

Scenario 209

PANAMA LEAKS TRIAL IN SC - II:

On 30th November 2016; the Supreme Court asked PTI to elaborate about the businesses owned by the Sharif family saying ***the court was not inclined to review political statements, nor would announce a verdict on the basis of news reports.***

SAVE NAWAZ SHARIF BILL:

On the political front, the PML[N] managed to get passed '**Save Nawaz Sharif Bill**' in the parliament on 1st December 2016.

The said controversial bill sneaked through the National Assembly in its fourth attempt, to the dismay and protest of the opposition which had previously managed to block "***The Pakistan Commission of Inquiry of Bill, 2016***" three times, then calling it the "***Save Nawaz Sharif bill***". The legislation was pushed through parliament only to save the prime minister from the Panama Leaks fallout.

The PML[N]'s bill provided for the constitution of a powerful commission for investigation into Panama Papers issue as well as other issues. In their opinion, the scope of the commission would be wider and it would have all the authority to constitute special teams of experts as well as international teams to get the required information.

The then existing law related to the appointment of commission of inquiry and empowering it for the purpose was Pakistan Commission of Inquiry Act, 1956. A clause of the new bill titled "***protection of action taken in good faith***" said:

"No suit or other legal proceedings shall lie against the federal government, the commission or any member thereof, or any person acting under the direction either of the federal government or the commission in respect of anything, which is in good faith done or

intended to be done in pursuance of this act or of any rules or orders made there under or in respect of the publication."

The on-going session was to be prorogued a day before but the PML[N] government extended it by one day to pass the bill; one PPP MNA Aijaz Jakhrani had protested against saying that:

"There is monarchy in the country, we cannot call it democracy; the PML[N] government took two weeks to pass a bill. You [the government] faced embarrassment thrice for not maintaining quorum in the house despite having 2/3 majority."

The opposition announced boycott from their side while the MQM also supported the PPP lawmakers' sentiments and criticised the government for not taking the house seriously. The *Pakistan Tehreek-e-Insaf* [PTI] had already boycotted the whole session, saying that they would not participate in the proceedings of a parliament where the prime minister had become gravely controversial due to Panama Leaks disclosure.

On 3rd December 2016; *Jamaat e Islami* [JI]'s Sirajul Haq submitted a fresh application with [main] request to constitute an inquiry commission in the Panama Leaks case to probe into all persons, their family members, children, companies and business entities of those whose names had surfaced in the leaks dated 3rd April 2016.

The petition also requested the apex court to order the Federal Board of Revenue [FBR] as well as the Election Commission of Pakistan [ECP] to initiate an independent action against the names in Panama Leaks.

On the same day of **3rd December 2016;** a 12-member delegation of Qatari royals, including Prince Shaikh Hamad bin Jassim bin Hamad bin Abdullah bin Jassim bin Muhammed Al Thani, arrived in Lahore. The timing was crucial — as it did in the wake of the counsel for the premier's sons presenting a letter from Prince Jassim before the SC pertaining to the Panama-gate Case. Prime Minister Nawaz Sharif's son, Hassan Nawaz, received them and taken to the Sharif's Jati Umra residence.

One could recall that on 15th November, submitting documentary evidence on the 'legitimacy' of their assets before the SC, PM Nawaz Sharif and Maryam safdar, claimed their London apartment was bought through Qatari investments. PM children's counsel Akram Sheikh submitted the letter from Qatari Prince to the top court's larger bench.

The opposition, including PTI's lawyers, had questioned the sudden entry of the Qatari prince in the Panama Leaks case. The media was told that the prince was fond of hunting and was here in Pakistan on a personal visit.

MONEY TRAIL FOR LONDON FLATS:

During hearings on **30th November 2016** and two days after, a five-member larger bench headed by CJP Anwar Zaheer Jamali resumed the hearing of Panama Leaks case and asked PTI counsel to elaborate as to wherefrom the capital for Jeddah Steel Mills came and how was the money transferred to London. The judges also remarked that:

"If Sharif family's link with offshore companies prior to 2006 is established then the entire burden would be shifted on Sharifs.

We cannot review political statements and if a verdict was announced on the basis of news reports then your client may also have to face difficulty."

The Supreme Court, while pointing towards Akram Sheikh, the lawyer for PM Nawaz Sharif's children, passed remarks that:

"The Sharif family had not presented documents for companies it had mentioned. In fact, documents had been hidden from the court; why were the documents hidden? If you say that you are a shareholder, you will have to give evidence."

The new legal team of the PTI presented the case before the bench, after the party's chief lawyer, Hamid Khan, rescued himself from representing the party. Another senior lawyer Naeem Bokhari was asked to take place of Hamid Khan to represent PTI in Panama Leaks Case.

Talal Chaudhry, the PML[N] spokesperson remarked that: ***"You {PTI} have hired an actor NOT a lawyer."***

[While speaking to Geo News later, **Hamid Khan** remarked that: *"After media's campaign against me, it was not possible to continue with the case proceedings.*

We lawyers have our own way of presenting a case, which is why I refused to continue with the case - I informed Imran Khan that I cannot fight the battle on the media front."

During the hearing of that day, the PTI's new counsel Naeem Bokhari started off the hearing confidently. On a lighter note he told Justice Azmat Saeed: *"It seems like today you will get angry at me."* --- "Please present your case; AND do not flatter me," a prompt answer from Justice Azmat Saeed was there

Mr Bokhari said the prime minister lied in his address to the nation and was involved in tax evasion. He urged that Maryam was the beneficiary owner of the London flats, adding that the trust deed between Maryam and Hussain Nawaz did not prove her stance. Bokhari also called for apex court's action against the NAB Chairman for failing to perform its duties.

