which he had formed on perceiving threes facts, then the same would amount to delegation of essential judicial functions to witness and investing them with the attributes of a Judge which the law cannot and does not permit".

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14. P.L.D 2015 Peshawar 157 tiled Sayyar Vs. the State para 45 is reproduced as below:

" The statement recorded under section 161 Cr.P.C.. 1898, by either accused or any other prosecution witness carries no evidentiary value and could not be proved against c-accused, being inadmissible in evidence. However. there under the provisions contained in Article 43. of the Qanun-e-Shahadat Order. 1984, which envisaged that when more person than one are being tried jointly for the same offence, and

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a confession made by one of such person was proved, such confession may be taken into consideration against the co-accused, being tried jointly for the same offence, as circumstantial evidence”.

15. 1997 M L D 1257 titled Akmal Vs. The State para 4 of judgment is reproduced below:

“the long and short of the matter is that such statement under section 161 Cr.P.C is not even admissible against the very maker thereof., muchless. a co-accused. It is utterly inadmissible in evidence and should not even be recorded as a usual statement placed in “Nathi-Bey” of Police file. The correct way of alluding to such conversation with the accused is to mention the same in “Nathi-Alif” of Police diaries”

16. 2010 SCMR 660 titled Muhammad Ahmad (Mahmood Ahmed) and other Vs. The State para 37 Q is reproduced as under:

“ It may be mentioned here. for the befit and guidance of all concerned. that determination of guilt or innocence of the accused persons was the exclusive domain of only the Courts of law established for the purpose and said sovereign power of the Courts could never be permitted to be exercised by the employees of the police department or by anyone else for that matter. If the tendency of allowing such-like impressions of the Investigation Officers to creep into the evidence was not curbed then the same could lead to disastrous consequences. If an accused person could be let off or

acquitted only because the Investigating Officer was of the opinion that such an accused person was innocent then why could not, on the same principle. another accused person be hanged to death only because the Investigating Officer had opined about his guilt. It may be added that the provisions of sections 155,157 and 174 of the Criminal Procedure Code permit a police officer only to investigate a case. “Investigation” stands defined by the provisions of section 4(1)(1) of the said Code in the following terms:--

“Investigation includes all the proceedings under this Code for the Collection of Evidence conducted by a police officer.....(emphasis and

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underlining has been supplied)".

This then clearly indicates that the job of the Investigating Officer is only to collect evidence and to place the same before the competent Court. Therefore, whatever expertise, if at all, could be claimed by an Investigating Officer, would be vis-à-vis his field of operation, namely, collection of evidence. Could his opinion ever become admissible in the medico-legal matters which is the area reserved for medical doctors or with respect to archeological matters to determine whether an item was or was not an antique or about hand-writings or foot-prints or finger-prints or to find out whether a painting was the actual work of a renewed painter or a fake? It the answer be in the negative, which it has to be, then how come he could be considered an expert and his opinion becoming admissible vis-à-vis the guilt or innocence of an accused person? It may be added that in the last 110 years since the Code of Criminal Procedure had been in existence in its present form, not once had it been authoritatively declared that an Investigating Officer was an expert in the matter of determining the guilt or innocence of accused persons whose opinion was admissible for the purpose, under the law of evidence. The prohibition contained in section 161 Cr.P.C and in Section 172 of the said Code regarding in-admissibility of the statements recorded by an Investigating Officer under the said section 161 or the case diaries prepared by him under the said section 172, would further clarify the said proposition. Reference may also be made to a judgment of the Lahore High Court, authored by one of us which is reported as Haji

Muhammad Hanif v. The State PLD 1992 Lah. 214."

17. 2011 P Cr. L J 895 (Lahore) titled Abdul Hameed and 3 others Vs. the state and others para 10 A & B is reproduced as under:

"However, the question arises whether the opinion of the police officers, regarding the innocence or guilt of an accused is admissible in evidence? The answer is very simple that the opinion of the police regarding the guilt or innocence of an accused is inadmissible in evidence and court is required to decide the case on the basis of legally admissible evidence which has been produced before it. In a

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recent judgment reported as "Muhammad Ahmad (Muhamood Ahmad and another V. The State" (2010 SCMR 660), the Hon'ble Supreme Court of Pakistan was pleased to observe, as under:-

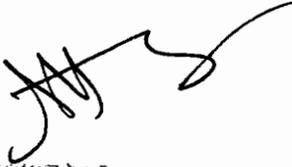
"37.... It may be mentioned here, for the benefit and guidance of all concerned that determination of guilt or innocence of the accused persons was the exclusive domain of only the Courts of law established for the purpose and the said sovereign power of the Courts could never be permitted to be exercised by the employees of the police department or by anyone else for that matter. If the tendency of allowing such-like impressions of the Investigating Officers to creep into the evidence was not curbed then the same could lead to disastrous consequences. If an accused person could be let off or acquitted only because the Investigating Officer was of the opinion that such an accused person was innocent then why could not, on the same principle, another accused person be hanged to death only because the Investigating Officer had opined about his guilt. It may be added that the provisions of (As above).

18. 2005 S C M R 1175 (Supreme Court of Pakistan) title Agha Wazir Abbas and others Vs. The state and others para 13 A & B and 14 A are reproduced as under:

Para 13A.. "we have given our anxious through to the contentions made at bar and have gone through the judgments of the trial Court as well as that of Appellate Court. In our opinion the impugned judgment is based on proper appraisal of evidence. The reasons advanced for the acquittal of respondents Kaka Kishan Chand, Raj Kumar, Ismail Rahu and Asher Jan are cogent and convincing. It is settled principle of law that the findings of acquittal can only be upset if the same are found perverse, arbitrary, foolish or based on misreading or non-appraisal of evidence. Learned counsel for the State has not been able to show that the judgment of acquittal suffers from anyone of the above legal infirmities.

Para 13B: The above referred letter said to have been written by absconding accused Mehrumal Jagwani to the Chairman NAB is not admissible in evidence at all. It cannot either be considered as a confessional statement as contemplated in Article 43 of the Order nor

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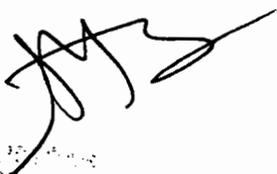
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it would amount to a statement referred in Article 46 of the Order. Article 43 of the Order provides that when more persons than one are being tried jointly for the same offence and a confession is made by one of such persons and if it is proved against its maker, the same can be used as circumstantial piece of evidence against other accused. The letter said to have been sent by absconding accused Mehrumal Jagwani in any case would not be a confession in the terms of the Order as he is still absconder and was also not tried with the other accused. Even on plain reading of Article 46 of the Order, it is evident that it relates to the statement of a person who is dead or cannot be found. In this case, absconding accused Mehrumal Jagwani is alive and is available in India".

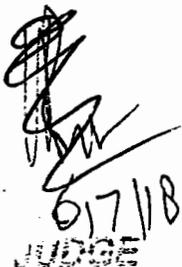
**Para 14.** "At this juncture it would be relevant to mention that a specific procedure has been laid down under sections 164 and 364, Cr.P.C. for recording the confessional statement of an accused which admittedly lacks in this case. The said letter cannot even be equated with a statement under section 161 or 162, Cr.P.C. which even are to be reduced in writing by the Investigating Officer on the oral statement of accused which procedure too is missing in this case. The said letter is not admissible in evidence as it has been produced by a P.W. A.D Khuwaja, Additional Director Investigation F.I.A, who was not competent to produce the same. The documents said to have been sent from India, as such, invoice and envelope might have been received by Fedex Office in Pakistan but no one from such office was examined to prove its delivery. Even address of A.D.Khuwaja, Additional Director Investigation F.I.A has not been written over it. Moreover, a perusal of letter shows that it was attested by a Notary Public of Mumbai, India, whose signature was verified by Section Officer, Home Department, Government of Maharashtra. Since it is not a judicial record of a foreign country, therefore, its genuineness and authenticity cannot be verified. Irrespective of above, it has neither been certified by any officer of Embassy of Pakistan in India nor it has been routed through the Embassy of Pakistan, as such, it cannot be said to be a document worth admissible in evidence at all".

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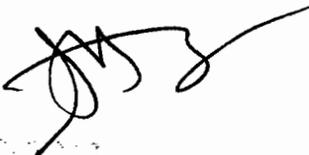
The authorities in respect of admissibility and proof of contents of the documents were also cited. same are recorded below:

1. 2010 CLC 722 titled Syed Imdad Hussain Shah Vs Syed Makhdoom Hussain Raza and 5 others. Para 11 G is reproduced as below:

" Certified copy is the one which forms part of the public record and has been issued by the authority competent to issue while comparing with the original document or register. Mere fact that the signatures of the copyist or the Secretary of Union Council are appearing on the said instrument, is not sufficient to hold that the said document was admissible in evidence until the certified copy is brought on the record and the same is proved by bringing the original record and the Secretary Union Council or the Copyist. Relevant portion of the judgment afore-noted i.e. Muhammad Aslam's case 2000 MLD 1581 reads:---

"The learned counsel submitted that the term 'displaced' relates to entirely different situation and an affectee need not necessarily be a displaced person. Leaned counsel for the respondents took the stand that while filing reply to the application for amendment, the respondents had categorically disputed the legality, admissibility and genuineness of the certificates and their reply, dated 07.11.1992' is on record at page 182. The learned counsel also submitted that the certificates were not certified in accordance with the provisions contained in Articles 87 and 89 of the Qanun-e-Shahadat Order, 1984 and placed reliance on 1991 CLC page 1201 where it was held that the provisions of Qanun-e-Shahadat with respect to certification of documents is mandatory and any document not certified in accordance thereof cannot be relied upon. Reliance was placed on PLD 1962 Lahore 492 in which it was held that copy certified in terms of section 76 of the Evidence act (Article 87 of Qanun-e-Shahadat Order, 1984) only is the certified copy and that a copy must contain note that it is true and

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correct copy of the original and mere signature of "Naqal Koninda" and "Tasdeeq Koninda" is not enough".

2. 1991 CLC 1201 (Lahore) Titled Mehbood Ali and another Vs. Mst. Sharifan Bibi and 21 others
3. PLD 1962 (W.P) Lahore 492 titled Khizrat Muhammad and others Vs. Ghulam Muhammad and others
4. Financial Investigation Agency Act, 2003 Virgin Islands
5. 1995 C L C 531 (Peshawar) titled General Manager, HBFC and others Vs. Ali Rehman. Para 13 G and 14 are reproduced as below:

"In the instant case only one marginal witness and scribe had been examined but Fazal-e-Mehmood, appellant, had not been confronted with his signatures on both the aforesaid documents. The definition of the word 'proved' in section 3 of the Evidence Act must, when applied to documents, be read in conjunction with section 67 of the Act. A document cannot, therefore, be held to be proved, as required by the Evidence Act, where there is no evidence that the signature purporting to be that of the executants is in the handwriting of the executant, even if the Court considers, as in the instant case it did, the execution so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that there had been execution. In the case of a document required by law to be attested, proof of execution in addition to proof of attestation is necessary. We are, therefore, of the considered opinion that, besides the evidence of an attesting witness and that of the scribe of the two aforesaid questioned documents, the signatures of the executants, namely, Fazal-e-Mehmood, appellant, ought to have been proved first by confronting him and if he disowned it then the provisions of the Evidenced Act would be attracted and one or more of modes of proof of signature of Fazal-e-Mehmood, appellant, shall be pursued.

The following are modes of proving a signature or handwriting recognized by the Evidence act:-

- (i) By calling the person who signed or wrote the document.

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- (ii) By calling a person in whose presence the document was signed or written.
- (iii) By calling a handwriting expert.
- (iv) By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written.
- (v) By comparing in Court the disputed signature or writing with some admitted signature or writing.
- (vi) By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it.
- (vii) By the statement of a deceased professional scribe, made in the ordinary course of business, that the signature on the document is that of a particular person.
- (viii) A signature is proved to have been made if it is shown to have been made at the request of a person by some other person, e.g., by the scribe who signed on behalf of the executant.
- (ix) By other circumstantial evidence."

6. 1996 CLC 79 (Karachi) titled National Bank of Pakistan Vs. General Tractor and Machinery Co. Ltd. and other:

"the rule as to proof of a document, therefore, is that, firstly, the contents of a document must be proved by either primary or secondary evidence as provided by Articles 72 to 76 of the Qanun-e-Shahadat; secondly, that proof of 'contents' of a document is not proof of its authenticity or genuineness which must be proved, under Article 78, by proof of the signature and handwriting; thirdly that the genuineness or authenticity of a document may be proved by any of the methods recognized by Qanun-e-Shahadat or by reference to its contents or other evidence on record which the Court may, in its discretion, consider sufficient proof of its authenticity or genuineness".

7. 2004 P Cr. L J 371 (Federal Shariat Court) titled Muhammad Arshad Naseem Vs. the State. Para 8A & B are reproduced below:

"We have given our anxious consideration to the respective contentions of the learned counsel for the parties and have also perused the available record with their assistance. Admittedly, the application wherein, the allegation regarding Zina was leveled against

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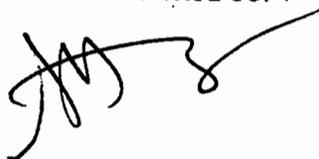
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the complainant was not exhibited. at the trial whereas, legally, the person relying on a document is under obligation to prove the same. Article 72 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as "the Order" lays down that contents of documents may be proved either by primary or by secondary evidence whereas, Article 73 of "the Order" provides that primary evidence means the document itself produced for inspection of the Court and it is the requirement of Article 75 of "the Order" that the document must be proved except in the cases in which secondary evidence may be given".

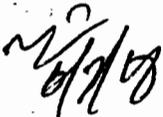
"Having regard to the above provisions, it may be noted here that though documents not formally admitted in evidence and available on Court's record or elsewhere even, may, for the purpose of elucidation of certain facts, be looked into yet, the same, by no stretch of imagination, can be termed or regarded as "evidence" unless proved and exhibited, at the trial, in accordance with law. Further, since documents do not prove themselves and truth of the contents of the documents cannot be proved by merely producing the same for inspection of the Court within the purview of Article 2(c)(ii) of the Qanun-e-Shahadat Order, 1984, therefore, the document upon which a party places its reliance must, at first, be placed before the Court and then be got proved by calling a witness/witnesses. In this view, we are fortified by the following reported judgments:-

- (i) Abdul Qayyum v. Muhammad Rafique 2002 SCJ 300;
- (ii) Muhammad Azam v. Muhammad Iqbal and another PLD 1984 SC 192; (iii) Fazal Muhammad v. Mst. Chohara and others 1992 SCMR 2182; (iv) Bishwanath v. Sachhidannand AIR 1971 SC 1983 Bom. 1; and (vi) Rajwati Devi v. Joint Director Consolidation, government of Bihar, Patna and others AIR 1989 Patna. 66".

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8. P L D 2016 Lahore 570 titled Mst. Rehana Anjum V. Additional Sessions Judge and 6 others. Para 9F is reproduced as below:

"To tender a document in evidence is something different from proving it in contents thereof. Admissibility of a document in evidence by itself does not absolve the party from proving its contents in terms



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of article 79 of the Order (ibid). an electronically generated document would not require any signature to be put on it by virtue of Electronic Transactions Ordinance 2002. Production of a document and proof of the document were two different subjects. A document can be produced in evidence, which is always subject to proof as required under Article 78 of the Order (ibid). If a document was relied upon by a party and it had been formally exhibited but was not proved in accordance with the law, therefore, it could not be relied upon in circumstances. A medical officer having scribed a medico-legal report or a necropsy report is required to prove each and every bit of the descriptions/contents, so as to prove the said documents, the reason being that the reports prepared by him do not have the coverage of provision of section 510, Cr.P.C., which underlines that "any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or of the Chief Chemist of Pakistan, Security Printing corporation Limited or any Serologist, finger print expert or fire-arm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code." It is further provided that "the Court may if it considers necessary in the interest of justice summon and examine the person by whom such report has been made."

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9. P L D 1973 Supreme Court 160 title Khan Muhammad Yousuf Khan Khattak V. S.M. Ayub and 2 others.

"The Form 'E' (Exh.P.E.) filed by the company itself under

section 32 of the Companies Act with the Registrar of Joint Stock Companies showing Khan Muhammad Yousaf Khattak as one of the Directors of the Company even on 31<sup>st</sup> of December 1970. This form also contained a certificate end to the following effect:-

"I, Mohammad Yousuf Khan Khattak, do hereby certify that the above list and summary truly and correctly states the facts as they stood on the 31<sup>st</sup> day of December 1970.

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(Sd.)

Mohammad Yusuf Khattak  
Managing Director."

When I say that the document Exh. P.E. is unproved. I have mind the mandatory provisions of section 67 of the Evidence act, which lay down that "if a document is alleged to be signed or written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be that person's handwriting must be proved to be in his handwriting". If the case of the respondent was that the appellant had signed the original of Exh. P.E. or the certificate appended to it: it must have been proved that it was in the appellant's handwriting, for which no effort whatsoever was made. In the case of Bengal Friends & Co. v. Gour Benode Saha & Co., this Court had expressed itself on this point as follows:-

"Documents which are not copies of judicial record, should not be received in evidence without proof of signatures and handwriting of persons alleged to have signed or written them."

I am of the view that even if such documents are brought on record and exhibited without objection, they remain on the record as "exhibits" and faithful copies of the contents of the original but they cannot be treated as evidence of the original having been signed and written by the persons who purport to have written or signed them, unless the writing or the signature of that person is proved in terms of the mandatory provisions of section 67 of the Evidence act. If instead of the copy Exh.P.E., the original form "E" which formed the primary

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evidence, had been exhibited on the record without proving as to whom was its author can it be argued that by merely exhibiting it, the document should be taken for granted as bearing the signature of the appellant without proof that in fact it was written and signed by him.

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The onus obviously lay on the respondent to prove this fact and his failure to prove it did not cast any responsibility on the appellant to negatively disprove it.

On the view that I have taken regarding the suspicious authorship of form "E" (Exh.P.E.) and that it was not proved to be in the handwriting of the appellant, as required by law, it is not necessary to examine the contention that it contains an admission on the part of

the appellant that he had functioned as the Managing Director of the

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K.K. & Co. Ltd.. up to the 31<sup>st</sup> of January 1971, as Indicated in this document. However. Companies under section 32 of the Companies Act. The Election Tribunal as well as the High Court has placed full reliance on this document.

It was contended before us that Exh. P.E. was a forged document which had been surreptitiously smuggled into the record that it had not been proved in evidence according to law. and that in any case it could not be used against the appellant as he was not confronted with it as required by section 145 of the Evidence act. The learned Chief Justice has repelled all these contention whereas Sajjad Ahmad Jan. J.. has accepted them. with the result that he has held that Exh. P.E. could not at all be used in evidence against the appellant.

As regards the contention that the document was not proved in accordance either law. I find that there is merit in the submission that the provisions of section 67 and 47 of the Evidence Act were not complied with. as there is no evidence on the record regarding the identity of the handwriting and the signatures of the appellant as appearing on the certificate appended at the end of Exh. P.E. It is true that the document was produced before the Tribunal by an official of the Registrar. Joint Stock Companies, Peshawar, and it was exhibited thereafter. without any question having been put to the witness in cross-examination about the genuineness and the authorship of the document. but the fact remains that this official did not say a word about his familiarity with the handwriting and signatures of the appellant. On the date of the production of this document, the appellant himself was not present in Court. although his counsel was

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present. However. after the close of arguments on the 19<sup>th</sup> of February 1972, an application was moved on the appellant's behalf on the 28<sup>th</sup> of February 1972, requesting the Election Tribunal to remove Exh. P.E. from the record on the ground that it had not been duly proved, and there was no compliance with the provisions of rule 4 of Order XIII of the C.P.C and section 145 of the Evidence Act. The application was refused by the Tribunal. observing that to the best of his recollection the learned counsel for the appellant had, during the course of arguments, admitted the document saying that the appellant must have signed it erroneously or illegally. The Tribunal also added

that the document was not being used as a previous admission of the appellant and, therefore, the provisions of section 145 of the Evidence Act were not attracted.

While it is true, as observed by the Privy Council in *Gopal Das v. Sri Thakurji* and by this Court in *Abdullah v. Abdul Karim and Malik Din v. Muhammad Aslam*, that an objection as to the mode of proof should be taken at the trial before the document is marked as an exhibit and admitted to the record and a party cannot lie by until the case comes before a Court of appeal and then complain for the first time of the mode of proof, it will be seen that in this case an objection as to the admissibility and the proof of this document was taken before the Election Tribunal itself. A cursory glance at the original of this document, which was summoned by this Court, shows that there is an overwriting on the signatures of the appellant. It is recorded by the Election Tribunal that the original, as produced by the Registration Assistant, was seen and returned. I cannot hold feeling that the Tribunal clearly failed to perform its duty if it did not see the overwriting on the original of Exh. P.E. Even in the attested copy obtained by the respondent there appears a note to the following effect:-

"Attested to be true copy. However, the signatures of Muhammad Yusuf Khattak appear to be over-written."

In these circumstances, it was obviously necessary for the Election Tribunal to have the signatures and the handwriting of the appellant proved in accordance with the mandatory provisions of section 67 of the Evidence Act but this was not done. The onus of proving this document lay on the respondent, and the fact that the appellant or his counsel did not take any specific objection at the time of the production of this document does not mean that the same stands duly proved, in view of the patent overwriting existing in the original and noted in the attested copy.

