

**BEFORE THE ANTI-CORRUPTION TRIBUNAL
(THE PAKISTAN CRICKET BOARD)**

In the matter of

Pakistan Cricket Board Vs. Mr. Nasir Jamshaid

For the Pakistan Cricket Board.

Mr. Taffazul Haider Rizvi, ASC, PCB

Mr. Haider Ali Khan, Advocate, PCB

Col. ® Khalid Mehmood, Manager, Security & Vigilance, PCB

Mr. Daniyal Imam, Assistant Manager, Legal Affairs, PCB

For the Participant

Barrister Hassan Iqbal Warriach, Advocate.

Mr. Hassan Iftikhar, Advocate.

Mr. Wasim Akram, Advocate.

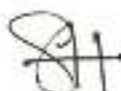
D E C I S I O N

This decision containing reasons is made in accordance with
Article 5.2 of the Pakistan Cricket Board's, Anti-Corruption Code for
Participants, 2015.



1. The Pakistan Super League (PSL) is a premium tournament of the PCB. Its first edition was played in 2016 wherein in addition to Pakistani players Foreign Cricketers also participated but due to compelling circumstances this tournament was held in U.A.E. The second edition of PSL tournament was also held in U.A.E, but in view of the improved law and order situation, the final of PSL 2017, was held at Lahore on 5.3.2017. Five teams namely Islamabad United, Peshawar Zalmi, Quetta Gladiators, Karachi Kings and Lahore Qalandars, comprising of both Pakistani and Foreign Cricketers participated in PSL-2.

2. Mr. Nasir Jamshad is a Cricketer and has been playing International as well as Domestic Cricket for several years therefore being a Cricketer he is governed by the PCB's



Anti-Corruption Code for Participants, 2015 as under Article 1.4 of the Code (ibid) it applies to all Cricketers who fall within the term "Participant" accordingly for all intents and purposes the Code is fully applicable to Mr. Nasir Jamshaid and he is bound to adhere to every Article contained in it.

3. During investigation conducted by the PCB against Mr. Sharjeel Khan and Mr. Khalid Latif for "corrupt practices" the name of Mr. Nasir Jamshaid surfaced for allegedly enticing Sharjeel Khan and Khalid Latif, to spot fix, therefore according to the PCB his conduct was not in consonance with the set standards and requirements of the Code and accordingly entailed a reply from him.

4. In furtherance thereto, under Article 4.1 of the Code the PCB, Vigilance and Security Department, has authority to



conduct investigation into illegal activities of any Participant and exercising these powers after perusing the available material it opted to summon Mr. Nasir Jamshaid. PCB also "Provisionally Suspended" him on 13th February, 2017, reiterating the charges referred to earlier.

5. The Participant Mr. Nasir Jamshaid challenged this suspension before the Chairman, Disciplinary Panel, wherein proceedings have been adjourned and would be decided alongwith the Decision made in these proceedings.

6. The PCB thereafter issued a Notice of Demand to Mr. Nasir Jamshaid on 1st March, 2017 under Article 4.3. of the Code to appear before the PCB Vigilance & Security Department at PCB Headquarters, Qaddafi Stadium on 10th March, 2017. Mr. Nasir Jamshaid failed to appear

before the PCB's Vigilance and Security Department but sent an e-mail dated 10th March, 2017 through Abbey Solicitor's (who claimed to be acting as Counsel for Mr. Nasir Jamshaid) stating that Mr. Nasir Jamshaid is currently under investigation being conducted by the National Crime Agency, U.K. and there are travel restrictions imposed upon him therefore he cannot appear.

7. The PCB again issued a Notice of Demand on 18th March, 2017 and sent an e-mail also, dated 4th April, 2017, requiring Mr. Nasir Jamshaid to appear before the PCB's Vigilance and Security Department for investigation in London but according to the PCB the Participant refused to appear, despite this opportunity, thus he committed an



infraction of the Code consequently he was charged under


Article 2.4.6 and 2.4.7.

