Ex P.B

ZAFAR IQBAL
Addl. Sessions Judge-West
Islamabad

(6 Pages)

Entrusted

Islamabad for disposal, to appear on 08 NOV 2022
Before him/Her

IN THE COURT OF SESSIONS JUDGE ISLAMABAD (WEST)

District Judge-West
Islamabad
08 NOV 2022

District Election Commissioner, Islamabad, Office at Jinnah Super Market, F-7 Markaz, Islamabad who is duly authorized by the Election Commission of Pakistan, Constitution Avenue, Sector G-5/2, Islamabad.

.....Complainant

Versus

Imran Khan Niazi S/O Ikramullah Khan R/O House # Bani Gala, Mohra Noor, Islamabad

.....Respondent

COMPLAINT UNDER SECTION 190 OF THE ELECTION ACT, 2017 IN RESPECT OF OFFENCES COMMITTED UNDER SECTIONS 167 & 173 OF THE ELECTIONS ACT, 2017 ALONG WITH ALL OTHER ENABLING PROVISIONS OF LAW

Respectfully Sheweth:

1. That the Complainant is currently posted as Deputy Election Commissioner Islamabad and the Election Commission of Pakistan (" Hereinafter referred as "**Commission**") in exercise of powers under Section 6 of the Elections Act, 2017 ("**Act**"), has duly authorized him to file the subject complaint against the Respondent.
   (Copy of Authorization Letter is annexed herewith as **Annexure-A**)

2. That the Commission is an independent Constitutional body constituted under Article 218(2) of the Constitution of Islamic Republic of Pakistan (hereinafter referred as the "**Constitution**") and is charged with the duty to organize and conduct election and to make such arrangements as are necessary to ensure that election is conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against under clause (3) of Article 218.

3. That every member of National Assembly shall, under Section 137 of the Election Act, 2017, submit to the Commission on or before the 31st December of each year, a copy of his/her statement of assets and liabilities including the assets and liabilities of his/her spouse and dependent children as on the preceding 30th day of June, on Form B.

4. That the Respondent had furnished the required statements of assets and liabilities for the years 2018, 2019, 2020 & 2021 within the stipulated period and the same had also been published in the official gazette in accordance with the provision of Section 138 of the Election Act, 2017.
   (Copies of Statements of Assets & Liabilities for the years 2018, 2019, 2020 & 2021 are attached herewith as Annex _____)

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6. Keeping in view the fore-cited position Barrister Gohar Khan is directed either to ensure his presence or ensure the attendance of lead counsel Mr. Khawaja Haris Ahmed Sr. ASC for arguments on the question of maintainability and the main case at 08:30 a.m. sharp otherwise the court shall announce order and judgment. The said counsel is further directed to make sure the attendance of the accused on 05.08.2023 at 08:30 a.m. Let this file be put up on 05.08.2023 at 08:30 a.m.

Announced
04-08-2023

(HUMAYUN DILAWAR)
Additional Sessions Judge,
Islamabad-West.

08:35 a.m.
05-08-2023

Present: M/s. Saad Hasan, Advocate Muhammad Nawaz Chaudhry, Advocate learned counsel(s) representing complainant.
Accused Imran Ahmed Khan on bail absent.

ORDER

Orders of Hon'ble Islamabad High Court, Islamabad passed in Cr. Revisions Nos. 74/2023, 76/2023, 108/2023, 114/2023 and Crl. Misc. No. 662/2023 received. Vide order passed in Criminal Revision No. 108 of 2023, the Hon'ble Islamabad High Court, Islamabad has been pleased to pass following order:-

"17. For the above reasons, Criminal Revision No. 108/2023 and Criminal Revision No. 74/2023 are allowed and the matter is remanded to the Trial Court for decision afresh. This court was informed that the matter is pending for final arguments tomorrow i.e. 04.08.2023, the petitioner shall ensure addressing of arguments positively on the issue when matter is fixed by Court for final arguments. The Trial Court shall address the issues raised in the referred petitions while deciding the matter. Criminal Revision No. 114/2023 and Criminal Miscellaneous (Transfer Applications) No. 662/2023 are dismissed. Criminal Revision No. 76/2023 is disposed of as not warranting any interference for the reasons mentioned above. All the pending applications are also disposed of accordingly."

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2. Call was made on 08:35 a.m. nevertheless nemo turned up on behalf of accused. For the best interest of justice and fair play, let this file be put up again at 09:00 a.m.

Announced
05-08-2023

(HUMAYUN DILAWAR)
Additional Sessions Judge,
Islamabad-West.

09:25 a.m.
05-08-2023

Present: M/s. Muhammad Amjad Parvez ASC, Saad Hasan, Muhammad Nawaz Chaudhry, Advocates learned counsel(s) representing complainant.
M/s. Khurram Shahzad ADG (Law) and Falak Sher Legal Consultant on behalf of ECP.
Accused Imran Ahmed Khan on bail absent.

ORDER

At 09:25 a.m. repeated calls were made, however, no one turned up on behalf of accused. Let this file be put up again at 10:30 a.m.

Announced
05-08-2023

(HUMAYUN DILAWAR)
Additional Sessions Judge,
Islamabad-West.

10:30 a.m.
05-08-2023

Present: M/s. Muhammad Amjad Parvez ASC, Saad Hasan, Muhammad Nawaz Chaudhry, Advocates learned counsel(s) representing complainant.
M/s. Khurram Shahzad ADG (Law) and Falak Sher Legal Consultant on behalf of ECP.
Accused Imran Ahmed Khan on bail absent.

