

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

E.Crl. Appeal No.02-P/2016

Date of hearing:- 22.03.2017

Date of announcement: 11.04.2017

Petitioner(s):- Rajab Ali by Barrister Mudasir Ameer.

Respondent (s):-National Accountability Bureau etc by Mr. Zair Nawaz Khattak, Special Prosecutor for NAB.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this common judgment, we shall decide the instant Eh. Criminal Appeal, and connected **Eh.Cr.A.No.3-P of 2016**, filed under section 32 of the National Accountability Ordinance, 1999 (NAO), filed by Rajab Ali and Latif Hussain, respectively, “the appellants”, as both arise out from one and the same judgment of the learned Judge Accountability Court No.II, Peshawar, dated 08.02.2016, in Accountability Reference No.07 of 2014, whereby the appellants have been convicted and sentenced as under:-

Appellant Rajab Ali:

Under 9 (a) (v) punishable u/s 10 of the National Accountability Ordinance (NAO), 1999:- to undergo 7 years rigorous imprisonment with fine of Rs.1,46,88,056/- and 05 years R.I. for offence at Sr.No.3 (a) of the Schedule to the Ordinance. The assets of appellant Rajab Ali have also been forfeited.

Appellant Latif Hussain:

Under section 9 (a) (xii) punishable u/s 10 of the Ordinance:- To undergo 7 years rigorous imprisonment with fine of Rs.1,40,87,500/- and for offence at Sr.No.3 (a) punishable under the Schedule to the Ordinance to undergo 5 years R.I..

Benefits u/s 382-B Cr.P.C. have been extended to both the appellants.

The the amount of fine has been directed to be recovered as arrears of land revenue within the meaning of 33 (E) of the Ordinance.

2. Facts in brief forming the background of the instant appeals are that appellant Rajab Ali joined police Department as a Constable in District Kohat, since 03.07.1994. During his service till 13.08.2013, he was promoted up to DSP. He was posted as SHO Police Station Hayatabad, Peshawar, when complaints were made against to this Court qua misuse of his official authority i.e. detaining innocent citizens in his torture cells for the purpose of grabbing money from them. Similarly, W.P.No.432-P of 2012, was filed before this Court by Mst. Mamala Bibi for release of her son Sadam Khan, allegedly kept in illegal confinement by appellant Rajab Ali. Prior to the aforesaid writ petition, Mst. Mamala Bibi, had also filed W.P. No.119/2012, for release of her minor son Iqbal Hussain, illegally detained by appellant-SHO Rajab Ali. This Court while issuing release order of her son, simultaneously directed the learned Sessions Judge, Peshawar, to conduct thorough inquiry into the matter. In this view of the matter, appellant Rajab Ali allegedly abducted another son of the petitioner, namely, Saddam so as to pressurized her for settlement in the aforesaid W.P. No.119/2012. Taking the above circumstances, on 20.03.2012, this Court passed the following order in Writ Petition No.432-P/2012:-

“Two separate enquiry reports have been received. In both, it has been concluded that Rajab Ali SHO Police Station Hayatabad is consistently indulging in unlawful and illegal activities by abusing and misusing his official position, getting ransom from innocent people arrested in false case, is running and maintaining three private torture cells where such people, illegally arrested and detained, are kept and are put to torture and in lieu thereof gets handsome

ransom amount. The present case is a testimony to this fact where as pre-teenager was tortured with extreme brutalities. He has made his fortune through ill gotten gains, as reported in the enquiry reports and accumulated unmatchable and disproportionate assets both moveable and immovable in this Province, in Rawalpindi and Islamabad and is also involved in immoral activities. To give fair chance of defence to the SHO, he is directed to file written reply to the enquiry reports and the allegations made against him within seven days, positively.

.....
.....

In the meanwhile, Director General NAB is directed to constitute a team of experts who shall investigate into the allegations contained in these reports and shall submit periodical report to the Court. The experts shall chase the moveable and immovable assets of the SHO and shall detect all his hidden assets as well and in case he is found involved in accumulation of wealth through illegal means or ill gotten gains then proper reference will be prepared against him in due course.”

3. In pursuance of this Court order, the Director General National Accountability Bureau (NAB) Khyber Pakhtunkhwa, took cognizance in the matter and ordered inquiry/investigation. During investigation it was unearthed that appellant Rajab Ali while serving in Police Department, since 1994 to 2013, has accumulated moveable and immovable assets/properties through illegal means/modes at his own name, value of which comes to Rs.1,46,88,056/-, which is disproportionate to his legal known sources of income. Detail of those properties are under: _

| S.No. | Description of Assets | Purchase value in rupees | Ill-gotten amount in rupees |
|-------|--|--------------------------|-----------------------------|
| 1. | 15 Marlas land in Mouza Lala & its construction cost. (Years 2009) | 9,52,285 | 861,818 |
| 2. | 04 Kanal land in Mouza Thatta Khalil | 13,36,795 | 1209609 |

| | | | |
|----|--|-----------|-----------|
| | (Year 2009) | | |
| 3. | Partial construction of bungalow in moza Thatta Khalil (cost of construction (Years 2011)) | 65,60,360 | 62,27,963 |
| 4. | Partial construction of bungalow in moza Thatta Khalil (cost of construction (Years 2012)) | 65,60,360 | 63,88,666 |

Total ill gotten money

Rs.1,46,88,056

4. Appellant Rajab Ali was arrested by the NAB authorities on 18.04.2014. During interrogation, he, in order to justify his alleged illegal assets, produced agreement/affidavit No.2551 and 2552 dated 05.09.2011 (Exh.PW.30/1) to the Investigation Team of the NAB in respect of sale of his ancestral property measuring 80 Kanals and 10 Marlas land in Moza Tezana Kurram Agency in favour of co-appellant Latif Hussain in lieu of Rs.1,40,00,000/-. Since, the said affidavit was apparently attested by Muhammad Yousaf Kareem, the then Tehsildar Mahal Kurram Agency (PW.30), therefore, he was associated with the investigation, who on confrontation with said document Exh.PW.30/1, denied his signature as attesting Officer over it. His statement to this effect was recorded and he was also produced for recording his statement under section 164 Cr.P.C. Similarly, his Specimen Signatures were obtained and sent to the FSL along with Exh.PW.30/1, which as per FSL report, were found to be fake and forged. It is further alleged by the prosecution that the stance of the appellant was also denied by the revenue hierarchy of Kurram Agency and was also in contrast with of his reply filed by him in W.P. No.432/2012, as in his reply the appellant Rajb Ali has categorically stated that he and his family has got 120 Kanals ancestral cultivable property in Parachinar and he had not stated a single word about impugned sale of 80 Kanals land to co-appellant Latif Hussain. The NAB authorities allegedly found the appellant

failed to provide any cogent proof of money trail from co-appellant Latif Hussain viz Bank.

