

IN THE COURT OF ASAD ALLI,
JUDGE, ACCOUNTABILITY COURT-1, LAHORE.

In Re: The State

Versus

Mir Shakeel-ur-Rehman & Others
A.C. Reference No.15/2020

APPLICATION U/S 265-K Cr.P.C FILED BY
PETITIONER/ACCUSED MIR SHAKEEL-UR-
REHMAN FOR HIS ACQUITTAL IN THE TITLED
REFERENCE

Present:- Mr. Faisal Raza Bukhari and Haris Shafiq, learned Special Prosecutors for the State.
Accused Mir Shakeel-Ur-Rehman on bail with his counsel Mr. Muhammad Amjad Pervaiz Advocate.
Muhammad Ali Yousaf Advocate/Pleader on behalf of accused Humayon Faiz Rasul.
Barrister Haider Rasul Mirza Advocate on behalf of accused Humayon Faiz Rasul.
Accused Mian Bashir Ahmad on bail with his counsel Mian Ilyas Advocate.

ORDER

The petitioner/accused Mir Shakeel-ur-Rehman has filed this second application filed u/s 265 K Cr.PC for his acquittal in the titled Reference. Earlier, first application of the petitioner/accused and his co-accused Humayon Faiz Rasul and Mian Bashir Ahmed was dismissed by this court vide order dated 08.09.2021. Meanwhile, after the amendment in NAB laws by virtue of 2nd and 3rd amendment, 2021, petitioner/accused and his co-accused Humayon Faiz Rasul and Mian Bashir Ahmed moved applications u/s 4 of NAO, 1999 as Amended vide section 2 (e) of Ordinance No.XXIII of 2021 and section 2 Clause (b) of Ordinance No.XXVI of 2021 read with Section 265-K Cr.P.C. During the pendency of



aforementioned applications, the petitioner/accused Mir Shakeel-ur-Rehman assailed order dated 08.09.2021 passed by this Court in Writ Petition No.2788-2022 titled "Mir Shakeel-ur-Rehman Vs Chairman NAB etc." The learned counsel for the accused Mir Shakeel-ur-Rehman, in order to move fresh application did not press the petition before hon'ble Lahore High Court and the hon'ble Lahore High Court vide order dated 18.01.2022 was pleased to dispose of the writ petition with observation "However, the learned trial court is directed to decide such applications if moved, on available material on merit without being influenced from the impugned order.

2. Before dilating upon merits of the case, it deems appropriate to highlight facts leading to filing of instant Reference. Two applications have been filed before DG NAB Lahore regarding same subject matter. Complainant of first application was anonymous while another application was filed by Asad Kharal complainant before DG NAB Lahore. It is alleged that in year 1986, the petitioner/accused Mir Shakeel-ur-Rehman, in connivance with officials/officers of LDA and Muhammad Nawaz Sharif, the then Chief Minister Punjab and DG LDA (since declared PO), exempted 180-Kanals and 8-Marlas land in favor of petitioner No.1/accused Mir Shakeel-ur-Rehman, who at that time was having general power of attorney of Hidayat Ali and Hakam Ali etc. (the previous land owner). On 24.07.1986 the then Chief Minister Nawaz Sharif (since PO) changed Rules of Exemption and the whole land measuring 55-Kanals and 05-Marlas situated in Johar Town Phase-II was allotted to Hidayat Ali and Hakim Ali etc./General Attorney/petitioner No.1/accused Mir Shakeel.

Accused/petitioner Mir Shakeel-ur-Rehman had plots on different locations, 33-Kanals situated on Canal Bank Road Lahore, 124-Kanals situated near Civic Center and 33-Kanals far away from the Civic Center. The then Chief Minister accused Nawaz Sharif (since declared PO) gave special favor to petitioner No.1/accused Mir Shakeel-ur-Rehman and exempted three different location plots and allotted 55-Kanals and 5-Marlas land to the single location on Canal Bank Road, which is illegal and in violation of all rules and set procedure. The complainant further alleged that in his summary, the then Chief Minister had written that, this is a special case and don't follow it as precedent. If balloting process were followed, then 55 plots (01-Kanal each) should have been allotted to the some other allottee. In the original part plan of plots, a 30ft road was there which is now part of the house of petitioner No.1/accused Mir Shakeel-ur-Rehman who got transferred plots in his favor in 2016 under the regime of accused Muhammad Nawaz Sharif (since declared PO).