It was contended by the learned counsel for the respondent that the document Exh. P.E. was actually a public document under subsection (2) of section 74 of the Evidence Act, and therefore, in accordance with the view taken in *Katikineni Venkata Gopala Narasima Rama Rao v. Chitluri Venkataramayya*. It stood proved by

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the mere production of the original from the public records of the Registrar. Joint Stock Companies. The learned counsel appears to me to be right, as form E is in the nature of a return compulsorily required to be filed by a public company under section 32 of the Companies Act, and it is, therefore, a public record of a private document under sub-section (2) of section 74 of the Evidence Act. But, as held in *Bengal Friends & Co. v. Gour Benode Saha & Co.* documents which are not copies of judicial records could not be received in evidence without proof of signature and handwriting of person alleged to have signed or written them as required by section 67 of the Evidence Act. It seems to me therefore that in the circumstances of the case, namely, the application made by the appellant to the Election Tribunal and the overwriting appearing on the original and reflected in the attested copy, the Exh. P.E. could not be said to have been duly proved without compliance with the mandatory provision of section 67 of the Evidence Act.

10. 1999 S C M R 1245 (Supreme Court of Pakistan) title Abdul Majeed and 6 others V. Muhammad Subhan and 2 others. Para 11 E is reproduced as under:

"The learned counsel further argued that the registered sale-deed, mutation and Revenue Record are admissible in evidence and as the plea of the appellant finds support from all these documents, therefore, the High Court was not correct in discarding them, he referred to several cases to support his view-point. This is a sweeping and very wide argument and it is not so that every thing which finds mention in the registered deed or Revenue Record must invariably be accepted without proof of their execution, genuineness and authenticity. It is axiomatic principle of law that a registered deed by itself, without proof of the execution and the genuineness of the transaction covered by it, would not confer any right. Similarly, a mutation although acted upon in Revenue Record, would not by its own force be sufficient to prove the genuineness of the transaction to which it purports unless the genuineness of the transaction is proved. There is not cavil with the proposition that these documents being part of public record are admissible in evidence but they by their own force would not prove

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the genuineness and execution of that to which they relate unless the transaction covered by them is substantiated from independent and reliable source. Admissibility is to be distinguished from proof required by law for determining the execution and genuineness of document. The plea of res judicata and estoppels were also raised against the plaintiff on account of the earlier litigation. But we find that they have been satisfactorily resolved by the High Court as it has been said that the documents relied upon by the defendants were take and fraudulent and. thus. could not form basis for declaring the present suit as barred by res judicata or for applying the principle of estoppels against the plaintiff. This is found without merit and is, accordingly, dismissed with costs.

11. 1992 M L D 283 (Karachi) Title President of Pakistan Vs.

Ms. Benazir Bhutto. "it is by now well-settled that even where a document is admitted in evidence and duly exhibited, that incident, in itself, does not constitute the proof of truth or veracity of the contents, though contents themselves simpliciter would thereby be proved and that may be all which is needed in a given case, for instance, where the document contain recitals or stipulations or conditions applicable to parties to a dispute, such as, an agreement, a deed inter parties or other bilateral arrangement. When a document is produced through its author or in any other permissible mode and exhibited in due course, the author or the witness producing it is open to cross-examination and the correctness of the contents may be questioned or denied through cross-examination of other evidence, failing which even that could be deemed established. Likewise, the mere fact that a document has been duly proved and exhibited will not establish its relevancy, for relevancy is a concept of law arising in given facts. Similarly, relevancy and proof of a document while such in themselves are different in character, they, at the same time, usually, do not involve any implication that either of them constitutes proof of correctness or veracity of a document, which must be separately established through oral evidence in an appropriate manner. Even where a document is admitted by consent, in any permissible mode, that circumstance constitutes only a waiver as to the

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admissibility thereof though admission in evidence, without reservations, may also imply acceptance of correctness of contents. Relevancy, however, is always subject to the facts of a case and conditionality's of law".

12. 2017 C L C 1090 (Sindh (Sukkur Bench) Titled Mohammad Uris Vs. Zawar Haji and 3 others. Para 13 (c) & (d) is reproduced as under:

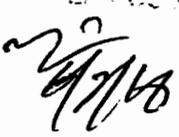
" Article 72 of the Qanun-e-Shahadat Order, 1984 (hereinafter to as "Qanun-e-Shahadat") provides that the contents of documents may be proved either by primary or by secondary evidence. Primary evidence is defined in Article 73 of the Qanun-e-Shahadat as the document itself produced for the inspection of the Court. Whereas, secondary evidence is defined in Article 74 of Qanun-e-Shahadat which means and includes copies made from or compared with the original:

(d) Article 78 of the Qanun-e-Shahadat provides that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the hand writing of so much of the document as is alleged to be in that person's hand writing must be proved to be in his hand writing. Whereas, Article 79 of the Qanun-e-Shahadat provides that if a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution. On the other hand, Article 80 of the Qanun-e-Shahadat provides that if no such attesting witness can be found, it must be proved that the witnesses have either died, or cannot be found and that the document was

ATTESTED TO BE TRUE COPY attested by the person who purports to have done so;

It is also submitted that nature of the offence cited in interim reference is 9 (a)(iv)(v)(xii) NAO 1999/ serial no. 2 of the schedule attached thereto. There is no evidence in respect of s 9 (a)(iv) A paradigm shift can be noted in supplementary reference. He has referred to following authorities with the contention that prosecution is under onus to prove ingredients of the offence before saying that onus of proof is on the accused u/s 14(c)CrPC. The ingredients of the offence are:-

- (i) It must establish that the accused was holder of public office.

  
  
  
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- (ii) The nature and extent of the pecuniary resources of property which were found in his possession
- (iii) It must proved as to what were his known sources of income i.e known to the prosecution after thorough investigation.
- (iv) It must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income.

2011 SCMR 136 titled Khalid Aziz Vs. the State wherein it is held that in order to prove the case, the prosecution is required to prove the ingredients of the offence, which are (1) it must establish that the accused was holder of a public office, (2) the nature and extent of the pecuniary resources of property which were found in his possession, (3) it must proved as to what were his known sources of income i.e. known to the prosecution after thorough investigation and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his know sources of income. Once these four ingredients are established, the offence as defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or property. Thus, mere possession of any pecuniary resources or property is by itself not an offence, but it is failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitute offence. If he cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and a corrupt practice is required to be drawn.

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Reference is invited to a case Biswa Bhushan Naik v. State (Air 1954 SC 350) in which identical provision in Prevention of Corruption Act, 1947 were interpreted."

Similar view was also taken in the cases of Farrukh Javed Gumman and State of Maharashtra supra. Thus, it is clear that the prosecution has to establish the above mentioned four ingredients and then the burden would shift upon the appellant to explain his possession as required under section 14(c) of the Ordinance.

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PLD 2011 Supreme Court 1144, titled Ghani Ur Rehman Vs.

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The same principle cited above is reiterated:-

a. The law now stands settled that in order to prove commission of an offence under section 9 (a)(v) of the NAO, 1999, it has to be proved by the prosecution as to what were the known sources of income of the accused persons at the relevant time and that the resources or property of the accused person were disproportionate to his known sources of income and it is after such proof has been led and the necessary details have been provided by the prosecution that the onus shifts to the accused persons to account for such resources or property because mere possession of any pecuniary resources or a property is by itself not an offence but it is failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes the relevant offence. In the case in hand the appellant's sources of income had never been brought on the record by the prosecution and had never been quantified by it at any stage of this case and, therefore, it was not possible for the learned trial to conclude or to hold that the appellant or his dependants or so-called benamidars owned or possessed assets or pecuniary resources disproportionate to the appellant's income. It is unfortunate that the investigating officer of this case as well as those responsible for prosecution of this case before the learned trial court had, probably on account of their sheer incompetence, utterly failed to do the needful in this regard and it is regrettable that even the learned trial court as well as the learned appellate court had completely failed to advert to this critical aspect of the present case. According to the reference filed and the charge framed against the appellant he had, through indulging in corruption and corrupt practices, accumulated assets in his own name and also in the names of his wife and sons and the worth of such assets was to be tune of Rs. 5,15,35,000/- which was disproportionate to the appellant's known sources of income. The wife of the appellant and his sons were set up in this case as

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benamidars and admittedly the said wife and sons of the appellant had never been summoned by the learned trial court for providing them an opportunity to produce evidence in support of their claims regarding ownership of the relevant assets in their own right or to substantiate that they had sufficient sources of their own to acquire the relevant properties.

2010 SCMR 1697 titled Muhammad Hashim Babar vs. the State and other. citation a, b and c are reproduced as under:

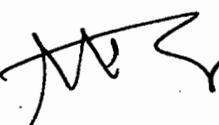
.. it is pertinent to mention here that in order to prove the case is the duty and obligation of the prosecution to prove the ingredients of the offence which are as follows:

- (i) It must establish that the accused was holder of a public office.
- (ii) The nature and extent of the pecuniary resources of property which were found in his possession.
- (iii) It must be proved as to what were his known sources of income.
- (iv) It must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income.

The aforesaid ingredients are proved then the offence defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or property. It is also settled proposition of law that mere possession of any pecuniary resources or property is by itself not an offence, but failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes offence meaning thereby that if an accused cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and corrupt practices is required to be drawn. See Biswa Bhushan Naik V. State (AIR 1954 SC 350). The evidence brought on record read with the presumption under section 14 of the said Ordinance established the charge against

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the petitioner beyond any reasonable doubt. As the learned counsel of the petitioner has failed to point out any piece of evidence which was misread or non-read by the Courts below while rendering finding of guilt against the petitioner by merely mentioning Rs. 14 lac in the expenses head cannot discharge the onus of the petitioner to furnish explanation with regard to having Rs. 14 lac. The explanation of sources with regard to the amount mentioned hereinabove is not furnished by the petitioner as is evident from the finding of guilt recorded by the courts below reproduced hereinabove. It is also settled principle of law that the initial burden of proof is on the prosecution to establish the possession of properties by an accused disproportionate to his known sources of income to prove the charge of corruption and corrupt practices under NAB Ordinance, 1999 and once this burden is satisfactorily discharged, onus is shifted to the accused to prove the contrary and give satisfactory account of holding the properties and in case of his failure, Court may raise the presumption of guilt.

2009 SCMR 790 titled Syed Qasim Shah vs. the State, citation "c" is reproduced as under:

" Hence, notwithstanding the presumption contained in section 14(c) of the Ordinance, the initial burden of proof always rests on the prosecution. It is well-settled that the burden to prove all the ingredients of the charge always lies on the prosecution and it never shifts on to accused who can stand on the plea of innocence, assigned to him under the law, till it is dislodged. In other words unless the presumption of innocence imputed to the accused is crossed out by the force of suspicious circumstances he cannot be called upon to prove that the charge was false or he was innocent. The prosecution, therefore, is never absolved of from proving the charge beyond reasonable doubt and burden shifts to the accused only when the prosecution succeeds in establishing the presumption of guilt.

PLD 2017 Lahore 23 titled Brig. (R) Imtiaz Ahmad Vs. the State. Para 19 is reproduced below:

"Scanning the above evidence as well as findings of the trial court, we are constrained to hold that the said properties cannot be

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confiscated for the simple reason that the findings were based on the statements of approvers who were not permitted to become as such by the order of the Chairman, NAB and in case of the above said properties, the vendors were not produced. Moreover, the ingredients of Benamidars transactions as held in the dictum laid down by the apex Court in Mst. Zahida Sattar and other v. Federation of Pakistan and others (PLD 2002 Hon'ble Supreme Court of Pakistan 408) could not be produced. The possession of the property, the written transaction, the circumstances under which Benamidar transactions were made were required to be disclosed before the court by the prosecution.

2016 YLR 2547 para 11 are reproduced as under:

Before adverting to the evidence in support of charge qua the above mentioned properties, it is necessary and advantageous to examine the necessary ingredients for proving an offence under section 9(a) (v) of "NAO, 1999". It is by now well settled that the prosecution in order to prove the culpability of an accused in terms of above referred penal clause has to prove following ingredients:-

- (i) the accused is a holder of public office.
- (ii) he accumulated, owns or possess title or interest in the properties.
- (iii) his known sources of income.
- (iv) and the expenditures incurred the accused on acquisition properties or disproportionate his known sources of income.

It is manifest from the above that mere holding of assets in the shape of moveable and immovable property in his own name or in the name of his dependant is not the sole fact to determine the culpability of an accused in term of section 9(a) (v) of "NAO 1999". The prosecution is always burden with heavy onus to prove that assets so acquired do not commensurate to the known sources of income of the accused.

2016 P Cr. L.J 300 titled Sardar Muhammad Naseem Vs. The State,

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head note is reproduced below:-

---Ss. 5(da) & 9 (a) (v)---Assets beyond known sources of income---Appreciation of evidence--- Benami properties--- Sources of income---Proof---Accused was holder of public office and he was convicted and sentenced by Trial Court of seven years imprisonment along with fine--- Validity--- No notice was issued to alleged Benamidar prior to confiscation of property. the same was fatal to prosecution case--- In order or case of assets beyond means. prior to discussing assets, the known source of income both legal and illegal had to be brought on record--- Trial Court fixed value of properties but nowhere salary of accused for last 41 years, his savings and his other emoluments were ever discussed--- Court had no formula to apply in order to ascertain as to what were the assets beyond means--- High Court disagreed with the findings of Trial Court and set aside conviction and sentence awarded to accused, resultantly. he was acquitted of the charge--- Appeal was allowed in circumstances.

2016 P Cr. L J 1343 titled Ghulam Sarwar Khan Lalwani vs. The State.

2013 P Cr. L J 1697

2007 P Cr. L J 1972 (Karachi) titled Muhammad Akram Nadeem Vs. NAB Sindh citation of para 9 A is reproduced below:

“Under this provision of law, the prosecution is required to prove the following points....

- (1) The accused was holder of public office.
- (2) Nature and extent of pecuniary resources of property which were found in his possession.
- (3) What were his known sources of income i.e., known to the prosecution after through investigation.

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- (4) Such resources or property found in possession of the accused were disproportionate to his known sources of income.

2007 P Cr. L J 1957 (Karachi)\_titled Muhammad Irshad Khan Vs. Chairman NAB and 2 others.

2007 MLD 910 (Karachi)\_ titled Hakim Ali Zardari Vs. the State. Citations A, B & C are reproduced as under:

"In order to prove the case, the prosecution is required to prove the ingredients of the offence, which are (1) it must establish that the accused was holder of a public office, (2) the nature and extent of the pecuniary resources of property which were found in his possession. (3) it must be proved as to what were his known sources of income, i.e.. known to the prosecution after thorough investigation and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence as defined under section 9(a)(v) is complete. unless the accused is able to account for such resources or property. Thus, mere possession of any pecuniary resources or property is by itself not an offence, but it is failure to satisfactorily account for itself not an offence, but it is failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitute offence. If he cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and corrupt practices is required to be drawn .

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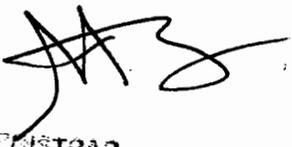
As regards the third and fourth ingredients of the offence and

about the known sources of income. the expression "known sources of income" must be taken to the sources known to the prosecution on a thorough investigation of the case. It does not mean sources known to the accused for the simple reason that the prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused within the meaning of Article 122 of Qanoon-e-Shahadat Order, 1984, which reads as under:-

"When any fact is specially within the knowledge of any person burden of proving that fact is upon him".

This also does not mean that the prosecution is absolved from holding any enquiry or investigation about the sources of income. There are two types of persons within the scope of holder of public office under the Ordinance: public servant and other persons holding public office. The cases of public servants and other persons are required to be dealt with separately and differently, as in the former case his known source of income would be salary and for other sources he is required to declare them in the annual declaration of assets filed with the department of income received from any lawful sources, the receipt of which has been intimated in accordance with the provisions of any law, rules or order for the time being applicable to public servant, therefore, such sources can easily be obtained by examining such documents. Secondly, he can earn income from his properties and investments that are also required to be mentioned in such statement. Whereas the case of other persons holding public office is quite different and distinguishable from the public servant, as the source of income of a particular individual depends upon his position in life with particular reference to his occupation or avocation in view. Thus, known source of income in the case of other persons, the prosecution is required to hold a detailed enquiry and investigation to ascertain the said sources of income. Furthermore, the word "income" used in the above provision is also a very significant, its meaning has been defined in Chambers 21<sup>st</sup> Century Dictionary as "money received over a period of time as payment for work, etc., or interest or profit from shares or investments".

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2006 P Cr. L J 1409\_titled Jameel Akhtar Kiyani and another Vs. The State para 10 is reproduced as under:

“According to section 9(a)(v) of the NAB Ordinance, the prosecution is required to prove that (i) the accused is holder of Public Office; (ii) the nature and extent of the pecuniary resources or property found in his possession; (iii) what are his known sources of income (i.e known to the prosecution); (iv) such pecuniary resources or the property found in possession of he accused are disproportionate to his known source of income. Once these ingredients are established then the offence of corruption and corrupt as defined under section 9(a)(v) is complete unless the accused is able to reasonably account for such resources from which the properties were purchased, as provided under section 14(c) of the NAB Ordinance. In this section the word “satisfactorily” has been used, whereas in section 9(a)(v) the word “reasonably” has been mentioned”.

P L D 2004 Lahore 155 titled Farrukh Javed Ghumman Vs. The State para 15 D is reproduced as under:

“ The expression “Known sources of income” means the sources of income known to the prosecution after thorough investigation of the case. Obviously the prosecution is not expected to know every detail of the income of the accused. But to bring a charge against some one under the law under consideration, the prosecution has to give details of the “Known sources of income”, compare it objectively with the assets etc., and only in case of the latter being disproportionate, can it file the reference. If the accused is holder of a public office his salary, his allowance and other privileges like transport etc. are part of his known sources of real income. If he happens to be a landowner as well, the agricultural income has to be included in his income. It is the duty of the Investigating Officer to thoroughly inquire into the “known sources of income” of the

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accused and the latter has to be given full opportunity in this regard. Assessment of agricultural income may not be an easy task for the Investigating Officer for more than one reason. Firstly, in our rural culture book keeping is rarely done, secondly, there is no compulsion either as it is not a taxable income, thirdly, even if some one does it, he is not expected to maintain the record for a decade and, fourthly, when the accused was holder of a public office, it was not an offence and he was not obligated to maintain the account of it for rainy days”.

He has contended that statement of witnesses recorded u/s 161 CrPC cannot be used in evidence and IO cannot play a role of proxy witness on their behalf. No document is said to be proved unless its execution and contents are proved in accordance with law. Here say evidence is to be excluded.

He any of his dependents or benamidars are used in s 9(a)(v). Prosecution has not proved dependency of any accused on accused no.1. Minor may not be dependant in certain circumstances. Definition of benamidar is given in NAO 1999 as such that any person who ostensibly holds or is in possession or custody of any property of an accused on his behalf for the benefit and enjoyment of the accused. Definition of asset is given in s 5(c) means any property owned controlled by or belonging to any accused whether directly or indirectly are held benami in the name of his spouse or relatives or associates whether within or outside Pakistan, for which they cannot reasonably account or for which they cannot prove payment of full and lawful consideration. Learned defence counsel referred following authorities:-

(a) 2016 PCr LJ 1343 (Lahore) Ghulam Sarwar Khan Lalwani VS State Para 25. In order to prove the nature of transaction as benami, the prosecution was obliged to prove following ingredients highlighted by a learned division bench of Peshawar High Court in “Muhammad Hayat and two others VS State” (PLD 2002 Pesh. 118)

(i) Source of consideration

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- (ii) Holder of title document
- (iii) Person in possession of the property
- (iv) Intention and object of benami transaction

(b) 2013 P Cr LJ 1607 (Peshawar) Syed Anwar Badshah VS Chairman NAB etc

It was observed that the learned counsel for the appellant is quite correct in maintaining that the source of income of the appellant had never been any listed, determined or quantified by the prosecution either during the investigation of the case or during the trial. The law now stands settled in order to prove commission of an offence u/s 9(a)(v) of NAO 1999, it has to be proved by the prosecution as to what were the known sources of income of the accused person at the relevant time and that the resources or property of the accused person were disproportionate to his known sources of income, because mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily accounts for such possession of pecuniary resource or property that makes the possession objectionable and constitute the relevant offence.

(c) PLD 2009 SCMR 202 Ahmed Riaz Sheikh and others VS State

Para 9. The word "benamidar" means any person who ostensibly holds or is in possession or custody of any property of an accused on his behalf for the benefit and enjoyment of the accused.

(d) 2003 P Cr LJ 1 Mehmood Hussain VS State Para 15 of the judgment is reproduced below:

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The word "benamidar" denotes a person who has nominal title to the property. The person who purchases the same in the name of benamidar has the real title to the property. For determining the Benami nature of a transaction, the August Supreme court of Pakistan has laid down the following four tests, in the case of Muhammad Sajjad Hussain VS Muhammad Anwar Hussain 1991SCMR703...

- (i) Source of consideration
- (ii) From whose custody the original title deed and other documents came in evidence

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- (iii) Who is in possession of the suit property and
- (iv) Motive for benami transaction

(e) 1991 SCMR 703 Muhammad Sajjad Hussain VS Muhammad Anwar Hussain

Some of the criteria for determining the question, whether a transaction is a Benami transaction or not, inter alia the following factors are to be taken into consideration:-

- (i) Source of consideration
- (ii) From whose custody the original title deed and other documents came in evidence
- (iii) Who is in possession of the suit property and
- (iv) Motive for benami transaction

It is also a well settled law that the initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar for him and that the weakness in the defence evidence would not relieve a plaintiff from discharging the above burden of proof.

(f) PLD 2004 Lahore 155 Akhtar Ali VS Judge Special Court (Offence in Banking)

It was held that the expression known sources of income means the sources of income known to the prosecution after thorough investigation of the case. Obviously the prosecution is not expected to know every detail of the income of the accused. It is the duty of IO to thoroughly inquire into the known sources of income of the accused and be later has to be given full opportunity in this regard.