ORDER

Mr. Khalid Yousaf Chaudhry, Advocate associate of Barrister Gohar Khan, Advocate appeared and apprised the court that Senior Counsel Khawaja Haris Ahmed Advocate is busy in Accountability Court, Islamabad in bail petitions titled "Imran Khan Vs. The State" and "Bushra Bibi Vs. The State". He requested to postpone the matter until the lead counsel appeared before the court.

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2. The referred statement made at the Bar by the associate is uncertain as he cannot apprise the court with certainty as to whether the learned lead counsel would be able to appear any time to be fixed by the court.

3. With all fairness and to decide the matter on merit in light of the direction of Hon'ble Islamabad High Court, Islamabad and to afford opportunity of hearing for ensuring fair trial, the matter is postponed to 12:00 p.m. with direction to the said associate to make sure the attendance of the lead counsel otherwise the court will announce the judgment.

Announced
05-08-2023

(HUMAYUN DILAWAR)
Additional Sessions Judge,
Islamabad-West.

12:00 p.m.
05-08-2023

Present: M/s. Muhammad Amjad Parvez ASC, Saad Hasan, Muhammad Nawaz Chaudhry, Advocates learned counsel(s) representing complainant.
M/s. Khurram Shahzad ADG (Law) and Falak Sher Legal Consultant on behalf of ECP.
Accused Imran Ahmed Khan on bail absent.

ORDER

Call was made at 12:00 p.m. however, none appeared on behalf of accused. Mr. Muhammad Amjad Parvez, ASC apprised the court that one of his associate visited the Accountability Court, Islamabad and inquired about the status of bail petitions, however, he was informed by the court staff that no one appeared from accused side in Accountability Court, Islamabad.

2. Despite keeping the matter till 12:00 p.m., nemo appeared on behalf of accused for arguments. In view thereof, judgment is hereby reserved, which will be announced at 12:30 p.m.

Announced
05-08-2023

(HUMAYUN DILAWAR)
Additional Sessions Judge,
Islamabad-West.

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12:30 p.m.
05-08-2023

Present: M/s. Muhammad Amjad Parvez ASC, Saad Hasan, Muhammad Nawaz Chaudhry, Naeem Ahmed Advocates learned counsel(s) representing complainant.
M/s. Khurram Shahzad ADG (Law), Zaigham Anees (Law Officer) and Falak Sher Legal Consultant on behalf of ECP.
Accused Imran Ahmed Khan on bail absent.

ORDER

Since no body argued application filed by accused questioning maintainability of complaint, hence on this score and on the basis of earlier findings in order dated 05.05.2023 and 08.07.2023 the said application is dismissed.

2. Vide my detailed judgment of today, consists upon thirty (30) pages, this court finds it more than convincing that the complainant has produced confidence inspiring, well knitted and corroborated evidence, and so the charge against the accused has successfully been proven that accused has committed offense of corrupt practices by making and publishing false statements/ declaration in respect of assets acquired by way of gifts from Toshakhana and disposed of during the years 2018-2019, 2019-2020 and making and publishing a false statement and submitting false and incorrect declaration in material particular relating to Form-B for the year 2020-2021. He has been found guilty of corrupt practices by hiding the benefits he accrued from national exchequer wilfully and intentionally. He cheated while providing information about gifts he obtained from Toshakhana which later proved to be false and inaccurate. His dishonesty has been established beyond doubt. Accordingly, the accused is convicted under section 174 of The Election Act 2017, and he is thus sentenced to three (03) years simple imprisonment with fine of Rs.100,000/-, and in case of default in its payment, he shall also suffer six (06) months simple imprisonment.

3. The accused is not present today, therefore, a copy of this order along with warrant of conviction be communicated to the I.G. Islamabad for execution of the said warrant. File be consigned to the record room after compilation & necessary completion whilst, requisitioned record(s) be returned forthwith.

Announced
05-08-2023

(HUMAYUN DILAWAR)
Additional Sessions Judge,
Islamabad-West.

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THE COURT OF MR. HUMAYUN DILAWAR, ADDITIONAL SESSIONS JUDGE WEST-ISLAMABAD.

Case No.01/2022
Date of institution: 08.11.2022
Date of decision: 05.08.2023

District Election Commissioner Islamabad, Office at Jinnah Super Market, F-7 Markaz, Islamabad who is duly authorized by the Election Commission of Pakistan, Constitution Avenue, Sector G-5/2, Islamabad.

--------Complainant

Versus

Imran Khan Niazi S/O Ikramullah Khan R/O House # Bani Gala, Mohra Noor, Islamabad.

---------Respondent

Complaint under section 190 of Election Act, 2017 in respect of offences under sections 167 & 173 Of the Election Act, 2017 along with all other enabling provisions of Law.

JUDGMENT:-.

Accused, Imran Ahmad Khan Niazi, faced trial in this criminal complainant filed by the Election commission of Pakistan through its authorized officer Mr. Waqas Ahmad Malik on charges of committing corrupt practices as defined under Section 167 and Section 173 of the Election Act punishable under Section 174 of the said Act

2. Precisely, the facts of the case are that complainant, the District Election Commissioner Islamabad, authorized by the Election commission of Pakistan filed complaint against the accused with allegations that he being member of the National Assembly was required to submit a copy of statement of assets and liabilities for the year 2018-2019 2019-2020 and 2020-2021 held and retained by him as

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well as statement of assets and liability of his spouses which he submitted and was published in the official gazette under section 138 of Election Act,2017,hereinafter shall be referred to as Act, nonetheless the accused deliberately concealed his assets relating to Toshakhana gifts acquired and retained by accused particularly in the years 2018-2019 and 2019-2020 as Prime minister of Pakistan. It is further alleged that the accused intentionally and deliberately made false statement and incorrect declaration before the Election commission of Pakistan in respect of statement of assets and liabilities filed by him for the years 2020-2021 in material particular as such committed an offense of corrupt practices defined under section 167 and section 173 of the Election Act punishable under section 174 of the said Act; hence booked in the case.

