

ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. SIKANDAR SULTAN RAJA, CHAIRMAN.
HON'BLE MR. NISAR AHMED DURRANI, MEMBER
HON'BLE MR. SHAH MOHAMMAD JATOI, MEMBER

Case No. 11(2)/2021-Law

In Ref: PETITION UNDER ARTICLE 218 (3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN READ WITH SECTIONS 9, 124, 156, 167, 168, 170 AND 174 OF THE ELECTIONS ACT, 2017 AND ALL OTHER ENABLING PROVISIONS OF LAW DECLARING THE ELECTION OF RESPONDENT NO. 1 VOID BEING ILLEGAL BASED ON VIOLATION OF ELECTION LAW AND CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

1. Ms. Maleeka Ali Bokhari, MNA
2. Mr. Farrukh Habib, MNA
3. Ms. Kanwal Shauzab, MNA

... Petitioner (s)

AND

Case No. 11(2)/2021-Law P/F



In ref: AMENDED PETITION AS PER DIRECTIONS OF THE HONOURABLE COMMISSION FOR IMPEADING RESPONDENTS NO. 3 AND 4 AS PROFORMA RESPONDENTS

PETITION UNDER ARTICLE 218 (3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN READ WITH SECTION 9, 124, 156, 167, 168, 170 AND 174 OF THE ELECTIONS ACT, 2017.

Aliya Hamza Malik d/o Hamza Jamil Malik, r/o H. No. 153-C,
Phase-I, DHA, Lahore

...Petitioner (s)

AND

Case No. 3(1)/2021-Cord

In Ref: ACTION TO BE TAKEN AGAINST MR. YOUSAF RAZA GILLANI & OTHERS CANDIDATES FOR HORSE TRADING /VOTE BUYING IN THE RECENTLY HELD SENATE ELECTIONS UNDER SECTIONS 167, 168, 170 AND 174 OF THE ELECTIONS ACT, 2017

DECLARATION OF THE POLLS OF MR. YOUSAF RAZA GILLANI & OTHERS SIMILAR CANDIDATES AS VOID DUE TO ACTIVE INVOLVEMENT IN HORSE-TRADING /VOTE BUYING UNDER SECTION 9 OF THE ELECTIONS ACT, 2017

INTIMATION FOR INTIMIDATION OF CONTEMPT OF COURT PROCEEDINGS IN VIEW OF ARTICLE 204 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973 READ WITH SECTION 3 OF THE CONTEMPT OF COURT ORDINANCE 2003 FOR NON-COMPLIANCE OF ORDERS, DATED 01.03.2021 PASSED IN REFERENCE NO. 1 OF 2020 BY THE AUGUST SUPREME COURT OF PAKISTAN

COMPLIANCE OF ARTICLE (S) 218 (3) & 220 OF THE CONSTITUTION READ WITH THE JUDGMENTS PASSED BY THE AUGUST SUPREME COURT OF PAKISTAN

Muhammad & Ahmed (Constitutional, Corporate & Tax Counsel)
Ref: Munir Ahmed, Advocate, ground Floor, Almas Tower, Begum salma Tassaduq Hussain Road, 26, The Mall, Lahore

Petitioner (s)

VERSUS

1. Yousaf Raza Gillani, s/o Syed Alamdar Hussain Gilani, F-8/1, Islamabad
2. Syed Ali Haider Gillani, Member Provincial Assembly
3. Captain (R) Jameel Ahmed Khan s/o Inayat Ullah, r/o Askari-V, Flat No. 115-A, Malir Cantt, Tehsil Malir, District Karachi Malir;
4. Faheem Khan s/o Humayun Khan r/o 196 Khayaban-e-Muhammad Hussain Shaheed, Phase VII Extension DHA, Karachi

... Respondent (s)

(In all the above three petitions)



For Petitioner (s) No. 1, 2 & 3: Mr. Syed Ali Zafar, ASC alongwith
Muhammad Zubair Sarfaraz,
Advocate, Mr. M. Sohaib Ilyas & Mr.
Abdullah Solangi, Advocate
For the Respondents No. 1 : Malik Javeed Iqbal Wains, Adv.
For the Respondent No. 2 : Mr. Hassan Murtaza Mann, Adv.
For Respondents No. 3 & 4 : Mr. Mubashar Majeed, Adv.
Date of Hearing(s) : 09.03.2022, 10.03.2022,
18.03.2022, 31.03.2022 & 05.04.2022

ORDER

Mr. Sikandar Sultan Raja, Chairman. — Through this single order we shall decide the above titled three petitions filed by (i) Farrukh Habib and two others (ii) Aliya Hamza Malik and (iii) Muhammad & Ahmed, being identical in nature and on common grounds and seeking same relief as well.