3. The inquiry and investigation of instant case was entrusted to Mr. Muhammad Abid Hussain AD/IO NAB Lahore who after conducting investigation, prepared and submitted investigation report, on the basis of which competent authority filed instant Reference was filed. The petitioner/accused Mir Shakeel-ur-Rehman and his co accused Humayon Faiz Rasul and Mian Bashir Ahmad joined the trial proceedings but since Muhammad Nawaz Sharif did not join trial proceedings, therefore after observing legal formalities, he was declared Proclaimed Offender (P.O). The copies of relevant documents as required u/s 265-C of Cr.PC were supplied to

petitioner/accused and charge was framed on the grounds of committing crime of corruption and corrupt practices, misuse of authority in league with each other as defined in Section 9(a) sub-clauses (vi) & (xii) and punishable u/s 10 of NAO, 1999. The petitioners/accused denied the charge, therefore prosecution was directed to produce its evidence. Earlier after examining nine (09) witnesses' petitioner/accused Mir Shakeel-ur-Rehman and his co-accused facing trial moved separate applications for their acquittal which were dismissed by this Court vide order dated 08.09.2021. After recording examination-in-chief of further two PWs, fresh application in background discussed in para-1 supra has been moved by petitioner/accused Mir Shakeel-ur-Rehman.

4. I have given my anxious consideration to the contentions of the learned counsel for parties and perused record with assistance of learned counsel for the parties.

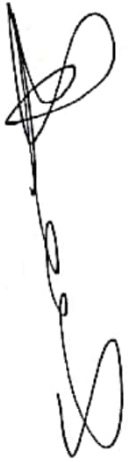
5. Firstly, I would like to decide the preliminary objection raised by the learned Special Prosecutors that since the status of case has not been changed after dismissal of previous applications u/s 265 K Cr.PC vide order dated 08.09.2021 passed by this Court, therefore instant application filed by petitioner/accused may be dismissed *in-limine*. Admittedly, earlier applications u/s 265-K Cr.P.C filed by petitioner/accused and his co accused were dismissed by this Court, without touching merits of the case, only on the ground of being premature. The impugned order was assailed by the petitioner/accused Mir Shakeel-ur-Rehman, before the honorable Lahore High Court Lahore. The honorable Lahore High Court Lahore was pleased to direct this Court to decide



applications if moved by the petitioner/accused on available material on merit without being influenced from the impugned order, therefore, in compliance of order of honorable Lahore High Court, application is decided on the merit.

6. Now coming to merits of the case. The prosecution has based its case mainly on two grounds, firstly petitioner/accused Mir Shakeel-ur-Rehman has paid price of excess land at reserve price and not at the market price; secondly, in violation of Exemption policy, petitioner/accused Mir Shakeel-ur-Rehman has been exempted/allotted plot in composite block, including two streets.

7. Admittedly, petitioner/accused Mir Shakeel-ur-Rehman was allotted/exempted plots in the year 1986 and for the excess land, LDA directed petitioner/accused Mir Shakeel-ur-Rehman to deposit price of excess land on reserve price, which the petitioner/accused Mir Shakeel-ur-Rehman deposited accordingly. No authority at any stage, raised objection that petitioner/accused Mir Shakeel-ur-Rehman was required to pay price of excess land at market rate but he paid the same at reserve price. Although a letter dated 29.10.1992 (Ex.PW 7/24) is available on record which was written by Mr. Qaiser Amin-ud-Din, Ex-Director LDA to wife of petitioner/accused Mir Shakeel-ur-Rehman wherein they were required to pay price of excess land at market price but said letter was written after pronouncing of policy dated 20.06.1990. The said policy was not having retrospective effect and was enforceable/applicable for the future cases only, therefore letter dated 29.09.1992 has no legal sanctity in the eye of law. The PW-07 in his cross examination also admitted implementation of policy dated



