

## **Scenario 48**

### **SC ALLOWS SHARIFS TO COME BACK:**

Sharif brothers and their families had left Pakistan under a clandestine deal on 10<sup>th</sup> December 2000 to settle in Saudi Arabia. It was a package including the exile deal, the presidential pardon and remission of sentence and undertakings of Nawaz Sharif and Shahbaz Sharif then sponsored by Saudi prince ruler but the deal was negotiated through Lebanon's PM Rafiq Hariri. When the wind went against Gen Musharraf after CJP Iftikhar Chaudhry's mishandling and Red Mosque episode of Islamabad, Nawaz Sharif vowed to come back to Pakistan in the back drop of Musharraf-Benazir deal of the last week of July 2007 in UAE. Drawing benefit from the situation, the Sharifs then moved a petition in the Supreme Court of Pakistan for their come back.

The SC admitted the petition and a judgment dated 23<sup>rd</sup> August 2007 by a seven-member bench of the Supreme Court, headed by Chief Justice Iftikhar Chaudhry, was announced stating: *'the former prime minister's release from prison and his journey to Saudi Arabia after getting a presidential pardon due to an undertaking cannot be described as forced exile.'* The detailed judgment dated 17<sup>th</sup> October 2007 by the apex court in the same case to prove its contention that the Sharifs had left the country under a deal or not was also available with the media then.

It was held in the judgment of 23<sup>rd</sup> August 2007 that the Sharif brothers could return as no restraint could be placed on a Pakistani citizen to return to his country and the undertaking given by them had no constitutional legitimacy as such the petitioners can't be prohibited from coming to Pakistan. But the court order had also mentioned:

*'In view of the chequered history of the case, the undertaking furnished by the petitioners cannot be ignored altogether on the basis whereof they had proceeded abroad. Had this undertaking not been in field, the position would have been different and sentence awarded in various cases would remain intact. In such view of the matter, the journey to Saudi Arabia could not be termed as 'forced exile'. The move was never challenged for a couple of years as the petitioners were aware of the undertaking which culminated in their release from jail.*

*Whatever terminology, i.e., deal, negotiation, mediation, third-party intervention, undertaking or agreement may be used, there is no denying the fact that the petitioners had proceeded abroad at their own.'*

The Supreme Court had announced its verdict a day after Gen Musharraf regime had submitted [on 22<sup>nd</sup> August 2007] the documents of the alleged deal made between the Sharif brothers and Gen Musharraf's government, in line with the apex court's desire dated 16<sup>th</sup> August 2007. As per contents of the exile deal produced before the apex court by the then Attorney General of Pakistan Justice (Retd) Malik Qayyum, the Sharif brothers had voluntarily agreed to live out of the country for ten years. A copy of an undertaking seeking permission to proceed abroad by Nawaz Sharif and Shahbaz Sharif was also filed in the apex court the same day which revealed that the Sharif brothers had left the country for 10 years on their own choice and agreed not to be engaged in any business or political or any other activities of any nature whatsoever against the interests of Pakistan.

Nawaz Sharif's exile agreement produced before the apex court was as under [verbatim]:

*"I, Muhammad Nawaz Sharif, accept the help by a personality for negotiation for the release from imprisonment in Pakistan. I am satisfied with this whole process of the negotiation. In the country where I would adopt residence, there I would not take part in any business or political activity and nor would take part for ten years in any politics, regarding imprisonment or against the interests of Pakistan. I will not proceed to another country without any permission of the country where I will reside for ten years outside Pakistan, and that I will come back in the same country. I will not tell anything to anybody about the personality and the country, through which the agreement has been made."*

Two separate but identical one-page "**Confidentiality and Hold Harmless Agreements**" carried the signatures of the Sharif brothers. There was no other signature on them. Sharifs pledged in these papers that they would not disclose the identity of "*either the gentleman or the country involved in their release from Pakistan and relocation except with their prior written consent.*" During the hearing of the case, the Attorney General was stopped by Gen Musharraf from revealing the identity of the "gentleman" mentioned in the agreement who had arranged the agreement that let the Sharif family leave Pakistan in 2000. But in his book titled "**In the Line of Fire**", Gen Musharraf had clearly stated that the deal was arranged by Crown Prince Abdullah bin Abdul Aziz Al Saud.

According to the pardon documents produced in the apex court by Gen Musharraf regime on 22<sup>nd</sup> August 2007, it was on the basis of a 4-page application signed by Nawaz Sharif, Shahbaz Sharif, Abbas Sharif and Hussain Nawaz, that the then Chief Executive of Pakistan Gen Musharraf had advised the then President Rafiq Tarar on 9<sup>th</sup> December 2000 to remit the sentences awarded to Nawaz Sharif under Art 45 of the Constitution, which he remitted.