5. Co-appellant Latif Hussain was initially associated by the inquiry/investigation officer as witness, but subsequently was arrayed as an accused on the accusations that he being the close friend of appellant Rajab Ali introduced himself as purchaser of 80 Kanals land i.e. the ancestral property of the Rajab Ali vide Exh.PW.30/1 in Moza Tezana Kurram Agency, so as to save his skin. In this way abetted appellant Rajab Ali in preparation of fake/fabricated affidavit/sale deed Exh.PW.30/1, owned/stood by the contents of the said deed and thereby misguided the Investigating Team of the NAB.

6. Appellant Latif Hussain was arrested and on completion of investigation, supplementary challan was submitted against him in Accountability Reference No.7 of 2012. Both the appellants were charge sheeted by the learned Trial Court, to which they pleaded not guilty and claimed Trial. In order to prove its case, prosecution/NAB examined as many as 34 witnesses. After closure of the prosecution evidence, statements of the appellants were recorded under section 342 Cr.P.C., wherein they denied the prosecution allegations and professed their innocence. Appellant Rajab Ali denied to be examined on oath under section 340 (2) Cr.P.C., however, opted to produce evidence in defence. Same was the option of co-appellant Latif Hussain.

7. Arif Hussain, Gulfam Hussain, Muhammad Ashraf Malik (Rtd DIG Police Services of Pakistan), Safar Ali and, Muhammad Nazar, were produced as DW.1 to DW.5, respectively. Later on, appellant Rajab Ali did wish to be examined on oath. Accordingly, his statement under section 340 (2) Cr.P.C., was recorded on 4.01.2016 and 8.01.2016. On closure of the defence evidence, learned Trial Court,

after hearing both the sides, convicted and sentenced the appellants as mentioned above, hence, these appeals.

8. Learned counsel for the appellant at the begin of occupying the rostrum and addressing his arguments, delineated the family background and social status of the appellant Rajab Ali. By presenting the summery of accumulation of assets coupled with his family tree, the worthy counsel argued that appellant Rajab Ali has four brothers and four sisters; that appellant along with his brothers are still residing jointly bearing the expenses and saving together; that father of the appellant was owner of 120 Kanals land since 1909 in Kurram Agency. The appellant inducted in Police department as Constable in the year 1994 and on the basis of his excellent and brilliant performance, was not only awarded medals but was also bestowed with accelerated promotion. In the year 2001 the appellant was promoted as Head Constable, in the year 2005 as Assistant Sub-inspector, in the year 2007, as Deputy Sub-Inspector, in the year 2011, as Inspector and finally in the year 2014, as Deputy Superintendent of Police; that during his service tenure, he remained posted in different districts of the province including Hangu, Kohat, Pehsawar, Charsadda, Bannu, Nowshera, Swabi and Marndan and by virtue of his bravery he was always given the hard tasks, that too, in the hard areas having worst law and order situations; that the appellant as a Police Officer fought against the terrorists and anti state elements on front line, therefore, his enemies/Anti state elements in order to malign and restrained him from his obligation submitted frivolous and baseless complaints against him to his superiors as well as Court of law; that in the year 2001, Shaban Ali, the elder brother of the appellant, went to Saudi Arabi for earning livelihood, hence, the responsibility of looking after the agriculture property and other business came on the

shoulders of his other younger brother Safar Ali; that after demise of father of the appellant in the year 2006, his other younger brother Liaqat Ali also proceeded to Saudia Arabia for earning livelihood; that in the year 2008 when the law and order situation became worst in the entire tribal belt, including the native village of the appellant, the inhabitants of the area started migrating to settled areas, hence, the appellant and his brothers also decided to shift to Peshawar along with families for peaceful and better life. In this view of the matter, they purchased 15 Marals land in village Lala Kale in lieu of sale consideration of Rs.1,50,000/-, which amount was given to the appellant by his brother Safar Ali. A house was constructed on the said land by the appellant from the joint kitty of all the brothers. Due to threats to the life of the appellant, he and his brothers decided to find out a place for construction of house in some peaceful area, consequently, their relative Haji Muhammad Nazar, who was dealing in the property business at Islamabad, found a place on reasonable price for them in village Thatta Khalil, Taxil. The sale transaction of 4 Kanlas land was finalized by brother of the appellant with Nazar Hussain from joint kitty of the brothers in the year 2008, however, the mutation was attested in the name of the appellant. The appellant and his brothers decided to sell their ancestral land for getting amount to construct house on land in the Taxila. A sale transaction of 80 Kanals land in this regard was struck with co-appellant Latif Hussain against sale consideration of Rs.1,40,00,000/- vide sale deed Exh.PW.301/1. Since, inheritance mutation of the aforesaid ancestral land of the appellant and his brothers was not yet attested therefore, as a precautionary measures the aforesaid agreement to sell was executed; that out of total sale consideration, Latif Hussain paid rupees one coror to Arif Hussain vide deed Exh.PW.30/1. The deed was also signed by Latif Hussain

vendee, as well as marginal witnesses, namely, Arif Hussain and Gulfam Hussain, (examined as DWs); that the aforesaid deed was attested by Muhammad Youaf Kareem the then Tehsildar Mahal Kurram after verifying the land from the revenue record, but the mutation could not be attested due to restraint of the NAB authorities, which is still “Zair-e-Tajweez”; that Safar Ali completed partial construction of the house on the land at Thatta Khalil in the year 2011 while NAB authorities started digging in the matter through inquiry/investigation against the appellant Rajab Ali, in 2012, qua alleged misuse of his powers while serving in police department, but could not collect any evidence against him, hence, started investigation into acquisition of the house at Thatta Khalil and by then only roof (lunter) on the basement was completed. The learned counsel for the appellant went on to say that construction and acquisition was not on the basis of ill gotten money and had it been so, the appellant would not have proceeded with the onward construction. Indeed the house was held by the appellant and his brothers, jointly and the construction was being raised from the joint kitty, therefore, the appellant and his brothers did not stop the construction; that during investigation, the NAB authorities pressurized Yousaf Karim Tehsildar to disown his signature on Exh.PW.30/1.