20.06.1990 for the future cases in this manner, "As per record, Policy/SOP for charging Market Price against excess land was issued on 26-09-1990. As per record the aforesaid SOP/Policy was to be applicable from the date of issuance i.e. 26-09-1990 and was not effective retrospectively. It is correct that it was for the first time through the aforesaid SOP/Policy that in future, no reserve price would be charged against excess land." When the policy letter dated 26.09.1990 was applicable for the future cases, how petitioner/accused could have been asked to pay the price of excess land, which he had already paid in year 1986 as per then SOPs, in accordance with policy order dated 26.09.1990 which was to be implemented/enforceable from the date of issuance said letter. The letter dated 29.09.1992 was issued in sheer violation of principles of natural justice. Not only this but the said letter was also replied by wife of petitioner/accused Mir Shakeel-ur-Rehman (Ex.PW 7/30, Ex.PW 7/32 and Ex.PW 7/33) and thereafter, no further demand notice was issued to the petitioner/accused Mir Shakeel-ur-Rehman or his family member for recovery of any arrear amount. The PW-07 also fortified this fact, "It is correct that ever since submission of refuting replies Ex.PW 7/30, Ex.PW 7/32 and Ex.PW 7/33, no demand notice or letter for recovery regarding any amount was issued to the Exemptee/Transferee till date... It is correct that since 1992 till my joining inquiry proceedings with I.O NAB, no demand notice had ever been issued to the Exemptee/Transferee for recovery of outstanding dues."

8. The fact that nothing is outstanding against petitioner/accused Mir Shakeel-ur-Rehman regarding his

exempted/allotted land in MA Johar Town Phase II, also finds support from subsequent events. Whenever any allottee/owner of land applies to LDA for issuance of No Recovery Certificate (NRC), the Authority issues NRC after verification of payments of all dues, if any. The petitioner/accused Mir Shakeel-ur-Rehman applied for NRC on quite a few occasions, not even a single time, NRC was declined to petitioner/accused on account of pendency of outstanding dues against him. The PW-7 also verified these facts in his cross examination. "It is correct as per record on 03.09.2016, report was sought as to the Challan of excess area and any other recoverable charges. It is correct that as per record in year 2016, after credit verification of amounts and any dues recoverable, NRC/FRC no recovery certificate/final recovery certificate was issued by the competent authority and after verification of all payments, case was approved for execution for Transfer Deed. It is correct that as per record from year 2016 onward, nothing was outstanding against Exemptee/Transferee." The learned defence counsel also got referred and verified dates of issuance of NRC from PW-07, the relevant excerpt is reproduced, "At page No.000048 (volume-II of reference) Ex.PW-7/1 in Para No.127 to 130, it is mentioned that NRC has been issued by the Competent Authority on 23.11.2009. At page No.000082 (volume-II of reference) Ex.PW-7/1 in Para No.201 it is mentioned that a considerable period of more than 5 years has lapsed after issuance of pervious NRC, so file may please be forwarded to Directorate of Revenue for issuance of fresh NRC. As per record, fresh NRC was issued in due course. As per record, accused Mir Shakeel-ur-Rehman moved application for execution of



Exchange/Transfer Deed on 25.09.2009. It is correct that as per record, Assistant Director Land Development-I sent a letter dated 15.10.2009 to accused Mir Shakeel-ur-Rehman informing him that his above said application, seeking execution of exchange/transfer deed will be processed after receiving reports from Land Acquisition Collector, double exemption report, verification of deposited amount from Finance Department, NRC and fresh part plan from Town planning. It is correct that after receiving reports from all aforementioned departments, execution of Exchange/Transfer deed was completed, after observing all codal formalities.”

9. The statement of PWs and record of LDA affirms that no amount is outstanding against petitioner/accused Mir Shakeel-ur-Rehman, than after the lapse of over decades, how LDA or any other authority can raise objection that any amount is pending due against petitioner/accused Mir Shakeel-ur-Rehman, that too @ present market price. In case of identical nature, titled Noor-ul-Hassan Khan Versus Lahore Development Authority through Chairman and another, reported in 2013 CLC 100, when the LDA demanded from owner of land charges @ 40% above the D.C's current evaluation table for extra land which was in his possession since year 1998 on the basis of Policy Decision dated 28-5-2001, the honorable Lahore High Court observed, “In view of the above we have no hesitation to hold that the demand raised by the respondents from the appellant through the demand letter dated 27-5-2010 of Rs.152,133/- for excess area of 1-Marla and 101-Sq.ft. @ 40% above the current price of land is illegal, unjust, unfair and violative of principles of equity and justice and therefore not




sustainable in the eye of law.”