The text of the 4-page petition signed by the Sharifs was as under:

"The President

The Islamic Republic of Pakistan

Dear Sir,

That petitioner No 1 (Nawaz Sharif) along with others was tried for offences under sections 120B, 212, 121A, 123, 365, 402B, 109 and 324 of Pakistan Penal Code and section 6/7 of the Anti-Terrorism Act 1997 by the Anti-Terrorism Court No-1 Karachi.

The other co-accused of petitioner No. 1 were acquitted but petitioner No 1 was, by the judgment dated 6th April 2000 of the said court, convicted for offences under section 402 PPC read with Section 7 of the Anti-Terrorism Act 1997 and sentenced as under.

Offence under Section 402(B) PPC:

- (i) Rigorous imprisonment for life.
- (ii) Fine of Rs:5,00,000 (in case of non-payment of fine R.I of 5 years).
- (iii) Confiscation of entire property.

Offence under Section 7 of Anti-Terrorism Act:

- (i) Imprisonment for life.
- (ii) Fine of Rs:5,00,000 (in case of non-payment of fine R.I for 5 years).
- (iii) To pay Rs:29,00,000 as compensation to all passengers of flight PK-805 in equal shares.

That on appeal by petitioner No.1 against the judgment the court maintained conviction under Section 402(B) PPC read with Section 7 of the Anti-Terrorism Act and modified the sentences as under:-

- (i) Imprisonment for life.
- (ii) Fine of Rs:5,00,000 (in case of non-payment of fine R.I for five years).
- (iii) Forfeiture of property (movable and immovable to the extent of the value of Rs:500 million).

That on a reference filed by the National Accountability Bureau under the NAB Ordinance 1999, petitioner No 1 has been tried by Accountability Court Attock Fort and convicted for an offence under section 9(a)(v) of the NAB Ordinance and sentenced as under:-

- (i) R.I for 14 years.
- (ii) Fine of Rs:2,00,00,000 (in case of non-payment of fine R.I for 3 years).
- (iii) Disqualification for 21 years for seeking or from being elected, chosen, appointed or nominated as member or representative of any public office or any statutory or local authority of the government of Pakistan.

That the petitioner No 1 has developed serious health problems. That certain inquiries and investigations against conduct of petitioner No.1 and petitioners No 2 to 4 are pending with the investigating agencies and investigations may culminate into the petitioners' prosecution.

In view of the above it is requested that the sentences of imprisonment of petitioner No 1 may be waived to enable him to proceed abroad for medical treatment and the petitioners may not be prosecuted in respect of any alleged past conduct.

(Signed) Mian Muhammad Nawaz Sharif - petitioner No 1.

(signed) Mian Shahbaz Sharif - petitioner No. 2.

(signed) Mian Abbas Sharif - petitioner No. 3.

(signed) Hussain Nawaz - petitioner No. 4." [9.12.2000]

On 9<sup>th</sup> December 2000, the then Chief Executive Secretariat wrote to the president:

"Subject: **Grant of Pardon**

In terms of Article 45 of the Constitution of Islamic Republic of Pakistan the president is advised to:-

(a) Remit the sentence of imprisonment for life awarded to Mian Muhammad Nawaz Sharif by the High Court of Sindh in its judgment dated October 30, 2000 in Special Appeal No 43 of 2000 under Section 402B of the Pakistan Penal Code read with section 7(ii) of the Anti-Terrorism Act, 1997 and

(b) Remit the sentence of R.I for 14 years awarded to Mian Muhammad Nawaz Sharif by the Accountability Court Attock Fort in its judgment dated July 22, 2000 in reference No 2 of 2000 under Section 9(a)(v) of the National Accountability Bureau Ordinance 1999.

(Signed) Pervez Musharraf,

Chief Executive of Pakistan and CJCS and COAS

December 9, 2000."

On this the-then President [Rafiq Tarar] wrote:

"Approved. Sentences remitted. (Signed)."

### **CJP COMPENSATED SHARIFs:**

From above it was evident that Sharif brothers had left the country under a deal and had voluntarily surrendered their properties to the NAB but after their return in 2007, the Sharifs had filed an appeal before a division bench of the Lahore High Court, contending that since the corruption cases against them had been disposed of, their properties should be released.