3. The cursory statement of the complainant Waqas Ahmad Malik and PW.2 Musadiq Malik were recorded on 22.11.2022 and 08.12.2022 respectively giving detail of the allegations against the accused and also produced documentary evidence prima facie attracting offense under section 167 and 173 of the Election Act, 2017 punishable under section 174 of ibid Act. After admitting the complaint on 15.12.2022 the accused was put on notice. He did not appear in person, rather appeared through his leading counsel(s) on different dates by moving application of exemptions and even the counsel of accused submitted surety bounds and received copies under Section 265-C

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Cr.P.C on his behalf. Since then the accused did not appear in person leading to issuance of his non-bailable warrant of arrest and the proceedings remained on slow pace. During the proceedings accused filled many applications questioning the maintainability of the complaint and challenging jurisdiction of this court which were dismissed by this court vide order dated 05.05.2023, after affording hearing to the learned counsel(s) of the accused and ultimately charge against accused was framed on 10.05.2023, and the accused was informed with certainty and accuracy the exact nature of the charge, brought against him, nonetheless he refused to reply to any questions and also refused to signed the same. This caused the court to invite the complaint to adduce its evidence. In the meanwhile, the proceedings were stayed by the Hon'ble Islamabad high court Islamabad in CR No. 75/2023. The said CR was, however, decided on 04.07.2023 and this court was directed to decide the application of the accused in which he had challenged the maintainability of the complaint within the period of seven days after hearing both the parties.

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4. With all fairness, many opportunities were afforded to the accused to argue the application with all eventualities and exigencies with the caution so that no prejudice is caused to the accused nevertheless, the learned counsel(s) representing the accused started delaying tactics by submitting application for adjournment and exemptions and ultimately court dismissed the said application on

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08.07.2023, on merits, after hearing the learned counsel(s) representing the complainant.

5. The complainant was then again directed to produce his evidence and while acting on this complainant Malik Waqas Ahmad appeared as PW.1 and also examined Musaddiq Anwar as PW.2. The brief resume of the prosecution evidence is as under:-

Complainant Mr. Waqas Ahmad Malik appeared as PW.1 and stated that he was posted as district election commissioner in 2022. Vide letter dated 07.11.2022, he was authorized to file a complaint against the accused Imran Ahmed Niazi under section 190 of Election Act, 2017. The referred letter is marked as Exh.P.A/1. In consequence, he filed a complaint against the accused Imran Ahmed Khan Niazi which is already marked as Exh.P.B consisting of 08 pages and the PW admits his signature which is already marked as Exh.P.B/1. He deposed that the accused Imran Ahmed Niazi submitted his assets and liabilities on Form-B pertaining to the years 2018, 2019, 2020 and 2021. The Election Commission of Pakistan issued the said Assets and Liabilities Form in gazette notification which is already marked as Exh.P.G. In august, 2022, the speaker national assembly sent a reference to the Election Commission of Pakistan which is already marked as Exh.P.K consisting of 48-pags . He further stated that the Election Commission of Pakistan started proceedings on the said reference

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and so issued notice to the accused. . In consequence of the said notice, the accused submitted his reply in the Election Commission of Pakistan which is already marked as Exh.P.N. He has produced certified copies of the Exh.P.N which is marked as Exh.P.N/1. He deposed that the election commission of Pakistan conducted scrutiny by summoning records from cabinet division (Toshakhana) and also requisitioned the bank statements of the accused and his spouse through the state bank of Pakistan which is already marked as Exh.P.L. The correspondence of Toshakhana through letter dated 14.10.2022 is marked as Exh.P.M/1. He brought on record Exh.P.M consists of 116-pages. PW.1 stated further that the accused maintained his position in the election commission that he acquired four major gifts from Toshakhana in 2018/2019 . According to a challan submitted by the accused, he deposited more than Rs.21.5 million. According to the assessed value by the Toshakhana, the value of these gifts were more than Rs.107 million. The respondent took a stance that he has sold out the said gifts in consideration of Rs.58 million in the same year. According to the PW the accused took a stance that he had deposited the proceeds of the gift in account bearing No.3256 maintained at bank Al-Falah. The bank statements is Exh.P.P/1-31. The accused also took the stance that since he had sold out the gifts in the same year so he did not mention the same in Form-B . Form-B

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related to the year 2018/2019 is already marked as Exh.PD.

He stated that the election commission of Pakistan perused the record of tosha khana and bank statement of the accused and compared with the statement of the accused, and it revealed that the accused submitted the last receipt/challan of tosha khana on 22.01.2019. The account of the accused bearing no.3256 was reflecting only one single large deposit of Rs.30 million during the period of 22.01.2019 to 30.06.2019. During scrutiny it revealed that the accused could not establish the amount of Rs.58-million deposited in the bank Al-Falah .During proceedings before the election commission, the accused neither disclosed the name of the buyer nor produced any receipt . The referred facts unveil that the accused furnished false declaration and false statement before Election Commission of Pakistan.

PW.1 further deposed that Regarding the year 2019/2020, the accused took a stance that he secured three major gifts from tosha khana and he did not mention the same in Assets and Liabilities Form of the same year because he had further gifted the said gifts to someone. The Form-B relating to the year 2019/2020 is Exh.P.E. In the Form-B there is a particular column for gifts which was not filled by the accused and also did not mention the name of the person to whom the gift was made in the said form. Similarly, he did not

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mention the cost value of the gifts. According to the PW on the account of the referred facts, it has been established that the accused has furnished false statements and false declarations in the Election Commission of Pakistan. Form-B for the year 2019/2020 was issued in the gazette notification which is already marked as Exh.P.J.