While summarizing his arguments, worthy counsel for the appellants contended that NAB authorities has conducted dishonest investigation in the case as the I.O. has intentionally not recorded the statements of marginal witnesses of the alleged disputed deed while the appellant Rajab Ali has squarely proved his and his brothers’ legal sources on the basis of which they have jointly constructed the questioned house. The sale transaction regarding 80 Kanals land i.e. the ancestral property of the appellant Rajab Ali has been proved from the prosecution evidence and the

sale consideration received by the appellant his brothers are sufficient to meet with the construction expenses of the house. The co-appellant Latif Hussain has not denied the stance of the appellant Rajab Ali rather from the very inception till date he is stuck to his stance that he has purchased 80 Kanals ancestral property of the appellant and his brothers vide deed Exh.PW.301/1; that the financial position of Latif Hussain has not been disputed by the prosecution, who on the day of execution of the dispute agreement to sell has also entered into sale transactions with other people and has made payment in cash, therefore, question of the money trail via bank etc, would not advance the prosecution case, particularly, when the witnesses of the deed admit payment to the appellant and his brothers in cash by Latif Hussain; that on the basis of the disputed agreement to sell, mutation has been entered in the revenue record and this fact is proved from the prosecution evidence. That it could not be attested due to restraint by the NAB authorities due to present proceedings. He argued with vehemence that if the impugned sale is taken out from consideration, even then, the income of the appellant and his brothers from their ancestral cultivable property till 2012, as per assessment of the NAB authorities coupled with their monthly salaries, are sufficient to prove the expenses of purchase and construction of the houses in question. He added that sufficient evidence has been brought by the prosecution itself which proves that appellant and his brothers are residing jointly and their saving and expenses are joint; that it is proved from the available evidence that two brothers of the appellant are serving in Saudi Arabi and getting handsome salary upto 6000 Saudi Riyals each. He closed his submissions by stating that the learned Trial Court while ignoring material evidence placed on file, particularly, the evidence produced by the appellant in defence, has arrived

at an erroneous conclusion by holding the appellants guilty of the offence, hence, the same is liable to be set aside and the appellants be acquitted of the charges.

9. Conversely, learned Special Prosecutor for the NAB while controverting the submissions of learned counsel for the appellants contended that sufficient documentary and oral evidence has been brought on record by the prosecution to prove the illegal assets of the appellants and the sale deed Exh.PW.30/1 to be a fake document, hence, the learned Trial Court was justified by holding the appellants guilty of the offence, to which no exception can be taken. He, thus, sought dismissal of the appeals.

10. We have considered the respective submissions advanced from both the sides and perused the record with their able assistance.

11. Accusation against appellant Rajab Ali is that he being a public servant accumulated various immovable properties which are disproportionate to his salary, emoluments and other known legal sources. The properties allegedly accumulated by the appellant are (1) purchase of 15 Marlas land in Moza Lala, Peshawar, and construction of a house thereon. The NAB authorities have assessed the purchased value of the said property and construction thereon as Rs.9,52,285/- out of which Rs.86181/- has been declared as ill gotten gain of the appellant (2) purchase of 04 Kanals land in Moza Thatta Khailil, purchased value of which has been assessed as Rs. 13,36,795/-, out of which Rs.12,09609/- has been declared as ill gotten money of the appellant (3) Partial construction of bungalow in Moza Thatta Khalil on the aforesaid area on Rs. 65,60,360/-, out of which Rs.62, 27,963/-, has been assessed as ill-gotten money of the appellant and (4) Remaining construction of the said bungalow at a cost of Rs.65,60,360/-, out of which

Rs.63,88,666/-, has been assessed and declared as ill-gotten money of the appellant. In this way Rs.1,46,88,056/-, has been assessed as the total ill gotten/unjustified money on the part of the appellant by the NAB authorities.

12. Before to reappraise the evidence available on record, we, would first refer to Section 5 of the NAO, 1999, wherein word “Assets” has been defined under subsection (c), which read as under:-

“Assets” means any property owned, controlled by or belonging to any accused, whether directly or indirectly, or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan which he cannot reasonably account for, or for which he cannot prove payment of full and lawful consideration.”

Section 9 (a) subsection (v), of NAO, 1999, enumerates that 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, 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. No doubt, under section 14 (c) of the NAO, 1999, in any trial of an offence punishable under clause (v) of subsection (a) of section 9 of the 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 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 the offence of corruption and corrupt practices and his conviction therefore shall not be invalid by reason only that it is based solely on such a presumption. However, every accused who faces trial in the Accountability Court or against whom a Reference has been sent, the presumption as envisaged in section 14 of NAO, 1999, cannot be convicted for the simple reason that section 14 NAO, 1999, cannot be used to undermine the rule of law that save in every, exceptional class of cases the burden to prove the guilt of an accused always rests on the prosecution and it does not cast any burden on an accused person to prove that no crime was committed by him by proving facts specifically within his knowledge nor does it warrant the conclusion that if anything is unexplained which the Court thinks the accused could explain he ought therefore to be found guilty. Ordinary rule that applies to criminal trials viz that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of evidence contained in S.14 of NAO 1999 which cannot be used to make up for the inability of the prosecution to produce evidence of circumstances necessary to prove the guilt of the accused. It is only in cases where the facts proved by the evidence give rise to a reasonable inference of guilt unless the same is rebutted that such inference can be negative by proof of some fact which in its nature can only be within the special knowledge of the accused. If the prosecution fails to prove the essential ingredients of the offence, no duty is cast on the accused to prove his innocence. Presumption under S.14 of NAO, 1999 is that Court is required to presume if prosecution proves that accused is guilty of offence of corruption and corrupt practices on the condition that prosecution proves the ingredients of clause (a)(v) of section 9 of NAO 1999.

13. Taking the case in hand, at the touch stone of the principles referred above, we would evaluate the prosecution evidence so as to determine whether it has successfully performed its primary duty, if, yes, whether the appellants by rebutting the prosecution evidence, have proved their innocence. For this purpose, a precise resume of evidence of parties would be necessary, which run as below:

Danishwar Khan SSP, Special Branch, Head Quarter, Peshawar (PW.1), Lal Zada SHO Traffic Police Peshawar (PW.2), Hameed Khan Assistant Pay Officer, District Police Office Kohat (PW.3), Muhammad Shafiq, Inspector Legal Office of DPO, Mardan (PW.4), Wajid Ali, Senior Clerk, Office of CCPO Peshawar (PW.5), and Israel Khan Pay Officer, Office of DPO, Hangu (PW.6), have furnished the salaries record of appellant Rajab Ali for the period served by him on various disciplines in different districts of the province.

Bashir Ahmaed DSP (Legal) Capital City Police Peshawar, while appearing as PW.7 deposed that in compliance of letter No.1/25/IW-I/Notices/NAB (KP)/215 dated 28.03.2012 marked to him by SP Head quarter Exh.PW.7/1, he submitted report Exh.PW.7/2, wherein he has mentioned that W.P. No.1059/2012, filed by Mst. Jamila, W.P. No.1716-P/2012 filed by Mst. Jamila, W.P. No.1293/2012 filed by Awal Khan and W.P. No.1856-P/2012 filed by Feroz Shah in this Court, appellant Rajab Ali was one of the respondents therein..