*[The court consequently ordered the release of their properties on 4<sup>th</sup> October 2011 besides asking NAB to return property documents of the Sharif family, which were seized in 2001 to recover fine imposed on Nawaz Sharif in two cases; the NAB challenged the LHC decision in the apex court.*

*A three-member bench of the Supreme Court of Pakistan, headed by Chief Justice Iftikhar M Chaudhry, on 18<sup>th</sup> January 2012 ordered the release of seized assets of the Sharif brothers by dismissing the National Accountability Bureau (NAB)'s appeal and upholding the decision of the Lahore High Court (LHC). During the hearing, the court held that 'NAB cannot take over Sharifs' property against the punishment. NAB had no right to seize their property'.*

The Lahore High Court and the Supreme Court were able to understand that in the above 'mercy appeal' Gen Musharraf had categorically recommended only the remission of imprisonment sentences and not the punishments of fine or confiscation of the property. The then President Rafiq Tarar had also agreed with Chief Executive's advice while remitting the imprisonment sentences under Art 45 of the Constitution and nothing more. But as the apex judiciary wanted to oblige the Sharifs so they used their prerogative. The PPP government alleged that the CJP wanted to compensate Sharifs in the name of 'independent judiciary'

*[The NAB's prosecutor K K Agha placed all the above mentioned documents before the apex court on 18<sup>th</sup> January 2012 again but allegedly the CJP Iftikhar Chaudhry discarded them for unknown reasons.*

*The media roared that:*

*'The CJP wanted to oblige the Sharifs, he did so and upheld the LHC's decision. Judiciary has gone independent in Pakistan; the decisions would be taken at the sweet will of the judges, may not be on facts. Paying back the blessings of March 2009's long march was not over yet; though it was the lawyer's show not of Sharifs, they were the beneficiaries of the fall out.'*

Nawaz Sharif himself, once talking to the Geo News from Germany on 22<sup>nd</sup> August 2007, (a day before the apex court announced its 23<sup>rd</sup> August 2007 verdict) had spoken on the deal documents produced in the court by the government. He had used diplomatic phrases saying that:

*'General Musharraf is blackmailing and threatening us by presenting fake and fraud documents in the Supreme Court to keep us from returning to Pakistan. The entire government drama is meant to blackmail us and the entire nation. **However, I do acknowledge that there was an understanding with the Saudi Arabian government at that time, but I can't reveal that because it is a very sensitive issue.***

Such blatant lie was not expected from a politician of such high stature like Nawaz Sharif who had been the prime minister of a country twice. He forgot then that the mercy petition of condoning punishments dated 9<sup>th</sup> December 2000 was not only signed by him but also other three respectable members of his family. On the same day Gen Musharraf had written his recommendatory remarks over it and then got approved from PML(N)'s own slave president Rafiq Tarar using his powers under Art 45 of the Constitution. The official record was to be maintained in the President's Secretariat, Attock Jail from where Sharif family was released and GHQ as Gen Musharraf was the Army Chief then too.

If those documents could be fraud or concocted then think about the Pakistani judiciary on the same footing too.

In a **live TV program of ARY News dated 19<sup>th</sup> January 2012**, the veteran lawyer Asma Jahangir, the former president of the Supreme Court Bar Association, had opined that:

*'The apex court's decision can also be wrong. In the past history the Supreme Court's many decisions were wrong. Still they are behaving differently by targeting only one 'corrupt person' [pointing towards Mr Zardari] and has not questioned even a single other known corrupt politician for justice. Is he the only corrupt man in Pakistan and no one else?'*

PML(N)'s Senator Mushahidullah Khan told the viewers that **'Nawaz Sharif's whole kingdom of wealth is genuine wherever it lies in Pakistan or abroad (?)**. *Nawaz Sharif's business in London is being looked after by his son to whom he [Nawaz Sharif] had given 1.5-2 billion rupees from his own savings.* Afzal Chan, a parliamentarian from the PPP, also present in program, had questioned that why the Supreme Court was not inquiring into that 'golden process' under which a shopkeeper of Brandreth Road Lahore was able to foster billions of pounds in UK and elsewhere just in ten years.

The intelligentsia stands nowhere to comment upon the judgment of the Supreme Court but, in their opinion, the CJP Iftikhar Chaudhry could have handled the case in another honourable way to enhance the respect and prestige of the apex court. The appeal was launched in the court just in December 2011 and it was assigned so much priority that it was fixed for 18<sup>th</sup> of January 2012 and was decided in the first hearing and that too by the CJP himself. Already there prevails an impression that the CJP Iftikhar Chaudhry leaves no stone unturned to please the Sharifs whenever an occasion arises to reciprocate the March 2009's long march gesture after which the defunct judiciary was reinstated. There were numerous more examples to quote in that regard.