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He also contended that no thorough investigation is conducted about known sources of income. Charts are exhibited which are not admissible in evidence and not reliable. In respect of chart (Exh PW 18/13) it is not clarified that who prepared it on the basis of which chart was prepared is not part of the reference as chart is based on information derived from some other record. The person who exhibited it is not the witness.

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There are malafide on part of investigation as no effort was made to join freeman box. In investigation even IO of the case visited London UK subsequently. The explanation given by him is that it was not considered necessary.

Opinion of IO is not per se admissible. He referred following authorities:

- (a) PLD 2018 SC 178
- (b) 1986 SCMR 1763
- (c) 2011 P Cr LJ 885 wherein 2010 SCMR 660 is referred. 1992 Lahore 324 IO is generally in our setup not expert.
- (d) PLD 2000 Lahore 216
- (e) PLD 1998 Lahore 300
- (f) 1998 P CrLJ 58 Io is criticized and direction to apply independent mind in the court.
- (g) 1991 P Cr LJ 62 (usurpation of judicial power)

Statement recorded by IO cannot be used except for confrontation u/s 162 CrPC and not admissible except version of the accused. He referred to cases reported as:-

- (a) 3007 MLD 372 Karachi (statement u/s 162 CrPC not substantial piece of evidence)
- (b) 1991 MLD 2025 Lahore
- (c) 1999 P CrLJ 1198
- (d) 2003 MLD 678 IO cannot record statement
- (e) PLD 2015 Peshawar 4157 (confession of accused jointly trialed article 43 of QSO)
- (f) 1997 MLD 1257 Para 9-13
- (g) Article 43, article 46 (absconding accused letter, statement of co-accused)

He has also contended that no CMA was filed by his accused no. 1 so what is mentioned in CMA is not position of respondent no. 1 which cannot be read against him. Advocate on record who filed these CMA's has neither been examined by the IO nor is he produced in court as PW to establish the contents thereof. Attestation is not in

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accordance with law. Article 85(3) and 88 of QSO is referred.

The documents have not been proved in accordance with law. Certain documents have nothing to do with the Avenfield properties. MLA responses are not notarized/certified in accordance with law. Opinions, speculations are inadmissible unreliable .....

Affidavit filed by Tariq Shafi Exh PW16/5 is exhibited subject to objection he is not witness therefore. IO cannot be a proxy witness. Same is the position of Exh PW16/6. Witnesses of share sale agreement Exh PW16/7. scribe of that agreement are not produced.

The Qatar transaction is not related to accused no.1. Without prejudice to objections raised in respect of exhibition of other documents produced by PW 16 and their admissibility/reliability, are not related to accused no.1 and they have nothing to do with him, including Directors report Exh PW16/36, Exh PW16/37, Exh PW16/38 incorporation certificates. Trust deeds, opinion of Stephen Moverley Smith. Accused no.1 does not figure in any report. Radley reports have no concern with accused no.1. The documents of FZE has nothing to do with Avenfield properties. Worksheet Exh PW16/13 has not related to accused no.1.

Transactions mentioned therein are not related to accused No.1.

Statements/speeches of co accused cannot be used against accused no.1 who has also not admitted ownership of the Avenfield Apartments. Even mere alleged presence does not make one in possession of such flats. if someone goes to take tea somewhere he would not become in possession of it. No witness had said that accused no.1 is beneficial owner of these flats. Prosecution did not provide any bank transaction showing that money was transferred by accused no.1 for purchase of such flats. Prosecution has not produced any witness to say that the accused actual or benami owner of the companies Neilson or Nescoll.

Statements/speeches of co accused cannot be used against accused no.1 who has also not admitted ownership of the Avenfield apartments.

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Malafide of PW 16 and Investigating Officer is evident on record. The evidence which were in favor of the accused is not brought on file. IO visited London but did not examine relevant witnesses such as Lawrence Radley, Jerry Freeman. Their addresses were available on record. Similarly, hurdles were created for Hamad Bin Jasim. Questionnaire as requested by him was not sent despite the fact that questionnaire was sent to Jerry Freeman subsequently. It is stated by PW16 that it was jointly decided by the JIT that no questionnaire shall be sent to any witness and that was the reason questionnaire was not sent to Hamad Bin Jasim. PW18 lied in statement while saying that flats were in exclusive use of Nawaz Sharif as per statement of Hassan Nawaz, Hussain Nawaz and Nawaz Sharif. Statement u/s 161 CrPC is not substantial piece of evidence. Even confession of an accused jointly trialed cannot be used against co accused as per article 43 of QSO.

Learned defence counsel has also argued in respect of CMA, LC regarding shifting of material Exh PW16/69, concise statements of CMA, two letters of Hamad Bin Jasim, report of Quist Solicitor, report of Stephen Moverly and Gilliard Cooper, Deutsche Bank loan, companies of Hassan Nawaz, chart B, audit report. Those arguments will be considered at relevant place during discussion in the judgment.

Statements/speeches of co accused cannot be used against accused no.1 who has also not admitted ownership of the Avenfield apartments.

Learned defence counsel has also referred an authority reported as PLD 1975 SC 506 with the contention that language of a penal statute has to be construed strictly, PLD 2002 Lahore 369 wherein a reference of book is given the extract from is reproduced below:

“Criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose

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which the statute was enacted".(Page 460b of Crawford's Interpretation of Laws by Earl T. Crawford, Saint Louis Thomas Law Book Company,1940)

**BURDEN OF PROOF/DEFENCE**

2011SCMR136 Para 9

"In order to prove the case, the prosecution is required to prove the ingredients of the offence. which are (1) it must establish that the accused was holder of a public office, (2) the nature and extent of the pecuniary resources of property which were found in his possession. (3) it must be proved as to what were his known sources income i.e. known to the prosecution after thorough investigation and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence as defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or property. Thus, mere possession of any pecuniary resources or property is by itself not an offence. but it is failure too satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitute offence. If he cannot explain. presumption under section 14(c) of the ordinance that accused is guilty of corruption and a corrupt practice is required to be drawn. Reference is invited to a case Biswa Bhushan Naik Vs the state (AIR 1954 SC 350) in which identical provision in the Prevention of corruption Act, 1947 were interrupted"

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PLD 2005 SC 63

In no circumstances the defence should be expected to prove the accusation. In a similar wake of event while discussing the question of presumption it was held in Rehmat Vs the state PLD 1977 SC 515 as follows:-

"Needless to emphasize that in spite of section 106 of the Evidence Act in a criminal case the onus rests

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on the prosecution to prove the guilt of the accused beyond reasonable doubt and this section cannot be construed to mean that the onus at any stage shifts on to the accused to prove his innocence or makeup for the liability and failure of the prosecution to produce evidence to establish the guilt of the accused. Nor does it relieve the prosecution of the burden to bring the guilt home to the accused."

2004 PCr L J 984 pg 987

Even, in a case where the defence plea, on its face, appears to be sham the prosecution is not absolved of the duty to prove its case. So much so if the defence set up by the accused is that he is protected by any of the exceptions, special or general, burden to disprove the charge would not shift on him unless it is proved on record by the prosecution that in the absence of such a plea he would be guilty of the offence charged.

### DEFINITION OF DEPENDENT

PLJ 2005 Lahore 999

"If we take into account the dictionary meaning of the word 'dependent' it simply means that a person who is financially 'dependent' on someone and who requires financial support from a person upon whom he depends for maintenance."

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Learned defence counsel has stated that dictionary definition of

'dependent' as per black law dictionary is as under:

"One who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else".

### ADMISSIBILITY OF STATEMENT OF IO

PLD 2004 Lahore 155 pg 175

The statement of the Investigating Officer is admissible and is relevant only insofar as he collects the material which is to be

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produced as evidence during trial and records statement of those witnesses who ultimately depose in court. However, during trial he cannot be a substitute for any of the above piece of evidence.

He cannot prove a document of which he is not the author, nor play proxy to the witnesses who are not produced during trial without any cogent reason. His statement, in the afore-referred circumstances, is merely an opinion, which is both irrelevant and inadmissible.

### DEFENCE IN CRIMINAL CASE

PLD 2011 SC 554 pg 576 para 17

At the same time under criminal jurisprudence for the safe administration of criminal justice, the courts are required to follow certain settled principles, such as the innocence of the accused must be presumed, till he is proved to be guilty; sifting "the grain out of the chaff"; the defence may take a number of pleas and even if all are shown to be false, yet it is the duty of the prosecution to prove its case to the hilt: "better that ten guilty persons escape than that one innocent suffer" (William Black Stone, English Jurist)

### INTERPRETATION OF PENAL STATUTE

PLD 1995 SC 1

If any legal provision, which is to be relied upon in the appraisal of evidence and is open to two interpretations, one beneficial to the accused is to be adopted.

1998 SCMR 1794

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(a) Interpretation of statutes---

---Provision susceptible to two interpretations--- Where provision of a statute on criminal law is susceptible to, two interpretations, the interpretation favorable to accused should be preferred. [pg 1798] A

### PROOF OF CONTENTS OF DOCUMENTS

PLD 1988 Karachi 131

We may point out that there is a marked distinction between the

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factum of proving of signature of the writer on a document and proving the correctness of the contents. The latter cannot be proved without examining the author of the document or in his absence on account of death or for any other admissible reason by a person who was associated with the execution of the document and was conversant with the correctness of the contents.

(2010) 4 Supreme Court Cases 491 India

Held, mere filing or exhibiting of a document in court does not amount to proof of its contents --- Admission of a document in court may amount to admission of its contents but not their truth

NOTICE U/S 19 OF NAO 1999

PLD 2012 SC 903

Duties of National Accountability Bureau (NAB) --- scope --- Before summoning a person to attend, National Accountability Bureau (NAB) was duty bound to identify and particularize the information sought from any witness etc, and to state the nexus between such information and the subject of the inquiry being conducted by NAB. [pg. 914] G

PLD 2007 Karachi 469

Therefore, while calling the information from any person, the person must be informed the fact, point, allegation, offence, name of accused, specified matter, if any, concerning the matters of the provisions in the notice so that the person can furnish such information. If such specified information is of such a nature which, if furnished through any mode will serve the purpose, then such person should not normally be called to appear in person.

The improvements as pointed out by the Learned DPG in the investigation process before the NAB authorities are basically carried out to facilitate all the concerned persons to give them due respect, not to harass them, to provide all reasonable facilities, relieve them within shortest possible time, without detaining them unnecessary or

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put any hardship to any person then in all fairness the person at the initial stage should not normally be asked to appear in person and furnish such information, which otherwise, can serve the purpose by furnishing such information through any other manner. This does not mean that the authorities have no power to call such person, but in unavoidable circumstances where the presence of the person is necessary then the person can be called by signing reasons as required under section 24-A of General Clauses Act, which stipulates that where any authority or officer is empowered to make order or give any direction, such power is required to be exercised reasonably, fairly, justly and for the advancement of the purpose of enactment and give reasons for making such order. The copy of such order should find place and be made available in the case diary.

The arguments of learned defence counsel in respect of other points stressed by him were:

That despite the Hon'ble Supreme Court of Pakistan's clear directions the Prosecution, in this case, has miserably failed to fulfill even one of the conditions. Maintained that during both investigations, sources of income were not probed. Added that for the sake of argument, if it is presumed that accused Mian Muhammad Nawaz Sharif is the owner of flats, it was not an offence unless the Prosecution establishes its case as per the prerequisite set out under the superior courts precedents.

There is no connection of a company Capital FZE with Avenfield properties yet it was brought in evidence by the PW-16 Wajid Zia who has lied regarding use of London flats. It was also pointed out that I.O. in this case did not collect the information regarding known source of income in the reference and that there are numerous contradictions in the statement of PW-16 Wajid Zia. That Wajid Zia while appearing as PW-16 also alluded to his opinion and observations which are not admissible in evidence and therefore irrelevant. Reliance was placed on 2011 P Cr. L J 901, 2010 CMR 53, 1992 PLD 3019 Lahore, 2013 PLD 432 SC.

That the statements recorded by JIT cannot be produced as

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evidence in this trial. Statement of accused may only be admissible if they are jointly tried and a confession is made. Reliance was placed on 1997 MLD 257, SCMR 1182 and 2015 PLD 157. The leaned defence counsel also read out the statement of accused Nawaz Sharif and said that he never said that London flats remained in his possession. Neither absconding accused Hassan Nawaz said in his statement that accused Nawaz Sharif was owner of these flats or lived in them.

Mere presence in these properties doesn't make one in possession of such flats as would I become in possession if I were to have a cup of tea there. (According to the documents received from BVI, accused Nawaz Sharif is not owner of flats 16A and 17A, also pointed out that no witness said in his statement to PW-16 Wajid Zia that accused Nawaz Sharif is the beneficial owner of these flats. Prosecution did not proved any bank transaction of accused Nawaz Sharif for purchase of said flats. Further added that Prosecution does not have any witness who can say that accused Nawaz Sharif was the actual or benami owner of Neilson and Nescoll (offshore companies).

It was mandatory for the prosecution to prove source of income and transactions to establish ownership of benami properties. That NAB as an investigating agency should have evidence regarding transaction of money. During cross examination, PW-16 Wajid Zia accepted that the JIT did not receive any document, which can prove that accused Nawaz Sharif was owner or director of Neilson and Nescoll. Added that Wajid Zia also accepted that none of the witnesses gave statement that NMS held bearer share.

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That 01 Sidra Mansoor accepted that she did not have any such information which may prove connection of accused Nawaz Sharif with flats.

That the prosecution failed to establish which reply was received against what MLA documents. Maintained that in NAB cases, investigation is a huge responsibility, however it was not done in present case. Added that NAB does not have any evidence that accused Nawaz Sharif was benami of properties belonging to his sons.

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That I.O. and NAB officials visited London but failed to examine any of the relevant witnesses who could have exonerated the accused like Lawrence Radley whereas he was very important witness because he said that he did not purchase flats in 1993 on the direction of Sharif family. Similarly Gerry Freeman of Freeman Box was not examined by NAB as he had earlier stated that the trust deed was signed in his presence. Efforts were made to prove connection of accused Mian Nawaz Sharif with flats through Al Towfeeq settlement and it was said that Sharif family owned flats at the time of settlement.

All the documents presented by PW 16 Wajid Ziad regarding Qatari Prince, Gulf Steel Mill sale purchase and Affidavits of Tariq Sharif are not admissible in evidence in these proceedings as either the maker of these statements, documents were not cited as witness nor were the documents in original and were photocopies. Similarly expert opinion presented by the Prosecution with producing the expert as witness is not relevant.

Objections were also raised on various CMAs filed in evidence by the prosecution and it was said that in none of the CMAs accused Mian Nawaz Sharif has admitted to ownership of possession of these flats. Further the CMAs were not verified from the Hon'ble Supreme Court of Pakistan according to the law of evidence.

In the documents presented by the prosecution regarding the Gulf Steel Mills in Dubai, its share sale agreement or any other documents including the Affidavits of Tariq Sharif, no mention was made of accused Mian Nawaz Sharif or his involvement in any matter, neither accused Mian Nawaz Sharif had any connection with these transactions. It was also alleged that all the evidence submitted in photocopies is not admissible under the law. Similarly regarding Shezi Neckvi Affidavit and Al-Towfeek settlement papers submitted by prosecution, there is no mention of accused Mian Nawaz Sharif.

**Arguments of Amjid Pervez Learned defence counsel on behalf of accused Maryam Safdar and Capt (Retd) Safdar.**

1. That the accused Maryam Safdar and Captain (Retd) Safdar were not asked by the Hon'ble Supreme Court of Pakistan to appear before the JIT and neither were their names in the mentioned in the 13

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questions raised by the Hon'ble Supreme Court of Pakistan. The accused also didn't file review petition against the Supreme Court Judgment.

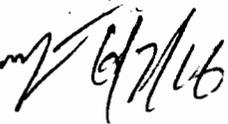
That JIT was not empowered to engage solicitors but experts yet the JIT engaged services of Quist Solicitors. Despite direct question, PW-16 or PW 15 Akhtar Raja of Quist Solicitor didn't disclose the fee arrangement or the contract for hiring of his services. He clearly had an interest in the case and hiring him was nepotism as he was related to the head of JIT.

The accused Maryam Safdar never remained public office holder so she might not be tried under NAB laws. the current case is prepared rather on perceptions than evidence. It is a case of weak evidence where the ownership is not established.

There are conditions for establishing offence of assets beyond known sources as laid down under precedents set by the superior courts which are not met in this case. It is a settled law that the accused cannot be convicted on assumptions.

He has also argued on other points in line with the arguments advanced by learned counsel Kh. Haris about MLA responses, their intrinsic value etc. He also maintained that Robert Radley was not font identification expert. His report is not supported by any material. He has not mentioned font type in his first expert report about trust deed. If he was expert in font identification he would have noted the same in his first reported on simple examination of the deed by naked eyes. He has also argued in line with learned defence counsel Kh. Haris in respect of notice under section 19 of NAO 1999 issued in name of accused by NAB.

He has contented without prejudice to his legal and factual objections raised in respect of documents produced in the case that opinion and inferences of I.O., the documents produced has not established any case against Mian Muhammad Nawaz Sharif. When that barrier is not crossed i.e examination of Mian Muhammad Nawaz Sharif or his means is not established. Accused Maryam Safdar cannot be held responsible of any criminal act. It is case of no evidence

  
  
  
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against accused Maryam Safdar and Capt. (Retd) Safdar.

The authorities produced on different points in support of his arguments are given below. His arguments are in line with and in addition to arguments advanced by learned defence counsel Kh. Haris. The points in rulings produced by learned defence counsel were also the points of discussion in arrangements of learned defence counsel and his arguments at relevant time will be noted while appreciating the evidence.

P L J 1996 SC (Appellate Jurisdiction) Tiled Muhammad Asahrif Khan Tareen Vs State. Para E of the same is reproduced as under:

"Learned counsel for the appellant further argued that as per first report No. 147 of Cantt. Police Station, the appellant fired with a weapon mentioned as "Tamacha" while the weapon recovered from the appellant was 38 bore revolver as per SSP Faiz Khan PW-4, Driver Muhammad Younas PW-12, SHO Sadiq Hussain PW-14 and recovery memo Ex.PW-12/1. In reply learned counsel for the complainant State argued that mis-description of a weapon of offence is not material. He cited the case of Muhammad Gul vs. The State (1970 S.C.M.R. 797) where the weapon allegedly used in commission of the offence was described in the FIR as "Bandook" while during the trial it was shown as gun and it was held that word "Bandook" can be used both for gun and a rifle. Similarly in this case the word "Tamacha" can be used for "revolver".

Learned counsel for the appellant wanted this Court to consider certain newspaper cuttings about the incident. The newspaper cuttings have not been properly proved in the way required by law of evidence. Particularly in a criminal case such cuttings cannot be used either in favour of the prosecution or in favour of the defence, unless author of the same is examined in Court as a witness".

P L D 1961 (W.p.) Karachi Titled Messrs Balagamwalla Cotton ginning and Pressing Factory, Karachi Vs. Lalchand. Part F is reproduced as under:

"in our opinion the learned Sub-Judge was not justified in relying on these documents without the proof of the source or the basis on which these items appear in the said newspaper".

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P L D 2007 Karachi 448 titled Arif Hashwani and 3 others Vs. Sadruddin Hashwani and 3 others: Para B is reproduced as below:

"Article 70(8)(a) inserted by the Ordinance 2002 required that if the electronic information was denied by the party then documents must be proved. Electronic documents as defined in Ordinance, 2002 required that if the electronic documents as defined in Ordinance, 2002 includes documents, records etc. in electronic form and "information" has been defined as voice, sound, video etc.

Article 2(1)(c) of Qanun-e-Shahadat Order, 1984 defines "evidence" but interesting to note that the legislature has not defined that what he means by the evidence but said that evidence includes a statement that the court permits or requires to be made and or all documents produced. It is a settled principle of law that the word "include" is always used in "interpretation clause" in order to enlarge the meaning of the word and phrase occurring in the body of a statue and as such contention of the learned advocate for the defendants that CD recorded cassettes does not come within the definition of evidence oral or documentary have no force. Even otherwise after the amendments of Qanun-e-Shahadat Order 1984 by Electronic Transactions Ordinance, 2002, electronic generated documents and information become admissible piece of evidence.

In my humble view audio, video-records cassettes CDs are admissible piece of evidence, however, the authenticity of same is always subject to proof in case the party against which it can be used disputed and or denied the party against which it can be used disputed and or denied the authenticity and information contained in the said electronic documents".

1985 S C M R 359 Titled Muhammad Afzal Zullah, Shafiur Rahman and Mian Burhan un din Khan, JJ Ch. Abdul Hamid--Vs. Deputy Commissioner and others: Part A is reproduced below:

"The value to be placed and the setting in which the handwriting expert's opinion has to be considered appeared with

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clarity in the following passage lifted from M. Monir Law of evidence.

"Of all kind of evidence admitted in a Court, this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence. In view of this infirmity of expert testimony, it is settled practice of Courts not to base a finding merely on expert opinion. Conclusion based on mere comparison of handwriting must at best be indecisive, and yield to the positive evidence in the case".

1969 P Cr.L J 259 Titled Jafar Alam Choudhury Vs. The State.

Para (d) and para 9 E of judgment are reproduced as below:

"the opinion of handwriting expert with regard to questioned writing and signature is not infallible but liable to error and it is a very weak kind of evidence. The opinion of handwriting expert does not conclusively prove forgery when it is to the effect that the questioned writing and signature are not those of the person whose writings and signatures they purport to be. It is, however, one of the modes of proof of handwriting and signature but its evidentiary value is slender. In the instant case, the handwriting expert was not himself definite that the petitioner was the author of the impugned signature and writing appearing in the cheque in question. This considerably reduced the value of the evidence that it was the petitioner who wrote and signed the cheque".