The SC bench agreed that there were discrepancies in the Prime Minister's speech in the National Assembly and the documents submitted by his children in the court.

Justice Ijazul Ahsan said that according to documents submitted by the prime minister's children, they invested 12 million Dirhams with the Qatar royal family. While in his speech the prime minister had said that this investment was used by the Prime Minister's children, Justice Asif Saeed Khosa completed the sentence.

Jeddah Factory: Mr Bokhari brought the court's attention to a Jeddah Steel Mills bought in 2007 and urged that the London flats were bought before buying this factory.

Justice Azmat Saeed said that the documents submitted by the prime minister's children only speak about the Dubai Steel Mills but didn't mention where investment for the Jeddah Steel Mill came from. The judge also pointed out that the documents didn't mention that the said investment of Dubai Mills was used to purchase the London flats.

Naeem Bokhari wondered if it had been mentioned that loan had been taken from banks for the Jeddah Factory but Justice Ijazul Ahsan remarked that:

"How did he get loan from Saudi banks – AND how much was the Jeddah Factory sold for?"

Mr Bokhari informed - the PM claimed that in June 2004 the factory was sold for \$17 million; and that the prime minister [*had said that he*] had submitted all documents in the apex court. At that moment Justice Azmat Saeed said that: **"....the documents might be available everywhere but they have not been submitted in the court."**

Naeem Bokhari emphasized that the London flats were bought between 1993 and 1996. Justice Asif Saeed Khosa said that:

"....these were the sources of income through which the London flats were bought.

In two different documents submitted there were no similarities between signatures of Tariq Shafi - How did Tariq Shafi transfer money to Qatar."

Naeem Bukhari said that Shahbaz Sharif had forged Tariq Shafi's signature. Also that prime minister had lied and hid evidence, therefore, **'he has been neither Sadiq nor Ameen, and should be disqualified'.**

Speaking to the media outside the Supreme Court, PTI leader Jehangir Tareen held that discrepancies in the prime minister's statements were 'effectively' presented in the court; the prime minister had lied to the nation in his speech in the National Assembly.

Tareen also told the media that when the Dubai Mills was sold it was in a loss. The prime minister said that the mills was sold in 2004-05 and the flats were bought. *"However we presented documents to prove that the prime minister's children were using these flats since much earlier and the same were purchased during 1993-96."*

Asad Umer, speaking to journalists held that the government had told so many lies that it was finding it difficult to prove their point: **"In the trust deed filed in the court the two offshore companies have not been mentioned."**

The hearing was then adjourned till 6th December 2016.

On 6th December 2016; the Supreme Court of Pakistan resumed hearing of the Panama Leaks Case; the bench headed by CJP Jamali was seen in high mood. Till then PM Nawaz and his children; Hassan Nawaz, Hussain Nawaz and Maryam Safdar had filed their official response on offshore companies and their flats in London.

The Chief Justice Jamali was responding to *Jamaat e Islami* [JI]'s request of announcing an inquiry commission with the mandate to investigate the matter. During the hearing, the chief justice added that the National Accountability Bureau [NAB], the Federal Board of Revenue [FBR] and the Federal Investigation Agency [FIA] do not operate effectively. The CJP held that **"if these institutions do not want to work, why don't we shut them down"**.

During the proceedings, Justice Saeed Khosa raised three questions for the PM's counsel about the companies owning London flats.

- *How did the children establish these companies?*
- *Explain, who is dependent on whom?*
- *Whether the facts in prime minister's speeches are true or not?*

In his arguments, PM's lawyer Salman Aslam Butt said the petitioners have failed to provide evidence that the companies were formed illegally. To this, Justice Khosa remarked that ***after accepting the ownership of companies, the burden of proof lies upon you.***

PTI lawyer, Naeem Bukhari, continued his arguments against the Sharif Family contention that they bought flats in 2006. Both the petitioners, including PTI Chief Imran Khan, and the defendants, the family of PM Nawaz Sharif, requested the larger bench to hold day-to-day proceedings.

A request for daily hearings had become all the more necessary since Advocate Salman Aslam Butt, who was representing the prime minister, had sought an adjournment of the case from 12th to 19th December. The CJP was reaching superannuation on 30th December 2016, but his farewell reference was being held on Dec 15th, thus he was not available thereafter.

Senior counsel Akram Sheikh, who was representing PM's three children — Maryam, Hussain and Hassan Nawaz — also held that: *"...we will plead before the court to close the proceedings by conducting day-to-day hearings. It is a national loss; therefore, he would implore the court not to adjourn the case until its conclusion."*

PTI's lead counsel Naeem Bokhari concluded his arguments in which he attacked the trust deed of 2nd February 2006 signed by Maryam Safdar in which she was shown as a trustee of Hussain's companies Nescoll and Nielson Enterprises but at the same as a 49 percent shareholder of a company called Coomber Group. Mr Bokhari added that:

"Our prime focus in the case is two pronged:

The first issue is to question from where the prime minister got the money to invest for acquiring the four Park Lane flats in London and second from where Hussain & Hassan Nawaz got money to run their business empires."

ACTUAL PRICE OF LONDON FLATS:

Meanwhile, Akram Sheikh submitted an application in line with an earlier court query [*made by J Azmat Saeed Sheikh*] regarding certain documents with an intention to establish that the actual price of all the four flats then was £1.905 million that amounted to a maximum of Rs:120m at the time mentioned. Mr Sheikh added:

"We have submitted the documents since Mr [Imran] Khan in his petition had claimed that billions of rupees were skimmed to launder and get the flats in London.