10. Price Assessment Committee was constituted in this case to determine the price of excess land given to the petitioner/accused Mir Shakeel-ur-Rehman, after the years and years of past and closed transaction, that too not on the direction of competent authority of LDA but on the desire of NAB. Even the Price Assessment Committee which prepared report in this case was defective/incomplete as same was consisted upon Director Land only which is also established from evidence of PW-07 who stated “As per practice, composition of Price Assessment Committee used to be consisted upon more than one Officers of LDA. It cannot be established from record that price mentioned as recoverable in Ex.PW-7/24 was determined by Price Assessment Committee. It is correct that only Director Land cannot determine the price of land. No report of Property Evaluator is available on record regarding determination of price of excess land.” Even after evaluation of excess land no letter was issued to petitioner/accused which is corroborated by the PW-07 “It is correct that after evaluation of excess land by the Price Assessment Committee, no demand notice was issued to Exemptee/Transferee.”

11. If it is presumed true that accused persons Humayon Faiz Rasul, Ex-DG LDA and Mian Bashir Ahmed, Ex-Director Land Development, LDA or any other official of LDA gave concession or favor to petitioner/accused Mir Shakeel-ur-Rehman then why any action was not taken by the department against said accused/officials. Both accused were never proceeded by their department during their service. If price of


excess land has not been paid by petitioner/accused Mir Shakeel-ur-Rehman at market price since 1986 till to date and also no subsequent DGs and DLDs of LDA ever wrote letter to petitioner/accused, then this means all subsequent DGs and DLDs who replaced petitioners/accused No. 2 and 3 are also liable to be proceeded by LDA or NAB. However, no subsequent DG/DLDs were implicated in this case as accused persons. The PW-07 admitted that "It is correct that there had been 10s of DGs/DLDs, LDA who remained posted during the period of 34 years and no DG or DLD raised any objection regarding consolidated exemption of adjoining plots and addition of streets... no action was taken against any Officer of LDA on the basis of letter Ex.PW 7/24." This is case of discrimination against the accused no.2 and 3 which is not warranted by law.



12. No loss was caused to the LDA from any act of petitioner/accused or his co-accused. Rai Mehmood Hussain, Assistant Director DLD-1 Lahore (PW-08), in very clear words also admitted that reserve price was paid in time and no loss was caused to LDA, in this manner "It is correct that there is nothing on record to indicate that any authority what so ever have observed that any loss was occurred to any person/department or LDA on account of granting exemption in this case. It is correct that reserve price of excess land of this case was paid in due time by the Exemptee as per SOPs/policy." Even if it is believed true that arrears/dues if any are still outstanding against petitioner/accused Mir Shakeel-ur-Rehman then under LDA Act 1975, same may be recovered from him as arrears of Land Revenue.

13. The second charge against petitioner/accused

and his co accused are that in violation of Exemption Policy, petitioner/accused Mir Shakeel-ur-Rehman was allotted about 59 plots of 1-Kanal each that also included 2 streets/thorough fare in composite block at Canal Bank. It is admitted fact that petitioner/accused Mir Shakeel-ur-Rehman was allotted plot in year 1986. At that time, neither development work of MA Johar Town Phase II Lahore was started, nor Master Plan of MA Johar Town Phase II was approved which is also certified by PW-07, the relevant excerpt of his deposition is reproduced "As per record no development work was started in MA Johar Town Phase-II, Lahore in year 1987... It is correct that Administrative approval of MA Johar Town Phase-II, Lahore was accorded by CM Punjab on 15-06-1989. As per report, completion of demarcation work was directed to be completed vide order dated 16-01-1991... As per record, Master Plan of MA Johar Town Phase-II, Lahore was sanctioned on 27-08-1990. I never visited MA Johar Town Phase-II area in year 1986/87. It is correct that nobody ever complained before LDA regarding exemption of excess land in shape of streets in area of MA Johar Town Phase-II, Lahore."