According to this witness Pertains to the year 2020/2021, the accused took a stance that he acquired five major gifts from tosha khana in the year 2020/2021 and mentioned the cost value in Form-B with title "precious item". The said Form is already marked as Exh.P.F. In this regard, the accused did not mention the details of the gifts in Form-B. Similarly, he did not annex any document revealing the nature of the gifts. On the basis of above facts, it has been established that the accused furnished false statements and false declarations in the Election Commission of Pakistan which is a violation of Section 167 and 173 of Election Act, 2017 . The order of the Election Commission dated 21.10.2022 is already marked as Exh.P-A which reveals all these facts.

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Musaddiq Anwar recorded his statement as PW.2 *and tendered statements of the bank accounts of accused Imran Ahmed Khan Niazi procured by Election Commission of Pakistan as part of the proceedings of the Election Commission in a reference by Speaker National Assembly, comprising of pages 1-31 exhibited as Exh.PP. He*

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further stated that he is custodian of the statement of assets and liabilities (Form-B) submitted by accused Imran Ahmed Khan and other parliamentarians. He also tendered gazette notification showing publication of Form-B submitted by accused Imran Ahmed Khan pertaining to the financial year 2018-2019, 2019-20 and 2020-21. He also brought the original record of statement of assets and liabilities (Form-B) and gazette notification both for the aforesaid financial years already exhibited as Exh.P.C and Exh.P.G respectively.

After perusing the statement, the witness stated that he had not referred to certain documents already exhibited so he was allowed to record his statement in this regard.

He brought Form-B of financial year 2018-19 as Exh.P.D and Form-B of financial year 2019-20 as Exh.P.E and for financial year 2020-21 of said Form as Exh.P.F, gazette notification relating to the financial year 2018-19 is Exh.P.H, and same Form for the financial year 2019-20 is Exh.P.J.

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6. Plenty opportunities were afforded to the learned counsel(s) representing the accused for cross-examination on the PWs, after appointing one of his leading counsel Mr. Khwaja Haris Ahmad ASC as his pleader and it took 04 days to complete the cross-examination.

7. The learned counsel(s) representing the complaint closed complainant/prosecution evidence on 26.07.2023.

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8. During the entire proceedings the accused appeared in judicial complex G.11 on 13.03.2023 however did not enter the court, due to sour situations between the law enforcement agencies and the followers of the accused. He was, however, brought to the Camp Court on 10.05.2023 while in custody in another case and on such date a charge against him was framed. Besides, he appeared in the court once on 24.07.2023 and on such date partial cross-examination was conducted and remaining was reserved on request of learned senior defense counsel Mr. Khawaja Haris Sr. ASC. On said date the accused appeared with more than fifty lawyers led by Mr. Intizar Hussain Panjhota Advocate who attempted to influence the proceedings by raising slogans disturbing the proceedings and so the court has to start proceedings against all those who disturbed the order and proceedings of the court to maintain order however the said proceedings were dropped when the accused as well as leadings counsel(s) including Khwaja Haris Ahmad ASC tendered verbal apology from the court. Similarly, the accused appeared in person on 31.07.2023 and then on 01.08.2023 and recorded his statement under section 342 Cr.PC wherein he professed innocence. He nonetheless, did not opt to be examined on oath as envisaged under section 340(2) Cr.PC however opted to produce defense evidence. On the said date the accused was directed to produce his private witnesses on 02.08.2023 and also furnish a list of official witnesses, Instead Barrister Gohar appeared

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in later hour and submitted a list of private witnesses and requested adjournment. This application was resisted by the learned counsel repressing the complainant that this application has been moved to delay the matter as none of the witnesses are relevant to the charge framed and allegations leveled by the complainant. He also referred to reply of a question No. 30 (statement of accused) in which accused stated that he has not relied upon his tax return/wealth statement for financial years 2018-2019, 2019-2020 and 2020-2021 as a substitute for the Form-B. After affording hearing to both side this court declined the request of accused to adjourn the matter for recording statement of the witnesses reflecting in his list of witnesses being irrelevant.

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9. The accused While replying to a question that Why this complaint is against him and why the P.Ws deposed against him?, stated that this is a politically motivated case. The complaint has been filed at the behest of PDM government. The complainant is not even authorized as required by law to make this complaint. Both the witnesses are merely stooges of the federal government and have been planted to falsely depose against him. While the complainant does not hold any authorization as required by law for making the complaint, even his name does not appear in the authorization letter dated 07.11.2022 relied upon by him for filing the complaint. Similarly, in the case of Musadaq Anwar neither his name nor his designation appears in the list

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of witnesses submitted along with the complaint. The persons who have thus deposed in the instant case as PW-1 & PW-2 were therefore, introduced at the last moment to falsely depose against him, after making sure that they are ready to make a false statement against him. He added that for fourteen months the PDM government has been trying to knock him out of election race and this case including the 180 cases and two assassination attempts on him plus the crackdown after 9th of May, where 10 thousand of his workers are in jail including senior leadership and the others forced underground, all in attempt to make sure that PTI does not participate as a force in the elections and the motivation for ensuring the PTI out of the way by the PDM is because of 37 by-elections, PTI won 30 and according to all opinion polls PTI has over 75% public approval rating and this current case is part of the strategy to ensure that PTI or he cannot compete in the elections.

In reply to another question as to whether you will appear as your own witness on Oath as envisaged u/s 340(2) Cr.P.C ? He stated that the prosecution has miserably failed to bring any incriminating evidence against him which may require him to appear as his own witness.