8. A formal notice of this charge was sent to Mr. Nasir Jamshaid on 11th April, 2017, he responded to the Notice of Charge, on 21st April, 2017 and requested that proceedings be put on hold till the investigation being conducted by NCA, U.K. is finalized. The PCB did not accede to his request, thus in view of these peculiar events and circumstances, the PCB constituted a Three Members Anti-Corruption Tribunal comprising of the following:-

Mr. Justice ® Syed Asghar Haider.	Chairman
Lt. Gen. ® Tauqir Zia.	Member
Mr. Wasim Bari.	Member

9. The Tribunal was specifically requested to initiate proceedings against Mr. Nasir Jamshaid for violating Articles 2.4.6 and 2.4.7 of the Pakistan Cricket Board's Anti-Corruption Code for the Participants, 2015. The Tribunal in pursuance of the entrustment made issued notice to the PCB and the Participant for a Preliminary Hearing to appear before it on 12th May, 2017. On this date the Counsel for Parties entered appearance and as ordained under Article 5 of the Pakistan Cricket Board's Anti-Corruption Code for the Participants, settled the modalities as required in Article 5.1.3 and 5.1.4, the following schedule was settled:-

- Pakistan Cricket Board shall submit its Opening Brief on 26th May, 2017 at 2.30 p.m.
- Participant shall submit the Answering Brief on 9th June, 2017 at 2.30 p.m.
- Pakistan Cricket Board if it so desires, submit Reply Brief on 14th June, 2017 at 2.30 p.m.



- Thereafter, the proceedings will be held on 30th June, 2017 for recording of evidence on day to day basis till conclusion.

10. The parties as agreed filed the Opening Brief, the Answering Brief and the Reply Brief. The Pakistan Cricket Board produced two witnesses Col. ® Mohammad Azam Khan as PW-1 and Mr. Salman Naseer as PW-2 ,they were subjected to cross-examination by the learned Counsel for the Participant. The PCB also tendered various documents which are part of the record. Thereafter Mr. Nasir Jamshaid appeared as RW-1 through Skype, he was subjected to cross-examination by the PCB's Counsel and the parties closed their evidence. Finally, both the Counsel made verbal arguments and rested their case. The proceedings were reserved for announcement of decision in terms of Article



5.2 of the Pakistan Cricket Board's Anti-Corruption Code for Participants, 2015 and in pursuance thereof this Decision is being announced today.

11. The learned Counsel for the Pakistan Cricket Board Mr. Taffazul Haider Rizvi, contended that he reiterates all grounds taken in the Opening Brief and the Reply Brief and laid much emphasis that Mr. Nasir Jamshaid flagrantly violated the provisions of Article 2.4.6 and 2.4.7 of the Code as he refused without compelling justification to cooperate with the investigation carried out against him by the PCB's Vigilance and Security Department and also obstructed and delayed the investigation into possible "corrupt conduct", thus he falls within the mischief of these two Articles, to elaborate his contention further he referred to the



deposition's made by PW-1 and PW-2 (as contained in the Ex-P-1 and Ex-P2). He also tendered in evidence Ex-P/1/A (Annex-A), Ex-P/1/aa (Annex-A/1), Ex-P/1/b (Annex-A/2), Ex-P/1/c (Annex-A/3), Ex-P/1/d (Annex-A/4), Ex-P/1/e (Annex-A/5), Ex-P/1/f (Annex-A/7), Ex-P/1/g (Annex-A/11) and Ex-P/1/h (Annex-A/12) and finally stated that the PCB has adequately discharged onus in terms of Article 3.1 of the Code in accordance with standards set therein. He specifically referred to Ex-P/1/g and the correspondence addressed by Mr. Nasir Jamshaid to PCB to establish that he deliberately chose not to appear before the PCB's Vigilance and Security Department, therefore the charges as levelled stand proved and he be accordingly punished to



the maximum in accordance with the standards set in the Code.