2. Brief facts giving rise to the titled petitions are that to fill the vacant seat, Senate election was held on 03.03.2021. One day prior to the said election i.e. 02.03.2021, some videos surfaced on ARY News Channel in its program namely "Power Play" hosted by anchor Arshad Sharif. Petitioner (s) Farrukh Habib (an MNA) and two others i.e. Ms. Maleeka Ali Bukhari & Ms. Kanwal Shauzab (MNAs) filed the above titled joint petition on the basis of those videos on 06.03.2021 before this Commission under Article 218 (3) of the Constitution of Islamic Republic of Pakistan, 1973 read with sections 9, 124, 156, 167, 168, 170 and 174 of the Elections Act, 2017, with the following prayer (s):

"In light of the above, it is most respectfully prayed as follows:-

- (a) Declare the election of respondent No. 1 illegal, unlawful, null & void ab initio and order a repoll under Section 9(1) of the Election Act 2017.



- (b) Respondent No. 1 & 2 may also be declared as being disqualified as a returned candidate for Senate & Sindh Assembly respectively.
- (c) As a consequential relief, the notification of respondent No. 1 as returned candidate may graciously be not be issued or published.
- (d) Any other relief with this Honorable Commission deems just and appropriate may also be granted."

3. Ms. Aliya Hamza Malik (an MNA) also filed the above titled petition on 08.03.2021 under Article 218 (3) of the Constitution of Islamic Republic of Pakistan, 1973 read with sections 9, 124, 156, 167, 168, 170 and 174 of the Elections Act, 2017, with the following prayer (s):

"Based on the above, it is prayed that the Election on the General Seat from Capital Territory held on 03-03-2021 may be declared as void and fresh elections may be called by the said seat in Senate.

It is further prayed to kindly set the law in motion against the Persons who have been found to be, brazenly violating the law through active involvement in corrupt practices bribery, undue influence etc. as provided under Sections 167, 168 and 170 and other provisions of The Election Act 2017 for which punishment is provided under Section 174 and other provisions *ibid*."

4. The petitioner(s) Muhammad & Ahmed filed the above titled petition on 08.03.2021 while relying upon the same videos and prayed as under:-



I. To kindly declare the poll of Mr. Yousaf Raza Gillani and other similar candidates who were involved in vote-buying/horse-trading as void under Section 9 and other provisions of the Elections Act, 2017 read with Article 218(3) and judgment of the Superior Court(s), especially, order, dated 01.03.2021, passed in the Reference No. 1 of 2021, by the August supreme Court of Pakistan, of course, in the interest of justice, equity and fair play.

II To please not to issue the notification of Mr. Yousaf Raza Gillani and other similar candidates who were actively involved in horse trading as members of the Senate until a full and through inquiry and investigation is conducted and concluded against them.

5. Notices of the titled petitions were issued to the parties. After preliminary hearing, notices were issued to the respondents who were duly represented by their counsel.

6. Learned counsel for respondent No. 2, Mr. Ali Haider Gillani at the very outset emphasized that instant matters cannot be processed under sections 9 of the Elections Act, 2017 as the time of 60 days has elapsed after the publication of the name of returned candidate. That where the Commission does not finally dispose of a case within the period of sixty days, the election of the said candidate is deemed to have become final, subject to the decision of an Election Tribunal on an Election Petition. In support of his contentions, he referred a judgment reported as PLD 2003 Kar 209 "Kanwar Khalid Younis vs Federation of Pakistan & others" & 2016 CLC Note 137. He prayed that since the time of sixty days has elapsed and notification of returned candidate has been issued, the Commission has no power under Article 218 (3) of the Constitution to declare the election void as prayed for. Carrying forward his arguments, he vociferously