Farhad Ali appeared as PW.8, who also produced salaries record of the appellant Rajab Ali, in consequence of direction of the NAB authorities along

with record of departmental inquires against the appellant.

Muhammad Javed Khan District Police Officer Upper Dir while appearing as PW.9, produced salaries record of the appellant since 2006 to 2011 available at page 44 and 45 of the Reference Exh.PW.9/5 (2 sheets). He also produced record of the posting and transfers of the appellant Rajab Ali. In cross-examination this witness deposed that appellant Rajab Ali remained posted as SHO PS Hayatabad, Peshawar for two times i.e. once for 07 days w.e.f. from 13.08.2011 to 20.08.2011 and then from 01.12.2011 to 22.03.2012 i.e. for a total period of 02 months and 22 days and that too in two different postings.

Arshad Khan S.I. appeared as PW.10. He has furnished detail report of inquires conducted against appellant Rajab Ali on different occasions Exh.PW.10/1. In cross-examination he admitted that inquires mentioned at S.No.1, 5 and 6 of Exh.PW.10/1 have been filed.

Mir Afzal Moharrir Office of Saddar Kanoongo Kurram Agency appeared as PW.11. He produced original register in respect of mutation No.75 attested on 18.03.1958 Exh.PW.11/2, mutation No.128 attested on 17.03.1964 of the same Moza Exh.PW.11/3, mutation No.177 attested on 15.01.1975, Exh.PW.11/4, mutation No.196 attested on 25.03.1984 Exh.PW.11/5, mutation No.197 attested on 25.03.1984 Exh.PW.11/6, mutation No.268 attested on 28.03.1996 Exh.PW.11/7, of Moza Tezana, mutation No.1543 attested on 09.05.2012 Exh.PW.11/8 of Moza Yousaf Khel, mutation No.334 attested on 28.03.2012 of Moza Tezana, which is the inheritance mutation of deceased Mir Ahmad Khan in

favour of his legal heirs Exh.PW.11/9, mutation No.677 attested on 28.03.2012 of Moza Masto Khel Exh.PW.11/10, mutation No.1542 attested on 28.03.2012, Moza Yousaf Khel (the inheritance mutation of Mir Ahmad Khan deceased/father of Appellant in favour of his LRs) Exh.PW.11/11, mutation No.335 attested on 09.05.2012 of Moza Tezana which is a gift mutation by daughters of Mir Ahmad Khan in favour of their brothers Exh.PW.11/12, mutation No.677 attested on 28.03.2012 of Moza Masto Khel (inheritance mutation of deceased Mir Ahmad Khan in favour of his LRs) Exh.PW.11/3. He also produced Goshwara Amdan and Takhmeena Paidawar of property of appellant Rajab Ali from the year 2001 till Rabi 2012 Exh.PW.11/14, and Exh.PW.11/15, respectively. Similarly, he produced Takhmeena Paidawar of property of appellant Rajab Ali in Moza Masto Khel for the year 2001 till Rabi 2012 Exh.PW.11/16 and that of Moza Yousaf Khel since 2001 till Rabi 2012 Exh.PW.11/17 alongwith schedule of rate for the crops of Rabi and Kharif for the year 2000 till Kharif 2011 Exh.PW.11/18 and verified the report submitted by PW Ashiq Ali Patwari.

In cross examination, this witness admitted Mir Ahmad Khan to be the father of the appellant Rajab Ali and Ali Noor as his grandfather and that as per revenue record the predecessor of Rajab Ali, are recorded as land owners of ancestral property in the area since 1905 i.e. for the last 110 years according to first settlement in Kurram Agency. He deposed that on the basis of Goshawarajat mentioned above about the produce of the ancestral property of the appellant since 2001 to Rabi 2012, the net saving income of

Rajab Ali comes to Rs.10,15,067/- and similar that of his brothers. that the total proportionate share under the produce of all the five brothers comes to more than 50 laces rupees during this period. He admits that he has not prepared the proportionate share and the income of father of the appellant w.e.f. 1950 to 2012, therefore, he cannot say as to what would be the average yearly income under produce of the land owned by father of the appellant to his extent. He further admitted that he has included the income of Bosarajat (straw heap) of the property of the appellants and his brothers for the last 12 years in the aforesaid Goshwarajat, therefore, cannot say the exact value of per straw heap stock. He stated that he does not know per mound price of straw heap in Kurram Agency, however, admitted the fact that the area where ancestral property of the appellant is situated is famous for different types of fruits like pomegranate and apples. He showed his ignorance about orchards of pomegranates over an area of 20 Kanals of the appellant's property nor he has shown the same in the Goshwarajat nor has assessed any price of the same. He categorically admitted that appellant Rajab Ali and his brothers are members of joint family and property of their predecessor is still jointly held as per revenue record. He, however, showed his ignorance about sale of the ancestral property by the appellants in favour of co-appellant Latif Hussain. While going through the statement of this PW we observe that had he assessed the market price of the straw heaps of 10 years and the saving of the appellant's father till his death as well as the assessment of the export quality fruit of pomegranate, which factum is established from the revenue record that on area of 20 Kanals there are

orchards of pomegranate, the share of income of the appellant and his brothers as assessed by this PWs would not be upto fifty laces rupees but more than one corore, particularly, keeping in view the market price of pomegranate.

Ashiq Ali Patwari Halqa appeared as PW.12. He produced revenue record for the year 2009-2010 of Moza Tezana Exh.PW.12/1, original Register of Fard jamanbadi of Moza Masto Khel for the year 2009-2010 Exh.PW.12/2, original Jamanbamdi for the year 1943-44 of the same Moza Exh.PW.12/3, original Register of Fard Jamanbandi for the year 1943-44 of Moza yousaf Khel Exh.PW.12/4, original Register of Fard Jamanbamdi in respect of Moza Masto Khel Exh.PW.12/5 and Naqsha Tasveery of the house of appellant Rajab Ali and other LRs of Mir Ahmad Khan deceased Exh.PW.12/6 as well as original Register Khasra Girdawari from Kharif 2001 till Rabi 2012 of Moaza Tezana, Yousaf Khel and Masto Khel Exh.PW.12/8.