12. The learned Counsel for the Participant Mr. Hassan Iqbal Warraich, on the other hand firstly referred to the Reply Brief and the grounds contained therein by reiterating them, he also laid emphasis on the fact that the correspondence addressed by his client to the PCB emphatically stated that Mr. Nasir Jamshad was under investigation by the NCA and there were travel restrictions upon him therefore it was not possible for Mr. Nasir Jamshad to travel to Pakistan thus non-appearance before the PCB was neither deliberate nor intentional but result of circumstances beyond his control. To fortify his contention further he referred to Article 3.1 of the PCB's Code to state that the PCB has not adequately



discharged onus as required in the terms set therein. He thereafter stated that though the PCB's Vigilance and Security Department communicated that they will travel UK to conduct the interview but the PCB's Vigilance and Security Department did not travel to U.K, in this regard he referred especially to the cross-examination of Col. Mohammad Azam (PW-1) who accepted this assertion and he also laid great emphasis that travel allegedly undertaken to the U.K. was by Mr. Salman Naseer (PW-2) the General Manager, Legal, but it is of no use to PCB as he is not part of the Vigilance and Security Department, therefore even if such exercise was done it was void ipso facto. He thereafter also stated that the entire correspondence placed before this Tribunal and relied by the PCB does not refer to the



Venue of the interview to be conducted in London, therefore no serious attempt was made to conduct the interview in London, it rather was peripheral to fulfil a requirement in which the PCB failed. He also adverted to the fact that notwithstanding any lapse committed by Mr. Nasir Jamshaid even if for the sake of argument any infraction was committed by him it stands cured because Mr. Nasir Jamshaid appeared before this Tribunal through Skype and was subjected to a detailed and exhaustive cross-examination by the learned Counsel for the PCB thus the lapse if any stands automatically condoned. He pointed that there are several contradictions in the deposition and cross-examination of PW-1 the star witness of the PCB, thus the case of the PCB falls apart in view of these material



contradictions especially when Mr. Nasir Jamshaid stated in categorical terms that no information regarding spot fixing was ever made to him therefore he had nothing to report, thus all actions by the PCB in this regard are nullity in the eye of law of no legal validity or significance. To conclude the learned Counsel stated that Mr. Nasir Jamshaid does not fall within the ambit and purview of Article 2.4.6 and 2.4.7 of the Code, therefore the proceedings against him be dropped.

13. We have heard the learned counsel for the Parties and perused the record. At the very outset we would like to state that the matter in hand requires legal interpretation of Article 2.4.6 and 2.4.7 of the PCB's Code for the Participants, 2015 and thereafter on the threshold of the



interpretation made we will decide as to whether Mr. Nasir Jamshaid the Participant falls within the ambit and mischief of these enactments or not, we are thus required to adjudicate both on questions of law and fact.

14. The case of the Pakistan Cricket Board is that during the course of investigation of Mr. Khalid Latif and Mr. Sharjeel Khan it transpired that Mr. Nasir Jamshaid had enticed these players to commit "Corrupt Practices" in terms of PCB's Code of Conduct, 2015. It is in this background that the PCB required the Participant Mr. Nasir Jamshaid to enter appearance and explain whether the allegations levelled are true or false, as he did not cooperate with the PCB's Vigilance and Security Department in relation to possible "corrupt conduct" he has thus failed to provide



accurately and completely information as requested by the PCB, Vigilance and Security Department therefore he has obstructed and delayed further investigation which was to be carried on by the PCB, Vigilance and Security Department, therefore Mr. Nasir Jamshaid is guilty of violating the Code for the Participants, 2015 in terms of Article 2.4.6 and 2.4.7 and he be suitably punished.