contended that instant cases against respondent No. 2 are totally based on assumptions and presumptions, fake, fabricated and based on doctored videos which have no legal or factual sanctity. That first petition was filed on 03.03.2021 and subsequently another petition was filed on 06.03.2021 but Commission itself noticed that the petitioners had not arrayed the concerned MNAs/MPAs as party in the pleadings who allegedly were found involved in the videos as claimed by the petitioner (s). They sought time to file an amended petition and to remove the deficiencies and to array MNAs/MPAs as party. That Commission vide order dated 09.03.2021 allowed the request with the directions to the petitioners to do the needful and file an amended petition on 10.03.2021. That on 10.03.2021, they did not array those MNAs who were allegedly involved/seen in audios/videos committing corrupt practices and once again petitioners were directed to array them as party. That Mr. Asif Ali Zardari, Nasir Shah and Maryam Nawaz on whom the petitioner (s) have mainly built the entire edifice of their cases have not even been arrayed as a party in the petitions despite clear and repeated directions of this Commission. That the audios/videos if termed to be correct for a while even then the same have been got through unauthentic way which cannot be termed as a piece of evidence in the eye of law. That the grounds urged in the petition cannot be disposed of in a summary manner as the so called allegations require examination of numerous witnesses and a detailed inquiry which cannot be subject matter under section 9 of the Elections Act, 2017. Learned counsel for the petitioner contended that faces of persons in the alleged video are not visible. That such videos/audio cannot be termed or considered as evidence under Article 113, 122, 133 and 164 of Qanoon-e- Shahdat Order 1984. That alleged videos are attained



through sting operation if deemed true and value of evidence got through sting operation and value of sting operation is nothing but zero in the eye of law. In support of his contentions he referred reported judgment PLD 2019 SC 675 (*Ishtiaq Ahmed Mirza vs Federation of Pakistan*) & 2022 SCMR 42 (*Muhammad Salman vs. Naveed Anjum*). He further added that affidavits filed by the respondents Faheem Khan and Jameel Ahmed Khan were filed after his reply without mentioning the time and place of event and the same are not executed in accordance with law as the affidavits are not attested/verified by Oath Commissioner which is mandatory requirement of law and such mistake cannot be rectified at this stage. Last limb of his arguments was that Abdul Hafeez Sheikh who is a runner up in the contest has not preferred any petition before the Election Commission nor before the Election Tribunal. That the purpose of instant petitions is nothing but political point scoring and to get their publicity in the media. He prayed that titled petitions be dismissed.

4. Malik Javed Iqbal Wains, learned counsel for respondent No. 1 contended that there is no allegations in the petition in respect of respondent No. 1 Yousaf Raza Gillani. That instant matter has already stands decided and got finality vide order dated 10.03.2021 of this Commission. That the petitioners have not impleaded as party to all those MNAs/ MPAs to whom the bribe was offered as alleged by the petitioners. That Notification of respondent as returned candidate has been issued on 10.03.2021 and requisite time of sixty days has also elapsed, therefore, proceedings under section 9 of the Elections Act, 2017 cannot be carried out. That petitions are private persons as PTI is not a party in the instant matters. That petitioners were required to file an election petition before the Election Tribunal but they have not filed an election petition for the reasons best know to them. He



prayed that proceedings to the extent of respondent No. 1 (Yousaf Raza Gillani be withdrawn.