In cross-examination this witness also admitted the ancestral property of the appellant Rajab Ali and the status of the land to be "Self cultivated". He deposed that the land in question bear two types of crops i.e. Fasl-e-Rabi and Fasl-e-Kharif and produce all types of seasonal crops of Rabi and Kharif; that land of appellant Rajab Ali cultivable for all types of seasonable crops including fruits, and that he had mentioned those types of crops like wheat, onion, shaftal, Mattar (beans), Potatoes, rice, Tomato, Cucumber, Peanuts. He stated the land in question has got a lot of planted trees of various kinds; that he is not in the knowledge of the fact that how many times during the preceding 10 years appellant and his

brothers have sold out trees and its branches from their land. He admitted that he has not shown the income of straw heap, Palala etc as there was no specific column in the relevant printed Khasra Girdawari. This witness showed his ignorance about orchards of Pomegranate over an area of 05 Jareeb, but he was confronted with all the Jamabandies and Khasra Girdawaris where such orchards are mentioned, he could not wriggle out of the situation. He admitted the house of the appellant to be Kacha built and is owned by them jointly. He deposed that initially the total ownership of the appellant and his brothers was 99 Kanals but on rechecking of the record it was found to be 106 Kanals and 03 Marals. In light of statement of this PW, we are of the considered view that if the produce and income of the pomegranate over an area of 05 Jareeb for a period of 10 years along with the trees and branches, had been assessed, the income of the appellants and his brothers from their ancestral property would have not been the one as assessed by this PW.

Zulfiqar Ali Patwari (PW.14), produced record of mutations No.2877, 2878 and 2879 of Moza Pind Kamal Barian which he had collected in pursuance of direction of the NAB and instruction of Naib Tehsildar Exh.PW.14/4. He also produced original Pert Sarkar of mutation Nos.5973 and 5974 Exh.PW.14/5 and Exh.PW.14/6.

In cross-examination he deposed that the number of buyers in mutation No.5973 is fifteen including appellant Rajab Ali and the share of Rajab Ali comes to 03 Kanals only. He stated that sale consideration of the entire mutation in the name of fifteen persons is recorded as Rs.58,00,000/-; but he

cannot say that on calculation the sale consideration paid by Rajab Ali appellant for 60 Marlas i.e. 03 Kanals would come to less than Rs.3,00,000/-. He further stated the numbers of buyers of land mentioned in mutation No.5974 of Moza Thatta Khalil are thirteen and the sale consideration collectively comes to Rs.26,00,000/-. He admitted that sale consideration paid by Rajab Ali for his due share in the land purchased vide mutation above mention is Rs.2,00,000/-; that in mutation No.2877 the buyer is Shaban Ali. He deposed that mutation No.2879 of Moza Pind Kamal Barian is about 14 Marlas and is in the name of Rajab Ali and the sale consideration thereof is Rs.4,50,000/. In last part of his cross-examination he admitted that entire sale consideration of mutation in question to the extent of share of Rajab Ali comes to Rs.,10,20,000/-.

Falak Niaz Patwari Halqa Moza Lal Kely (PW.15) produced original mutation No.3167 attested on 23.01.2009, of Moza Lala Kely Exh.PW.15/1. In cross examination he deposed that according to the said mutation property measuring 15 Malra had been purchased by Rajab Ali against a sale consideration of Rs.1,55,500/-.

Abdul Adeel Mir XEN Pak PWD appeared as PW.16. He deposed that on the direction of his High ups, he visited the house of appellant, situated in Lala Kaly for determination of its market rate and to this effect furnished report Exh.PW.16/2, according to which the market value estimated at that time was Rs.11,68,618/- which was the depreciated costs. He further deposed that he also visited village Tattah Khalil Taxila for assessment of the house owned by appellant which by then was under

construction, therefore, after evaluating the cost of material used, he furnished his report Exh.PW.16/4, according to which, the cost incurred at that time was worked out to the tune of Rs.65,60,360/-. He stated that completion of the construction of the aforesaid house, the NAB authorities again directed him for re-assessment of the market value of the said house. Accordingly, on 15.05.2014, he along with NAB officers and brothers of appellant Rajab Ali visited the house and furnished complete assessment report Exh.PW.16/8, according to which the total cost of construction was worked out to the tune of Rs.1,57,44,864/- vide Exh.PW.16/9.

In cross-examination he deposed that he is graduate Civil Engineer from Khyber Pakhtunkhwa University Engineering and Technology; **that he is qualified engineer, but he is not specialized because specialization in any one of the related subjects require higher studies of P.hd. engineering or M.Sc in Engineering;** that after graduation he has not carried out any research work in his field. He stated that so far qualification as Civil Engineer is concerned, he holds the same but so far the expertise and technical knowledge of evaluation is concerned, he does not possess any specialized degree in the said field. He further admitted that during those days in all the three divisions of Pak PWD under the control of Superintending Engineer, there were many senior officers available who were more experienced persons than him. (Under line for emphasis). From the statement of this witness it is evident that he was not expert, therefore, the assessment made by him cannot be relied upon.

Shehryar ASI (PW.17), produced list of 25 vehicles Exh.PW.17/1, kept in Police Station Hayatabad being case property in criminal cases. In cross-examination he deposed that Exh.PW.17/1 does not bear any seal/stamp of the concerned Police Station nor does it bear any verification note of high ups of the police Department. Neither this witness has deposed about misuse of these vehicles by the appellant or receipt of any monetary gain by the appellant Rajab Ali.

Dr. Muhammad Ishaq Functional Head PHS State Life Insurance Limited (PW.18) produced record of premium per annum paid from 01.03.2005 to 01.03.2010 Exh.PW.18/2. In cross-examination he deposed that appellant Rajab Ali has made payment of his respective premiums for 06 years w.e.f. 01.03.2005 to 01.03.2010 at the rate of Rs.12132/- making a total of Rs.72792/-.

Ihsan ul Haq Accountant Roots School System (PW.19), produced fee record of daughter of Appellant Rajab Ali from the date of her admission till June, 2012, Exh.PW.19/2. In cross-examination he deposed that Nadia Ali daughter of Rajab Ali remained student in their school for about 14 months and her tuition fee was Rs.5500/- per month; that entire amount on calculation spent on the education of daughter of appellant comes to Rs.80,500/- including 10,000/- annual charges; that according to his record the daughter of the appellant has left the school.