Had the said appeal be heard in routine and through any other bench, the result might have been the same but at least the Supreme Court could have avoided itself from finger pointing and undue criticism.

The insiders also felt smilingly that on the same day of 18<sup>th</sup> January 2012, the CJP Iftikhar Chaudhry had very graciously ordered **'to postpone for indefinite period another old case file praying for disqualification of Nawaz Sharif.'** The said petition was placed before the Supreme Court by one Iqbal Jaffery Advocate in 1990 and still waiting for hearing since 22 years. In the petition it was then prayed that:

- Nawaz Sharif had sent his ill-gotten wealth worth billions in foreign countries.
- Nawaz Sharif had allotted state lands in an illegal way.

Thus he [Nawaz Sharif] was no more 'honest' as per definition given in the constitution. He should be disqualified and should be barred to contest elections for the rest of his life; it was prayed.

The CJP Justice Chaudhry once again sent the file to the cold room for an indefinite period saying that *'the cover page of the said file is missing'*. Pakistani Justice-hurray!

### **JAPAN'S LOAN [YEN 32 b]: NO CLUE?**

Let us take another count in this regard.

Referring to **'the News' dated 21<sup>st</sup> December 2009**, the PML(N) had categorically contradicted a similar news report then appeared in the media in the aftermath of the Supreme Court's decision on NRO on 16<sup>th</sup> December that there were outstanding bank liabilities against Sharif brothers. It was maintained by PML(N) leaders that:

*'They were not the defaulters of any bank in Pakistan and the issue discussed in media pertained to the settling of financial liabilities through handing over of valuable properties to the high court under mutual agreement with the banks. Even at that*

*time their assets worth Rs:10 billion were in custody of the committee set up by the high court while their total outstanding liabilities were about Rs:2.2 billion only.*

*During their rule in 1990s, they instead of getting their loans written off, had set an unparalleled example in the political history of Pakistan by surrendering highly valuable assets of his family to the banks. Moreover, no stay order existed from 1999 to 2005 when Gen Musharraf, the President of Pakistan and the CM Punjab Ch Pervaiz Elahi were at liberty to deal with their properties in appropriate manner.'*

The PML(N) maintained that Nawaz Sharif, despite being in power, had decided to surrender his properties to repay the loans otherwise it was an open secret that during the rule of Benazir Bhutto all the commercial banks of the country had been stopped from opening letters of credit of business concerns of Sharif brothers due to which they suffered a loss of billions of rupees and were virtually closed. He said that the Jonathan ship incident was one of the sad reminders of this era.

But from where those assets of Rs:10 billion [as per their own admission and that too in Pakistan only] gathered in Sharifs till 1999. Sort out the link below; a tip of the iceberg!

During the same days, the media brought forward a special report once published in the '**South Asia Tribune**' under the title '**Dar defends his Govt in missing Rs:11 billion scam**' saying that Mr Ishaq Dar [the former Finance Minister in the PML Cabinet, then the PML(N)'s Senator in 2006 and once again the Senator of the PML(N) in March 2012] had denied the *SAT* story published on 23<sup>rd</sup> September 2002 trying to wash out the dirty linen of Sharif's financial schemes.

Mr Dar had known the details that how a Japanese Loan of \$250 million taken by PML(N) government in 1998 had mysteriously disappeared and even the military Government had failed to trace it.

The said Japanese loan of \$250 million was signed on 27<sup>th</sup> March 1998 and handled by the then Finance Minister Sartaj Aziz but later looked after by Ishaq Dar, the new Finance Minister from November 1998. The fact remains that all sums, whether loans or other receipts, of the Federal Government were to be taken in the Federal Consolidated Fund under the provisions of Article 78(1) of the Constitution of Pakistan. This amount of Yen 32 Billion was a Structural Adjustment Loan to be spent [along with Counterpart Fund in Pak rupees] at projects approved under the Public Sector Development Program (PSDP), as mutually agreed between the GoP & Japan.

The State Bank of Pakistan (SBP) had converted the said loan amount into Pak rupees amounting Rs:10.94 billion. The above mentioned amount remained throughout with the SBP as part of the Consolidated Fund but in papers only and was never transferred to Federal Government's Accounts till at least 12<sup>th</sup> October 1999.