4. Barrister Syed Ali Zafar, learned counsel for petitioner (s) on the other hand while chalking out the arguments of learned counsel for the respondents No. 1 & 2 contended that instant matters are filed before this Commission under section 9 read with sections 167, 168, 175 and 178 of the Elections Act, 2017 read with Article 218 (3) of the Constitution of Islamic Republic of Pakistan to declare the election of respondent No. 1 as void. That Commission under section 9 read with Article 218 (3) of the Constitution of Islamic Republic of Pakistan has ample powers to investigate the matter of corruption, bribery and corrupt practices committed in an election. While augmenting his arguments he contended that allegations are based on facts and are true. That election for Senate 2021 has been conducted on 03.03.2021 and prior to one day i.e. 02.03.2021 five videos surfaced on ARY channel and were subsequently widely circulated on other TV channels and also shared on social and electronic media Mr. Ali Haider Gillani, respondent No.2 son of Respondent No.1 was seen exercising undue influence, undertaking corrupt practices and offering bribes to Pakistan Tehreek-e-Insaf (PTI)'s MNAs namely Faheem Khan and Jamil Ahmed Khan to vote/support to his father respondent No.1. He was also seen coaching the PTI MNAs, how to spoil their votes, which is a clear violation of the Constitution of Pakistan and also against sections 156, 167, 168, 170 and 174 of the Election Act, 2017. That in the video No. 1 respondent No.2 is allotting numbers to the MNAs/MPAs and also coaching them on the process of kite folding for identification purposes. That in video No. 2 Syed Nasir Hussain Shah, Provincial Minister Sindh is clearly heard as having conversation with respondent No. 2 and PTI MNAs and they



are negotiating a package deal of money and development work. That Sindh Provincial Minister namely Nasir Hussain Shah is also referring to increase the bribery rate by 5-10 Crores and offer of local work relating to building control in Sindh. That such conversation is the offer of bribes in the form of money and other gratification for obtaining the vote and favour of PTI's MNAs in the Senate elections, 2021. That in third video, respondent No.2 is referring to Nasir Hussain Shah's conversation with ex-President Asif Ali Zardari in which he is asking for the bribery rate to bring down as PPPP is willing to undertake development work for those PTI's MNAs. Respondent no.2 reassured PTI's MNA Captain (R) Jameel that even if they want development work having worth 10 Crores, and that PTI's MNA will get to keep half of that amount. Respondent No.2 speaks about keeping parity in the bribery rate, which Captain (R) Jameel says that people are getting very good rates across. That in fifth video, PTI's MNA Faheem Khan and Captain (R) Jameel are heard as seeking assurance from respondent No.2 on the likely outcome if PTI finds out about their discussion in near future. Respondent No.2 is heard reassuring both of them about the grant of PPP tickets in future. Further added that respondent No.2 in his press conference on 02.03.2021 admitted all the videos but later on he disowned that it was his general discussion. That Maryam Nawaz Sharif, Vice President of Pakistan Muslim League(N) on 04.03.2021 admitted through her speech that she induced PTI Members of Parliament with promise of party ticket in upcoming elections and resultantly respondent No.1 was elected as Member of the Senate. That said inducement is clear violation of the provision of Elections Act, 2017. That PTI's MNA Faheem Khan and Jameel Ahmed Khan on affidavits solemnly affirmed and declared that respondent No.2 was

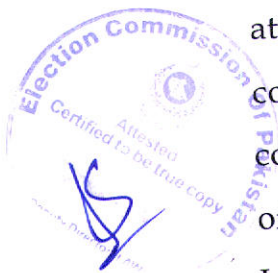
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involved in trying to procure votes illegally in favour of respondent No.1. They met respondent No.2 on 01.03.2021 and recorded the video of the meeting. They confirmed that video provided with this petition was recorded by Jameel Ahmed Khan, MNA. That the Commission on the allegation of PML(N) has recently ordered a re-poll in NA-75 Daska Sialkot while exercising its powers under section 9 of the Elections Act, 2017 and Article 218(3) of the Constitution and declared the election void in the entire constituency and fresh elections have been conducted. That same principles and parameters may be applied in the instant matter as the Commission inherits powers under section 4 & 9 of the Elections Act, 2017 read with Article 218 (3) of the Constitution of Islamic Republic of Pakistan.

5. Maleeka Bukhari and proxy counsel for Aliya Hamza and Muhammad & Ahmed Ahmed adopted the arguments of Barrister Syed Ali Zafar. However, Ms. Maleeka Ali Bukhari in rebuttal, drew attention towards press conference of respondent No. 2 and contended that he has admitted the factum of videos in press conference. That after admission, no proof is required and the denial of videos by respondent No 2 is afterthought story. That case of Ishtiaq Ahmed Mirza as referred by learned counsel for respondent No. 1 does not matter in the instant cases as in that particular case, there was denial but in the instant matters, there is an admission. She while relying upon judgment PLD 1992 SC 96 and AIR 1973 SC 157 empathetically contended that videos obtained through sting operation hold the validity to be produced as an evidence.