15. We would at the very outset state that the mandate of this Tribunal is limited only to infractions contained in Article 2.4.6 and 2.4.7 of the PCB's Code for Participants, 2015, which are reproduced for ready reference:-

2.4.6 *Failing or refusing, without compelling justification, to cooperate with any investigation carried out by the PCB Vigilance and Security Department in relation to possible Corrupt Conduct under this Anti-Corruption Code (by any Participant), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by*



the PCB Vigilance and Security Department (whether as part of a formal Demand pursuant to Article 4.3 or otherwise) as part of such investigation.

- 2.4.7 *Obstructing or delaying any investigation that may be carried out by the PCB Vigilance and Security Department in relation to possible Corrupt Conduct under this Anti-Corruption Code (by any Participant) including (without limitation) concealing, tempering with or destroying any documentation or other information that may be relevant to that investigation and /or that may be evidence of or may lead to the discovery of evidence of Corrupt Conduct under this Anti-Corruption Code.*

Accordingly the findings of this Tribunal in the current matter would be also limited to these charges only. We would emphatically state here that under Article 3.2.1 of the PCB's Code for Participants this Tribunal is not governed by the applicable provisions of the Qanun-e-Shahadat Order, 1984 as applicable in Judicial or other proceedings, on the contrary facts can be established by any reliable means and therefore this Tribunal has unfettered powers to examine



any document which has been placed on record. It is a settled principle of law that documentary evidence takes precedence over any oral material thus on this principle we have examined the material available on record with due diligence and care. After apperising this material it emerges clearly from the documents tendered by the PCB that Mr. Nasir Jamshaid had given a clear and unequivocal declaration in November 2010 that if any corrupt practice comes into his notice or knowledge he will immediately convey it to the relevant authority (Ex-P/1/c). On 13th February, 2017 PCB suspended Mr. Nasir Jamshaid by issuing Ex-P/1/d, this suspension letter indicates clearly the PCB's intention to investigate Mr. Nasir Jamshaid, as in their viewpoint, prima facie a cause existed. In furtherance

thereto on 1st March, 2017 PCB issued a Notice of Demand requiring Mr. Nasir Jamshaid to appear before the PCB's Vigilance and Security Department (Ex-P/1/e) with a clear warning that non-compliance would deem to mean that "you are in breach of your obligations under the Code". The copy of the suspension letter was attached with it, in response thereto Mr. Nasir Jamshaid through an e-mail by *Abbey Solicitor's* stated that their client "Mr. Nasir Jamshaid" was under investigation by the NCA and travel restrictions were imposed upon him, he therefore could not appear before the PCB's Vigilance and Security Department on 10th March, 2017 as required (Ex-R/1). The PCB declined the request and proceeded with the matter further and issued another notice of Demand (Ex-P/1/f) intimating that the interview



may be conducted in London on 3rd and 4th April, 2017. In response thereto *Abbey Solicitors* sent an e-mail on 29th March, 2017 (Ex-R/2) raising legal objections inter alia that they were in violation of Article 4.2 of the PCB's Anti-Corruption Code, casting aspersions on Mr. Najam Sethi's conduct and also making a demand that Mr. Nasir Jamshaid be foretold what questions he would be put and demanded full disclosure in this regard. The PCB has placed on record Annex A/9 which is an e-mail from Mr. Salman Naseer (PW-2) dated 4th April, 2017 in which a final opportunity was granted to Mr. Nasir Jamshaid to make himself available for the interview on 7th April, 2017 at 3.00 p.m. in London, with a stipulation that venue would be confirmed later. (Mr. Nasir Jamshaid denied the receipt of this e-mail and as such the



learned Counsel for the Participant raised objection that this document be not made part of the record). We would therefore first rule on the admissibility of this document. The scribe of this document Mr. Salman Naseer PW-2 has vouched and stated that this was dispatched to Loren Coulding of *Abbey Solicitors* therefore under law it would deem to have reached its destination, even otherwise we have already held that the threshold of admissibility in the current proceedings is different from as required in judicial proceedings therefore when Mr. Salman Naseer vouched its dispatch any evasive denial by the Participant without any convincing material does in no way diminish its authenticity or dispatch rather it proves otherwise, further this document is a part of the PCB's Opening Brief, thus a part of record