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 JUDGE  
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9E.... The next point urged by Mr. Moinul Haq is that the conviction in this case has been based on the opinion of the handwriting expert which is of a shaky character and which is at best a very weak evidence. It is well settled that opinion of handwriting expert with regard to questioned writing and signature is not infallible but liable to error and it is a very weak kind of evidence. The opinion of handwriting expert does not conclusively prove forgery when it is to be effect that the questioned writing and signature are not those of the person whose writings and signatures they purport to be. It is, however one of the modes of proof of handwriting and signature but its evidentiary value is slender. In the instant case, the handwriting expert was not himself definite

  
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that the petitioner was the author of the impugned signature and writing appearing in the cheque in question. This has considerably reduced the value of the evidence that it was the petitioner who wrote and signed the cheque".

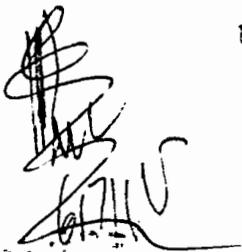
Air 1979 Supreme Court 1011 Titled Kanchansingh Dholaksingh Ta Ahakur. Appellant V. State of Gujarat. Para 1 is reproduced as under:

"The position is that the entire conviction rests on the uncorroborated testimony of the Expert P.W. Acharya. The High Court has clearly found that the expert had opined in case of even those persons who admitted to have signed in token of the payment that the signatures of these witnesses were forged. This is a most extraordinary situation because when the witnesses testified on oath that they had signed the Register and the signatures shown to them were their own how could the expert say that the signatures of these witnesses were forged. At any rate the expert's opinion does not appear to be reliable for this reason. Once it is proved that the appellant had not forged his signature on the entries concerned in Exh. A-18 on which the entire case of the prosecution is based, there is no legal evidence to prove either the charge of misappropriation or use of forged document or the charge of corruption or allegation of forgery. While this contention was specifically raised before the High Court by the counsel for the appellant the High Court does not appear to have given any satisfactory explanation for this. It is well settled that in order to rely on the evidence of an expert the Court must be fully satisfied that he is a truthful witness and also a reliable witness fully adept in the art of identification of hand-writing in order to opine whether the alleged hand-writing has been made by a particular person or not. As the evidence of the expert has been disbelieved by the High Court on the most material points, we find it wholly unsafe to base the conviction of the appellant merely on the testimony of the expert.

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2001 Y L R 448 (Lahore) Titled Kh. Ijaz Ahmad and others Vs. D.R.O. and others. Paras 9, 12 and 13 are reproduced as below:

"So far as the newspapers are concerned, there is no evidence or for that matter information as to when the event reported in the newspaper took place. No statement or affidavit of the person who had allegedly reported the event in the newspapers is forthcoming on the record. Now it is settled that newspapers or the newspaper articles are not ordinarily admissible as evidence of the facts stated therein. In the case of Abdul Wali Khan PLD 1976 SC 57 the Supreme Court of Pakistan had observed while agreeing with the learned Attorney general who had relied upon Volume 29 of the American Jurisprudence (Second Edition), page 989 that "it cannot be denied that so far as newspaper reports of contemporaneous events are concerned, they may be admissible particularly where they happen to be events of local interest or of such a public nature as would be generally known throughout the community and testimony of an eye-witness is not readily available". It was further observed by the apex Court "The contemporary newspaper account may well be admitted in evidence in such circumstances as has often been done by Courts in the United States of America not because they are "business records" or "ancient documents" but because they may well be treated as a trustworthy contemporaneous account of events or happenings which took place a long time ago or in a foreign country which cannot easily be proved by directed ocular oral testimony". Reference thereafter was made to the case of Sher Muhammad Vs. THE Crown (PLD 1949 Lah. 511) where newspaper reports were accepted of and articles published in a daily newspaper the contents of which were not denied by the Crown. It was further observed that thus if a person does not avail of the opportunity to contradict or question the truthfulness of the statement attributed to him and widely published in newspaper he cannot complain if that publication is used against him.

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So far as the video film is concerned there is nothing in the order of learned R.O. as to who provided him with the same. I may refer here to the same judgment of Abdul Wali Khan to state that in the said case tape recorder of speeches of the NAP Leaders were admitted only when the Officer recording the speeches was produced. He produced the tape. The tape was run in open Court and Officer identified the voices of persons speaking. What to speak of production of any such person or his affidavit who had made the recording we do not even know who that person is. The video film of course seen by the learned R.O. in isolation was not a piece of legal evidence and could not have been relied upon by the learned R.O.

As to the photographs. Here again the order or learned R.O. is silent as to who provided him photographs as to who had taken photographs who had developed the photographs and as to where are the negatives. Here again photographs could not have been admitted in the evidence without the evidence of alleged photographer and the developer of the film with reference to negatives thereof.

PLD 2016 Lahore 570 titled Before Shahid Hameed Dar, J Mst. Rehana Anjum Vs. Additional Sessions Judge. Paras 9(F) and 10 (G) are reproduced as below:-

Production of a document and proof of the document were two different subjects. A document can be produced in evidence, which is always subject to proof as required under Article 78 of the Order (void). If a document was relied upon by a party and it had been formally exhibited but was not proved in accordance with the law, therefore, it could not be relied upon in circumstances. A medical officer having scribed a medico-legal report or a necropsy report is required to prove each and every bit of the descriptions/ contents, so as to prove the said documents, the reason being that the reports prepared by him do not have the coverage of provision of section 510, Cr.P.C., which underlines that "any documents purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or of the Chief Chemist of Pakistan, Security Printing Corporation Limited or any Serologist.

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finger print expert or fire-arm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code". It is further provided that "the Court may if it considers necessary in the interest of justice summon and examine the person by whom such report has been made".

"The DW does not fall within any of the categories mentioned in section 510 Cr.P.C., therefore, he has to depose about the contents of Ex.DW-4 A and petitioner complainant shall be within her right to cross-examine him so as to shake his credibility, if possible. Merely by tendering the said document in evidence, without saying a word to the contents thereof by the DW, it would not be possible for the trial court to assess the evidentiary value thereof".

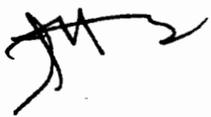
1995 SCMR 1621 Supreme Court Of Pakistan, titled Malik Khuda Baksh Vs. The State). Paras 11 is reproduced as below:-

It may be seen that in case of Mst. Naseer Begum Vs. Sain and 6 other, reported in 1972 SCMR 584 the Supreme Court has observed that "Evidence Act does not make a finding of fact arrived at on the evidence before the Court in one case evidence of that fact in another case". Thus, a judgment in a Civil Court, as pointed out by M. Munir in his Law of Evidence, "is not admissible in a criminal proceedings to establish the truth of the facts upon which it is rendered, in a criminal trial it is for the Court to determine the question of the guilt of the accused and it must do so upon the evidence before it". In the case of S.N.Gupta & Co. Vs.Sadanada Ghosh, it was held by the Dacca High Court that a judgment of acquittal in a criminal case only decides that the accused has not been proved guilty and to this extent only and no more is it to be taken as correct and conclusive in a subsequent civil between the parties".

PLJ 2004 Cr.C. (Lahore) 734 (DB) titled Muhammad Ajmal Vs. State. Paras 12 (I) is reproduced as below:

These reports stand on a much weaker footing than the judgment of a Civil Court. Even the judgments of a Civil Court cannot per se be

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used to establish facts constituting an offence before a Criminal Court. This is in line with the law laid down by the August Supreme Court in *Mst. Naseer Begum V. Sain and 6 others* (1972 SCMR 584) wherein at page 585 it was held as under:-

“Learned counsel appearing in support of this petition reiterates the contention that the judgment of the Civil Court should have been taken into account, before arriving at a decision in the criminal case. We are unable to agree, because, as pointed out by the Privy Council in the case of *Kumar Gopika Raman Roy Vs. Atal Singh (1)* “the Evidence Act does not make a finding of fact arrived at on the evidence before the Court in one case evidence of that fact in another case”. Thus, a judgment in a Civil Court, as pointed out by M. Munir in his *Law of Evidence*, “is not admissible in a criminal proceeding to establish the truth of the facts upon which is rendered. In a criminal trial it is for the Court to determine the question of the guilt of the accused and it must do so upon the evidence before it”.

2016 S C M R 2084 titled *Asfandyar and other Vs. Kamran and another*. Para 5D and E are reproduced as under:

“The record reveals that during investigation the petitioner tried to produce the footage of some C.C.T.V. which were produced by the petitioner-accused before the investigating officer. No doubt the trial Court, under 164 of the Order, 1984, may allow to produce the said footage of C.C.T.V but it is incumbent upon the defence to prove the same in accordance with the provisions of the Order, 1984. The defence had ample opportunity to produce in his defence, the concerned person who had prepared the said footage from the C.C.T.V. system in order to prove the same. In that eventuality, the adverse party would be given an opportunity to cross-examine the said witness regarding the genuineness or otherwise of the said document. Any document brought on record could not be treated as proved until the same is proved strictly in accordance with the provisions contained in the Order, 1984. While discussing these aspects of the case, the High Court restricted the admissibility only to the extent of article 79 of the Order, 1984 whereas there are certain other provisions/Article in the Order, 1984 for proving the documents which are procured through the modern devices and techniques. Mere producing any

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footage of C.C.T.V. as a piece of evidence in the Court is not sufficient to be relied upon unless and until the same is proved to be genuine. In order to prove the genuineness of such footage it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the C.C.T.V. system. So we modify the impugned judgment to the extent that the accused is at liberty to produce evidence and prove the same strictly in accordance with the provisions of the Order, 1984 and it will not confine only to the Article 79 of the Order, 1984.

2016 Y L R 2547 titled Muhammad Iqbal Ahmad Vs. The State: Paras 11, 13 & 14 are reproduced as under:

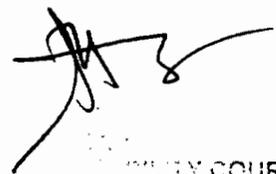
"P 11.. Before adverting to the evidence in support of charge qua the above mentioned properties, it is necessary and advantageous to examine the necessary ingredients for proving an offence under Section 9(a)(v) of "NAO, 1999". It is by now well settled that the prosecution in order to prove the culpability of an accused in terms of above referred penal clause has to prove the following ingredients:-

- (v) the accused is a holder of public office.
- (vi) he accumulated, owns or possess title or interest in the properties.
- (vii) his known sources of income.
- (viii) and the expenditures incurred the accused on acquisition properties or disproportionate his known sources of income.

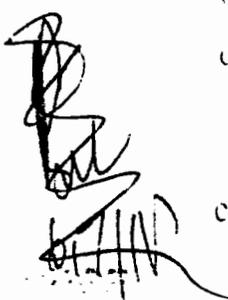
It is manifest from the above that mere holding of assets in the shape of moveable and immovable property in his own name or in the name of his dependant is not the sole fact to determine the culpability of an accused in term of section 9(a) (v) of "NAO 1999". The prosecution is always burden with heavy onus to prove that assets so acquired do not commensurate to the known sources of income of the accused. The Hon'ble Supreme Court of Pakistan in the case of "Ghani-ur-Rehman v. National Accountability Bureau and others" (PLD 2011 SC 1144), while dealing with a similar proposition has laid down the following principles:-

"6. The law now stands settled that in order to prove commission of an offence under section 9(a)(v) of the National

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APPELLATE COURT

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Accountability Ordinance, 1999 it has to be proved by the prosecution as to what were the known sources of income of the accused person at the relevant time and that the resources or property of the accused person were disproportionate to his known sources of income and it is after such proof has been led and the necessary details have been provided by the prosecution that the onus shifts to the accused person to account for such resources or property because mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence. In the case in hand the appellant's sources of income had never been brought on the record by the prosecution and had never been quantified by it at any stage of this case and, therefore, it was not possible for the learned trial court to conclude or to hold that the appellant or his dependants or so-called benamidars owned, or possessed assets or pecuniary resources disproportionate to the appellant's income. It is unfortunate that the investigating officer of this case-as well as those responsible for prosecution of this case before the learned trial court had, probably on account of their sheer incompetence, utterly failed to do the needful in this regard and it is regrettable that even the learned trial court as well as the learned appellate court had completely failed to advert to this critical aspect of the present case."

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"P13. So far charge relating to segment (h) is concerned, the appellant was held guilty on the basis that he failed to account for 69 tolas of gold as he failed to declare the same in his tax return and wealth statement. Suffice to observe that mere non mentioning of detail of jewelry in the relevant tax document does not constitute any offence under Section 9(a)(v) of "NAO, 1999, unless other necessary ingredients for the constitution of said offence were proved by leading cogent and convincing evidence. Reliance in this respect can be placed on "Khalid Aziz V. the State."

"P14.... Though learned Prosecutor strengthened his contentions by submitting that the appellant at some stage opted for voluntary return of the assets but the same never matured. The

appellant was sent to face the trial instead of accepting his plea of voluntary return in terms of Section 25 of "NAO, 1999". The conviction cannot be recorded on the basis of presumptions and suppositions. When once an accused has faced the regular trial then his guilt or innocence is to be determined from the evidence adduced in this regard. Mere fact that some offer was made by the accused at early stage of his prosecution to enter into voluntary return, is not sufficient to hold him guilty of the offence. The Hon'ble Supreme Court of Pakistan in somewhat similar circumstances in the case of "Syed Ali Nawaz Shah and 2 others v. The State and others".

2011 SCMR 136 titled Khalid Aziz Vs. the State wherein it is held that in order to prove the case, the prosecution is required to prove the ingredients of the offence, which are (1) it must establish that the accused was holder of a public office. (2) the nature and extent of the pecuniary resources or property which were found in his possession. (3) it must be proved as to what were his known sources of income i.e. known to the prosecution after thorough investigation and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence as defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or property. Thus, mere possession of any pecuniary resources or property is by itself not an offence, but it is failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitute offence. If he cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and a corrupt practice is required to be drawn. Reference is invited to a case Biswa Bhushan Naik v. State (Air 1954 SC 350) in which identical provision in Prevention of Corruption Act, 1947 were interpreted."

"Similar view was also taken in the cases of Farrukh Javed Gumman and State of Maharashtra supra. Thus, it is clear that the prosecution has to establish the above mentioned four ingredients and then the burden would shift upon the appellant to explain his possession as required under section 14(c) of the Ordinance."

"In the present case, the prosecution has simply produced the Declaration of assets for the years 1995-2000 filed by the appellant before the department, which show that he appellant owned various properties and was earning income therefrom. The prosecution has not lead any evidence to show about the amount received by the appellant from his salary, allowances etc. during the period of his service i.e. 1969 to the relevant time. Thus, the prosecution did not produce the required evidence to prove that the amount alleged or final amount determined by the High Court was disproportionate to the known sources of income, as such, the prosecution has failed to prove the main appellant to furnish

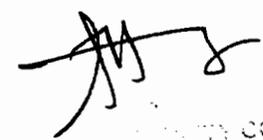
explanation as provided under section 14(c) of the Ordinance.. However, in spite of that the appellant explained his position by giving details of each and every transaction in the accounts of his wife and produced the relevant evidence in the shape of the statements of his wife (D.W.3), his father-in-law (D.W.2), Ishfaq Ahmed, Chartered accountant (D.W.1) and Haji Maqsood Ahmed, Advocate (D.W.4) along with documentary evidence. They have fully supported the stand taken by the appellant with the documentary evidence. The question as to whether these amounts were not mentioned in the Income Tax Department or that the resolution was not filed with the Registrar, Cooperative Societies is by itself will not affect the explanation or draw any adverse inference against the appellant as the appropriate action can be taken under the Income Tax Laws or by the Registrar, Cooperative Societies Act (sic) against the Firm under the relevant provisions of law, if such laws are violated. While interpreting section 14(c) of the Ordinance, it has been observed in the case of Hakim Ali Zardari supra, as under:--

"As regards the burden of proof, the normal rule of law is that an accused is presumed to be innocent until his guilt is proved, established and the onus of establishing the guilt is always on the prosecution. But the rule of law laid down in section 14(c) of the Ordinance is a departure from normal law and under this section, a presumption of corruption and corrupt practices is required to be drawn, if the accused or any person on his behalf is in possession of pecuniary resources or property disproportionate to his known sources of income of which sources he cannot satisfactorily account. For shifting the burden upon accused to account for the sources of income, the words of the statute are preemptory and the burden must lie all the time on the accused to prove the contrary, after the conditions laid down in the earlier part of the section have been fulfilled by the prosecution through evidence to the satisfaction of the Court and then the Court is required to draw the presumption that the accused person is guilty as provided under section 14(c) of the Ordinance. Such presumption continues to hold the field unless the Court is satisfied that the statutory presumption has been rebutted. The onus upon the accused is not as strict as the initial onus on the prosecution which has first to establish the disproportion was not satisfactorily explained by the accused it could not be said that excessive burden was thrown on him to explain the disproportion. A reference is invited to Rameswar Prasad Upadhyaya v. State of Bihar (AIR 1971 sc 2474). Thus, the nature and extent of the burden cast on the accused is that he is not bound to prove his innocence beyond any reasonable doubt, therefore, while examining the explanation of the accused the above principle is required to be kept in view and if the accused is able to explain the circumstances to the satisfaction of the Court then that will be enough to discharge the burden."

P L D 1975 Karachi 352 titled Mohammad Usman Vs. Lal Mohammad and 12 others. Paras 8 & 10 are reproduced as below:

"P.8. Now section 65, it is to be noticed, only makes admissible secondary evidence in some cases; it does not prescribe the mode by which secondary evidence may be given though in some cases—and

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clauses (e) and (f) are such cases---a certain mode is stated and all others forbidden. This mode is by means of a certified copy. What a certified copy is stated in section 76 which read:

"76. Certified copies of public documents.---Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies."

A plain reading of this section shows that Exh. 49 is not a certified copy within the meaning of section 76. This section requires that only the public officer having the custody of a public document may give a certified copy and it must then be dated and subscribed by such officer with his name and official title. I have already stated that Exh. 49 although it does bear a signature does not purport to indicate the designation of the person who has put the signature, much less that he was such a public officer as is contemplated by section 76.

P.10. Reliance was then placed upon Exh. 49-A, it being claimed that since this was notorially attested there was sufficient compliance of section 78. Now it is to be remembered that Exh. 49-A was claimed to be a Photostat copy of Exh. 49 which was then notorially attested. In fact it was not even that: it was a photostat copy of such a photostat copy of the Exh. 49 as had been attested notorially before being re-photographed. In the first place on general principles I should be extremely reluctant to accept as admissible the photographic copy of a document which itself is inadmissible. It would be remarkable indeed if a document although not admissible itself became admissible only because it was photographed and then attested. Unless, therefore, the law compels me to come to such a conclusion I would hold that Exh. 49-A is inadmissible on that ground alone. It was claimed, however, that Exh. 49 was being held inadmissible only for the want of an attestation by a Notary Public and that Exh. 49-A bear such an attestation. I do not think the matter is as simple as that. What section 78 requires is the certificate under the seal of a Notary Public that "the copy is duly certified by the officer having the legal custody of the original". In other words from the notorial attestation is being derived the guarantee that the copy is indeed certified by that officer. The Notary Public in this case even if he had put a stamp upon Exh.49 itself could not have and did not give such a certificate. In the absence of any certificate the utmost that the attestation amounts to is a certificate that he has compared the photostat copy with the document from which it has been made and that the photostat copy is accurate. This by no means complies with section 78 and I am quite unable to hold, therefore, that Exh. 49-A was admissible either".

P L D 1999 Lahore titled Mst. Kalsoom Begum Vs. Ahmad Raza Bukhari.  
Para 4 is reproduced as below:

"The only question, which calls for determination, is whether

applicant is entitled to obtain the certified copies of certified copies of the orders of Deputy settlement Commissioner dated 17.1.1960.. the order of Settlement Commissioner dated 11.3.1960 and order of Chief Settlement Commissioner dated 5.6.1962 appended with the memo. of Writ Petition No. 368-R of 1963. The answer to this question beings upon Articles 85, 87 and 88 of the Qanun-e-Shahadat (10 of 1984). Article 85 enumberates defines what are the public documents. According to this Article, written instruments are divisible into two classes namely public and private. Public documents consist of act of public functionaries, in the executive, in the Legislature and in the judicial wing of Government which are required to be entered into books reisters in the course of their public duties. The relevant sub-clause in this Article is 1(3). Next we move to Article 87 and 88. These provisions are exceptions to the rule which requires that each document is to be proved by primary evidence. Article 87 says that every public functionary having the custody of public document of which any person has right to inspect, such give that person, on demand, a copy of it on the payment of legal fee therefore together with certificate written at the foot of the copy that it is a true copy of such document or part thereof. It further postulates that such certificate shall be dated and subscribed by such officer with his name, his name, his official title and his seal. It, so, state that such copies shall be entitled to be designated as certified copies. Form the above, it clearly follows that Article 87 only applied firstly, where a public officer is in custody of a public document mentioned in article 85; secondly, that such document is open & to inspection; thirdly that such officer is empowered to give the copy of such document to any person who makes a request for its copy and pays the legal charges due on requested copy copies; fourthly, that such officer is to give him that copy after comprising it with the original and has to make a certificate that effect. The question is whether a certified copy of the orders mentioned above do satisfy the above requirement. Answer is very simply, 'No'. The functionaries of the High Court were not required under any law to prepare and maintain the record of Settlement of evacuee properties. This was within the domain of Settlement Department. The incharge of the copying agency of the High Court cannot certify the copies of the certified copies annexed with the memo. of Constitutional Petition No. 368-R of 1963 with heir corresponding originals. This being the position we have no difficulty in holding that copying agency of this Court cannot give certified copies mentioned above. The applicant, if so chooses, may approach the copying agency of the Settlement Department.