Zahir Hussain Bangash Political Moharrir appeared as PW.20. He deposed that on the direction of the NAB authorities, he inquired about the family of appellant Rajab Ali and in this respect prepared report Exh.PW.20/1. In cross-examination he deposed

that he visited the grave of father of appellant namely Mir Ahmad Khan for verification of date of his death; that he has mentioned the date of death of father of the appellant as 18.07.2006 and the father of the appellant is buried in the graveyard of Karman Tizana Kunda; that on 24.04.2014, the NAB investigation team again called him to the Governor's Cottage with further direction to collect information about number of brothers of the accused, his family status, family members and property owned by the appellant and his brothers; that he belongs to Bangash cast whereas appellant belongs to Tori Mastokhel cast; that both the casts are at daggers drawn due to landed and other disputes; that he has correctly mentioned the number of the brothers of Rajab Ali i.e. Shaban Ali, Safar Ali, Liaqat Ali and Mujahid Hussain. This witness also categorically admitted that appellant and his brothers are living in a joint family system and their profit and loss is one and the same. Further deposed that he has not mentioned in his report about duration of stay, nature of their profession and their earning, however, he was told by the elders of the locality that brothers of the appellant are serving abroad for the last 15/16 years in Saudia Arabia. Though he has mentioned in his report about the ancestral property of appellant Rajab Ali to be considerably sufficient but has not given the exact area in terms of Kanals, Jareeb. The entire property is cultivable as he was not asked by the NAB to ascertain the present status of the ancestral land of Rajab Ali, therefore, he did not report about the sale of land of Rajab Ali and his brothers in favour of Latif Hussain. He admitted that a person having more than 100 Kanal cultivable land in Kuram Agency is considered notable and elder of the

area; that Latif Hussain is known to him who deals in property and is a fruit and vegetable merchant.

Muhammad Akhlaq Satti Customer Service Officer PW.21, produced record of mobile number of the appellant vide report Exh.PW.2/2. Similarly, Shah Nawaz SDO IESCO Islamabad, (PW.22), produced the record of installation of electric meter and monthly bills of the appellant. In cross-examination he deposed that he is not in possession of the original record of the documents produced by him today. Arab Amir Regional Manager U-Phone (PW.23), produced record about the mobile SIMs of the appellant. The record produced by these PWs is having normal expenditure of the phone use of the appellant.

Malik Muhammad Fayaz Patwari Halqa Ghari Afghana Tehsil Taxila Rawalpindi (PW.24) produced original Register of mutations regarding mutation No.5973, 5974 and 6957, Exh.PW.24/1 to Exh.PW.24/5.

In cross-examination he deposed that on the strength of mutations No.5973, 5974 and 6957, appellant Rajab Ali has purchased 04 Kanals land; that vide mutation No.5974/- the price of the land owned by Rajab Ali is Rs.302326/-; that mutation No.5974/- does not bear the name of Rajab Ali as purchaser or owner; that the purchased value of the land in the name of Rajab Ali as per entries in the relevant record is about rupees twelve lacs; that the said land is not canal irrigated one and appellant has not dug out any tube well etc. for the purpose of its irrigation. He admitted it correct that the said land is low cost land in the entire Tehsil Taxila.

Nawab Ali Inspector (Expert FSL) Peshawar appeared as PW.25, who urged that the signature of

Muhammad Yousaf Karim on the disputed stamp paper No.2552 dated 05.09.2011 Exh.PW.30/1, does not tally with the specimen signatures obtained for the purpose.

In cross-examination he deposed that the subject under which the handwriting is ascertained is called questioned documents examination and this subject of science is called graphology; that he has two diplomas in questioned documents examination from FSL Lahore in 1982-83; that he had not secured any degree in Forensic Science from any recognized University within the country and from abroad; that he has remained as trainee for one year only while basic training for handwriting expert is two years; that **his recognized supervisor was Ex-Director FSL Alhaaj Malik Muhammad Ashraf, who was foreign qualified in the field of handwriting expert. He categorically admitted that there is no doubt with regard to the expertise, authenticity, honesty of his trainer namely, Ex-Director Malik Muhammad Ashraf the then DIG Head of the Forensic Science Laboratory because he is foreign qualified Expert.**

Altaf Azad Ali Regional Finance Manager City School, (PW.26), produced details of educational expenses in respect of Mudasir Ali son of the appellant Rajab Ali.

Asif Mehmood Assistant Data Base Administration FIA Islamabad appeared as PW.27, he produced travelling record of brothers of the appellant namely, Shaban Ali and Liaqat Ali in respect of year 2009 till 2013. In cross-examination he admitted that as per his report Shaban Ali and Liaqat Ali had been travelling from Pakistan to abroad and from abroad to

Pakistan. He categorically, admitted that appellant Rajab Ali, his wife as well as his deceased father have never travelled from Pakistan to abroad as per his report Exh.PW.27/2.

Zahid Younas Political Naib Tehsildar Bara Khyber Agency appeared as PW.28. He deposed that during the relevant days he was posted as Tehsildar Mahal Upper Kurram Agency and on the instruction of NAB authorities, he provided revenue record in respect of appellant Rajab Ali and attested the report of Pawari Halqa as well as Khasra Girdawari of circle Karhman including three Mauzajat prepared by the concerned Patwari Halqa already Exh.PW.12/7 already Exh.PW.12/8.

In cross-examination he deposed that it is correct that the name of Mir Ahmad Khan father of appellant Rajab Ali is recorded in the Pedegree-table as owner in its forth generation; that appellant, his brothers and sisters are the owners in its fifth generation. He admitted that sisters of Rajab Ali have gifted their respective due shares in their ancestral property of their father in favour of their brothers namely Shaban Ali, Rajab Ali, Safar Ali and Liaqat Ali and Mujahid Ali along with their due share in Shamilat land of Mozajat vide mutations No.677 dated 26.03.2012 Exh.PW.11/10).

Syed Noman Ali Shah Political Tehsildar Bajaur Agency while appearing as PW.29, deposed that during those days he was posted as Tehsildar Mahal Kurram Agency; that he forwarded the report of Patwari and Field Qanoongo Exh.P:W.13/1 to APA Upper Kurram and Jarh Pedawar of land owned by Mir Ahmad Khan father of Rajab Ali in three different

Mozajat i.e. Tizana, Mastokhel and Yousafkhel and forward the same to APA.

In cross examination he deposed that he had not verified these documents through spot inspection before its forwarding to the APA. He admitted that this Goshwara Jarh Pedawar is for three years only i.e. 2012-2014. In reply to a question of defence, this PW deposed that attestation of mutations are of two kinds i.e. Zair-e-Tajweez, and Ready for attestation; that the mutation from the side of Rajab Ali and his brothers in favour of Latif Hussain was Zair-e-Tajweez being already entered but was not attested because of the commencement of an inquiry against Rajab Ali by the NAB, and direction of NAB authorities through a letter to political Agency Kuram that sale and purchase transaction in ancestral property of Rajab Ali and his brothers and sisters should not be attested.