14. Sec 14 of LDA 1975 says "The Authority may, at any time, modify a scheme prepared under this Act by way of change of land use through classification, reclassification or redevelopment in the prescribed manner and shall publish, in the official Gazette, such modification or change." It is evident from prosecution evidence that Administrative approval of MA Johar Town Phase-II, Lahore was accorded on 16.06.1989 while its Master Plan was sanctioned on 27.08.1990. Sec 14 of Act *ibid* empowers the competent

Authority to make any changes in land. Since at the time of exemption/allotment of land, neither administrative approval was granted nor Master Plan was finally sanctioned, therefore, plots were allotted/exempted to petitioner/accused Mir Shakeel-ur-Rehman by the Authority, exercising his lawful power and authority.

15. The prosecution did not allege that in order to misuse authority, any illegal benefit was derived by petitioner/accused or his co-accused which is main ingredient of Sec 9 a (vi) NAO 1999. There might be some violation of Exemption Policy but such violation cannot to be treated as a misuse of authority. In order to prove criminal responsibility, prosecution is required to establish that there exists a clear cut criminal intention/mens-rea on the part of petitioners/accused. In absence of criminal intent, mere violation of procedural rules is not sufficient to constitute an offence of corruption and corrupt practices. The honorable Supreme Court of Pakistan in M. Idrees Ghauri case reported in 2008 SCMR 1118 dealt with the expression mens-rea in the context of the offences under the NAO 1999 and observed:

"The misuse of authority in general, means wrong and improper exercise of authority for the purpose not intended by law, therefore, in order to prove the charge of misuse of authority, at least two basic ingredients i.e. mens-rea and actus reus of the crime have to be necessarily established and in case anyone of these two elements is found missing, the offence is not made out. Mens-rea in context to the misuse of authority means to act in disregard of the law with the conscious knowledge that act was being done without

authority of law and except in the case of strict liability, the element of mens-rea is necessary constituent of crime. The offence of corruption and corrupt practices within the meanings of section 9(a)(vi) of the Ordinance, is not an offence of strict liability, therefore, the use of authority without the object of illegal gain or pecuniary benefit or undue favour to any other person with some ulterior motive, may not be a deliberate act to constitute an offence. The mens-rea for an offence under section 9(a)(vi) of the Ordinance, is found in two elements i.e. conscious misuse of authority and illegal gain or undue benefit and in absence of anyone of these basic components of crime, the misuse of authority is not culpable, therefore, the prosecution must establish mens-rea and actus reus of the crime to establish the charge, as without proof of these elements of crime, mere misuse of authority, has no penal consequence. The offence of corruption and corrupt practices has not been as such defined in the Ordinance but in general terms, the corruption is an act which is done with intent to give some advantage in consistent with law and wrongful or unlawful use of official position to procure some benefit or personal gain, whereas the expression corrupt practices is series of depraved/debased/morally degenerate acts, therefore, as contemplated in section 14(d) of the Ordinance, unless the prosecution successfully discharges the initial burden of proving the allegation in a reasonable manner, the accused cannot be called to disprove the charge by raising a presumption of guilt."

16. In the case of Mansur-Ul-Haque v. Government of

Pakistan reported in PLD 2008 SC 166, it was held

"Learned counsel for the petitioner has not been able to convince us from the evidence on the record that essential elements of mens-rea and intention to commit an offence under section 9(A)(vi) of NAB Ordinance were traceable in the transaction or the accused acted for their personal gain at the cost of causing financial loss to the organization (PNSC) or the ships in question were not of viable technology and were not that of international standard and specification. The mere procedural irregularities in the transaction, would not be sufficient to constituted an offence under section 9(a)(vi) of the ibid Ordinance."

17. In the case of State v. Anwar Saif Ullah, reported in PLD 2016 SC 276, it was held *"It is also apparent from the same precedent cases that a mere procedural irregularity in the exercise of jurisdiction may not amount to misuse of authority so as to constitute an offence under section 9(a)(vi) of the National Accountability Ordinance, 1999 and that a charge of misuse of authority under that law may be attracted where there is a wrong and improper exercise of authority for a purpose not intended by the law, where a person in authority acts in disregard of the law with the conscious knowledge that his act is without the authority of law, where there is a conscious misuse of authority for an illegal gain or an undue benefit and where the act is done with intent to obtain or give some advantage inconsistent with the law."*

18. The honorable Islamabad High Court in case of Syed Hamid Saeed Kazmi Versus The State reported in 2017

P Cr. L J 854 held " In last, the entire case is based upon violation of Hajj Policy 2010 Exh.PW-13/A1-32 and Policy Guidelines Exh.PW-13/B1-32 which is not an offence under any law and the same does not fall within the definitions of sections 409, 420; 467, 468, 471, 109/34, P.P.C. read with section 5(2) 47, P.C.A. in any manner." it is a case of reallocation of the scheme and not a case of radical change/modification in the original schemes. The LDA has charged for the area which was added in the property of petitioner/accused."