*According to the land registry of 7th May 1993 under the Land Registration Acts 1925 to 1986 of London, £585,000 were paid by Nescoll Ltd to acquire the ownership of **17 Avenfield House, 118/127 Park Lane London**. The earlier owner of the flat was Herby Transfers.*

*Likewise, the property of **16 and 16A, Avenfield House, Park Lane London** was registered on 10th July 1995 for £1.075 million to be transferred to Nielson Enterprises Ltd. The previous owner of that property was Delfina Limited.*

*Whereas the property **17A Avenfield House, Park Lane London** was registered on 5th July 1996 in favour of Nescoll Ltd for £245,000. The previous owner of the property was Aksala NV of Chuchubiweg, Netherlands Antilles.*

All together the amount was 1.9m pounds."

On 7th December 2016; a larger bench of the SC headed by CJP Jamali adjourned the Panama case hearing and hinted at forming an inquiry commission comprised of one Judge to investigate the allegations levelled in the petitions by both parties. The SC asked both parties to decide over the

formation of a commission which would comprise one judge and be able to call anyone as part of the probe.

During that day's hearing, CJP Jamali asked on which date PM's daughter Maryam Safdar purchased the property [Land] and made payment for it. PM's counsel Salman Butt argued that *'the prime minister does not need to reveal his tax files'*.

Justice Asif Khosa said that ***'we do not give a verdict without legal evidence'***.

PM's counsel replied: *"This is a great defence that my father knows and I don't."*

Justice Ameer Hani Muslim said: ***"You should rather say I don't know how the money was paid."***

Salman Butt argued that: *'...the records are 40 years old and it is difficult for him to find documents'*.

Justice, Khosa said that: ***"...in your speeches you had said that you had all the documents. All these financial matters were between grandfather and grandson."***

Salman Aslam Butt informed the apex bench that the land was purchased on 9th April 2011 and money was gifted by Nawaz Sharif. Maryam had paid back money to her father in the form of land; and also that ***'Maryam Nawaz lives in Jati Umra'***.

Justice Sh Azmat Saeed asked: ***"Is Jati Umra property in Maryam Nawaz's name? Who pays for the expenses?"***

The defence lawyer said: *'Maryam earns through agriculture'*.

On 8th December 2016; PTI Chairman Imran Khan told the media that ***his party did not agree with the idea of a commission*** that would investigate the Panama Leaks case and that his party would rather want for the Supreme Court to give a verdict at its own when the hearings finished. Imran Khan came out with an explicit stance that:

"We feel that the bench hearing the case is qualified; the Supreme Court should hold a hearing on daily basis."

A commission will only be fruitful if the prime minister resigns; otherwise, Nawaz Sharif will affect the working of the commission.

When PTI had decided to approach the court over the Panama Leaks case people were sceptical - because the public has stopped believing in institutions. This fact was also acknowledged by the Supreme Court a day before.

We [PTI] have already won the case in the Supreme Court. Nawaz Sharif's lawyer had said that in the parliament he had given a political statement- which means he lied."

This was with reference to deliberations made by PM's counsel in the Panama Leaks case; *Salman Butt's statement in the apex court that the speeches that the premier had made on the floor of the parliament were not meant to be taken as his legal position.*

PM's counsel had deposed before the SC bench that **"....those were not legal testimonials rather, mere political statements."** Earlier, the premier's speeches were about one of the three questions that the bench had asked; the other two being how the prime minister's children formed the companies and who in the family was dependent on whom.

"Nawaz Sharif has to answer as to why he lied," the SC's key question was not being answered adequately.

During second week of December 2016, PM Nawaz Sharif landed in despair when the SC bench on Panama Leaks announced that they would not avail their winter vacations to continue examining the submitted record from both sides. On the other side the changeover in the army leadership and major overhauling in the top brass had brought some respite to the embattled PML[N] government but the flavour remained the same.

In a remarkable turn of events, the SC bench adjourned the Panama proceedings during mid December [2016] **to resume again in the new year with new bench** as the head of the bench CJP Jamali was retiring on 30th instant. With no serious challenge from a restless but brittle opposition, the prime minister appeared composed but the estimation was quite premature given the volatility of Pakistani politics.

With a new chief justice at the helm, a new bench was likely to hear the case afresh and decide whether or not to form a commission of inquiry. The case could drag on, making the prime minister happier though the

suggestion about a commission had already become controversial. Whether the new chief justice would heed Imran Khan's request to retain the old bench – no one was sure; eyes were focused on Justice Saqib Nisar, the new incumbent.

PM Nawaz Sharif was lucky enough to avail the second time within three years to appoint an officer of his own choice to lead Pak-Army; hoping to tilt the balance of power towards his civilian government but with both officers he could not go easy. The previous army chief Gen Raheel Sharif proved himself more professional, high profile than the Sharifs, more loyal to the country and more patriotic believing in 'Pakistan First'.

With the new chief Gen Bajwa even, the civil - military tensions continued to prevail because of Nawaz Sharif's own ineptitude, fragile governance and directionless policies on key national security issues. However, the PM felt much more confident about taming the military by appointing a low-profile General albeit he stood for the continuity in the policies of his predecessor, Gen Raheel Sharif though many close to the later were sidelined.

No doubt every army chief likes to choose his team, but normally there prevails a kind of continuity in army's internal working policies. However, the appointment as ISI chief of Lt Gen Naveed Mukhtar, who had very close family links with Sharifs, had particularly raised eyebrows of intelligentsia – but he was a professional soldier; so no one worried.

In the words of Zahid Hussain, a celebrity journalist of Pakistan:

"Whatever consideration there may be in those new appointments the main loyalties [of the officers] will still remain with the institution. Who knows this better than Nawaz Sharif himself?"

.....the transition in the leadership provides an opportunity to the prime minister to mend his fences with the army. But he must not repeat the mistakes of the past."