Muhammad Yousaf Karim Additional Assistant Commissioner Tank, who is the star witness with regard to sale transaction between the appellants, appeared as PW.30. As per his deposition, he remained as Political Tehsildar Mahal Kurram Agency for about 16 months i.e. from July 2010 to December, 2011 and during his tenure apart from routine duty of Political Administration he was also performing the duties of Tehsildar Revenue as well as Sub-Registrar. He explained that there were three modes of transfer of property in Kurram Agency ,i.e. through mutation, through registered deed or through sale deed on judicial stamp paper duly attested by Tehsildar. The procedure for attestation of sale deed which was in vogue during his tenure was that when the parties i.e. vendor and vendee came for attestation of sale deed, he used to mark it to his subordinate staff

for verification and after the report and verification, he used to attest the mutation by calling the parties. He admitted the fact that he has seen the impugned agreement to sell Exh.PW.30/1. Since, it does not bear any report or verification of his subordinate staff therefore, the signature available on it is not that of him; that his specimen signatures were obtained for comparison with the signature over the disputed deed Exh.PW.30/1. He admitted slight difference in his specimen signatures.

Gul Sahib Khan appeared as PW.31, Mst. Dilbar Sultana wife of Darvesh Khan (PW.32) and Muhammad Munir (PW.33), narrated the stories of cruelty of appellant Rajab Ali and the account allegedly grabbed by the appellant, but without any solid proof. Since, we are confronted with the case of illegal assets, therefore, we are least interest with the cruelty of the appellant, that too, when nothing material has been brought on record in this regard.

The prosecution got examined; Muhammad Kamran Deputy Director NAB/I.O. as PW.34. He being an Investigating Officer, has collected the service, and revenue record of appellant Rajab Ali. His examination in chief would depict that he received the revenue record from the revenue officials of upper Kurram Agency, according to which, father of appellant Rajab Ali, owned 106 Kanal and 01 Marlas land in three different Mozajat, who died in the year 2006 and his property was transferred to his LRs in the year 2012 through inheritance mutation, wherein the share of appellant SHO came to 21 Kanals and 4 Marlas. The witness has also collected the schools record of children of the appellant and his other income and expenditure. This PW has

categorically admitted it correct that appellant and his brothers are living jointly. He further admitted that appellant Rajab Ali had been given out of turn promotion in his service because of his bravery. In reply to a question of defence, he replied that he had investigated the matter relating to the alleged illegal detention of innocent persons by appellant SHO, but he could not trace any clue of involvement of the appellant Rajab Ali in the alleged illegal detention of innocent person. He stated that during investigation co-appellant Latif Hussain provided him original sale deed executed on stamp paper whereby he had purchased various properties in the year 2011 excluding the deed in question. He has also obtained original translation of certain letters which were in Arabic Language relating to receipt of salaries by the brothers of appellant Rajab Ali but have not placed the same on record. He affirmed that Haji Malik Gulfam Hussain and Arif Hussain were the marginal witnesses of the disputed sale deed, who were interrogated by him but did not record their statements. He admitted that along with the disputed stamp paper four other stamp papers were also purchased by Latif Hussain on the same day and the factum of its purchase was duly mentioned by the stamp vendor in his register and each stamp paper was given number; that on the disputed signatures of Muhammad Youaf Karim the then Tehsildar two persons (Experts) i.e. Nawab Ali Inspector and Jehanzeb Inspector had given opinions. It is true that he has not audited the inflow and outflow chart Exh.PW.34/6 from chartered account and that he has no experience in accountancy nor has worked with any chartered account firm. During his cross-

examination on the request of defence, he produced original agreement to sell bearing No.2553 and 2554 dated 05.09.2011, and 2552, 2553, and 2554 dated 05.09.2011, taken into possession by him from co-appellant Latif Hussain.

14. It appears from the record that the total ill gotten money assessed against the appellant Rajab Ali is Rs.1,46,88,056/-. At the same time, it is apparent from the revenue record, produced by the Prosecution Witnesses, namely, Ashiq Ali Patwari and Political Tehsildars, that appellant's father, namely, Mir Ahmad Khan was ancestral owner of 106 Kanals land in Kurram Agency in three different Mozajat. It is admitted by Zahid Younas Political Naib Tehsildar PW.28 that after demise of father of the appellant Rajab Ali, his property devolved upon sons including Rajab Ali (appellant) and his sisters, who simultaneously, gifted their shares in favour of their brothers through gift mutations referred above and exhibited in prosecution evidence. The factum of joint residence/dwelling of the appellant and his brothers has been squarely proved by the prosecution itself in its evidence through various PWs including the Investigating Officer and Political Tehsildar. It is also proved from the prosecution evidence that two brothers of the appellants are serving in Saudia Arabia and getting handsome salaries to the tune of 6000 Saudi Riyals. Plethora of revenue record has been brought on record by the prosecution itself which proves the ancestral property of the appellant in three Mozajat of Kurram Agency. The inheritance mutation No.334 of father of the appellant has been attested on 28.03.2012. Similarly, mutations No.677 dated 28.03.2012 Exh.PW.11/10 and mutation No.1542 attested on the same date are the inheritance mutation of Mir Ahmad Khan in Moza Masto Khel and Yousaf Khel of Kurram Agency in

favour of his LRs. Mir Afzal Moharrir office of the Saddar Kanungo Kurram Agency (PW.11), has categorically admitted that predecessor of Rajab Ali appellant were recorded as land owners in the area since 1905 i.e. for the last 110 years according to first settlement in Kurram Agency. The net saving of the appellant has not been assessed by the NAB authorities with honesty as sufficient things have been left unattended in determination of assessment i.e. the price of the straw heaps, the trees and branches planted in the lands of the appellants, more particularly, the income assessment of the orchards of Pomegranates over an area of 05 Jareeb as admitted by Patwari Halqa and Tehsildar, during the years under assessment. Similarly, the saving of father of the appellant till his death has also not been assessed. All the prosecution witnesses have unanimously admitted the fact that appellant and his brothers were dwelling together in their ancestral house. A shred of evidence has not been brought on record by the prosecution suggestive of the fact that after the death of father of the appellant any brother amongst them has ever shifted his abode in the vicinity or out of area. The Political and Revenue Administration of Kurram Agency, have admitted the factum of joint living of appellant and his brothers. From prosecution evidence, it is manifest that after the death of father of the appellant, the agricultural property remained in his name till 2012, and during this period remained under their joint cultivation. For the first time inheritance mutation No.1542 dated 28.03.2012 was attested in favour of LRs of Mir Ahmad Khan, and that too, for the purpose of actualizing the sale transaction with co-appellant. In the above scenario if the income of the appellant Rajab Ali from his salaries since 1994 till 2012 and his due shares in the landed property along with joint income of his brothers are taken into consideration, the

amount of Rs.,1,46,88,056/- being spent on purchase of the disputed properties and construction thereon is justifiable, even if the amount of the disputed sale of 80 Kanals land is excluded from consideration, which transaction otherwise, has been proved on the face of record from the prosecution as well as defence evidence.