2011 CLJ 233 (Peshawar) titled Mst. Nishata Vs. Muslim Khan alias Musali etc. Para 11 B is reproduced as below:

" in connection with the expert about the signature of Mst. Nishat, plaintiff petitioner and Abdul Hakeem, PW-4, ACW-1 and 2, where examined. As per opinion, the signatures are fake and fictitious not matching with admitted signatures. The evidence of ACW-3, wherein, he opined that the thumb impressions are similar to that of admitted thumb impression of Mst. Nishat. This evidence cannot be considered.

notwithstanding being weak type of evidence, but the defendants/respondents have failed to comply with the provisions contained in Articles 78, 79 and 80 of the Qanun-e-Shahadat therefore, under Article 84, expert opinion made permissible, in the instant case, same was also about thumb impression, but negates the claim of defendants/respondent: about the signing of disputed sale-deed, therefore, not of any importance as it's supportive evidence of the rest of the material on the file, even otherwise the mere expert evidence cannot be considered in supersession of other material available on record, whereby inference can be drawn altogether contrary to the expert report. When the party has failed to prove its case not entitled to have given the benefit of the sole opinion of expert which is by its nature is a weak evidence, in this respect reliance can be placed on a case titled Syed Muhammad Umer Shah vs. Bashir Ahmed.

"Article 61. Handwriting Expert opinion. Scope. Evidence of Handwriting Expert is always considered to be a weak type of evidence. In present of overwhelming evidence, oral, documentary as well as circumstantial, it would be futile to examine the expert. Even if examined, it would not outweigh the available evidence"

P L D 2005 Quetta 1 titled Ashfaq Khalid Vs. the State. Para 33 M.N.O.P. 35S & 37U are reproduced as under:

"So far report of Handwriting Expert is concerned, it may be observed that same is not infallible. The Hon'ble Supreme Court, in the case-law reported in 1985 SCMR page 359 observed that the opinion of Handwriting Expert is not final word on the subject. Relevant observation is reproduced below: "Opinion of Handwriting Expert---Opinion of Handwriting Expert, of all kinds of evidence admitted in a Court, was the most unsatisfactory---Such evidence was so weak and decrepit as scarcely to deserve a place in system of jurisprudence--- Courts not to base a finding merely on expert opinion--- Conclusion based on mere comparison of handwriting must at best be indecisive and yield to positive evidence in case."

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Likewise in the judgment reported in AIR 1947 Oudh page 180 their Lordships have held that it would be dangerous to place implicit reliance on the opinion of Handwriting Expert. It would be advantageous to reproduce the relevant observations herein below:

"the last witness to be considered in the connection in D.W.22. I wish to state at the outset that had the evidence of the Handwriting Expert in proof of these disputed documents stood alone. I would have had great hesitation in accepting it. Mr. Wasim has cited the opinion expressed in numerous authorities and text books in regard to the evidence of a handwriting expert. I am fully conscious of the fact that it is dangerous to place implicit reliance upon the evidence of such witnesses."

It has also been held in number of cases that an expert is unconsciously prejudiced in favour of the party calling him. Here we may refer to the judgment reported in PLD 1958 Lahore page 447.

"The opinion of a Handwriting Expert should be received with great caution: however impartial an expert may be, he is likely to be unconsciously prejudiced in favour of the said that calls him. From the mere fact that an expert has said that a document was written by a certain person one will not be justified in arriving at the conclusion that the scribe was the person mentioned by the expert because before giving a finding to that effect the Court has to consider the entire evidence on the point."

It was further held in the same judgment as under:

"The opinion of an expert is admissible but it cannot be considered to be infallible. There must be some circumstances or evidence whereby to test the accuracy of the statement of an expert."

There Lordships in the judgment reported in 1969 P.Cr.L.J page 259 while discussing the opinion of Handwriting Expert held as under:-

"The opinion of Handwriting Expert with regard to questioned writing and signature is not infallible but liable to error and it is expert does not conclusively prove forgery when it is to the effect that the questioned writing and signature are not those of

  
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the person whose writings and signatures they purport to be. It is, however, one of the modes of proof of handwriting and signature but its evidentiary value is slender."

35-S. Likewise the Court can come to its own conclusion independently of the Expert opinion after taking into consideration the facts and circumstances of the particular case as observed in PLD 1966 Dacca Page 444. Reproduced herein below:-

"A plain reading of the section will show that it is the Court which has to form the opinion of an Expert is relevant but the duty of the Court is not thereby altogether abrogated. The Court in order to form its opinion may call upon the opinion of an Expert to aid the Court to come to its conclusion. Therefore, in a case, where the impressions are clear and the similarity or dissimilarity is obvious, we do not use why the Court cannot itself come to its own conclusion independently of an opinion of the Expert."

37 U-- "In order to compare two different handwritings or signatures. Handwriting Expert is required to examine different characteristics of both the hand writings or signatures such as Pen hold. Pen pressure. slant. speed. sizing. alignment. spacing. line quality. tremors. Curves. connections. rhythm. moment in pulse. position in all letters. paper ink and writing instrument. Similarly before comparison the principle "like with the like" is to be observed. In other words the specimen for comparison must provide similar material for comparison. As far as possible while taking specimen writing similar paper Ink and writing instruments he provided to the person whose specimen writing are required. If disputed writings are in pencil. pencil specimen must be obtained. If they are in Ball Pen writings must be obtained. "(Hardless's Disputed Documents. Handwriting and Thumb print. identification" revised by T.J. Gajjar third Edition 1983 referred)."

2010 P Cr. L J 1832 Titled Mir Fayaz Ahmed Vs. The State. Paras No. 19, 20 and 21A are reproduced below:

" 19....In Abdul Rashid's case (supra). it was held that since there was no evidence at all to connect the appellant with the commission of offence with which he stood charged and that it

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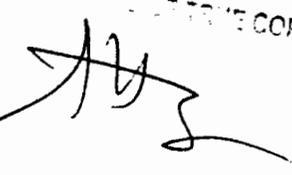
was "well-settled that since conviction cannot be based uncorroborated testimony of an expert witness which is certainly a weak type of evidence."

"P 20.... Lastly in Qazi Naseem Ahmed's case (Supra), the appellant was convicted under section 5-C of the Prevention of Corruption Act. It was alleged that being a public servant, by improper means, he had acquired in his own name and in the names of his dependent mother and young brother a host of properties. Court analyzed each of the property and came to the conclusion that the charge had not been proved. Regarding probative value of opinion of the Handwriting Expert, the Court observed that in the absence of any corroborative evidence, opinion of Handwriting Expert is not sufficient to hold that the appellant had forged the documents, as such evidence is not infallible."

P 21 D.... A reading of the above case-law indicates that the law seems to be well-settled that opinion of Handwriting Expert is what it is i.e. only an opinion. Therefore, standing alone the opinion will not be sufficient for reaching a definite conclusion as to the alleged handwriting or the alleged signatures. The opinion has only corroborative value and therefore unless independent corroboration is available conviction cannot be based on sole testimony of Handwriting expert."

P L D 2014 Supreme Court 696 titled Land Acquisition Collector, Sargodha and another Vs. Muhammad Sultan and another. Paras 5 D and 6 B are reproduced as below:

"5D... The provisions of the Qanun-e-Shahadat Order, 1984 including Article 59 thereof make it clear that the opinion of a witness is only relevant and carries some probative value if he is an expert in the fields specified in the said Article. Furthermore, even for the purpose of giving an opinion, the witness has firstly to establish the expertise vested in him either on account of academic qualification or experience or otherwise. Without such foundation, an opinion cannot be itself, be taken as having evidentiary value for proving a fact in

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6 B: In the present case, the reasons which prevailed with the Courts below were based on an opinion expressed by a person who is neither an expert, nor has he established any basis for the opinion expressed by him."

P L D 1993 Supreme Court 88 Titled Altantic Steamer's Supply Company Vs. m.v. Ttitisee and others. Para 13 is reproduced as below:

"There seems to be controversy between the parties as to the mode of proof of a foreign law. In this regard, reference may be made to section 38 of the late Evidence Act and the corresponding provisions contained in Article 52 of the Qanun-e-Shahadat. It will suffice to reproduce the latter, which reads as follow:-

"52. Relevancy of statements as to any law contained in law books.--- When the Court has to form an opinion as to a law of any country any statement of such law contained in a book purporting to be printed or published under the authority of the government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant."

A plain reading of the above article indicates that a foreign law can be proved by producing a book purporting to be printed or published under the authority of the Government of the country concerned containing a statement of the relevant law. It may also be observed that under Article 59 of the Qanun-e-Shahadat, an expert opinion on a foreign law is a relevant fact and therefore, an expert can also be examine. It may further be mentioned that in England as is indicated from the above-quoted para. from Cheshire on Private International Law, the foreign law is to be proved through expert evidence."

P L D 1972 Supreme Court 25 Titled Mst. Khair-UI-Nisa and 6 others Vs. Malik Muhammad Ishaque and 2 others. Were it is mentioned that Written statements cannot be the exhibits in the case without the person who filed the same being examined in the Court. The statements made in the written statement are not on oath. They are

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only verified and therefore, they cannot be treated as evidence in the case. This view finds support from the case of J.B. Ross & Co. v. C.R. Seriven and others (A I R 1917 Cal. 269(2)) and Muhammad Siddique v. Bhupendra Narayan Roy Chowdhury (P L D 1962 Dacca 643). It was held in the former case as:----

"A verification is required with a view to discourage, if not to prevent, the institution of false suite; the legislature never contemplated that verified statements should be treated as evidence on behalf of a plaintiff against a defendant. The inference may legitimately be drawn from the language used in section 191 read with section 193, I. P. C., that a verified statement would not be "evidence" but for the special provision of section 191 which has been enacted for a special purpose."

2016 S C M R 274 [ Supreme Court of Pakistan] Titled Azeem Khan and another Vs. Mujahid Khan and others. (J) Penal Code (XLV of 1960)...

..... Sec. 365-A & 302(b)----Anti-Terrorism Act (XXVII of 1997), S. 7(e)---Criminal Procedure Code (V of 1998), S. 510--  
-Kidnapping for ranso, qatl-i-amd---reappraisal of evidence ----  
Recovery of bones to identify deceased---DNA report of bones--  
---Not admissible in evidence-----Not sufficient to award  
capital punishment----Even if in the present case such DNA  
report was admitted into the evidence and relied upon, it would  
in no manner be sufficient to connect the necks of the accused  
persons with the commission of the crime when the bulk of  
other evidence against them was found to be unbelievable thus,  
no reliance could be placed on such DNA report to award a  
capital sentence---- to ensure fair-play and transparency, the  
samples in the laboratories from the parents (of deceased)  
should have been taken in the presence of some independent  
authority like a Magistrate and also the recovered samples from  
the crime scene in the same way to dispel the chances of  
fabrication of evidence through corrupt practices---- Transition  
of the samples to the laboratory should have also been made in  
a safe and secure manner, but all such safeguards were ignored  
in the present case---Supreme Court set aside convictions and  
death sentences awarded to accused persons and acquitted them  
of the charge."

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P L J 2002 Lahore 454 Titled Muqarrab Hussain. (deceased) through his Legal Representatives and other Vs. Pirzada Muhammad Rafique. (deceased) through his Legal representatives. Paras 4, 7, 8A & 10 C are reproduced as below:

"P 4.....The appellants on the other hand have relied on the said order dated 13.1.1962 for apportionment of rent. an uncertified photo copy of grounds of appeal dated 17.08.1965 Exh. DW-3/2. certified copy of grounds of revision dated 5.1.1966 Exh. DW3/4. copy of the plan Exh. DW 9 and copy of the plan Exh. DW3 19."

"P 7.... The impact and effect of order Exh. P3 is stated to be withheld down. by the appellants. with reference to documents Exh. Dw3/2 and Exh. D3-4. These documents are respectively grounds of appeal and grounds of revision filed by the respondents against the order of apportionment of rent dated 12.1.1962 relied upon by both the parties as Exh. P4 and Exh. DW3 1. According to the learned counsel these two documents constituted admission on the part of respondents that the plot in front of the Bungalow and arrange/quarter was in fact given to the appellants as part of portion C."

"P 8A...I must say that a plain reading of the said documents does give the impression as gathered by the learned counsel for the appellants. However, it is also apparent on the face of record that the facts so constituting an admission according to the learned counsel for the appellants are against weight of evidence on record which shows otherwise. Be that as it may, I find that so far as the Exh. DW 3/2 is concerned it is a photo copy and not a certified copy. I also find that the document was duly objected to when it was sought to be entered in the statement of the appellant as DW3. To my mind this document is not admissible at all under any provisions of Qanun-e-Shahadat Order, 1984. Exh. Dw3 4 has been issued from the record of writ petition filed in this Court. It has come out in the statement of DW 3 that this document is also copy of uncertified copy. This too is not admissible in evidence."

"P 10... I am also in agreement with the learned counsel for the respondents that even if by some stretch it be deemed that the said two documents constitute admission and are also admissible in evidence

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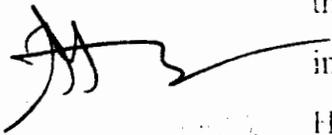
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and have been duly proved, nothing will turn on the same because these admissions would be relatable only in proceedings in which they were made and cannot be used as admission for the purpose of present suit which had been tried on its own merit in the light of evidence recorded therein.

2016 S C M R 2084 titled Asfandyar and other Vs. Kamran and another. Para 5D and E are reproduced as under:

" The record reveals that during investigation the petitioner tried to produce the footage of some C.C.T.V. which were produced by the petitioner accused before the investigating officer. No doubt the trial Court, under 164 of the Order, 1984, may allow to produce the said footage of C.C.T.V but it is incumbent upon the defence to prove the same in accordance with the provisions of the Order, 1984. The defence had ample opportunity to produce in his defence, the concerned person who had prepared the said footage from the C.C.T.V. system in order to prove the same. In that eventuality, the adverse party would be given an opportunity to cross-examine the said witness regarding the genuineness or otherwise of the said document. Any document brought on record could not be treated as proved until the same is proved strictly in accordance with the provisions contained in the Order, 1984. While discussing these aspects of the case, the High Court restricted the admissibility only to the extent of article 79 of the Order, 1984 whereas there are certain other provisions/Article in the Order, 1984 for proving the documents which are procured through the modern devices and techniques. Mere producing any footage of C.C.T.V. as a piece of evidence in the Court is not sufficient to be relied upon unless and until the same is proved to be genuine. In order to prove the genuineness of such footage it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the C.C.T.V. system. So we modify the impugned judgment to the extent that the accused is at liberty to produce evidence and prove the same strictly in accordance with the provisions of the Order, 1984 and it will not confine only to the Article 79 of the Order, 1984.

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2011 CLJ 233 (Peshawar) titled Mst. Nishata Vs. Muslim Khan alias Musali etc. Para 11 B is reproduced as below:

"in connection with the expert about the signature of Mst. Nishat, plaintiff petitioner and Abdul Hakeem, PW-4, ACW-1 and 2, where examined. As per opinion, the signatures are fake and fictitious not matching with admitted signatures. The evidence of ACW-3, wherein, he opined that the thumb impressions are similar to that of admitted thumb impression of Mst. Nishat. This evidence cannot be considered, notwithstanding being weak type of evidence, but the defendants respondents have failed to comply with the provisions contained in Articles 78, 79 and 80 of the Qanun-e-Shahadat therefore, under Article 84, expert opinion made permissible, in the instant case, same was also about thumb impression, but negates the claim of defendants respondent: about the signing of disputed sale-deed, therefore, not of any importance as it's supportive evidence of the rest of the material on the file, even otherwise the mere expert evidence cannot be considered in supersession of other material available on record, whereby inference can be drawn altogether contrary to the expert report. When the party has failed to prove its case not entitled to have given the benefit of the sole opinion of expert which is by its nature is a weak evidence, in this respect reliance can be placed on a case titled Syed Muhammad Umer Shah vs. Bashir Ahmed.

"Article 61, Handwriting Expert opinion. Scope. Evidence of Handwriting Expert is always considered to be a weak type of evidence. In present of overwhelming evidence, oral, documentary as well as circumstantial, it would be futile to examine the expert. Even if examined, it would not outweigh the available evidence"

P L D 2005 Quetta 1 titled Ashfaq Khalid Vs. the State. Para 33 M.N.O.P. 35S & 37U are reproduced as under:

"So far report of Handwriting Expert is concerned, it may be observed that same is not infallible. The Hon'ble Supreme Court, is the case-law reported in 1985 SCMR page 359 observed that the opinion of Handwriting Expert is not final word on the subject. Relevant observation is reproduced below:

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"Opinion of Handwriting Expert---Opinion of Handwriting Expert. of all kinds of evidence admitted in a Court. was the most unsatisfactory---Such evidence was so weak and decrepit as scarcely to deserve a place in system of jurisprudence--- Courts not to base a finding merely on expert opinion--- Conclusion based on mere comparison of handwriting must at best be indecisive and yield to positive evidence in case."

Likewise in the judgment reported in AIR 1947 Oudh page 180 their Lordships have held that it would be dangerous to place implicit reliance on the opinion of Handwriting Expert. It would be advantageous to reproduce the relevant observations herein below:

"the last witness to be considered in the connection in D.W.22. I wish to state at the outset that had the evidence of the Handwriting Expert in proof of these disputed documents stood alone. I would have had great hesitation in accepting it. Mr. Wasim has cited the opinion expressed in numerous authorities and text books in regard to the evidence of a handwriting expert. I am fully conscious of the fact that it is dangerous to place implicit reliance upon the evidence of such witnesses."

It has also been held in number of cases that an expert is unconsciously prejudiced in favour of the party calling him. Here we may refer to the judgment reported in PLD 1958 Lahore page 447.

"The opinion of a Handwriting Expert should be received with great caution: however impartial an expert may be, he is likely to be unconsciously prejudiced in favour of the said that calls him. From the mere fact that an expert has said that a document was written by a certain person one will not be justified in arriving at the conclusion that the scribe was the person mentioned by the expert because before giving a finding to that effect the Court has to consider the entire evidence on the point."

It was further held in the same judgment as under:

"The opinion of an expert is admissible but it cannot be considered to be infallible. There must be some circumstances or evidence whereby to test the accuracy of the statement of an expert."

  
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There Lordships in the judgment reported in 1969 P.Cr.L.J page 259 while discussing the opinion of Handwriting Expert held as under:-

"The opinion of Handwriting Expert with regard to questioned writing and signature is not infallible but liable to error and it is expert does not conclusively prove forgery when it is to the effect that the questioned writing and signature are not those of the person whose writings and signatures they purport to be. It is, however, one of the modes of proof of handwriting and signature but its evidentiary value is slender."

35-S. Likewise the Court can come to its own conclusion independently of the Expert opinion after taking into consideration the facts and circumstances of the particular case as observed in PLD 1966 Dacca Page 444. Reproduced herein below:-

"A plain reading of the section will show that it is the Court which has to form the opinion of an Expert is relevant but the duty of the Court is not thereby altogether abrogated. The Court in order to form its opinion may call upon the opinion of an Expert to aid the Court to come to its conclusion. Therefore, in a case, where the impressions are clear and the similarity or dissimilarity is obvious, we do not use why the Court cannot itself come to its own conclusion independently of an opinion of the Expert."

37 U-- "In order to compare two different handwritings or signatures. Handwriting Expert is required to examine different characteristics of both the hand writings or signatures such as Pen hold. Pen pressure, slant, speed, sizing, alignment, spacing, line quality, tremors, Curves, connections, rhythm, moment in pulse, position in all letters, paper ink and writing instrument. Similarly before comparison the principle "like with the like" is to be observed. In other words the specimen for comparison must provide similar material for comparison. As far as possible while taking specimen writing similar paper ink and writing instruments he provided to the person whose specimen writing are required. If disputed writings are in pencil, pencil specimen must be obtained. If they are in Ball Pen

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writings must be obtained. "(Hardless's Disputed Documents. Handwriting and Thumb print. identification" revised by T.J. Gajjar third Edition 1983 referred)."

2016 P Cr. L J 1343 Lahore Titled Ghulam Sarwar Khan Lalwani Vs. The State. Para 20D is reproduced as below:

"the prosecution was obliged and required to collect and produce evidence regarding known resources of income of appellant for the period during which plots were purchased and installments were paid. Admittedly no such evidence was collected"

P L D 2002 Peshawar 118 titled Muhammad Hayat and 2 others Vs. the State. Para 81 is reproduced as below:

" if we take into account the Dictionary meaning of the word dependent". It simply means that a persons who is financially "dependent" on someone and who requires financial support from a person upon whom he depends for maintenance".

PLD 1993 Supreme Court 88 titled Altantic Steamer's supply Company Vs. m.v. Titisee and others. Para 13 G is reproduced as below:

" a plain reading of the above Article indicates that a foreign law can be proved by producing a book purporting to be printed or published under the authority of the Government of the country concerned containing a statement of the relevant law. It may also be observed that under Article 59 of the Qanun-e-Shahadat. an expert opinion on a foreign law is a relevant fact and therefore. an expert can also be examined."

P L D 1972 Supreme Court 25 Titled Mst. Khair-Ul-Nisa and 6 others Vs. Malik Muhammad Ishaque and 6 others.

"Written statements cannot be the exhibites in the case without the person who filed the same being examined in the Court. The statements made in the written statement are not on oath. They are only verified and therefore. they cannot be treated as evidence in the case. This view finds support from the case of J. B. Ross & Co. v. C. R. Seriven and others."