On 31st December 2016; the new appointed Chief Justice of Pakistan, Mian Saqib Nisar, constituted a five-judge larger bench to hear the Panama Leaks Case. The bench had to hear the case on 4th January 2017. Headed by Justice Asif Saeed Khosa the bench comprised of J Ejaz Afzal Khan, J Gulzar Ahmad, J Azmat Saeed Sheikh and J Ijazul Ahsan.

Earlier, Chief Justice Anwar Zaheer Jamali, was heading the bench and conducted 10 hearings of the case, adjourned the case till the first week of January before proceeding to his retirement.

***NEW SC BENCH IN PLACE:
J KHOSA – QUICK & STRAIGHT:***

On 4th January 2017; a new bench of the Supreme Court resumed hearing of the litigious Panama Leaks case. Headed by Justice Asif Saeed Khosa, the five-judge SC bench asked Makhdoom Ali Khan, the newly engaged counsel for PM Nawaz Sharif, to apprise the court of the dates when he became the prime minister twice, Punjab's chief minister as well as the provincial finance minister and when he was out of the country during Gen Musharraf regime.

The apex court asked for the dates against the backdrop of his interview to a private TV channel in which he stated that he had parted ways with the family business in 1997. The question became more relevant in view of the allegations of a conflict of interest, especially when there was no money trail in the shape of banking transactions to establish how sale proceeds of the Gulf Steel Mills in the UAE got invested in Jeddah or Qatar.

Justice Khosa was seen more concerned, wondering whether the then prime minister was using his official position for transfer of the money. Explaining further, the judge observed that it was in 2000 that the PM's family went to Saudi Arabia and it seemed that sum of 12 million dirham — proceeds from the sale of Gulf Steel — remained parked somewhere and was even available for investment in Jeddah after a gap of almost twenty years.

SC's new bench also made it clear that ***it would not grant any adjournment on any pretext*** and continue hearing day to day till the conclusion of the case; while asking PTI's counsel that: *"Does it mean justice according to the perception of his client or what the court decides in accordance with the law - **someone cannot be disqualified on the basis of people's expectations**"*.

J Ejaz Afzal told the PTI's Counsel to establish that the proceeds from the Gulf Steel sale remained parked in the accounts of the prime minister for some time. Another bench member Justice Sheikh Azmat Saeed asked:

*"...to determine what constitutes disqualification of the respondent [PM] for not being **Sadiq [truthful] and Ameen [honest]** under Article 62 of the Constitution.*

*But don't make us interpret the meaning of **Sadiq & Ameen** in such a way that contesting elections by politicians become almost impossible in future."*

PTI's Counsel Naeem Bokhari stated before the SC's apex bench that the prime minister mis-stated in his address [dated 5th April 2016] to the nation and statement [dated 16th May 2016] before the parliament when he claimed that the sale proceeds of the Gulf Steel were worth 33.37m dirham. He described it a false assertion, not corroborated with subsequent supplementary statements made by his three children — Maryam, Hussain and Hassan Nawaz.

Justice Ejaz Afzal wondered whether this admission amounted to any guilt and led to any illegality. The judge also inquired that:

"If there is / was any UAE law allowing an individual to possess and carry a huge amount of money outside Dubai bypassing banking transactions - Does this amount to commission of a crime."

Justice Khosa asked Mr Bokhari that:

"If his entire case hinged around establishing that the ruling family owned the four London flats prior to 2006.

*Is there any will, court decree or a family settlement to establish that the London properties as claimed by Hussain Nawaz would be automatically inherited by him in 2006 after the death of his grandfather [**Mian Sharif**] in 2004?"*

Justice Khosa, while raising questions over the money trail given by the Sharif family, observed that the prime minister in his speeches had not mentioned his family's investments in Qatar. Conversely, Sharif's children claimed that the family had made investments in real estate in Qatar. **The judge also wondered why these properties had not been transferred to other heirs of the late Mian Sharif.**

The fact remained that "...there is the issue of conflict of interests in this case as well," specifically referring to PM's TV interviews in which he explicitly said that he had pulled out of the family business in 1997. Even otherwise, under Section 122 of the *Qanoon-i- Shahadat Act 1984*, the onus of proof was on the respondents and they had to explain how they had got money and how they acquired the properties abroad.

AML chief Sheikh Rashid requested the bench to allow live telecast of the case proceedings to which the top court didn't agree.

Mr Bokhari also sought a direction against the NAB chairman requiring him to move a belated appeal before the Supreme Court against the judgment of the Lahore High Court dated 11th March 2014, which had rejected NAB's plea of opening corruption references against Sharifs in the Hudaibiya Mills case.

The NAB Chairman could be served with a show-cause notice under Article 209 of the Constitution for reference in the Supreme Judicial Council [SJC] because he had committed misconduct and dereliction of duties for failing to move the appeal in time. However, the apex court clarified it could only make a reference to the SJC nothing beyond.

Mr Bokhari pleaded the apex court to summon Punjab Chief Minister Shahbaz Sharif to explain how ***London's Queen Bench Division Order in the Al Towfeek Company case was satisfied which had ordered the defendants — Hudaibiya Paper Mills Ltd, Shahbaz Sharif, [late] Mohammad Sharif and [late] Abbas Sharif to pay £34 million to settle the London Flats' collateral.***

Shahbaz Sharif should tell the court how the huge amount of £34 million was paid to satisfy the judgement without seeking prior permission of the State Bank of Pakistan. ***If NOT from Pakistan***, then how the required money was borrowed from any lending company outside the country to pay back liabilities. PTI's Counsel Naeem Bokhari also urged that:

"The gifts of Rs:740m to the prime minister from his sons were income from other sources and, therefore, liable to be taxed. The FBR should be ordered to recover the tax and if the court reached to the conclusion that the tax was due, then the PM had incurred disqualification under Article 63 of the Constitution.