Nawaz Sharif had once launched '*Qarz Utaro Mulk Sanward*' Scheme (National Debt Retirement Program or NDRP) in February 1997 and had the following three components:

- An outright donation with no payback.
- *Qarz-e-Hasna* deposits for a minimum period of two years; no interest payments but principal repayments could be taken in Rupees or foreign currency.
- Profit bearing deposits for a minimum period of two years.

All funds in the aforesaid NDRP were directly received in the Federal Government's account with the SBP and the largest receipt was in profit bearing deposits. Inflow of funds under this Scheme virtually stopped in June 1998. The foreign exchange component of this NDRP was never generated or sent to the reserves of the SBP. Instead Nawaz Sharif's Government paid Rs:1.7 billion in 'national debt service' as it was propagated to some media sources. Most of the economists held that if the above said amount [of Rs:1.7 billion] was (really?) paid, it was

paid to either Muslim Commercial Bank of Mian Mansha or the National Bank from where the Sharifs and their close friends had taken huge loans against bogus collaterals.

The Pakistani people still do not know that how much amount was totally collected in NDRP and where the rest of the money gone.

On 21<sup>st</sup> November 2002, **SAT's Correspondent Ahmed Khan**, again replied from Islamabad that perhaps Mr Ishaq Dar was not aware of the fact that OECF [Japan] loan under question was transferred to Pakistan after the SBP had opened a separate "Counterpart Fund Account", already in existence on 27<sup>th</sup> March 1998 at the time of signing the contract. The amount was never put in the Federal Consolidated Fund as Mr Dar had wrongly claimed. The Auditor General of Pakistan (AGP) had given its findings after audit which was forwarded to the SAP Coordinator Mushtaq Khan by the DG Audit SAP, Shabbir Ahmad Dahar, vide his DO letter No: DGA / SAP-II / FSS Planning / 99 - 2000 dated 21<sup>st</sup> November 2000, clearly saying that:

*'The GoP received a loan of Yen32 billion (equivalent to \$250 million or Rs:11 billion) as loan from OECF on 27.3.1998; the amount was to be utilized by 27.3.2000 but the loan was not accounted for. Neither the equivalent amount credited to the Counterpart Fund nor allocation for utilization arranged. [The Audit letter had also recommended that] In view of this serious problem, an in-depth inquiry was inevitable.'*

Ishaq Dar's claim that the amount was meant for PSDP was, therefore, not correct. The issue turned serious when the missing of billions was brought to the notice of the Chief Executive Secretariat. The Secretariat through its letter No 689 / Dy Dir (D.1) CES / 2000 dated 27<sup>th</sup> September 2000 asked the Secretary Planning Fazal Qureshi to immediately submit a report on the bungling done by the previous Government (of Nawaz Sharif). The report submitted later by the Planning Division pointed out to the CE Secretariat that:

*'Under the agreement, borrower (GoP) was required to deposit the equivalent in Pakistani rupees in the Counterpart Fund which was opened with the SBP but only Rs:10 million was deposited in the account against Rs:11 billion. The Auditor General of Pakistan has not been able to conduct financial audit of the accounts of schemes or programs under Japan loan in compliance with the loan agreement as Counterpart Fund for the project have not been provided by the Finance Division.'*

The Planning Division report was enough to prove that Ishaq Dar was trying to cover up the matter. At a meeting held in Economic Affairs Division (EAD) on 10<sup>th</sup> June 2000, the provinces had raised hue and cry for non disbursement of Japanese money to them and Mr Dar had no answer except embarrassment.

During ending 2002, the issue of the billions collected under the "Qarz Utaro, Mulk Sanward" scheme was again raised in the Public Accounts Committee where the Finance Ministry was asked to give details of how much money collected under the scheme had been used for debt retirement. "Not a single penny", came the startling answer from the then Secretary Finance.

History would also remember the event of man-handling of the then SAP Chief, Mr Qizilbash, by Captain Safdar the son in law of the PM Nawaz Sharif and his Political Secretary Muthaq Tahir Kheli, when he was picked from his office and brought to the PM Secretariat where he was physically beaten and made to help the PM and his Finance Minister, Mr Dar to 'cook up' the figures for the record.

Pakistan's history is saturated with such planned episodes; is there any judge or court to take accountability of such events.

*(One part of this essay was published at [www.pakspectator.com](http://www.pakspectator.com) on 20<sup>th</sup> July 2011 under title: '**A Forgotten Page of Pakistan's History**'*

*(2<sup>nd</sup> Part of this essay was published at [www.Pakspectator.com](http://www.Pakspectator.com) on 21<sup>st</sup> January 2012 under Title '**Supreme Court going choosy**'*