2010 P Cr. L J 1832 Karachi titled Mir Fayaz Ahmed Vs. The State. Para 21 is reproduced as under:

"a reading of the above case-law indicates that the law seems to be

  
  
  
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well-settled that opinion of Handwriting Expert is what it is i.e. only an opinion. Therefore, standing alone the opinion will not be sufficient for reaching a definite conclusion as to the alleged handwriting or the alleged signatures. The opinion has only corroborative value and therefore unless independent corroboration is available conviction cannot be based on sole testimony of Handwriting Expert."

P L D 2005 Karachi 443, titled Mansoor Ahmed Qureshi Vs. The State. Para 14 F is reproduced as below:

"Where new offences are created along with corresponding punishments or new punishment are provided for existing offences, by virtue of amendments to the Ordinance, they would not apply retrospectively."

P L D 2010 Supreme Court 1109 titled Bank of Punjab an another Vs. Haris Steel Industries (PVT) LTD. Para 30E is reproduced as below:

"Only an honest investigation which could guarantee a fair trial and conceiving a fair trial in the absence of an impartial and a just investigation officer would be a mere illusion and a mirage".

**BURDEN OF PROOF AND EXPLANATION BY THE ACCUSED**

2007MLD 210 Karachi Hakim Ali Zardari Vs The State Last para at page 923 is reproduced below:

As regards the burden of proof the normal rule of law is that an accused is presumed to be innocent until his guilt is proved, established and the onus of establishing the guilt is always on the prosecution. But the rule of law laid down in s 14(c) of the Ordinance is a departure from normal law and under this section, a presumption of corruption and corrupt practices is required to be drawn, if the accused or any person on his behalf is in possession of pecuniary resources or property disproportionate to his known sources of income for which sources he cannot satisfactorily account. For shifting the burden upon accused to account for the sources of income, the words of the statute are pre-emptory and the burden must lie all the time on the accused to prove the contrary, after the conditions laid down in the earlier part of the section have been fulfilled by the prosecution through evidence to the satisfaction of the Court and then the Court is required to draw the presumption that the accused person is guilty as provided under section 14(c) of the Ordinance. Such presumption continues to hold the field unless the Court

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is satisfied that the statutory presumption has been rebutted. The onus upon the accused is not as strict as the initial onus on the prosecution which has first to establish the disproportion between the properties held by accused and the known sources of income. But where from the facts the disproportion was not satisfactorily explained by the accused it cannot be said that excessive burden was thrown on him to explain the disproportion. A reference is invited to Rameswar Prasad Udhapya Vs State of Bihar (AIR 1971 SC 2474). Thus, the nature, and extent of the burden cast on the accused is that he is not bound to prove his innocence beyond any reasonable doubt, but the prosecution is required to prove the charge beyond a reasonable doubt, therefore while examining the explanation of the accused the above principle is required to be kept in view and if the accused is able to explain the circumstances to the satisfaction of the Court then that will be enough to discharge the burden.

**STANDARD OF PROOF** are of three kinds.

- (i) Preponderance of evidence balance of probabilities
- (ii) Proof beyond a reasonable doubt
  - (i) Intermediate standards of clear and convincing evidence

In offences u/s 9 (a)(v) read with section 14(c) the standard of proof cited above as (iii) is applied.

A case reported as 2009 SCMR 790 can be referred to here, wherein it is held that s 14 if NAO cannot be used to undermine the well established rule of law that burden to proof guilt of accused initially is on the prosecution and it never shifts to accused unless discharged through cogent and reliable evidence.

2010 SCMR 1697 titled Muhammad Hashim Babar vs. the State and other, citation a, b and c are reproduced as under:

" it is pertinent to mention here that in order to prove the case is the duty and obligation of the prosecution to prove the ingredients of the offence which are as follows:

- (v) It must establish that the accused was holder of a public office.
- (vi) The nature and extent of the pecuniary resources of property which were found in his possession.

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- (vii) It must be proved as to what were his known sources of income.
- (viii) It must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income.

The aforesaid ingredients are proved then the offence as defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or property. It is also settled proposition of law that mere possession of any pecuniary resources or property is by itself not an offence, but failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes offence meaning there by that if an accused cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and corrupt practices is required to be drawn. See *Biswa Bhushan Naik V. State* (AIR 1954 SC 350). The evidence brought on record read with the presumption under section 14 of the said Ordinance established the charge against the petitioner beyond any reasonable doubt. As the learned counsel of the petitioner has failed to point out any piece of evidence which was misread or non-read by the Courts below while rendering finding of guilt against the petitioner by merely mentioning Rs. 14 lac in the expenses head cannot discharge the onus of the petitioner to furnish explanation with regard to having Rs. 14 lac. The explanation of sources with regard to the amount mentioned hereinabove is not furnished by the petitioner as is evident from the finding of guilt recorded by the courts below reproduced hereinabove. It is also settled principle of law that the initial burden of proof is on the prosecution to establish the possession of properties by an accused disproportionate to his known sources of income to prove the charge of corruption and corrupt practices under NAB Ordinance, 1999 and once this burden is satisfactorily discharged, onus is shifted to the accused to prove the contrary and give satisfactory account of holding the properties and in case of his failure, Court may raise the presumption of guilt.

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2009 SCMR 790 titled Syed Qasim Shah vs. the State, citation "c" is reproduced as under:

"Hence, notwithstanding the presumption contained in section 14(c) of the Ordinance, the initial burden of proof always rests on the prosecution. It is well-settled that the burden to prove all the ingredients of the charge always lies on the prosecution and it never shifts on to accused who can stand on the plea of innocence, assigned to him under the law, till it is dislodged. In other words unless he presumption of innocence imputed to the accused is crossed out by the force of suspicious circumstances he cannot be called upon to prove that the charge was false or he was innocent. The prosecution, therefore, is never absolved of from proving the charge beyond reasonable doubt and burden shifts to the accused only when the prosecution succeeds in establishing the presumption of guilt.

**I have heard the arguments and perused the record.**

So many authorities are referred to during arguments. Therefore, discussion is started with a well settled principle of criminal administration of justice that:

Each case is to be adjudged in the background of its own facts and circumstances and the facts of two criminal cases seldom coincide. Precedent will be applicable on a given case when it will be on fours to the same (my this view is fortified by an authority reported as 2010 YLR 2301, Lahore).

Therefore, the background of the present case is taken first for discussion to depict its actual picture.

#### **BACKGROUNDS OF THE CASE:-**

In year 2016, the international consortium of investigative journalists released certain information that have been hacked from the data base of a Panama based law firm/corporate service provider namely Mossack Fonseca. That information described as the Panama papers was published worldwide in both print and electronic media. It reveals the names of hundreds of persons who formed offshore companies in various tax heaven jurisdictions for obtaining secrecy and tax immunity of private property and wealth secured by means

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that include money laundering, tax evasion, fraud etc. The list was including the names of Heads of the States, their relatives, associates, public officials and politicians.

In the wake of documents (Panama papers) leaked from the record of a Panama based law firm (Mossack Fonseca). The accused no. 1 to 5 were alleged to have connection with offshore companies. The matter was taken up by Hon'ble Supreme Court of Pakistan on the basis of constitution petitions filed before Hon'ble Supreme Court of Pakistan. Accused persons also joined the proceedings before Hon'ble Supreme Court of Pakistan.

By a majority of three to two of Hon'ble Judges of Supreme Court of Pakistan, certain questions were framed, and it was held that a thorough investigation in this behalf is required. Para 2 of order dated 20-04-2017 is reproduced below for a ready reference:-

"In normal circumstances, such exercise could be conducted by the NAB but when its Chairman appears to be indifferent and even unwilling to perform his part, we are constrained to look elsewhere and therefore, constitute a Joint Investigation Team (JIT) comprising of the following members.

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- (i) A senior officer of the Federal Investigation Agency (FIA) not below the rank of Additional Director General who shall head the team having first hand experience of investigation of white collar crime and related matters.
  - (ii) A representative of the National Accountability Bureau (NAB)
  - (iii) A nominee of the Securities & Exchange Commission of Pakistan (SECP) familiar with the issues of money laundering and white collar crimes
  - (iv) A nominee of the State Bank of Pakistan (SBP)
  - (v) A seasoned officer of Inter Services Intelligence (ISI) nominated by its Director General, and
  - (vi) A seasoned officer of Military Intelligence (MI) nominated by its Director General.

The JIT was authorized to investigate the case and collect evidence if any, showing that respondent no. 1 (now accused no.1) or any of his dependents or benamidars owns, possess or has acquired assets or any interest therein disproportionate to its known means of income. Respondent

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no. 1 (now accused no.1), 7 & 8 (now accused no. 3 & 4) were directed to appear and associate themselves with the JIT as and when required. The JIT might also examine the evidence and material if any already available with the FIA and NAB relating to or having any nexus with the possession or acquisition of the Avenfield apartments or any other assets or pecuniary resources and their origin.

In pursuance to the order of Hon'ble Supreme Court of Pakistan, the following members constituted the JIT:

- (i) Mr. Wajid Zia, PSP, Head of JIT (Addl Director General, FIA)
- (ii) Brigadier Muhammad Nauman Saeed (R) Member (Rep. ISI)
- (iii) Brigadier Kamran Khursheed, Member (Rep. MI)
- (iv) Mr. Amir Aziz, Member (Executive Director, SBP)
- (v) Mr. Bilal Rasul, Member/Secretary (Executive Director, SECP)
- (vi) Mr. Irfan Naeem Mangi, Member (Director NAB)

The JIT was to conduct thorough investigation to answer the following questions and other matter which is assets of accused no. 1 or any of his dependents or benamidars beyond known sources of his income.

How did Gulf steel mill come into being:

What led to its sale:

What happened to its liabilities:

Where did its sale proceeds end up:

How did they reach Jeddah, Qattar and Uk:

Whether respondent no. 7 & 8, in view of their tender ages had the means in the early nineties to possess and purchase the flats:

Whether sudden appearance of the letters of Hamad Bin Jasem Bin Jabar Al-Thani is a myth or a reality:

How bearer shares crystallized into the flats:

Who infact is the real and beneficial owner of M/s Neison Enterprises Limited and Nescoll Limited:

How did Hill metal establishment come into existence:

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Where did the money for flagship investment limited and other companies set up taken over by respondent no. 8 come from. and

Where did the working capital by such companies come from and

Where do the huge sums running into millions gifted by respondent no.7 (accused Hussain Nawaz) to respondent no. 1 (accused Mian Muhammad Nawz Sharif) drop in from:

JIT initiated investigation on 08-05-2017 and the final investigation report comprising on ten plus two volumes was filed by the JIT on 10-07-2017.

In final order dated 28-07-2017 Hon'ble Supreme Court of Pakistan directed the NAB to prepare and file before the Accountability Court Rawalpindi/Islamabad the following references on the basis of the material collected and referred to by the JIT in its report and such other material as may be available with the Federal Investigation Agency (FIA) and NAB having any nexus with assets mentioned below or which may subsequently become available including material that may come before it pursuant to the Mutual Legal Assistance requests sent by the JIT to different jurisdictions:-

- (a) Reference against Mian Muhammad Nawaz Sharif (respondent no. 1), Maryam Nawaz Sharif (Maryam Safdar) (respondent no.6), Hussain Nawaz Sharif (respondent no. 7), Hassan Nawaz Sharif (respondent no. 8), and Capt. Retd Muhammad Safdar (respondent no. 9) relating to the Avenfield properties (Flat no. 16.16-A.17.17-A Avenfield House, Park Lane, London, UK). In preparing and filing this reference, the NAB shall also consider the material already collected during the course of investigations conducted earlier, as indicated in the detailed judgment.

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- (b) Reference against respondent no. 1.7 & 8 regarding Azizia Steel Company and Hill Metal Establishment, as indicated in the main judgment.
- (c) Reference against respondent no. 1.7 & 8 regarding the Companies mentioned in paragraph 9 of the judgment unanimously rendered by Mr. Justice Ejaz Afzal Khan, Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan.

In pursuance of direction of Hon'ble Supreme Court of Pakistan, NAB filed first interim reference against five accused in respect of Avenfield apartments no 16, 16-A, 17 & 17-A, Park Lane, London with the allegation that accused failed to justify legal bonafide sources means for purchase of said property.

After supply of copies of the reference, a charge was framed which was subsequently amended the last charge framed in this reference is reproduced below:

**CHARGE SHEET**

1. Mian Muhammad Nawaz Shahrif son of Muhammad Sharif, aged about 69 years, resident of Shamim Farms, Jati Umra, Raiwind Road, Lahore.
2. Maryam Nawaz (Maryam Safdar) Daughter of Mian Muhammad Nawaz Sharif, aged about 43 years, resident of Shamim Farms, Jati Umra, Raiwind Road, Lahore.
3. Captain (Retd.) Muhammad Safdar, son of Muhammad Ishaq, aged about 54 years, resident of Shamim Farms, Jati Umra, Raiwind Road, Lahore.

**ABSCONDING ACCUSED**

4. Hussain Nawaz Sharif s/o Mian Muhammad Nawaz Sharif, aged about 45 years, resident of Shamim Farms, Jati Umra, Raiwind Road, Lahore.
5. Hassan Nawaz Sharif s/o Mian Muhammad Nawaz Sharif, aged about 41 years, resident of Shamim Farms, Jati Umra, Raiwind Road, Lahore.

(Muhammad Bashir, Judge, Accountability Court-I, Islamabad) hereby charge you above named accused No. 1 to 3, as under that:

You accused Mian Muhammad Nawaz Sharif were holder of public office. You and your family dependants are owner in possession of Avenfield/Mayfair Properties namely Apartment No. 16, 16A, 17 & 17A Park

Lane London and those flats were in possession of you and your family since 1993. Source of investment for purchase of said properties through offshore companies M/s Nielsen Enterprises Ltd and M/s Nescoll Ltd which owned the said Avenfield Apartment is not justified and bearer shares of said companies were crystallized into the said property.

You accused Mian Muhammad Nawaz Sharif, Maryam Nawaz and absconding accused Hussain Nawaz, and Hassan Nawaz failed to justify legal bonafide sources means for purchase of said property.

You accused Maryam Nawaz was beneficial owner of above mentioned companies which owned Avenfield Properties. A false, fabricated trust deed dated 02-02-2006 in Calibri Font was filed whereas no such Font was available for such purposes of that deed in that year. That deed was signed by you accused Maryam Nawaz as well as you co-accused Capt Retd. Muhammad Safdar, signature of you accused Capt (Retd) Muhammad Safdar was as a witness. By filing such declaration, you both allegedly tried to mislead the investigation agency.

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 You Maryam Nawaz Sharif accused consciously concealed the actual facts regarding history of ownership of the said assets and the companies and there is failure on part of you all accused including absconding accused to account for sources means availability of fund and its lawful transfer abroad. Absconding accused had also no source of income at relevant time.

Thereby you accused Mian Muhammad Nawaz Sharif, Maryam Nawaz Sharif and Capt. (Retd.) Muhammad Safdar committed offences as defined under section 9 (a)(iv)(v)&(xii) as per details given above and offences cited at serial No. 02 of the schedule and punishable under section 10 of NAO 1999 read with schedule attached thereto.

And I hereby direct that you be tried by this Court on the said charge".

The accused facing trial pleaded not guilty to the charge, however they said that charge is groundless and investigation was conducted with malafide and is politically motivated. They are being denied their fundamental right to fair trial guaranteed by Article 10-A of the Constitution, on the basis of interim reference as well as the directions given by the Hon'ble Supreme

Court of Pakistan in the final order dated 28-07-2017 and the adverse observations made in its order dated 07-11-2017. Their rights.

guaranteed under Article 25 of the Constitution as well as right to be treated in accordance with law under Article 4 of the Constitution are being violated because of unprecedented directions for conclusion of proceedings and decision of the case within 06 months and the appointment of Monitoring Judge, especially for this case. They shall produce defence if required in the case.

Prosecution has produced eighteen witnesses in the case. The charge is framed u s 9 (a)(iv)(v)&(xii) and offence cited at serial No. 02 of the schedule and punishable under section 10 of NAO 1999 read with schedule attached thereto. The relevant provisions of law are reproduced below for a ready reference:

Section 9 (a) a holder of a public office or any other person is said to commit or to have committed the offence of corruption and corrupt practices.

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(iv) If he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse [...] or dependents or any other person, any property, valuable thing, or pecuniary advantage; or

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(v) if he or any of his dependents or benamidars owns, possesses, or has [acquired] right or title in any [assets or holds irrevocable power of attorney in respect of any assets] or pecuniary resources disproportionate to his known sources of income, which he cannot [reasonably] account for [or maintains a standard of living, beyond that which is commensurate with his sources of income]

Section 14 (c) NAO 1999 In any trial of an offence punishable under [clause (v) of sub-section (a) of section 9 of] this Ordinance, the fact that the accused person or any other person on his behalf, is in possession, for which the accused person cannot satisfactorily account, of assets or pecuniary resources disproportionate to his known sources of income, or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused person is guilty of offence.

Article 122 of the Qanoon e Shahadat Order 1984, burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

Article 129 of Qanoon e Shahadat Order 1984. Court may presume existence of certain facts. The court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

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## ILLUSTRATIONS

The court may presume--

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) That evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it

THE POINTS FOR DETERMINATION

1. BURDEN OF PROOF AND REQUIREMENT OF EXPLANATION BY THE ACCUSED

There are three types of Standard of proof required cases.

- (i) Preponderance of evidence balance of probabilities
- (ii) Proof beyond a reasonable doubt.
- (iii) Intermediate standard is of clear and convincing evidence.

A case reported as 2007 MLD 210 Karachi titled as Hakim Ali Zardari Vs The State can be referred to on the subject above.

Last para of page 923 of the said authority is reproduced below:

As regards the burden of proof, the normal rule of law is that an accused is presumed to be innocent until his guilt is proved, established and the onus of establishing the guilt is always on the prosecution. But the rule of law laid down in s 14(c) of the Ordinance is a departure from normal law and under this section, a presumption of corruption and corrupt practices is required to be drawn, if the accused or any person on his behalf is in possession of pecuniary resources or property disproportionate to his known sources of income for which sources he cannot satisfactorily account. For shifting the burden upon accused to account for the sources of income, the words of the statute are pre-emptory and the burden must lie all the time on the accused to prove the contrary, after the conditions laid down in the earlier part of the section have been fulfilled by the prosecution through evidence to the satisfaction of the Court and then the Court is required to draw the presumption that the accused person is guilty as provided under section 14(c) of the Ordinance. Such presumption continues to hold the field unless the Court is satisfied that the statutory presumption has been rebutted. The onus upon the accused is not as strict as the initial onus on the prosecution which has first to establish the disproportion between the properties held by accused and the known sources of income. But where from the facts the disproportion was not satisfactorily explained by the accused it cannot be said that excessive burden was thrown on him to explain the disproportion.

2010 SCMR 1697 (titled Muhammad Hashim Babar vs. the State and other). Relevant portion is reproduced as under:

“ it is pertinent to mention here that in order to prove the case is the duty and obligation of the prosecution to prove the

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ingredients of the offence which are as follows:

- (ix) It must establish that the accused was holder of a public office.
- (x) The nature and extent of the pecuniary resources of property which were found in his possession.
- (xi) It must be proved as to what were his known sources of income.
- (xii) It must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income.

The aforesaid ingredients are proved then the offence as defined under section 4(a)(v) is complete, unless the accused is able to account for such resources or property. It is also settled proposition of law that mere possession of any pecuniary resources or property is by itself not an offence, but failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes offence meaning there by that if an accused cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and corrupt practices is required to be drawn.

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It is also settled principle of law that the initial burden of proof is on the prosecution to establish the possession of properties by an accused disproportionate to his known sources of income to prove the charge of corruption and corrupt practices under NAB Ordinance, 1999 and once this burden is satisfactorily discharged, onus is shifted to the accused to prove the contrary and give satisfactory account of holding the properties and in case of his failure, Court may raise the presumption of guilt.

#### PROOF OF FACTS

According to Article 2(4) Qanoon-e-Shahadat Order, 1984, a fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

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The word "matters" has been used instead of evidence for

consideration in respect of proof of a fact. In this regard a case reported as 2016 MLD 1411 (Lahore) Mst. Bakhat Bibi Vs. Muhammad Aslam can be referred to. Wherein it is observed that the expression "matters before it" being a term wider than "evidence". The court has to necessarily go through the entire record before it including pleadings and demeanors of the witnesses.

One of the allegations in the present matter is that the offshore companies in tax heavens are used in purchase of Avenfield Apartments.

The accused namely Hassan Nawaz and Hussain Nawaz has taken stance that Avenfield Apartments were belonging to two offshore companies Nielson Enterprises and Nescoll Ltd and their bearer shares were handed over by Qatari Royal Family in settlement.

JIT has conducted investigation in this regard.

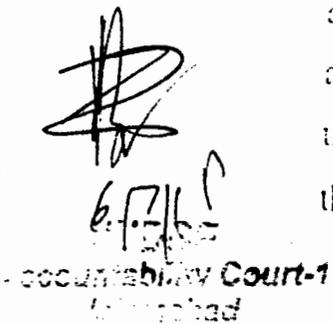
First responses of MLAs requests are taken into consideration. It is noteworthy here that Section 21 of NAO pertains to MLAs matters. Wajid Zia in his statement recorded as PW-16 has stated that JIT requested and got a notification issued for powers as conferred by Section 21 of NAO, 1999, that notification is Ex.PW-16/3 (Page 28 interim reference volume -1) and he being head of the JIT was authorized to exercise the powers conferred u/s 21 of NAO 1999. He wrote letters of request to United Kingdom, British Virgin Island, Kingdom of Saudi Arabia, United Arab Emirates etc.

Certain documents in respect of Avenfield Properties were received subsequent to submission of report of JIT before Hon'ble Supreme Court of Pakistan.