The apex court should hold that the documents released by the International Consortium of Investigative Journalists [ICIJ] after years of forensic investigations were authentic, especially when the PM's children were given the opportunity to rebut the allegations but they kept quiet.

Likewise, the letter of a Qatari prince, Hamad Bin Jassim Bin Jaber Al Thani, claiming that the Sharif family made investments in Al-Thani family business through the Dubai sale proceeds was an af-

terthought and complete concoction that had completely destroyed the credibility of the prime minister.

All the above malpractices lead to PM's disqualification and appropriate penal actions."

J AZMAT SAEED SEEN ON PM SIDE:

On 5th January 2017; SC bench told PTI's Counsel Naeem Bokhari that *"If you start hanging people on the basis of news clippings then your client [Imran Khan] will not survive either."* A five-member bench of the apex court, during proceeding, advised PTI to submit documents or link connection with the case instead of talking about news clippings.

On that day, PM Sharif's legal team submitted written reply to the apex court's questions which were asked in the hearing of day before. The information about PM's public offices and businesses was also placed before the apex court. Justice Khosa pointed out that PM never stated that London flats were owned by his sons.

PM's reply stated that he [the prime minister] was provincial finance minister from 1981 to 1985, after which he occupied the office of chief minister Punjab till 1988. During the period of April - May 1988, he was acting chief minister. Till 1990 he was CM Punjab again. He went on to become prime minister till 1993 for the first time, and then from 1997 till 1999 he was prime minister for the second time. From 1993 till 1996 he was the opposition leader; was exiled in 2000 which ended in 2007.

On 6th January 2017; the SC's bench hearing the Panama Leaks case expressed conflicting opinions over which side could shoulder the burden of proof. While Justice Asif Saeed Khosa wanted the onus to prove innocence to rest on Prime Minister Nawaz Sharif's family, two other members of the bench differed.

During the hearing of petitions seeking disqualification of the PM, Justice Khosa effectively narrated his opinion when he referred to the 2006 trust deed, declaring Maryam the trustee of her brother Hussain Nawaz, and observed that ***the onus to prove innocence had shifted to the respondents, i.e. the prime minister's family.*** The above observation appeared *when PTI's counsel Naeem Bokhari cited that:*

*"....that there exists a number of communications, such as the 12th June 2012 letter from the British Virgin Islands' Financial Investigation Agency [FIA] to **Mossack Fonseca** [MF] Money Laundering Reporting Officer J Nizbeth Maduro, raising queries about Nescoll Limited and Nielson Enterprises Limited — the companies that owned the four London flats.*

*....and that of **Mossack Fonseca** [MF]'s June 2012 response, acknowledging that Nielson and Nescoll were owned by the same beneficial owner - Maryam, and that family's business spread over 60 years was the source of her wealth.*

*The MF also provided acknowledgement of the **Samba Financial Group Jeddah**, certifying that Maryam was one of their valued customers since 2002, while highlighting that Maryam did not have the resources to buy the London flats."*

Maryam Safdar had allegedly acted as a tool to launder money for her father Nawaz Sharif, of whom she was a dependant, and received gifts from father and brother. Justice Khosa observed while wondering

'.....whether the apex court should utilise the services of forensic investigators to match Maryam's signatures in the trust deed and other documents'.

So many questions needed to be answered since a strong connection between Maryam, Samba Group and Minerva Financial Services Ltd had emerged. However, J Sheikh Azmat Saeed dissented, observing that the real issues needing attention were the questions:

'....whether the trust deed was an admitted, valid and effective document; whether the two children were obliged to disclose the deed under UK laws; and under what capacity Maryam was declared the trustee or the owner of the companies in question.'

The apex court asked Mr Bokhari to apprise the bench *'what are the principles of **benami***'; further that whether he wanted the court to lay down a judgement that all gifts such the ones received by Maryam from her father and brother at different points of time were **benami**.

At that juncture, Justice Khosa referred to **Article 122 of the Qanoon-e-Shahadat 1984**, which suggests that the burden of proving a fact rested

upon the person who had the knowledge of that fact, adding that it was always difficult to acquire documents regarding offshore investments.

Justice Khosa also cited Article 161 of the same law to emphasise that the law vested powers on any judge to pose questions or order the production of any documents to discuss proper proof. Thus it was for the defendants to produce documents to show how they acquired these offshore companies, as well as the money trail to buy the four London flats.

"Are we recording evidence?" was the observation from Justice Saeed.

"Why not then frame charges?" Justice Khosa said promptly.

"If we start recording evidence, then you will boycott [these proceedings]," J Azmat Saeed pointed towards Naeem Bokhari.

"Is it too much to ask for documents?" was Justice Khosa's retort. He also regretted that the defendants had not filed the required documents, adding that in order to refute the evidence filed by the petitioner; they would have to bring documents to support their claims.

Justice Azmat Saeed added that the matter would end if the defendants bring the relevant documents, explaining how Maryam became the beneficial owner of the London flats.

At this point, another member of the bench, Justice Ejaz Afzal, referred to Article 13 of the Constitution, *which provides protection to the accused from bringing any witness or evidence against himself*, adding that the Supreme Court was neither a trial court, nor was it seized with a civil case or inquiry at the moment. Then the judge advised Mr Bokhari that:

"You [the petitioner] have to satisfy us about the authenticity of the documents you have presented before the court; at this stage, it is too early to consider these documents."

J Azmat Saeed also reminded Mr Bokhari:

"....not to enter this territory since the communications he was referring to were not sent or received by you and the documents were mere photocopies. You rely on the Qanoon-e-Shahadat and throw away the rest of the law and the Constitution."