10. Arguments heard and record perused

11. The learned counsel representing complaint at very outset referred to admitted facts i.e. submission of Form-B as the mandate of section 137 and 138 and it's violation constituting offence of corrupt practices. He next referred to the various objections having been

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raised by the learned counsel representing the accused regarding submission of various Form-B of various years brought by the PW.1 being not the scriber etc. and that all these documents are inadmissible. The learned counsel of complainant argued that all these Form-B related to year 2018-2019, 2019-2029 and 2020-2021 were produced as EX.PD, EX.PC and EX.PE and according the learned counsel accused has admitted the referred documents in his reply to questions no 3,4,5,6,7,8 and 9 so these documents are admitted and admitted facts need not be proved and therefore the admissibility of these documents are no more in question. He next contended in this regard that statement of assets and liability Form-B is a public document for public consumption and for public information and so he refereed to case titled Khwaja Muhammad Asif versus Muhammad Usman Dar reported as 2018 SCMR 2128.

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12. While referring to EX.PD the learned counsel maintained that Form-B for the year 2017-2018 is EX.PC and similarly the rest of Form-B are EX.PD, EX.PE and EX.PF. The refereed Form-B provides for two type of properties, i.e immovable property and Movable property. Serial No.2 (a)(b)(c)(d)(e)(f)(g)(h)(I)and (j) relates to movable property. Serial No 2(g) relates to Jewelry however it is astonishing that the accused and his wife who remained First Lady have no jewelry. At this point the learned counsel referred to reply of question no 25 that the assessed value of "tosha Khana" gifts in question for the year

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2018-2019 was Rs.107 Million and accused deposited about Rs.21.5 million and he stated inter alia that it is correct. "However, the prosecution has not led any evidence to prove that the actual value of tosha khana gifts in question for the year 2018-2019 was Rs.107 million." He explained that accused filed a reply in the Election commission of Pakistan and the said reply is admitted by the accused and is available on file as EX.PN/1 reflecting the value of the gifts to have been assessed by the accused. He referred to a list at page no 11 and maintained that the accused has procured these gifts of Rs. 107 Million in consideration of Rs. 21.5 million and sold them in consideration of Rs.58 Million however this figure has not been mentioned in Form-B. He underscores that the accused was under obligation to mention the assessed value of the gifts; however even the sale proceeds are not mentioned in Form-B for the year 2018-2019. He further argued EX.PM/1 is the letter of the joint Secretary cabinet division govt. of Pakistan addressed to ECP giving detail of Toshakaha gifts retained by the accused and the same is reflecting all gifts which accused has referred in his reply EX.PN/1 and the said list containing jewelry nonetheless the accused has not mentioned the said jewelry despite the fact that a particular column is provided in the Form-B. The learned counsel argued that the accused was a bit conscious of mentioning his **four goats** however was not conscious of mentioning the jewelry. He next argued that in Form-B the accused stated to have mentioned gifts

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in Form-B secured and retained by him as precious items. He underlines that when a particular serial is provided for jewelry then it should have been mentioned so, instead precious items with goats are mentioned, and that is too only in Form-B for year 2020-2021 with incorrect value.

13. According to the learned counsel, the accused has taken a stance that he had sold those gifts secured in the year 2018-2019 and so were not in his possession. Similar stance is taken apropos gifts secured in the year 2019-2020. According to the learned counsel, had he not been in possession of the gifts he would have the proceeds of the gifts which ought to have been mentioned, nonetheless the accused did not perform his obligation and that even then Form-B reflect a serial of assets transferred which abundantly establish that accused was under obligation to mention the fact of transfer of the assets in any way and as such the accused has committed corrupt practices. He next argued that accused and his wife owns three houses of 300 kanal, 7 kanal and 3 kanal and that the three houses are equipped with furniture of Rs. 500,000/- and that the said entry with said amount exist in the Form-B related to the year 2017-2018, 2018-2019 2019-2020 and 2020-2021 which, according to the learned counsel is yet another false and incorrect statement.

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14. While referring to reply of question no 27 in statement of accused the learned counsel maintained that accused has taken erroneous position by making addition and subtraction and has

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attempted to justify his omission however his such attempt is of no avail.

15. The learned while referring to Tax return/wealth statement argued that the said is not a public document rather it is confidential and not open to public scrutiny and that it's disclosure is an offence whereas Legislature in its wisdom make the Form-B available to the public for scrutiny with lone intent to check corrupt practices.

16. Regarding maintainability the learned counsel of complainant relied on his arguments reflecting in order dated 05.05.2023 and order dated 08.07.2023.

17. Keeping in view the said the learned counsel implores upon the court to award maximum punishment under the law so as to set an example for others.

18. On the other hand neither accused nor any of his lead counsel appeared despite repeated calls with reasonable interval to argue the question of maintainability and main case so the court proceed hereunder to decide the instant complaint case.

19. As far as the question of maintainability of complaint is concerned this court has already dilate upon the said question vide order dated 05/05/2023 and 08/07/2023 and no one has appeared before the court on behalf of accused therefore the application of accused is dismissed and complaisant is declared maintainable.

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20. This is a case where an EX-Premier of Pakistan faced allegations of corrupt practices. The charges against the accused are obstinate as it relates to one of his deliberate omissions to furnish, not only complete but correct declaration of his assets and liability as member parliament for the term he remained so as member parliament. This obligation relating to the accused is more delicate as he remained the prime Minister of the Islamic Republic of Pakistan. This obligation is the mandate enshrined in section 137 of the Election Act 2017. Similarly Article 218(3) of the Constitution of Islamabad Republic of Pakistan orders the Election Commission to guard against corrupt practices having been defined under different provisions of Election Act, 2017. The relevant section 137 of Election Act 2017 is reproduced for the ease of the reference.