15. Coming to the case of co-appellant, Abdul Latif and authenticity and genuineness of the agreement to sell Exh.PW.30/1, suffice it to say that if one takes into consideration the sole statement of statement of Noman Ali Shah Political Tehsildar (PW.29), the same would be sufficient to prove the disputed transaction. For the sake of convenience and ready reference we would refer to a question put to him by the defence and his answer:-

Q. Are you aware of the fact that being Tehsildar Parachiner, Rajab Ali and his brothers had entered a slae mutation in register of mutation in favour of Latif Hussain co-accused which was not signed/sanctioned by you?

A. "Attestation of mutation are of two kinds, 1. Zair-i-Tajweez and 2. Ready for attestation. The mutation from the side of Rajab Ali and his brothers in favour of Latif Hussain was Zair-i-Tajweeb being already entered and was not attested because of the commencement of an inquiry against Rajab Ali".

The statement of the aforesaid witness of the prosecution is sufficient to prove the transaction of sale of 80 kanals ancestral land of the appellant and his brothers in favour of co-appellant Latif Hussain, who is not related to the appellant Rajab Ali, because as per statement of Zahir Hussain Political Moharrir (PW.20), appellant Rajab Ali belongs to Bangash cast and co-appellant Latif Hussain to Tori Mastokhel. According to statement of this witness the casts of both the appellants are at daggers drawn due to landed and other disputes. Keeping in view the allegations against the appellant Rajab Ali and Latif Hussain that former in order to justify the ill-gotten money manured the

sale transaction of 80 Kanals land with the latter coupled with the above mentioned fact qua no existence of any relationship and enmity between their casts, it does not appeal to a prudent mind that both the appellants were in league in the offence. The disputed transaction was an agreement to sell only and that too prior to inquiry/investigation of the NAB authorities in this case, as it is evident from the statement of Political Tehsildar that mutation qua the disputed transaction had been entered in the revenue record and was "Zair-e-Tajweez" i.e. ready for attestation, but could not be attested due to interference of the NAB authorities in consequence of an inquiry. In such eventuality, it is also not appealable to a prudent mind that the appellant and his brothers having no relation with co-appellant and both having different casts, and that too, as daggers drawn would take a risk to deprive them from a huge chunk of land measuring 80 Kanals by entering into a fabricated transaction. It is also evident from the evidence of the prosecution that on the day of execution of the disputed deed Exh.PW.30/1 co-appellant Latif Hussain has also entered into various other transactions with different people of the locality. The sale deed in this regard taken by the I.O. is sufficient proof of this fact. The I.O. while conducting investigation has not recorded statements of Muhammad Nazar and Gulfam Hussain, the marginal witnesses of the disputed deed Exh.PW.30/1, purposely, because their statements were favouring the stance of the appellants. This act of the Investigation Officer is not only the worst example of dishonesty on his part, but also deplorable and against the norms of natural and criminal administration of justice. It is to be noted that investigation does not mean to collect evidence for the prosecution rather the main aim and object of the investigation is the collection of evidence from both the sides i.e. prosecution

and defence only for assistance of the court in dispensing justice. Similarly, law cast heavy duty on the I.O. to deal with the investigation fairly, justly without any fear and favour to any party. The purpose of investigation is only to dig out the real truth in light of the evidence to be collected during investigation. Both the marginal witnesses Gulfam Hussain and Muhammad Nazar, have appeared as DW.2 and DW.3 and have proved the factum of execution of the dispute sale deed Exh.PW.301/1 in favour of co-appellant Latif Hussain by appellant Rajab Ali and his brothers and payment of rupees one coror at the time of execution of the deed and pledge for the remaining outstanding amount later on. An iota of evidence has not been brought on record by the prosecution to prove that co-appellant Latif Hussain was having no such sources to make a payment of rupees one corore, rather sufficient evidence is available which proves the strong financial status of co-appellant and the way of payment in cash, therefore, there is no need to look for money trail via bank etc.

16. So far as fakeness of the signature of Muhammad Younas Karim Tehsildar over the disputed deed is concerned, he has admitted in his statement the mode and way in vogue in the Kurram Agency regarding sale and purchase of the land. He, has not denied his signature over the disputed deed rather his stance is that since the disputed deed was without any verification report of his subordinate staff, therefore, according to him the signature would not be of him. To prove the signature of the said Tehsildar over the disputed deed Muhammad Ashraf Malik has been produced as DW.3. According to his report Exh.DW.3/2, he opined the signature over the disputed sale deed to be that of Muhammad Yousaf Karim Tehsildar. The remarks/view of Nawab Ali Inspector FSL (PW.25), about the integrity, honesty, intellectual level and expertise in the field of

graphology of Mr. Muhammad Ashraf Malik Inspector (DW.3), are worth consideration, which runs as under:-

“There is no doubt with regard to the expertise, authenticity, honesty of his trainer namely, Ex-Director Malik Muhammad Ashraf the then DIG Head of the Forensic Science Laboratory because he is foreign qualified Expert.

17. So in this view of the matter, PW.25 is the pupil of DW.3 and he has testified about the credibility and honesty of DW.3. In this view of the matter, the report/opinion furnished by DW.3 would be more authentic to be relied upon. Even otherwise, it has been held by the Hon’ble Supreme Court in case of **“Amrood Khan Vs the State” (2002 SCMR 1568)**, that expert opinion would not outweigh ocular testimony. Evidence furnished by an Expert is always treated to be a confirmatory nature qua the ocular testimony and if the latter kind of the evidence is trustworthy, confidence inspiring and consistent then the Expert opinion will not outweigh. Similarly, in case of **“Saeed Ahmad Vs the State” (PLD 2003 Supreme Court 389)**, the Hon’ble apex Court ruled that normally it is not safe to treat Expert evidence as to handwriting sufficient basis for conviction. Following the view of the Hon’ble Supreme Court the worthy Quetta High Court in case of **“Ashfaq Khalid Vs the State” (PLD 2005 Quetta 01)**, observed that opinion of handwriting Expert is not final word on the subject and it would be dangerous to place implicit reliance on the opinion of Handwriting Expert.

18. For what has been discussed above, prosecution failed to produce the required evidence to prove the alleged ill gotten money to be disproportionate to the known source of income of the appellant Rajab Ali and the

alleged abetment and joining hands of co-appellant Latif Hussain with him in the disputed sale transaction. Accordingly, both the appeals are allowed, the conviction and sentences of both the appellants recorded by the learned Trial Court are set aside and they are acquitted of the charge leveled against them. They be set at liberty forthwith, if not detained in any other case.

Announced:

Dt. 11.04.2017

Siraj Afridi P.S.

JUDGE

JUDGE