6. Before going into the merits of the case, question of maintainability of instant petitions is required to be looked into and decided first. Admittedly, Election Commission is duty bound to ensure that standards of honesty, justness and fairness are met in the



election and that the election is free from all kind of illegal and corrupt practices. Article 218(3) of the Constitution as well as the judgment reported as PLD 2012 SC 681 elaborately sets out and defines the duties of the Election Commission. The paragraph 43 of the referred judgment provides the following observations/declarations of the august Supreme Court:-

"43. Article 218(3) also empowers the Election Commission to ensure that the election process does not suffer from any corrupt and/or illegal practices. Sections 78, 79, 80, 80-A, 81 and 83 of ROPA comprehensively define the terms "corrupt practices" and "illegal practices". ROPA in sections 82, 99 and 100 further elaborates the consequences of such practices and enunciate that the same form a sufficient basis for the Election Commission to, inter alia, imprison, fine and disqualify those who violate them. These provisions, therefore, subsume all those impugned activities as cognizable by the Election Commission. Similarly, Section 103(a) of ROPA instructs the Election Commission to ensure a "fair election". In doing so it implies that "large scale malpractices including coercion, intimidation and pressures, prevailing at the election" would negate the 'fairness' elections are to embody. While sections 78, 79, 80, 80-A, 81 and 83 specify activities that the Election Commission can regulate and check under Article 218(3), section 103(a), substantially enhances this defined spectrum of cognizable activities and reinforces the obligation to check them. In section 103(c) section it empowers the Election Commission to issue instructions, exercise its powers and make orders to effectuate the said standard."



7. The above clearly shows that this Commission is fully empowered to look into the matters of corrupt practices and to take all measures to curb and guard them.

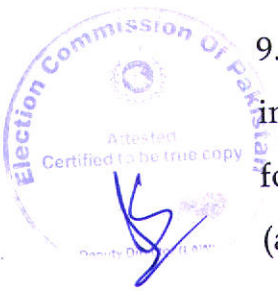
6. Now the foremost and expressive question, arise for determination, is whether alleged videos obtained can be termed and produced as an evidence in the instant matter. The august Supreme Court of Pakistan in its judgment reported as (PLD 2019 SC 675) Ishtiq Ahmed Mirza & 2 others versus Federation of Pakistan and others has settled certain principles. Audio/video can be procured and produced before the Court as evidence but certain requisite conditions requirements are laid down therein. In the present case most of the requirements/standards i.e. Commissions' permission to produce the audio/videos; respondent No. 3's appearance before the Commission as video recorder and furnishing written affidavit to this effect about the genuiness of the videos; displaying of videos in the Court; identification of voice of respondent No. 2 by the respondents No 3 & 4; videos recorded by the respondent No. 3 is witnessed by respondent No. 4; date of preparation of videos has also been pointed out by the respondent 3 & 4 which was prior to the happening of a certain event and production of its transcript by the petitioner, set out in the judgment are meeting in the present case. If the requirements/standards goes missing, then too, the respondent No. 2, in his press conference has not denied meeting with the MNAs of the PTI which as per record are the respondent No. 3 & 4.

8. We have perused the available record and have heard extensive arguments of the parties. The controversy in the instant matter revolves around the alleged audio/videos of the respondents No. 2-4 provided to the Commission by the petitioners. In these

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videos/audios, respondent No. 2, can be heard talking to respondents 3-4 (who are Members of the National Assembly) regarding destruction of vote being polled for the Senate elections, the very next day. In an audio-cum-video clip, the respondent No. 2, can be heard talking to one Captain Jameel (respondent No. 3) who then connected Mr. Jameel with another person Syed Nasir Hussain Shah. In this audio/video, these persons can be heard/seen bargaining for money in between *crores* for buying/selling the votes for the election of respondent No.1. The respondent No. 2, in a subsequent press conference, admitted that he had met the MNAs of Pakistan Tehrik-e-Insaf (without naming anyone) and had advised them how to destroy the votes to be cast for the election in question. To the contrary, the respondents 3-4 has denied taking any kind of bribe by them from the respondent No. 2. However, they say that they have recorded the video wherein respondent No. 2, was offering bribe to the other Members of the Assembly in their presence and they are witness to it.