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> 137. Submission of statement of assets and liabilities.— (1) Every Member of an Assembly and Senate shall submit to the Commission, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding thirtieth day of June on Form B.
> (2) The Commission, on the first day of January each year through a press release, shall publish the names of Members who failed to submit the requisite statement of assets and liabilities within the period specified under sub- section (1).
>
> (3) The Commission shall, on the sixteenth day of January, by an order suspend the membership of a Member of an Assembly and Senate who fails to submit the statement of assets and liabilities by the fifteenth day of January and such Member shall

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cease to function till he files the statement of assets and liabilities.

(4) Where a Member submits the statement of assets and liabilities under this section which is found to be false in material particulars, he may, within one hundred and twenty days from the date submission of the statement, be proceeded against for committing the offence of corrupt practice.

21. *Similarly, Article 218(3) of the Constitution of the Islamic Republic of Pakistan is reproduced infra: -*

> *218. (3) It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.*

22. *Similarly in case titled Khawaja Muhammad Asif vs Muhammad Usman Dar reported as 2018 SCMR 2128 the importance of Election laws are highlighted and the relevant para No 07 is reproduced infra :-*

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> 7. The provisions of election laws etc are designed to facilitate the general public to know what assets the contesting candidates own and what liabilities they owe before they are elected and what variation has taken place in their assets and liabilities on a year on year basis after being elected. Hence the election laws require every contesting candidate to file his or her statement of assets and liabilities and when elected was required to declare his assets and liabilities every year with the Election Commission. In this manner the net-worth of all elected members is maintained on the records of the Election Commission which is useful in noticing changes that may have occurred in their assets and liabilities after entering upon their office. In case an asset not

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declared by an elected member comes to light, his details of assets and liabilities would help in ascertaining whether concealment was intended to cover some wrongdoing. The whole purpose behind seeking details of assets and liabilities under the election laws is to discourage persons from contesting elections for a seat in the Parliament or a Provincial Assembly who have concealed assets acquired through some wrongdoing
Simultaneously it also aims at those members as well who hitherto may have held untainted record, be discouraged from indulging in corrupt and financial wrongdoings after entering upon their office. Hence whoever contests an election for a seat in the Parliament or a Provincial Assembly, is mandatorily required by law to be forthright in declaring all his assets which he owns and all liabilities he owes.

23. The effect is that the Declaration of Assets form is a mandatory requirement for all members of parliament and is an important step towards transparency and accountability. According to the Election Act 2017 of Pakistan and constitution of the Islamic Republic of Pakistan, all members' parliament are required to submit a Declaration of Assets form known as Form-B. This must be filled out accurately and honestly, and must include all assets either owned by the member, their spouse, or dependent children. The form requires details of all types of asset (e.g. immovable property, moveable property bank accounts, investments, etc., its current value, any loans or mortgages on the asset, and any income generated from the assets by way of transfer. Members are required to provide details of any gifts or loans received within a financial year, both monetary and non-monetary,

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including the donor's name, relation to the member, and the value of the gift or loan. The form is necessarily signed by the member, on solemn affirmation that all the information provided is accurate and complete to the best of his knowledge.

24. In the instant complaint the allegations having been set-forth are entirely simple and are based on the documentary evidence. According to the complainant the accused acquired and retained gifts from Toshakhana in 2018, 2019,2020 and 2021 nevertheless did not mention in the assets form i.e. Form-B for the years 2018-2019, 2019-2020 and 2020-2021. It has been further alleged that the accused is found to have furnished false and incorrect declaration in material particular in the year 2020-2021 as such has committed corrupt practices.

25. The complainant appeared in the witness box and deposed almost the same facts as he had narrated in the complaint. He produce Form-B of financial year 2018-19 as Exh.P.D Form-B of financial year 2019-20 as Exh.P.E and Form-B for financial year 2020-21 of said Form as Exh.P.F, gazette notification relating to the financial year 2018-19 is Exh.P.H, and same Form for the financial year 2019-20 is Exh.P.J.

26. He produced a document Ex.PM/1 regarding the Toshakhana gifts acquired and retained by the accused with its assessed value by the cabinet division of Pakistan. During the course of the cross-examination the learned defence counsel representing the accused

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raised objection on this document and on every other documents produced that this has been brought by the pw.1 who is neither scriber nor signatory of the said documents therefore he cannot produce in the evidence. The objection of the said counsel cannot be sustained as the learned counsel on one hand objected to production of the documents and on the other hand he refereed all such documents to the PW during the cross-examination, even the contents of all documents have been referred. Yet another aspect of the matter is that the complainant produced certified copies in evidence as such a presumption of correctness is attached to it. Article 75 of Qanun-e-Shahadat Order provides that the documents must be proved by primary evidence, except in the cases covered by Articles thereafter. Article 76 contemplates that secondary evidence can be given of the existence, condition and contents of a document, in cases enumerated therein. Reference can be made to clauses (a), (f) and (i) of the Article which deals with the cases where the original is in possession of any person out of reach of Court and not subject to process of Court or where the original document is a public document within the meaning of Article 85 or forms part of judicial record. Article 85 (1) (iii) and Article 85(3) of Qanun-e-Shahadat Order declare documents of public officers, legislative, judicial and executive, of any part of Pakistan or of a foreign country or documents forming part of judicial proceedings to be public documents, while Article 88 of Qanun-e-Shahadat Order permits the

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proof of public documents by producing, certified copies thereof. Explanation to Article 87 contemplates that any officer, who by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have custody of such documents within the meaning of said Article.

27. For proving existence, condition or contents of a document certified copies can be tendered in evidence, if the original is a public document within the meanings of Article 85, Qanun-e-Shahadat Order, 1984 or where the original document forms part of judicial record or document of public officers, legislative, judicial and executive, or of any part of Pakistan or. a foreign country. Likewise, certified copy of a document forming part of judicial proceedings can be produced to prove the document. Article 90 of Qanun-e-Shahadat Order, 1984 raises a presumption as to the genuineness of certified copies which, in law, are declared to be admissible in evidence of a particular fact. Reliance is placed on case titled The state vs Mohtarama Benazir Bhutto reported as PLD 1999 Lahore 535.