Justice Khosa then intervened, citing the relevant Supreme Court rules he emphasised that:

"We are trying to find out the truth; the [apex] court enjoys ample authority to order the production of any evidence necessary."

Justice Ejaz Afzal Khan observed here that:

"Perhaps the stage when the party is required to produce the evidence has not come; they would have recourse under Article 161 of the Qanoon-e-Shahadat.....Place all your cards on the table, so that we can look at them."

Justice Ijazul Ahsan also observed that:

"...the petitioner had not provided any document to prove ownership of the flats prior to 2006."

Mr Bokhari kept repeating that it was for the defendants to provide the same. PTI's counsel also submitted the transcript of an interview of one Haroon Pasha – the Sharif's financial adviser – where he had claimed that all the records and documents about financial transactions had been provided to their lawyer.

On 9th January 2017; Supreme Court judge, Justice Asif Saeed Khosa, identified ***honesty*** as the real issue in the Panama Leaks case, more so than the Sharifs' purchase of four London flats or the time of their purchase. He regretted while saying that:

"The real issue is that all statements made by Prime Minister Nawaz Sharif – in his address to the nation as well as the parliament – contradict each other."

The court wonders why the person making [such] statements was [considered] honest by the people, the National Assembly and even the apex court."

Justice Sheikh Azmat Saeed, pointing towards PTI's Advocate Naeem Bokhari, emphasised the need for caution in deciding a disqualification case under Articles 62 and 63 of the Constitution on the basis of a statement made by the holder of a public office, which later turned out to be false. The judge observed that:

"If we start disqualifying people under this pretext, no one will be spared, not even your clients."

Justice Khosa was courageous enough to explain why the bench was giving so much time to the Panama Leaks case:

"...the court understands the consequence of its decision — a decision that should be reached while striking a balance between satisfying the requirements of law on one hand and interpreting law in such a way that everybody should not be disqualified."

This case is the first of its kind that has come up; that's why the court did not want to rush into a decision.

We know the gravity of a declaration by the court and its affect for both the parties, saying that someone was not honest. But we have to lay down parameters, otherwise, except for the Jamaat-e-Islami chief Sirajul Haq, no one will survive."

However, next day Justice Khosa said ***'I think I should not have given the observation on Article 62, 63; I regret that.'***

Justice Ijazul Ahsan added that:

"The ultimate objective of this court is to get to the whole truth; it was understandable that the counsel cannot answer every question because the gaps have to be filled by the respondents [the prime minister and his family]."

On the same day [9th January 2017] Justice Sheikh Azmat Saeed told PTI's lead counsel Naeem Bukhari that **he had not answered any of the legal questions posed by the court.** The judge remarked that he was asked 16 legal questions and he answered none of them. He was needed to satisfy the court instead of media.

Naeem Bukhari told the court that the London flats were bought in Maryam Nawaz's name between 1993 to 1996. At the time of the transaction, she was underage and had no source of income.

Justice Khosa pointed out that the burden of proof was on the PTI since they had the evidence. It was the party's responsibility to show how the companies were purchased and where the money came from.

The judge also advised that a document in this regard should be submitted to the apex court; if the property belonged to the Qatari family then there was no question of money transfer.

Justice Azmat observed that the Sharif family had declared offshore companies in 2006.

Justice Gulzar said there was no objection if transactions were done through banks.

Mr Bokhari, however, argued that people's money have been laundered and [mis]appropriated to purchase the London flats, adding that the prime minister was answerable for the false statements he had made before the National Assembly and the nation.

The PTI counsel described the Qatari letter of 5th November 2016 as an attempt on the part of the PM to pad up his defence. In his address to the nation on 5th April 2016, he identified the sale of the Jeddah Factory as the source of finances for his son's business.

However, PM Nawaz Sharif never stated that the money was invested in Qatar. In his speech before the parliament, he asserted that the record regarding the sale of Jeddah Factory was available, but nothing had been placed yet on the apex court's record.

J EJAZ AFZAL SEEN SLANTED:

On that day, the SC bench also discussed the statement of Fed Finance Minister Ishaq Dar, recorded before a magistrate as an approver in the **Rs:3.4 billion Hudaibiya Paper Mills default reference** with NAB. The statement made under Section 164 of the Criminal Procedure Code [CrPC] was recorded on 25th April 2000 but the NAB never considered it important.

Later, the Sharif family had challenged the said reference before the Lahore High Court [LHC], where another stooge Justice Sardar Shamim quashed the reference on 11th March 2014, and remarked that if re-investigation was allowed against the Sharifs, it would provide a chance to investigators to pad up loopholes in their case. Justice Ejaz Afzal Khan observed:

"The NAB Chairman had shown connivance by not moving an appeal before the Supreme Court against the high court's decision. But by ordering the NAB chairman to file a be-

lated appeal, the court cannot arrogate itself to sit in appeal against the high court judgement."

However, Justice Khosa, the head of SC bench, remarked that:

"The SC had held that the finality of the Tauqir Sadiq Ogra corruption case by the Islamabad High Court was not an obstacle for the Supreme Court to take up the matter again under Article 184(3) of the Constitution.

....a statement under Section 164 had to be recorded before a magistrate and can be used as evidence by any forum."

Justice Ejaz Afzal Khan quoted a Federal Shariat Court judgement, in which it was held that confessions in Hadd cases should be recorded before the competent court and not before a magistrate. **Here the legal fraternity smelt that the said judge was inclined to help Sharifs by all means.** Otherwise J Ejaz Afzal knew that due to such gimmicks and loopholes, **there has NOT been a single punishment for male accused in RAPE cases since April 1979 – yes 14 women have been 'sang-sarred' – Paki judiciary...hurrey.**

Mr Bokhari argued that he was seeking court directions that the NAB chairman, by not filing the appeal against the high court judgement, had committed dereliction of duty. Therefore, a reference should be moved against him before the Supreme Judicial Council [SJC]. Justice Khosa reminded the counsel that:

"Though the reference was quashed, the allegations still survived. Therefore, the value and worth of the statement of Ishaq Dar under Section 164 CrPC still holds the field; the quashing of the reference does not mean that the accused were acquitted."