Mr. Zahir Shah Director General Operations NAB HQ produced documents received in response to MLA request sent by JIT. Those documents which were pertaining to Avenfield properties are available as Exh PW 17/2 to Exh PW17/10 (under objection that those are neither nor attested in accordance with law. The handing over of those documents is also disputed as person Osman is not produced in the court, and that the statement of this witness hearsay that

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documents were handed over to him by that person. CO: In fact this PW is high ranked officer and has given statement on oath it is not hearsay that documents were handed over to him by that person. He is stating the fact which he himself observed. Objections raised during examination of this witness are overruled). So far as objection in respect of documents Exh PW 17/2 to Exh PW 17/10 that PW is not recipient. scribe. executants and documents are redacted are concerned. S 21 (g) of NAO 1999 is required to be interpreted in this regard:

S 21 (g) says: Notwithstanding anything contained in the Qanoon e Shahadat Order 1984 (P.O 10 of 1984) or any other law for the time being in force all evidence, documents or any other material transferred to Pakistan by a Foreign Government shall be receivable as evidence in legal proceedings under this Ordinance

It clearly indicates that despite the other laws, the documents etc are receivable as evidence in the legal proceedings under this Ordinance. The requirement of s 89 (5) QSO is not required probably for the reason documents are considered authentic as transferred from other Government. Generally such documents are redacted. The term "receivable as evidence in legal proceedings" is also very significant.

The term "receivable as evidence in legal proceedings" is used to say that evidence is not defected in respect of admissibility, relevance and materiality. The term "evidence" is used that it generate the proof. Therefore, response of MLA cannot be brushacite simply on technical grounds particularly when legislature itself has made it receivable as evidence in legal proceedings.

According to those documents/official copy of register of title. absolute title (31-07-1995) of flat no. 16 avenfield house Park Lane, London is with Neilson Enterprises Limited care of M/s while. title absolute (31-07-1995) of flat no. 16-a avenfield house Park Lane, London is with Neilson Enterprises Limited similarly title absolute (01-06-1993) of flat no. 17 avenfield house Park Lane, London proprietor Nescoll Limited care of Dibb Lumton Broomhead. Absolute title (23-07-1996) of flat no. 17-a avenfield house Park Lane, London car parking space is with proprietor Nescoll Limited care of

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Dibb Lumton Brumhead.

These documents show that the flats came into ownership of Neilson and Nescoll during the years 1993, 1995 and 1996. It is also noteworthy here that Wajid Zia PW 16 was also asked about Avenfield Properties and he has given those details in cross examination as such that "As per official copy of register of title (Ex.PW-16 39 pg-75-76, CMA 7531/2016) it is mentioned under title absolute "01.6.1993 proprietor Nescoll Ltd. care of Dibb Lupton Broomhead". The said official copy of register of title pertains to Flat No. 17. As per official copy of register of title (Ex.PW-16/40 pg-77-78, CMA 7531/2016) it is mentioned under caption, "title absolute 23.7.1996 proprietor Nescoll Ltd. care of Dibb Lupton Broomhead 125 London Wall, London EC2Y 5AE". The said official copy of register of title pertains to Flat No. 17-A. As per official copy of register of title (Ex.PW-16 41 pg-79-80, CMA 7531/2016) it is mentioned under caption, "title absolute" "31.7.1995 proprietor Nielsen Enterprises Ltd care of Messrs Dibb Lupton Broomhead 125 London Wall, London EC2Y 5AE". The said official copy of register of title pertains to Flat No. 16-A. As per official copy of register of title (Ex.PW-16 42 pg-81-82, CMA 7531/2016) it is mentioned under caption, "title absolute" "31.7.1995 proprietor Nielsen Enterprises Ltd care of Messrs Dibb Lupton Broomhead 125 London Wall, London EC2Y 5AE". The documents exhibited by PW-16 from CMA No. 7531 2016 were objected at the time of there exhibition that those are attested photocopy of copy. Firstly, this objection is not acceptable as documents in response to MLA has been received. So much so those documents are available on CMA No. 7531/2016 filed by accused Maryam Nawaz and absconding accused. (Objections in respect of Ex.PW-16 39 to Ex.PW-16 42 are overruled).

It is established now that the documents are reliable and it is established that Avenfield Apartments had become ownership of Neilson Enterprises Ltd and Nescoll Ltd during the year 1993 to 1996.

PW Wajid Zia has produced attested copy of letter of Financial Investigation Agency. Photocopies of which are available at pg-8 and pg 9 on volume CMA No. 7511 16(A) which are Ex.PW-16/48.

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Attested copy is returned to witness.

A letter dated 12.06.2012 from Director of Financial Investigation Agency Mr. Errel Jeorge addressed to Money Laundering Reporting Officer Mossack Fonseca and Company seeking information about Nescoll and Neilsen Ltd. In CP-29/2016 at pg 37, (Ex.PW-16/49) is the response of Mossack Fonseca dated 22.06.2012 regarding Nescoll Ltd whereas at pg 38 (Ex.PW-16 50) is their response regarding Neilsen Enterprises. In response to the MLA the BVI Authorities have responded vide their covering letter, which is Ex.PW-16/79 (Original seen and returned back), has enclosed the response of Financial Investigation Agency which is placed at pg 52 to pg 56 Volume IV (already exhibited under objection as Ex PW-16 72 to Ex.PW-16/75) which confirmed and certified the copies of documents attached i.e. from Director FIA to Mossack Fonseca dated 12.06.2012 regarding Neilsen and Nescoll and the response from Mossack Fonseca dated 22.06.2012 responding to queries raised by FIA (Financial Investigation Agency), it also confirmed that the FIA received the reply from Mossack Fonseca regarding Nescoll Ltd through its letter dated 22-06-2012. The response from Mossack Fonseca regarding Nescoll Ltd duly certified by FIA states that basing on their due diligence record, the beneficial owner of the company is Maryam Safdar and provides the address of Saroor Palace Jeddah. It also states that they did not have any names of trustees, beneficiaries of any trust concerned with this company. Similarly, the response from Mossack Fonseca regarding Neilson Ltd duly certified by FIA states that basing on their due diligence record, the beneficial owner of the company is Maryam Safdar and provides the address of Saroor Palace Jeddah.

(The different objections were raised in respect of above said documents that the attested copy produced by the witness is attestation of a photocopy, the document is not attested in accordance with article 89(5) of Qanoon-e-Shahadat order 1984, witness is deposing about contents of document of which he is not the author or addressee the same is inadmissible in evidence).

(CO: In fact the witness is producing attested copies of a letter which was subsequently confirmed by the concerned authority through MLA request. Moreover, stating of contents at the most can be said as

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undesirable and not as inadmissible. Moreover, witness has to give some explanation in his statement about the documents and this explanation cannot be discarded unless and until it is found contrary to the contents of the documents. It is also immaterial whether he is not author or addressee of the documents because he is stating on the basis of response of MLA. All the objections stated above are overruled.

The letter dated 04.07.2017, Ex.PW-16/79 available at pg 241 of Volume IV shows that Attorney General Government of Virgin Island was contacted by JIT through MLA and Erel George Director FIA BVI has confirmed certain things that a letter dated 12.12.2012 bearing reference No. SAR 1478 was issued by FIA BVI signed by R. Erel George Director, the above said letter / document was received to JIT in response of its MLA request sent to Attorney General Virgin Island. It can be taken into consideration within the meaning of section 21(g) of NAO, 1999.

The other objections were raised that there is no seal, stamps and authentications therefore, it is not receivable in evidence. Such seal and stamp are required under schedule (i) FIA Act 2003, when a document is executed by the Agency. Diligent record is not available on file.

In cross examination so many questions were put on the witness regarding MLA Requests, photocopies of which are placed on file. The objection that copy of which was not supplied to the accused has not caused prejudice to the case of the accused. On this objection the document stated above cannot be discarded from evidence. CO: these objections are considered but as discussed above that 21 (g) NAO has excluded the application of Qanoon e Shahadat Order 1984 by using term notwithstanding any other law. Moreover witness has been asked so many questions during cross examination. Photocopies of MLAs sent by witness are also placed on file. Non supply of any MLA has not prejudice the case of the accused and document cannot be discarded which is received in response of MLA. Diligent record if not annexed the accused Maryam Nawaz can produce record to rebut the MLA response.

A specific question (No. 100) in this regard was put on the accused during her statement recorded u s 342 Cr.P.C. certain technical objections

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were recorded in it. No document to contradict the documents exhibited above was produced by the accused Maryam Nawaz. It is worth mentioning that offshore companies are incorporated in tax heavens and the money is concealed behind veils of secrecy and it is extremely difficult to lift those veils of secrecy.

When the documents produced by the witness has established that accused Maryam Nawaz is beneficial owner of the companies. She is also claiming herself as trustee of those companies. She must have produced the documents if any to prove the contrary, meaning thereby that she had no such document and she is beneficial owner of said companies as shown in above documents.

A letter dated 3.12.2005 Exh PW16/52 of Assistant General Manager SAMBA financial group to Minerva service limited shows that Maryam Muhammad Safdar is one of their valued customer in SAMBA. her address of Saroor Palace Jeddah was given in that letter. This letter is indicating that accused Maryam Safdar is connected with avenfield apartments before 2006. To rebut this assertion accused Maryam Nawaz should have placed detailed documents of both the companies.

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### CMA's

JIT has also collected and considered the documents of CMA's filed by the accused and also recorded statement of the witnesses/accused.

In CMA 7531 dated 15.11.2017 Exh PW16/4, PW16 Wajid Zia has stated that the explanation to the possession and acquisition of avenfield apartments was given in supplementary concise statement contained in CMA 7531 dated 15.11.2017. that CMA was on behalf of accused Maryam Safdar, Hussain Nawaz Sharif and Hassan Nawaz Sharif. It was explained that a Steel Factory by the name of Gulf Steel was established by the late Mr. Muhammad Sharif, the father of accused Muhammad Nawaz Sharif in 1974. that the said Steel Mill was run by Mr. Tariq Shafi as its owner whereas the real owner was Mr. Muhammad Sharif. 75% of shares of Gulf Steel Mills were sold for a consideration of 21 million Abu Dhabi Dhiram (AED). which were paid directly to BCCI for settlement of the loan liability and

  
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another agreement was signed with the purchaser Mr. Abdullah Ahli who became a partner of 75% whereas Mr. Tariq Shafi became the partner of 25% of the shares in Ahli Steel Mills (previous name Gulf Steel Mills). In 1980 Mr. Tariq Shafi on behalf of Mr. Muhammad Sharif sold 25% shares that he sold to Mr. Ahli for a consideration of 12 million AED which were invested with the Qattery Royal Family. The Qattery Royal Family had purchased the above said Apartments in question through companies Neilsen and Nescoll and the sons of accused Mian Muhammad Nawaz Sharif started living in those apartments, paying the ground rent and services charges. That in year 2006 a settlement between Mr. Hussain Nawaz Sharif and the Qattery Royal (Prince Hammad Bin Jasim Althani) resulted in the change of the ownership of the flats in question through handing over the bearer shares to Mr. Hussain Nawaz accused, who has since then been the beneficial owner of these apartments in question. That accused Maryam Safdar became a trustee for Mr. Hussain beneficiary in pursuance of a trust deed that was signed in 2006.

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Objection was raised when the above document was exhibited on the ground that the witness is neither scribe nor executant and he cannot prove such documents.

In this regard article 76. of Qanoon e Shahadat is reproduced below:

Cases in which secondary evidence relating to document may be given—secondary evidence may be given of the existence, condition or contents. of a document in the following cases:-

- (a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to the process of the Court: or of any person legally bound to produce it and when after the notice mentioned in Article 77, such person does not produce it:
- (b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative-in-interest:
- (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:

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- (d) When, due to the volume or bulk of the original copies thereof have been made by means of microfilming or other modern devices;
- (e) When the original is of such a nature as not to be easily movable;
- (f) When the original is a public document within the meaning of Article 85;
- (g) When the original is a document of which a certified copy is permitted by this Order or by any other law in force in Pakistan to be given in evidence;
- (h) When the original consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection;
- (i) When an original document forming part of a judicial record is not available and only a certified copy thereof is available, certified copy of that certified copy shall also be admissible as a secondary evidence.

Article 77 Rules as to notice to produce:- secondary evidence of the contents of the documents referred to in Article 76 paragraph (a) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate, such notice to produce it as is prescribed by law: and if no notice is prescribed by law then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it.

- (1) when the document to be proved is itself a notice
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) When the adverse party or his agent has the original in court;
- (5) When the adverse party or his agent has admitted the loss of the document:

(6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Section 89:- Proof of other public documents:- The following public documents may be proved as follows:

- (5) public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary public, or of a Pakistan counsel or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of foreign country.

In view of above provision, secondary evidence of document can be given in cases when original is in custody of opposite party. In certain cases notice as required Article 77 can also be dispense with. In view of the nature of this case firstly the document is being referred from the CMA filed by the accused and attested copy of judicial record is admissible in evidence. There is also no need to prove such

Account by Court

document as required under provisions of Qanoon e Shahadat Order because facts in issue to be proved in the present case are not the contents of a written instruments but independent facts. The above said document is being used as collateral. When the contents of a document are not in issue but a document is brought on file as collateral the strict procedure of its proof is not required. Learned defence counsels have also raised objections in respect of documents exhibited during examination in chief of similar nature. All the objections raised by defence in respect of exhibited documents stands overruled.

A number of documents were also filed with CMA 432 to elaborate money trail and that CMA was filed by accused Hussain Nawaz and Hassan Nawaz on 26.01.2017. Copy of affidavit of M. Tariq Shafi dated 12.11.2016 was also annexed with CMA 7531Exh PW16 5 (same objection was taken that witness is not scribe, executants and subscriber and the deponent is not the witness, this objection is also overruled on the reason stated above). the other affidavit of Tariq Shafi is also annexed with concise statement in CMA 432 (Exh PW16 6) (under same objection as a bove/ overruled). JIT found contradictions and anomalies those arte mentioned at pages 5 to 21 vol 3. Wajid Zia PW16 has further explained that Gulf Steel Mill was set up with zero equity and 100% loan as per para 7 of the said affidavit shows. Tariq Shafi and other witnesses had failed to explain that there was no equity involved and he was not a working partner then what was his role in setting of Gulf Steel Mills. Share sale agreement Exh PW 16 shows three parties Muhammad Shafi, Ahli and BCCI. All sale proceeds of 21 million AED were to go to BCCI. After payment to BCCI still about 14 million AED of liabilities were outstanding against Gulf Steel Mills. these liabilities were the responsibilities of Tariq Shafi who was running under the real ownership of Mr. Muhammad Sharif. These included another about 6 million AED owed to BCCI, while the remaining two utility companies like Water and Electricity charges. Share sale agreement of 25% was also found bogus by the JIT on the basis of response to MLA request sent to UAE. It does not matter that agreement of 1980 was genuine or not for the reason that if any consideration was received

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that was to be utilized to clear the liabilities. The assertion of the accused Hassan and Hussain is that, that 12 million AED were invested with Qattery Royal family is not acceptable in the circumstances shown by them. Two letters of royal families were presented before Hon'ble Supreme Court of Pakistan when those letters are analyzed those could not establish that investment was made by Muhammad Sharif with Royal family through Tariq Shafi. No details are given in those letters as alleged.

Learned defence counsel has raised so many objections on the grounds that certain portion of the statement of PW16 is opinion, analyses, speculative and argumentative. He also referred so many authorities that opinion of IO is not admissible. The reason in those authorities is that generally in our set up IOs are not experts. While JIT was constituted at high level by Hon'ble Supreme Court of Pakistan, 30 to 40 experts assisted the JIT as stated by PW 16 in cross-examination. This court has already given opinion that report of the JIT is not binding on the court but same can be considered, if it is convincing and found based on reliable documents/material that opinion can be accepted and relied upon.

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Moreover, the witness has to say something about the documents for the purposes of explanation of evidence, as it is noted above that when a document is being used for collateral purposes there is no need to prove it. All the objections raised during examination are hereby overruled.

JIT tried to record the statement of Hamad Bin Jasim AlThani member of Qattery Royal Family too but he was not cooperative with the JIT. He was asked to provide relevant documents, record and material. He was asking for questionnaire. No questionnaire in fact could be prepared for relevant material, record and documents because if any such document, material and record was available Hamad Bin Jasim. He was the best person who could enlist those documents material. Sending of any such questionnaire would mean to confine the scope of JIT in that matter.

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Accused have not got recorded statement of Hamad Bin Jasim in the court. His statement could be got recorded through videolink.

As regards possession of Avenfield apartments, prosecution has produced cd/dvd of speeches and interviews of the accused and their transcripts. So far as such evidence is concerned, those are admissible during trial within the meaning of Article 2(e)/164 Qanonn e Shahadat Order 1984. Evidence procured through modern devices as mobile phone data, tape recorded, video recording/cd/dvd are admissible in evidence during trial. CD and transcript of interview of Hussain Nawaz in program "kal tak" express news are Exh PW09/10 and Exh PW09/09. (Objection of defence is that Hussain Nawaz is neither a witness in this case nor he is accused present before the court, this objection is overruled for the reason that the said accused is absconding, evidence in his absence can be recorded). Similarly cd of address to National Assembly of Mian Nawaz Sharif is Exh PW 09/11 and its transcription is Exh PW09/08. (Objection of defence is that by virtue of Article 66 of the constitution of Islamic Republic of Pakistan speech of Nawaz Sharif is in admissible. Keeping in view that accused Mian Nawaz Sharif delivered his speech to explain the financial sources that were used to purchase and it was aired for nation. It was also an address to the nation. Therefore, Article 66 of the constitution is not applicable on such speech). CD's as well as transcripts were handed over to accused Mian Nawaz Sharif. CD and transcript of interview of Hassan Nawaz with Tim Sebastian in hard talk are Exh PW10/04 and Exh PW 10/05. Transcripts Capital talk is Exh PW11/03 and transcript of program "Lekin" is Exh PW 11/04 and one dvd Exh Pw01/5 were produced by senior coordinator Geo news Islamabad.

Questions were also asked in respect of the said CD's, DVD and transcripts u.s 342 CrPC. Questions and their answers of Mian Nawaz Sharif and Maryam Safdar are reproduced below respectively.

It is in evidence that you accused delivered speech as address to Nation aired on 05.04.2016, CD of which is Ex.PW-9/11 and transcript is Ex.PW-9/7 wherein you had inter-alia stated that sale proceeds of Dubai Factory was utilized for factory in Jeddah and

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Q.No.46.

Jeddah Factory was sold for 64 Million Riyals (17 millions Dollars) and those were the sources for purchase of London Flats. What do you say about said documents and your speech?

Ans.

The speech made by me as address to the Nation on 5.04.2016 was based on copies of the various agreements and related documents pertaining to Dubai Factory and another agreement relating to Azizia Steel Co. and the information shared with me by Hussain Nawaz Sharif and not on my personal knowledge. In-fact as already submitted by me in reply to the earlier questions I had never participated in any of the transactions pertaining to Dubai Factory including its sale and subsequent use disposal of its sale proceeds. Similar is my position with respect to the establishment, running, operation and sale of Azizia Steel Mill Co. These facts stand un-contradicted and uncontroverted by any evidence produced by the prosecution in the instant case. I may add here that I never stated in either my address to the nation or speech in the National Assembly that I was ever the real owner or beneficial owner of Avenfield Properties. Rather it had been my consistent stand that I am not the real or beneficial or benami owner of Avenfield Properties and that I never owned/held any bearer or shares certificate of Nescoll Ltd and Nielsen Enterprises Ltd. I may add here that the prosecution has miserably failed to bring on record any evidence to even remotely establish anything to the contrary.

Q.No. 47. It is in evidence that Hussain Nawaz (absconding accused) gave interview, his that interview with Hamid Mir in program Capital Talk aired by GEO News on 19.01.2016. CD of which is Ex.PW-11/5 and transcript is Ex. PW-11 3. Wherein inter-alia he has stated that Park lane Apartments were purchased from the income of sale of factory in KSA. What do you say about said documents and that interview?

Ans. It is for Hussain Nawaz to explain. As stated by me in answer to the previous question I was never involved in nor have any personal knowledge regarding purchase of Avenfield Properties.

Q.No. 48. It is in evidence that Hassan Nawaz (absconding accused) gave interview aired on BBC in November 1999. His interview by Tim Sebastian in program HARD TALK in shape of CD is Ex. PW-10/4

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and transcript is Ex.PW-10/5. Wherein he has inter-alia stated that he is living in Park Lane Flats on rent and amount of quarterly rent received from Pakistan and he did not know who own these flats. What do you say about said documents and that interview?

Ans. It is for Hassan Nawaz to explain. However it is known fact that my father was looking after the entire family and providing for their expenses and even fixing the per month pocket money for each of the family member and he continued to do so throughout his life time.

Q.No. 49. It is in evidence that Hussain Nawaz Sharif (absconding accused) gave interview aired by Express TV on 07.03.2016. His interview by Javed Chaudhary in shape of CD Ex. PW-9/10 and Transcript Ex.PW-9/9 were produced by PW-9. He Hussain Nawaz has inter-alia stated that Park Lane Apartments are belonging to them. offshore Companies Nescoll Ltd. and Nielsen Enterprises Ltd own them/apartments and he is beneficial owner of these companies and his sister Maryam Safdar is holding those offshore companies through a trust deed. What do you say about said documents and that interview?

Ans. It is for Hussain Nawaz to explain. As I have already submitted by me that I have no personal knowledge in this regard. nor was I ever involved or associated in the purchase of Avenfield Properties or in their management or maintenance.