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28. In the said reported judgment reference is made to case of Rama Rai vs. Chitluri Venkataramayya (AIR 1940 Madras 768) where it was observed :-

> "In my judgment, it would be putting an unwarranted restriction on the words 'documents forming the acts or records of the acts to say that they should be confined to those parts on an income-tax record which Income Tax Officer has himself prepared and

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to exclude documents which he has himself called for or which have been admitted to the record for the purposes of the assessment. I consider that the record of income-tax case must be regarded as record of the acts of the Income Tax Officer on the record is just as much a public document as the final der of assessment."

29. Being so, all the objections of the learned defence counsel are not sustainable hence are overruled.

30. In the matter in hand the accused has not denied to have submitted his reply EX.PN/1, similarly PW.1 produced Form-B of financial year 2018-19 as Exh.P.D and Form-B of financial year 2019-20 as Exh.P.E and for financial year 2020-21 of said Form as Exh.P.F, gazette notification relating to the financial year 2018-19 is Exh.P.H, and same Form for the financial year 2019-20 is Exh.P.J, Which is a robust collection of un-failing documents. According to the said EXN/1. the accused obtained and retained 101 gifts and according to EXPM/1 the total value of the said gifts are assessed as Rs107.943 million.

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31. The evidence led by the complainant establishes beyond any reasonable doubt that the accused, in his capacity as member of parliament, was commanded by law to submit Declaration of Assets forms, required to be verified by the accused on solemn affirmation. It has also been established that these Declaration of Assets were to be made as per the standard format of Form - B provided in Election Act 2017. The accused was required to provide complete details of all his assets and liabilities, as well as the details of assets transferred by

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him to any person during the relevant financial years. It is also established that the accused filed three different Forms - B for financial years 2018 - 2019, 2019 - 2020 and 2020 - 2021 respectively. All of these Forms were verified by accused on solemn affirmation. Moreover, it has also been established that the accused purchased / retained certain items from Toshakhana during the financial years 2018 - 2019, 2019 - 2020 and 2020 - 2021, and that these items were not disclosed in the relevant Form - B filed by him. In consideration of these facts, which have been established by evidence adduced by the complainant, the primary question that remains is whether such non-disclosure of assets retained / purchased by the accused from Toshakhana during these three years, constitute a mis-declaration.

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32. The accused came up with his detailed version in the defense statement recorded under Section 342 of Cr.P.C and maintains that he was only required to disclose the items / assets that were in his ownership on the "cutoff" date of 30th day June of respective years. He maintains a position that he was not required to provide the details of any assets that were purchased and sold within the preceding financial year; rather he was only required to disclose the status of his assets as they existed on the relevant cutoff date. Moreover, based upon this legal premise, the accused has maintained the following factual versions viz. the three relevant financial years:

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i) Firstly, with regard to the financial year 2018 - 2019, the accused admits that he had retained / purchased assets / items from Toshakahana during this financial year. However, he maintains that he sold all these items within the same financial year and prior to filing of his Form - B. Consequently, he states that he was not required to mention these items in the relevant Form - B;

ii) Secondly, with regard to the financial year 2019 - 2020, the accused again admits that he had retained / purchased assets / items from Toshakahana during this financial year. However, he maintains that he had gifted these items to some third party within the same financial year and prior to filing of his Form - B. Consequently, he states that he was not required to mention these items in the relevant Form - B;

iii) Thirdly, with regard to financial year 2020 - 2021, the accused again admits that he had retained / purchased assets / items from Toshakahana during this financial year. However, he states that financial amounts regarding these items were declared under the head of "Precious Items" in the Form-B for financial year 2020-2021. Furthermore, the accused admits that these items were not specifically identified in this Form-B and only "cost" at which they were purchased / retained from Toshakhana was mentioned under the head of "Precious Items";

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33. Hence, in consideration of the defense version put forward by the accused, the legal preposition viz. the scope of declarations and disclosures, which the accused was required to make under law, needs to be addressed at the outset. In regard, it is the complainant's case that accused was required to disclose all the assets purchased, acquired, sold, or otherwise disposed of by him during the

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relevant financial years, in his Form - B. Whereas, the accused claims that he was only required to disclose the position of his assets as it existed on the specific cut-off date for the relevant year. The arguments put forward by the accused do not provide a plausible justification for the simple reason that the Form - B, at its serial No. 2(j) specifically seeks details of "Assets transferred to any person". Hence, the argument put forward by the accused, that he was not required to submit details of assets which had been disposed of by him goes against the express provisions of Form - B and cannot be accepted by any stretch of imagination.

34. The application of aforementioned legal position to the facts of case results in the following determinations and conclusions:

i) Firstly, with regard to the financial year 2018 - 2019, the fact that relevant assets / items were not disclosed in the Form - B is admitted by the accused in his defense statement. However, the accused has asserted that he was not required to provide these details on the ground that the relevant items / assets had been sold by him prior to the cutoff date.

As highlighted above, the Form - B at its serial No. 2(j) specifically sought details of "Assets transferred to any person". Hence, even if the factual assertions viz. the alleged sale of these items / assets is presumed to be correct (though it has not been established on evidence), the accused was still required to provide details of such sale against Serial No. 2(j) of the Form - B under the heading of "Assets transferred to any person".

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It is therefore established beyond any doubt that the accused, while filing his Form - B for financial year 2018 - 2019 had made false declarations viz. his assets;

ii) Secondly, with regard to the financial year 2019 - 2020 is concerned, it is again admitted by the accused in his defense statement that relevant assets / items were not disclosed in the Form - B. Furthermore, the accused has asserted that he was not required to provide these details as the relevant items / assets had been gifted by him to a third party prior to the cutoff date.