19. In the case of Ramesh Udeshi v. The State, the honorable Sindh High Court held that "mere floating of summary in violation of Government Rules of Business would be an irregular exercise of authority which might call for appropriate disciplinary action against the accused under the Service Laws, thereby rendering him liable to disciplinary proceedings in his capacity as a "civil servant", but his such action would not in any way fall within the mischief of "corruption or corrupt practice" as defined in the National Accountability Ordinance 1999 especially as there was no evidence that the accused had made any attempt to obtain any personal gain from the transactions and/or extended illegal gains to anyone else and that no loss had been caused as the land in question had been restored to the Government."

20. The prosecution case lies on presumption and assumption. No evidence is available on record to establish the element of mens-rea on the part of the accused No.2 and 3, in absence whereof, they cannot be saddled with the offence of misuse of authority. Misuse of authority, no matter how grave

and gross, does not constitute an offence under NAO 1999, unless it involves mens-rea and conscious knowledge or a guilty mind. In order to establish the offence of corruption and corrupt practices, mere irregularity by a holder of public office is not sufficient as the prosecution must establish misuse of authority with intention to gain benefit for himself or another. There is no evidence of obtaining any illegal gratification and pecuniary benefits by accused No.2 and 3. The prosecution has failed to prove that accused No.2 and 3 had misused their authority and caused loss to the government exchequer as such offence of misuse of authority under S.9(a)(vi) NAO is not established.

21. The petitioner/accused Mir Shakeel-ur-Rehman is saddled with role of abetment in this case, when the prosecution has failed to establish main offence falling within definition of 9 a (vi) NAO 1999 than how abetment of offence can be established. Not even iota of evidence regarding abetting any offence by accused/petitioner Mir Shakeel-ur-Rehman is available on record. In case of Masood Chisti reported in PLD 2021 Isb 350, the honorable Court held *"controlling part of section 9(a) explicitly makes the offences relatable to corruption and corrupt practices. Thus clauses (i) to (xii) of section 9 (a) cannot be interpreted independently i.e. excluding or ignoring the expression 'corruption and corrupt practices' explicitly used in the controlling part. Clause (xii) of section 9(a) would be attracted only if the ingredients of the offences described in one of the clauses in section 9(a) are fulfilled, such as clause (vi) in the case in hand. The offence described under item 5 of the Schedule is in respect of loss*

caused to the entities mentioned therein. However, such loss would only become a criminal offence under the Ordinance of 1999 if it is caused due to deceit, fraud or dishonesty. Merely causing loss, regardless of its quantum, would not constitute a criminal offence."

22. Although accused No.2 and 3 have not moved any fresh application, however filing application under section 265 K Cr.PC is not necessary. The Court can exercise powers under section 265-K, Cr.PC at its own at any stage. Accused Humayon Faiz Rasul has been alleged that in order to render undue benefit to his co-accused Mir Shakeel-ur-Rehman, he forwarded/recommended illegal summary in violation of the exemption policy for approval to co-accused Mian Muhammad Nawaz Sharif (since PO). While accused Mian Bashir Ahmed has been charged for illegally recommending and preparing two alternative proposals for exemption/allotment of land/plots beyond the lawful entitlement of his co-accused Mir Shakeel-ur-Rehman and illegally issued exemption letter dated 22.07.1986 for about 59-Kanals land on Canal Bank, in Block-H, M.A. Johar Town Lahore. No incriminating material/evidence has been collected or brought on record to establish dishonest intention on the part of accused No.2 and 3 in forwarding summaries to the DG LDA for approval. It has not been alleged that either the accused No.2 and 3 themselves gained any pecuniary benefit or illegal gains by any means whatsoever. Mere forwarding summaries to the DG LDA do not constitute offence of corruption or corrupt practices as defined u/s 9 a NAO 1999, unless it is proved through corroborative evidence that same was done with ulterior motives and dishonest