Justice Khan immediately quipped: ***"Provided we ignore the judgement of the referee judge"***.

Justice Khosa, observed once more that:

"I can anticipate that if we call the NAB chairman and inform him that the court was sending a reference [against him] before the SJC, he may himself volunteer to hold a re-investigation in the said case."

Justice Khan also applauded the point that how the prime minister Nawaz Sharif could recall the whole money trail when the entire family business was run by Mian M Sharif, PM's father.

Justice Khosa very intelligently referred to three different stories relating to the Sharifs' investment in Dubai, Jeddah & Qatar which then ended up in London and said that if all the money in the three investments belonged to Mian Sharif, the money that travelled to London [*under the law of inheritance*] would ultimately go to the PM Nawaz Sharif.

On 10th January 2017; Justice Ejaz Afzal Khan of the SC's bench hearing Panama Leaks case observed that a dangerous precedent would be set if the Supreme Court disqualified PM Nawaz Sharif ***merely on the basis of his speeches related to the Panama Leaks.***

The member of the SC bench had categorically conveyed his opinion in the court while saying that:

"The Prime Minister Nawaz Sharif would not be disqualified on mere assumptions and without looking into the facts."

That day, the top court questioned the linkage of statement, given by PM Sharif in the National Assembly on 16th May 2016; the NA itself and all print & electronic media had its record but **certain SC judges could not find convincing document to support his speech.** Naeem Bokhari contended that the contradictory statements made by the prime minister on the floor of the house on 16th May 2016 and in his address to the nation on 5th April 2016 established his disqualification.

But Justice Ejaz Afzal Khan didn't buy Bokhari's point; he [the judge] remarked **that Nawaz Sharif's speech in parliament was independent and not part of any criminal transaction**, so it had nothing to do with the Panama Papers. He then remarked:

"We being human beings make statements. The question arises whether statements may become the basis to disqualify someone. If yes, then it would set a dangerous precedent."

Justice Asif Saeed Khosa, however, observed that:

'...the onus would be on the respondents to prove how a huge amount of money was kept alive for more than a quarter of century'.

Justice Ejaz Afzal asked PTI's counsel Naeem Bokhari how he could drag Mian Sharif's sons for shifting the business and money from one place to another when the whole business in Jeddah, Dubai and later on in London was controlled by him [PM's father]. Replying, Bokhari said: **"This is just a simple question of facts."**

*[More astonishingly; there was nothing on record that **the whole business empire in Pakistan, in three Arab States and in London was all controlled by a sixty years old man Mian Sharif** single handedly. The Sharifs' counsels had not placed even a single document supporting this version.*

It was only another false verbal statement by Sharifs which was being believed and followed by two judges – just to push the whole case into the dust-bin.]

The bench also questioned the source of money invested by Hassan Nawaz, son of Prime Minister Nawaz Sharif, in London business soon after completion of his education in 1999. Naeem Bokhari told the court:

"Hassan Nawaz had established a company in UK during the year 2000. He earlier said in an interview that he was a student with no source of income; and that the rent of the London flats was also being paid from Pakistan.

In his speech made in parliament, PM Nawaz Sharif had said his late father had established a factory in Jeddah whose sale proceeds provided funds to Hussain Nawaz and Hassan Nawaz to purchase the flats in London."

Naeem Bokhari presented a 249-page FIA's Investigation Report about money laundering of the Sharif family during 1993-96 but **Justice Sh Azmat Saeed turned it down and discarded simply because it was compiled by Rehman Malik.**

No comments were offered on the contents or material of that FIA's report. Later Justice Khosa observed that much research was put into the report but it ended nowhere. The two judges could have seen the material first instead of throwing the file away because it was against Sharifs.

NAWAZ SHARIF LIED OR OMITTED:

On 11th January 2017; Prime Minister Nawaz Sharif's counsel Makhdoom Ali Khan said that the Supreme Court must decide '**whether Nawaz Sharif lied or committed an inadvertent omission**'. Mr Khan urged before a five-judge SC bench that:

"The prime minister was not making a sworn, itemised submission in a court of law. The PM did not intentionally suppress any facts in his speech before the National Assembly on the Panama Papers issue; rather he gave a broad overview about his family's businesses set up by his father."

Justice Asif Khosa prompted immediately that:

*"You're putting in words different from what Salman Aslam Butt, who earlier represented the prime minister, had stated — that **the PM made a political statement on the floor of the house.**"*

In turn, Mr Khan asked how many discrepancies and contradictions there were in the itemised petition moved by the PTI, which had been filed after days of consultation and deliberations by senior lawyers. Justice Khosa again retorted that:

"We hope you will not seek the disqualification of their lawyers. Should the statement of the prime minister be construed as a half-truth or a lie?"

J Ejaz Afzal Khan highlighted the difference between intentional suppression of the truth and an inadvertent omission. Justice Ijazul Ahsan recalled that the **prime minister's address of 16th May 2016 to parliament was not an extempore address, but a written speech**; the prime minister knew whatever he might say would be subject to scrutiny.

Instead, Mr Khan emphasised that the prime minister never owned any offshore company in the British Virgin Islands [BVI]s or any other tax havens, nor had he been a shareholder, director, guarantor of any loans or the beneficial owner of any overseas investment. Therefore, the PM could not be asked to justify or answer for the business of his sons, adding that it was up to his children to furnish any material record.