Q.No.46. It is in evidence that your father accused Mian Muhammad Nawaz Sharif delivered speech as address to Nation. aired on 05.04.2016. CD of which is Ex.PW-9/11 and transcript is Ex.PW-9/7 wherein he had inter-alia stated that sale proceeds of Dubai Factory was utilized for factory in Jeddah. and Jeddah Factory was sold for 64 Million Riyals (17 millions Dollars) and those were the sources for purchase of London Flats.. What do you say about said documents and his speech?

Ans. Without prejudice as to the admissibility of Ex.PW-9/7 and Ex.PW-9/11 and objection as to the relevance to this question to me. the speech made by my father as addressed to the Nation on 05.04.2016 was based on copies of various agreements and related documents pertaining to Dubai Factory and another agreement related to Azizia Steel Company. and the information shared with him by Hussain

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Ans.

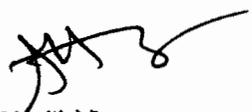
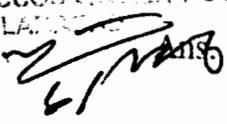
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Nawaz Sharif and not his personal knowledge. He had never participated in any of the transactions pertaining to Dubai Factory including its sale and the subsequent use / disposal of its sale proceeds. Similar is his position with respect to the establishment, operation, running and sale of Azizia Steel Mill Company. It is relevant to submit here that these facts stand un-contradicted and uncontroverted by any evidence produce by the prosecution in the instant case. I may add here that he never stated in either his address to the nation or speech in the National Assembly that he was ever real or beneficial owner of Avenfield Properties. Rather it has been his consistent stand that he is not real or beneficial or benami owner of Avenfield Properties and that he never owned/ held any bearer or share certificates of Nescoll Ltd and Nielsen Enterprises Ltd. I may add here that here that the prosecution had miserably failed to bring on record any evidence to even remotely established anything to the contrary.

Q. 47 It is in evidence that Hussain Nawaz (absconding accused) gave interview, his that interview with Hamid Mir in program Capital Talk aired by GEO News on 19.01.2016. CD of which is Ex.PW-11/5 and transcript is Ex. PW-11 3. Wherein inter-alia he has stated that Park lane Apartments were purchased from the sale proceeds of the factory of KSA. What do you say about said documents and that interview?

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This question does not relate to me. Be that as it may, Ex.PW-11/3 and Ex.PW-11/5 are inadmissible and have not been proved in accordance with law.

Q.No. 48. It is in evidence that Hassan Nawaz (absconding accused) gave interview aired on BBC in November 1999. His interview by Tim Sebastian in program HARD TALK in shape of CD is Ex. PW-10/4 and transcript is Ex.PW-10 5. Wherein he has inter-alia stated that he is living in Park Lane Flats on rent and amount of quarterly rent received from Pakistan and he did not know who own these flats. What do you say about said documents and that interview?

  
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 Ans.  
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This question does not relate to me. However, I may add that it is known fact that my late grand father was looking after the entire

family and providing for their expenses and even fixing/specifying the per month pocket money for each.

Q.No. 49. It is in evidence that Hussain Nawaz Sharif (absconding accused) gave interview aired by Express TV on 07.03.2016. His interview by Javed Ch. in shape of CD Ex. PW-9/10 and Transcript Ex.PW-9/9 were produced by PW-9. He Hussain Nawaz has inter-alia stated that Park Lane Apartments are belonging to them. offshore Companies Nescoll Ltd. and Nielsen Enterprises Ltd own them/apartments and he is beneficial owner of these companies and you Maryam Safdar / (his sister) is holding those offshore companies through a trust deed. What do you say about said documents and that interview?

Ans. The CD and transcript have not been proved in accordance with law. However, it is admitted that Park Lane Apartments were/are owned by Hussain Nawaz and Offshore Companies Nescoll Ltd and Neilsen Enterprises Ltd held them and he (Hussain Nawaz) was/is the real and beneficial owner of these companies and I was made trustee vide trust deed Ex.PW-14 2.

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Interviews of Hassan Nawaz and Hussain Nawaz accused are showing that they had lived in those apartments during years 1993 to 1996 and it was the time when those apartments were purchased through offshore companies.

JIT has also prepared analysis chart of assets and liabilities Exh PW 16/80 for accused Maryam Safdar. Exh PW 16/81 for accused Hussain Nawaz and Exh PW16.82 for accused Hassan Nawaz on the basis of income tax, wealth tax and wealth statement. Another analysis chart of assets and liabilities for accused Mian Nawaz Sharif Exh PW 18/13 prepared by JIT and questions were also asked from the accused in this regard during statements recorded u s 342 CrPC. They have given evasive answers without giving any further details of income other than which are mentioned in the chart.

They did not have income which could justify the acquisition and possession during early nineties.

The term "known sources of income" has been interpreted as become known to prosecution after thorough investigation. the reason behind it is

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that the accused is in the best position to say about it as he knows his sources of income. Prosecution has calculated their income on the basis of available material. However, it is also not the case of the accused that the avenfield apartments were purchased from their income but from the income of investment with Qattery family made by Muhammad Sharif which proves otherwise.

Trust deeds were sent twice to handwriting experts Robert Radley by the JIT. His reports are available as Exh PW 14/1 and Exh PW144. As per his 2<sup>nd</sup> report type of font was identified as Calibri which was not commercially available until 31.01.2007. therefore the documents have to be prepared after 31.01.2007. The accused Maryam Nawaz has stated in her reply to question posed in this regard u/s 342 CrPC that it is evidently, deliberately malicious opinion Calibri font was otherwise available even as early as 2005 as admitted by the said expert in his cross-examination.

Mr. Radley has explained that Calibri Fond was available for testing purposes etc and it was not available commercially. From perusal of statement and cross-examination it is clear that it is not disputed that Calibri font was not commercially available before 31.01.2007. The trust deeds are filed to mislead the court and does not prepared on date noted in this deed.

The British virgin Island (BVI) laws and regulations regarding the offshore companies (Internetenal Business Companies Act 1984) allowed any individual to have beneficial ownership of a company or property through the 'bearer share certificates' meaning thereby that whoever was in physical possession of the bearer share certificates would be considered the owner of that company and any assets of such company. Therefore it was as ideal arrangement till the law was changed to hide with absolute certainty the ownership. as there could be no documentary proof of such ownership. However as no crime goes undetected. in this case when the law in British Virgin Island changed in 2006. conveniently the accused went and registered the bearer share certificates into registered shares and accused Maryam Safdar became the beneficial owner. This fact becomes known to BVI Attorney General in response to MLA.

RELEVANCE OF AL-TAUFFEEQ PROCEEDINGS

Mazhar Raza Khan PW 3 has deposed that affidavit of service was relating to him, when it was shown along with other documents by the IO. He submitted that affidavit of service to his company, photocopies of which are mark B. In cross-examination he restrained himself from commenting on the contents on Order of Queen's Bench division. He effected service of order of Queen's bench on Mian Muhammad Sharif, Mian Muhammad Shahbaz Sharif and Mian Muhammad Abbas Sharif. A suggestion was made in cross-examination to the effect that it is incorrect to suggest that he has denied having read the Queen's bench order mark A and avoided referring to its contents for the reason that said order pertains to beneficial interest of second, third and fourth defendance in Al-Taufeeq company case in respect of all the four properties situated in Park Lane, London (16,16a,17,17a) while Mian Nawaz Sharif accused or any of his children is not shown to have any interest whatsoever in the said property. This situation is not showing interest of Qatri Royal Family. Qattery Royal family has no interest in the Avenfield property during the year of order of Queen's bench of 1999. Apartments had been purchased during the year 1993,1995 & 1996. It is also a worth mentioning here that first defendant was Hudaybia paper Mill in Al-Towfeeq litigation, accused Mian Nawaz Sharif was asked about the fact that his daughter accused Maryam Safdar and his son accused Hassan Nawaz were share holder in Hudaybia Paper Mills. His reply was, as per his information Maryam Safdar and Hussain Nawaz have been nominated as Directors at some stage and for some period by his father, while Hassan has also remained a share holder in Hudaybia Paper Mills. Sidra Mansoor PW1 brought certified copies of annual audited accounts of Hudaybia Paper Mills, from 2000 to 2005 upto 30.06.2005 as Exh PW 01/2 to Exh PW 01/8. According to her a long term loan was amounting to Rs. 494,960,000/- Status of long term loan remained the same from 30.06.2000 to 30.06.2005. Shareship and Directorship of Hudaybia Paper Mills and attachment of avenfield properties by order of Queen's Bench speak about interest therein of Sharif family.

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As discussed above it was difficult to dig out actual owner/beneficial of offshore companies formed in tax heaven jurisdiction due to rules regulations prevailing there. Mian Nawaz Sharif has distanced from any transaction in respect of avenfield property by seeing that he has got no concern with it. Despite the fact that he had remained Chariman of FZE which is the company of his son. As per statement of PW 16 vide CMA 895. a Deutche Bank which provided for a charge on Mayfair apartments to provide loan to Coomber company had been submitted at pg 261.278.279.282.291.300.302.305.311.313.325.328.339 & 336 of vol VII those are financial statements available of Hassan Nawaz companies Que holding, flagship securities and Quint Paddington for the year 2007-2012. The document shows that the loan from Coomber was provided to Que holding limited owned by Hassan Nawaz which further provided funding to Quint Paddington during the year 2008. Quint Paddington was also provided loan of 614.000 pounds by FZE in which accused was employee. These all acts show that the entire family daughter, sons and father are one and the same monolith. The accused Mian Nawaz Sharif cannot disassociate by oral assertions that he has got no connection.

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This case has different set of facts therefore, distinguishable from usual cases of assets beyond sources. The accused had also not appeared before NAB where a proforma would have been given to them for the purposes of showing the sources of income, assets and property. Accused have also not given detailed answer in respect of their sources of income.

The ages of children namely Hussain Nawaz, Maryam Nawaz and Hassan Nawaz of accused Mian Muhammad Nawaz Sharif in year 1993 were about 20 years, 18 years and 16 years respectively. They were studying in those days. They were dependents financially and could not purchase avenfield apartments without financial assistance of anyone else father. The story of investment with Qattery Royal family as already discussed above is not convincing one. Accused Mian Nawaz Sharif had remained holder of public office as Chief Minister Punjab, Finance Minister Punjab, Prime Minister of Pakistan

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(three times) and member of National Assembly of Pakistan. Generally children are considered dependents on their parents.

In the above scenario of the case, four ingredients which are required to be proved by the prosecution in case u/s 9(a)(v) of NAO 1999 are:

1. Prosecution must establish that accused was holder of a public office.

This ingredient of the offence has been established as admittedly accused had remained holder of public office as Chief Minister Punjab, Finance Minister Punjab, Prime Minister of Pakistan (three times) and member of National Assembly of Pakistan.

2. The nature and extent of the pecuniary resources of property which were found in his prosecution.

Accused Hassan Nawaz, Hussain Nawaz and Maryam Nawaz had admitted that avenfield apartments are in possession of Hassan Nawaz since 2006. Those apartments are in name of two offshore companies. It alleged that their bearer shares were received from member of a Qaterry Royal family however, when those apartments were attached in a case in which Hudaybia Paper Mill Muhammad Sharif, Shahbaz Sharif and Abbas Sharif were defendents. Hussain Nawaz and Maryam Nawaz were Directors of Hudaybia Paper Mills while Hassan Nawaz was share holder, there is no evidence to the effect that member of Qaterry Royal family had filed any objection against that order of attachment of avenfield apartments passed by Queen's bench in year 1999.

In interview Hassan Nawaz in program Hard Talk aired by BBC in year 1999 stated that he was living in Park Lane flats on rent and amount of the quarterly rent received from Pakistan, he did not know who own these flats and accused Maryam Nawaz Sharif in an interview with Sana Bucha in program lekin aired by Geo news on 08.11.2011 stated that she did not own any property in Pakistan and in Central London (It also showing her alleged financial status). Hussain Nawaz in program Capital Talk with Hamid Mir while explaining the means for purchase of avenfield flats did not mention about any investment with Al-Thani family and purchase of avenfield properties

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from proceeds of any such investment. However he stated that Park Lane apartments were purchased from the sale proceeds of factory in UK. Hussain Nawaz in program kal tak dated 07.03.2016 stated that Park Lane apartments were owned by him as offshore companies Neilson enterprises and Nescoll Limited holds them and he was beneficial owner of these offshore companies. Accused Mian Muhammad Nawaz Sharif has also not stated in his speech dated 16.05.2016 that avenfield apartments were acquired by accused Hussain Nawaz as a result of an investment amounting to AED 12 million by Mian Muhammad Sharif with Al-Thani Family. The sudden appearance of letters of Al-Thani family is managed subsequent to their interviews/speech. The other documents discussed above showing that Maryam Nawaz is beneficial owner of the avenfield apartments even prior to year 2006.

The accused namely Hussain, Hassan and Maryam statedly were not financially sound during the years 1993, 1995 & 1996 when those flats were purchased through offshore companies, beneficial owner of which, was Maryam Nawaz. Hence, accused no. 1 is also responsible to account for properties in name of his son/daughter during their tender ages. It is also in evidence that accused no. 1 and his father used to reside in the said apartments.

Thus prosecution has succeeded to establish the possession of accused on the Avenfield Apartment even during nineties and admittedly they are in possession at present.

It must be proved as to what were his known sources of income. JIT has prepared analysis charts of assets and liabilities of accused namely Mian Muhammad Nawaz Sharif, Hassan Nawaz, Hussain Nawaz and Maryam Safdar. The accused have not alleged any other source of income in their statements recorded u/s 342 Cr.P.C so much so they are claiming that flats were given to Hussain as a result of settlement of previous investment of their grand father so this ingredient is also established.

A worksheet is also annexed with CMA which is Ex.16/13 (Page 63 CMA 432) Wajid Zai PW -16 has rightly stated that worksheet was filed for filling the gaps which came to light during the proceedings of Hon'ble Supreme Court of Pakistan between the first

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and second letter of Qatri Royal Family. Objection is that it is opinion/inference of JIT. It is infact inference based on document and which is right. objection is overruled the witness himself has also explained this inference in remaining portion of the statement. He has stated that worksheet itself is unsigned without any notarization or authorization. Concise statement in CMA 432 is asserted that bearer share certificates of the companies of Nielsen and Nescoll which owned the apartments were transferred from representative of Mr. Hamid Bin Jasim Al-Thani to the representative of Mr. Hussain Nawaz Sharif but no receipt or documents for handing over these bearer shares of two companies and assets worth 8 million dollars was provided to JIT to support the claim.

The letters of the Hamid Bin Jasim Ex.PW-16/11 and Ex.PW-16/12 are having hearsay writer has used words in it that "I was informed", "I understand at that time" "I can recall that". these words without any supporting documents which could be produced by accused or Hamid Bin Jasin. those letters cannot be given any benefit to the accused.

Prosecution in the circumstances of the case and evidence produced has established that Avenfield Apartments were not purchased from sources of income shown by the accused in their CMAs.

In the above scenario of the case heavy burden of proof was shifted to the accused within the meaning of section 14 (C) NAO 1999.

The accused did not appear before the NAB despite notice u/s 19 of NAO, 1999. Addresses on the notices were of the accused, they must have appeared and had produced relevant supporting documents in their favour. Their attendance would have clarified certain ambiguity in their stances. Accused had also not produced a single witness in their defence. Muhammad Tariq Shaif and Hamid Bin Jasim were the witnesses whose documents are being relied upon by the some of the accused.

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As discussed above. Avenfield apartments were purchased in the years 1993, 95 and 96 through two offshore companies. It is alleged that beneficial owner of which is one of the accused while accused Maryam Nawaz is trustee. The document of incorporation, Article of association has not been produced by them to clear facts in this regard.

**Notice under section 19 NAO, 1999:** The presence reference is filed in continuity of cases which were pending before Hon'ble Supreme Court of Pakistan. therefore, there was no need to give details of facts in the notice issued u/s 19 of NAO, 1999 by NAB authorities. However, accused did not co-operate with NAB. They submitted replies for postponement of investigation till disposal of their review petition. They were asked in the notices inter alia to produce any additional documents, evidence / record whatsoever in support of their plea defence and they were also requested to attend the office for verification of their statements, documents handed over to JIT and confrontation with the record. Their reply was infact refusal to give information within the meaning of Srl. No.2 of the schedule. Those notices are available on file as Ex.PW18/Dx2, Dx3.DX4.Dx5.Dx6 and Dx7 and showing the above said facts.

Prosecution have not bright evidence in respect of 9(a)(iv) NAO, 1999. So the accused are acquitted under that section of law. The accumulative facts of the evidence produced by the prosecution is that accused Muhammad Nawaz Sharif was holder of public office. He had remained Chief Minister of Punjab. Finance Minister. Prime Minister of Pakistan (three times) and member of National Assembly of Pakistan.

It was difficult to establish ownership of properties which was purchased through offshore companies formed in tax haven jurisdictions due to veils of secrecy. Certain laws as discussed above were made during years 2003-2004 by BVI Govt. hence, bear shares were to be converted into registered shares and the name of owner and other particulars were to be disclosed.

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Avenfield apartments have been purchased during the years 1993, 1995 and 1996 through offshore companies Nielsen Enterprises and Nescoll Ltd. Certain documents have shown that accused Maryam Nawaz has remained beneficial owner of those companies prior to 2006. The year from which handing over of bearer shares of two companies Nielson and Nescoll are alleged by accused Maryam Nawaz and his brothers co-accused. Two letters and worksheet were produced before Hon'ble Supreme Court of Pakistan but those were found not reality by the JIT. As discussed above those are not good defence of the case in absence of supportive documents or direct evidence. Both the letters are based on hearsay.

The ages of accused Maryam Safdar was 18 years and ages of his brothers (co-accused) were about 20 and 17 years in years 1993. They have no source of income to purchase those apartments. Analysis charts of assets and liabilities prepared by JIT are showing their sources of income.

Generally children remain dependent on their parents during their tender ages therefore, accused No.1 cannot say that he had not provided any money to them to purchase the apartments.

The Avenfield apartments had remained in possession of accused as stated in interviews by Hassan Nawaz.

Accused Hassan Nawaz and Hussain Nawaz even accused Muhammad Nawaz Shairf and Maryam Safdar have never stated that the bearer shares of two companies were procured as a result of investment with Qatri Royal Family in their interview/ speech.

The Prince Hamad Bin Jasim had not noted the name of Muhammad Tariq Shafi to be representative of Muhammad Sharif while giving cash amount for investment purposes.

Withholding of relevant documents from the court can be presumed as that submission of documents would be adverse to interest of withholder of the documents.

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All the four ingredients of the offence as define u/s 9(a)(v) of NAO 1999 are established therefore. heavy burden was shifted to the accused to account of assets Avenfield apartments that those are not disproportionate to known sources of their income.

In the above circumstances prosecution has succeeded to bring home the guilt of the accused as below:

The guilt of the accused Mian Muhammad Nawaz Sharif u/s 9(a)(v) NAO.1999 read with Serial No.2 of the schedule attached with the said Ordinance punishable u/s 10 of NAO. 1999/said Serial No.2 of schedule. Therefore, he accused Mian Muhammad Nawaz Sharif is hereby convicted and sentenced to Rigorous Imprisonment for a term of ten years with fine 08 million pounds. He is also convicted and sentenced under offence cited at Serial No.2 for one years. Both the sentences shall run concurrently.

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The trust deeds produced by the accused Maryam Nawaz were also found bogus. She accused Maryam Nawaz was instrumental in concealment of the properties of his father accused Mian Muhammad Nawaz Sharif. This accused Maryam Nawaz aided, assisted, abetted, attempted and acted in conspiracy with her father accused Mian Muhammad Nawaz Sharif who was holder of Public Office. Therefore, prosecution has succeeded to establish her guild within the meaning of Section 9(a)(v) (xii) NAO. 199 read with serial No.2 of the schedule and punishable u/s 10 and schedule attached therewith. In view of the role of this accused Mst. Maryam Nawaz, she is convicted and sentenced to Rigorous Imprisonment for seven years with fine of two million pounds under section u/s 9(a)(v) (xii) NAO. 1999/ read with section 10 of NAO 1999 and simple imprisonment for one year under Serial No.2 of the schedule. Both the sentences shall run concurrently.

The accused Muhammad Safdar had signed the trust deeds as witness, he also aided, assisted, abetted, attempted and acted in conspiracy with the accused Mian Muhammad Nawaz Sharif and Maryam Safdar within the meaning of Section u/s 9(a)(v) (xii) NAO, 1999 read with section 10 of NAO 1999 and Serial No.2 of the

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schedule and he is convicted and sentenced to rigorous imprisonment for one year u/s 9(a)(v) (xii) NAO. 1999 read with section 10 of NAO 1999 and one year under Serial No.2 of schedule attached with NAO, 1999.

Avenfield Apartments Nos. 16, 16-a, 17 and 17-a stand forfeited to Federal Government within the meaning of 10(a) of NAO. 1999.

The above said accused shall be disqualified to contest election or to hold public office for a period of 10 years to be reckoned from the date he is released after serving the sentence and they shall not be allowed to apply for or to be granted or allowed any financial facilities in the form of loan etc for a period of 10 years from the date of their conviction within the meaning of section 15 of NAO. 1999.

Two accused namely Hussain Nawaz and Hassan Nawaz are absconding therefore. they are declared as proclaimed offenders. Non bailable perpetual warrants of arrest shall be issued against them.

Announced  
06.07.2018

  
( Muhammad Bashir )  
Judge  
Accountability Court-I,  
Islamabad.

It is to certify that this judgement is comprising upon 174 pages. Each page has been signed by me after making necessary corrections therein wherever required.

  
( Muhammad Bashir )  
Judge  
Accountability Court-I,  
Islamabad.



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REGISTRAR  
ACCOUNTABILITY COURT-I  
ISLAMABAD  