intention. In case of Ramesh Udeshi *ibid*, the Honorable Court observed "Mere floating of summary in violation of Government Rules of Business would be an irregular exercise of authority which might call for appropriate disciplinary action against the accused under the Service Laws, thereby rendering him liable to disciplinary proceedings in his capacity as a "civil servant", but his such action would not in any way fall within the mischief of "corruption or corrupt practice" as defined in the National Accountability Ordinance, 1999."

23. Almost all star witnesses have been examined and material record has been brought on record by the prosecution evidence of remaining witnesses ~~are~~^{at} formal in nature. The complainant of this case is not resident of the area, his no right has been infringed, hence he does not fall in the definition of aggrieved person. The "aggrieved person" has been defined in the decision of the Court of Appeal in England, in the case of *Side Botham* (L R (1880) 14 Ch. D 458), "a person aggrieved "must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something." It cannot, it is said, mean a person "who is disappointed of a benefit which he might have received if some order had been made." The relevant record has already been brought on record during examination of 09 PWs. After dismissal of earlier application u/s 265 K Cr.PC by this Court vide order dated 08.09.2021, Master Plan of MA Johar Town Phase II Lahore has also been brought on record by the PW Azhar Ali Director Town Planning LDA, though he is not cross examined. It will



be immaterial that if said PW is cross examined or not because he is not preparator of Master Plan and his entire evidence would be hearsay, while date of final approval of Master Plan of MA Johar Town Phase II Lahore has also been brought on record. The only other material witness in this case, as per prosecution claim is PW Syed Javed Iqbal, Secretary to then Chief Minister, the evidence of said Secretary to then CM who put summary before then CM will not cast any difference on the merit of this case, in view of discussion made above.

24. There is no supportive material with the prosecution to prove involvement of petitioner/accused Mir Shakeel-ur-Rehman and his co accused in this case and there is no probability of the petitioner/accused and his co accused being convicted, hence further proceedings in the case would be nothing but a futile exercise which must be curbed under section 265-K Cr.PC. The Court is competent to exercise its power under section 265-K Cr.PC where, taking available material as true, yet there is no probability of conviction; or where charge appears to be groundless and further process would be nothing but an abuse to process of law.

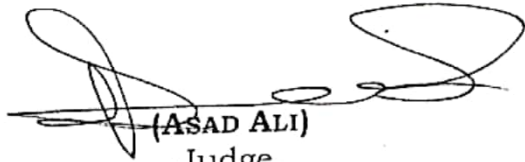
25. In the circumstances, mentioned above, applications u/s 265-K Cr.P.C moved by the petitioner/accused Mir Shakeel-ur-Rehman is accepted, therefore, petitioner/accused and his co-accused Humayon Faiz Rasul and Mian Bashir Ahmed are acquitted of the charge. They are present on bail, their bonds are cancelled and sureties are discharged of liabilities. Case property if any, seized during investigation/inquiry be returned to the petitioners/accused.

However, it is made clear that the competent authorities shall be free to recover outstanding dues (if any) against the properties in question, in accordance with law.

26. While accused Muhammad Nawaz Sharif is already declared as proclaimed offender. File be consigned to the record room and be put up as and when the proclaimed offender Muhammad Nawaz Sharif is arrested and sent up for trial.

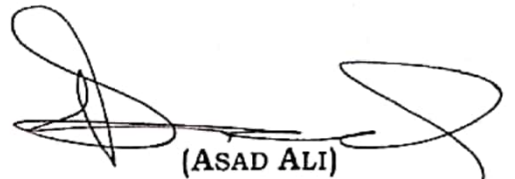
27. Copy of this order be dispatched to the DG, NAB, Lahore. File be consigned to the record room after its completion an compilation.

Announced
31.01.2022.


(ASAD ALI)
Judge,
Accountability Court-1, Lahore.

Certified that this Order consists of twenty (20) pages, each page has been dictated, corrected and signed by me.

Announced
31.01.2022.


(ASAD ALI)
Judge,
Accountability Court-1, Lahore.