9. The conduct of the respondent No. 2, *prima facie*, show that he in order to get vote for the respondent No. 1 by way of offering bribe for the election in question, induced respondents No. 3-4 and others (anonymous) for vote in favour of the respondent No. 1. The respondent No. 1 in the above referred press conference, admitted the factum of meeting the MNAs (respondents No. 2 & 3) and giving them instructions how to destroy the vote by double stamping which might be used against the respondent No. 1. Such conduct of the respondent No. 2 clearly attracts provisions of Chapter-X of the Elections Act, 2017. The relevant provisions of the Act *ibid*, provides the following:-

"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;

(b) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe;

(c)

(d)"

"168. Bribery.— A person is guilty of bribery, if he, directly or indirectly, by himself or by any other person on his behalf —

(1) receives or agrees to receive or contracts for any gratification for voting or refraining from voting, or for being or refraining from being a candidate at, or for withdrawing or retiring from an election;

(2) gives, offers or promises any gratification to any person —

(a) for the purpose of inducing —

(i) a person to be, or to refrain from being, a candidate at an election;

(ii) a voter to vote, or refrain from voting, at an election;
or

(iii) a candidate to withdraw or retire from an election; or

(b) for the purpose of rewarding —

Sd



- (i) a person for having been, or for having refrained from being, a candidate at an election;
- (ii) a voter for having voted or refrained from voting at an election; or
- (iii) a candidate for having withdrawn or retired from an election."

10. Under section 174 of the Act *ibid*, penalty for corrupt practice has been defined as under:-

"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."

11. Under Section 190 of the Act *ibid*, on commission of offence of corrupt practice, the Commission has to refer the matter to the Sessions Judge by way of a complaint for conviction and sentence/punishment. The said section provides as under:-

"190. Cognizance and trial.— (1) Notwithstanding anything contained in any other law but subject to section 193, an offence under this Chapter shall be tried by the Sessions Judge and any aggrieved person may, within thirty days of the passing of the final order, file an appeal against the order in the High Court which shall be heard by a Division Bench of the High Court."

12. We have affirmed view that relief under section 9 qua re-poll at this juncture of time cannot be granted as under sub-section (3) of the Act *ibid*, powers of re-poll may be exercised by the Election Commission before the expiration of sixty days after publication of name of the returned candidate. Whereas, election of respondent No.



1 has become final a year ago and has become past and close transaction. The said sub-section provides the following:-

“(3) Notwithstanding the publication of the name of a returned candidate under section 98, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to the decision of an Election Tribunal on an election petition, if any.”

Sd.

13. Further, the objections of the respondents qua inadmissibility of the videos/audios in question do not carry weight as there are instances of admission on the part of the respondent No. 2, which he made through his press conference. Likewise, the affidavits furnished by the respondents No.3 & 4, as well as their in-person appearance before us endorsing the authenticity of in question audio/videos and involvement of respondent No. 2 in this offense of corrupt practice, also amounts of admission. As per Article 113 of the Qanun-e-Shahadat Order, 1984, the facts which are admitted by the parties are not required to be proved through any mode of investigation or trial.



14. In light of the above, in exercise of powers under Article 218(3) of the Constitution read with section 190 of the Elections Act, 2017, the petitions of the petitioners are partly accepted. We direct and authorize the District Election Commissioner, Islamabad to lodge complaints of corrupt practice against the respondent No. 2-4 under the relevant provisions of the Elections Act, 2017 and the Pakistan Penal Code. Since, no evidence/material connecting the respondent

No. 1 directly to the commission of corrupt practice which was required to be produced by the petitioners, is available, therefore, no action to his extent is required. Disposed of, accordingly.

(Sikandar Sultar Raia)
Chairman

(Nur Anwar Hani)
Member

(Shah Muhammad Jatoi)
Member

Announced on 29th April, 2022