A perusal of the Form - B shows that its serial No. 2(j) specifically seeks details of "Assets transferred to any person". Furthermore, this serial No. 2(j) contains further sub-categories; the first sub-category specifically seeks information viz. any assets transferred to any person "without adequate consideration". Hence, even if the factual assertions viz. the alleged gift of these items / assets is presumed to be correct (though it has not been established on evidence), the accused was still required to provide details of such sale against Serial No. 2(j)(i) of the Form - B under the head of "(j) Assets transferred to any person; - (i) without adequate consideration".

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It is therefore established beyond any doubt that the accused, while filing his Form - B for financial year 2019 - 2020 had made false declarations viz. his assets;

iii) Thirdly, as far as the Form - B for the financial year 2020 - 2021 is concerned, the same involves slightly different factual and legal aspects. In this regard, the accused has maintained a position that he had retained / purchased the relevant items / assets from Toshakhana at the cost of Rs.

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11,684,250/-. He states that as Form - B does not contain any head of "Tohsakhana Gifts" or "Gifts" in general, he had mentioned this cost against the head of "Precious Items" in the Form - B for financial year 2020 - 2021.

A perusal of Form - B shows that it does not contain any column / head of "Precious Items" rather this head was added into the standard form by the accused. It is also apt to highlight that serial No. 2(c) of the Form - B specifically requires details of moveable "assets brought or remitted from outside of Pakistan". The Toshakahana Gifts retained by the accused clearly fall under this head. The accused, for the reasons best known to him, rather than declaring the details of these assets / items, has tried to disguise the nature, value, as well as specifics of these items.

It is therefore established that the accused had submitted incorrect declaration in material particular relating to Form - B for financial year 2020 - 2021;

Hence, it is established that the accused, while filing the Declaration of Assets forms / Form - B, for the Financial Years 2018 - 2019 and 2019 - 2020 had furnished false declarations and false statements before the Election Commission of Pakistan. Moreover, while filing the Form - B for financial year 2020 - 2021 the accused has submitted incorrect declarations in material particulars.

35. Before parting with this judgment, it is pertinent to mention that while filing the Form - B for financial year 2018-2019 the accused had declared "four goats" as his assets, while at the same time omitted to disclose purchase and sale of assets having huge financial value. Moreover, these assets were purchased from the State

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Depository and were subsequently sold by the accused at large profits. Similarly, the defense version put forward by the accused in his statement under Section 342 of Cr.P.C. is based upon evasive denials, as well as incorrect and self-serving interpretation of relevant laws.

36. All these factors when considered in juxtaposition establish beyond any doubt that the failure of accused to disclose these assets in the relevant Forms - B, which forms were executed by the accused on solemn affirmation, were based upon mala fide intents and intentional dishonesty on his part. Thus, the accused being dishonest and deceitful, made false declarations in his Forms - B for the financial years 2018-2019, 2019-2020 and 2020-2021, and thereby committed the offence of Corrupt Practice under Section 167(a) read with Section 173 of the Election Act, 2017.

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37. For the ease of reference the said provisions are reproduced infra:-

> " 167. Corrupt practice.—A person is guilty of the offence of corrupt practice if he—
> (a) is guilty of bribery, personation, exercising undue influence, capturing of polling station or polling booth, tampering with papers, and making or publishing a false statement or declaration;
> 173. Making or publishing a false statement or declaration.—A person is guilty of making or publishing a false statement or declaration if he makes or publishes a false statement or submits false or incorrect declaration in any material particular—
> (a) concerning the personal character of a candidate or any of his relations calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the

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election of another candidate, unless he proves that he had reasonable grounds for believing and did believe, the statement to be true; or

(b) relating to the symbol of a candidate whether or not such symbol has been allocated to such candidate; or

(c) regarding the withdrawal of a candidate; or

(d) in respect of statement of assets and liabilities or any liability with regard to payment of loans, taxes, government dues and utility expenses.

174. Penalty for corrupt practice.—Any person guilty of the offence of corrupt practice shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one hundred thousand rupees or with both."

38. Keeping in view the fore-discussed complainant evidence, and the record, this court finds it more than convincing that the complainant has produced confidence inspiring, well knitted and corroborated evidence, and so the charge against the accused has successfully been proven that accused has committed offense of corrupt practices by making and publishing false statements/ declaration in respect of assets acquired by way of gifts from Toshakhana and disposed of during the years 2018-2019, 2019-2020 and making and publishing a false statement and submitting false and incorrect declaration in material particular relating to Form-B for the year 2020-2021. He has been found guilty of corrupt practices by hiding the benefits he accrued from national exchequer wilfully and intentionally. He cheated while providing information about gifts he

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obtained from Toshakhana which later proved to be false and inaccurate. His dishonesty has been established beyond doubt. Accordingly, the accused is convicted under section 174 of The Election Act 2017, and he is thus sentenced to three (03) years simple imprisonment with fine of Rs.100,000/-, and in case of default in its payment, he shall also suffer six (06) months simple imprisonment. The accused is not present today, therefore, a copy of this order along with warrant of conviction be communicated to the I.G. Islamabad for execution of the said warrant. File be consigned to the record room after compilation & necessary completion whilst, requisitioned record(s) be returned forthwith.

Announced:-
05.08.2023.

(HUMAYUN DILAWAR)
Additional Sessions Judge
West-Islamabad.

Certified that this judgment consists of thirty (30) pages. Each page has been dictated, read, corrected and signed by me.

05.08.2023

(HUMAYUN DILAWAR)
Additional Sessions Judge
West-Islamabad.

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