Mr Khan continued to argue that his client never said that the proceeds from sale of the Jeddah Steel Mills helped start the business of his sons. When he referred to the premier's statement that he had nothing to hide because ***PM's life was like an open book***, Justice Khosa observed that ***many pages from that book seemed to be missing.***

Highlighting different contradictions in the PTI petition, the PM's counsel pleaded that the court should not overstretch the limits of its jurisdiction under Article 184(3) of the Constitution. The burden to prove all allegations rested with the petitioners and not the PM, who had nothing to do with the money which didn't belong to him.

Mr Khan also argued that if the PM got nothing out of the sale, then he was not required to disclose anything, nor was he obliged to pay taxes. The entire business was run by his father [Mian Sharif], who was in charge of everything until his death in 2004, after which the business was handled in accordance with instructions / will of the deceased.

Mr Khan told the court that the same instructions had been elaborated in the Qatari letter dated 5th November 2016. He emphasised that it was for the court to determine whether the premier had lied or made inadvertent omissions in his speech.

When the apex court asked why the prime minister had not placed anything on the record to show how the money went to Jeddah from Dubai and finally landed in London; the counsel maintained the PM never had the use of this money; his children would explain better.

During the painful proceedings of that day, Justice Sheikh Azmat Saeed observed that all efforts were being done to block the truth — sometimes by the petitioners and sometimes by the respondents — at a time when the nation wanted the true picture. The matter was intentionally being dragged to confusion thus delay.

On 12th January 2017; when the SC's larger bench led by Justice Asif Saeed Khosa resumed hearing, Justice Ijazul Ahsan remarked that the records which the Prime Minister mentioned had not been produced while adding that: ***"We can not decide what is true or false without looking at the records."***

During his arguments, the Prime Minister's lawyer Makhdoom Ali Khan again reiterated that Nawaz Sharif was not director or shareholder of an offshore company, nor was he its beneficial owner. In that day's pro-

ceedings, PTI's counsel Naeem Bokhari had already completed submissions of his evidence.

Meanwhile, Makhoom Ali Khan, the PM's counsel resumed his arguments before the SC bench but was immediately interrupted by the judges for want of money trail for the London flats and asked to prove there were no inconsistencies in the PM's speech in the National Assembly [of 16th May 2016] and the record being submitted.

Mr Khan, the PM's counsel vehemently denied that his client had anything to do with the London flats. He argued that the family business was transferred to Nawaz Sharif's son, Hussain Nawaz after the death of Mian Sharif, the PM's father. However, Justice Khosa inquired that:

"...if there was no connection, then how did the money trail lead to the London flats. There are two different money trails before us. How did the money go from Jeddah and then to London? And how did the money go from Dubai to London and then Qatar?"

The PM's counsel once more denied that Nawaz Sharif had been a director of the Sharif family's factory in Dubai. Justice Khosa remarked that:

"How can we believe that he was never the director? No documents have been submitted before us to prove he was never been the director."

Khan told the bench that ***the Dubai factory was established after taking a loan***, upon which he was reprimanded by a judge for presenting [apparently] wrong documents in the court. Both the bench and counsel of PM Nawaz Sharif didn't see eye to eye when the latter argued that Dubai Steel Mills were founded on a bank loan. The counsel in turn asked the court to form a commission *'to go to Dubai and review allegations made against the prime minister.'*

Justice Ijazul Ahsan observed that the prime minister had himself announced in the National Assembly that the Dubai mills belonged to Sharifs and that all the records were available. ***"Now the burden of proof is on you,"*** J Ijaz told the PM's counsel in plain words.

Mr Khan was of the opinion that presenting documents and proof was the petitioner's job but Justice Khosa reiterated that:

"....the prime minister's lawyer will have to satisfy the court regarding the ownership of the Dubai factory."

Justice Sheikh Azmat Saeed was a little harsh while telling Makhdoom Khan that the Panama Leaks case was based on contradictions in statements made by the prime minister on the floor of the National Assembly after the Panama data appeared on the horizon in April 2016.

Justice Ejaz Afzal, while referring to the plaintiff's allegations that Nawaz Sharif provided incorrect statements, warned Mr Khan that:

"If you disagree, then you will have to prove it. If there is a small mistake in the speech, it can be overlooked. But if mistakes were made on purpose, there will be serious consequences."

PM's counsel Mr Khan argued before the larger bench that article 19 of the constitution ensured freedom of speech to every individual. He reiterated that the premier's speech had no conflict. Justice Khosa added that:

"We do not believe that the speech was wrong but if something was hidden on purpose, we will consider that to be a half truth."

*He [the PM] was not demanding for right in terms of freedom of speech, instead he was asking for immunity for the premier. The apex court remarked that speech made on the floor of the house was used as **evidence against legislators in New Zealand.**"*

Mr Khan, the PM's counsel told the judges that Prime Minister Nawaz Sharif, in his speech, was providing an overview of his family's business. He was not taking an oath or answering a specific question; his speech was not a statement in a court.

Mr Khan at last conveyed the key point while saying that:

"There are two ways to remove the prime minister: the first is through the submission of a no-confidence motion. The second requires that Members of the National Assembly prove that the PM is dishonest."

The Supreme Court, however, cannot disqualify him based on the statements and claims of others."

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Justice Ejaz inquired that whether the prime minister told the truth or did Hussain Nawaz tell the truth - if one of them had told the truth, then the other lied definitely. Justice Gulzar also observed that the record the prime minister referred to in his address had not come forth in the court.

In Justice Khosa's words - some pages of PM's '*open book*' were definitely missing from that book.

On that day, Mr Khan finished his arguments once again telling the apex court that the matter of the money trail had nothing to do with Nawaz Sharif's person. The business [still] belonged to the premier's children; the record would be presented by their lawyers.