already, therefore we over-rule the objection of the Learned Counsel for the Participant and will peruse its contents. Likewise we would also look into the contents of Annexure-A/10 which is a reply of this e-mail from Loren Coulding to Mr. Salman Naseer, wherein a categorical refusal has been made by Mr. Nasir Jamshaid that he will not attend the interview scheduled for 7th April, 2017 thus both documents compliment each other and prove their authenticity dispatch and receipt under instructions by the Participant. (The reasoning for perusing this document is the same as referred to and applied to the former document (Annexure-9)). We therefore hold that both documents are admissible under the Code and their contents are true reflection of facts and will further elaborate in the coming paragraphs.



16. Finally we would refer to Ex-P-1/g which is a Notice of Disciplinary Charges for breeches of PCB Code issued on 11th April, 2017 by PCB to the Participant. This is very detailed and exhaustive and was responded to by Mr. Hassan Iqbal Warraich the learned Counsel for the Participant (Ex-P/1/h) wherein he inter alia reiterated the exceptional and extraordinary circumstances inhibiting the non-appearance of Mr. Nasir Jamshaid (investigation by NCA and travel restrictions) and also alluding to the legal requirements of Article 2.4.7 of the Code, interestingly the letter inter alia states as under *"As you are well aware from the fact that National Crime Agency of the United Kingdom hereinafter referred to as NCA is already conducting an investigation regarding the same matter on behalf of the*



PCB therefore in the larger interest of justice Therefore it is clear and apparent that all communication made by Abbey Solicitor's was with the consent, approval and understanding of Mr. Nasir Jamshaid, because the reference in Annexure P-1/h, makes reference to former correspondence on behalf of Mr. Nasir Jamshaid which was done only through Abbey Solicitors there was no direct communication between Mr. Nasir Jamshaid and PCB, further in our considered view it defeats reason why a Counsel would undertake such exercise without entrustment of brief and waste his time to defend cause of a person not known to him by taking the risk of prosecution, secondly Mr. Nasir Jamshaid in his deposition before this Tribunal did not deny clearly and unequivocally that *Abbey Solicitors*



were not representing him he merely stated that he engaged Mr. Shahid Ali who is his Counsel and is located in Manchester, U.K, though in law he was under a bounden duty to prove before this Tribunal that communication by *Abbey Solicitors* was without authority therefore it is clear that *Abbey Solicitors* were representing Mr. Nasir Jamshaid and handling correspondence on his behalf with the PCB. To elaborate further Mr. Nasir Jamshaid admitted that he received the Suspension Notice and the Notice of Demand and also acknowledged Ex R-1 and Ex-R-2 (with a rider that that he was not withholding any information) thus to our mind and at the cost of repetition the correspondence placed on record by PCB pertaining to Abbey Solicitor is a true and correct reflection of events *per se*, more so



because Mr. Nasir Jamshaid has not placed any material before us to disown it or initiated any legal action against them, therefore we accept the correspondence and contents contained therein which reflect that Mr. Nasir Jamshaid refused to appear before Vigilance and Security Department of the PCB. Now we will examine as to whether the defence taken is tenable in law or Code, to examine it we refer to and reproduce Article 4.2. of the Code:-

"All Participants must cooperate fully with such investigations, failing which any such Participant shall be liable to be charged with a breach of the Anti-Corruption Code pursuant to Articles 2.4.6, 2.4.7, 2.4.8 and/or 2.4.9 (and it shall not be a valid basis for failing or refusing to cooperate or a valid defence to any such subsequent charge for a Participant to invoke any privilege against self-incrimination, which privilege is deemed to have been waived by the Participant). The PCB Vigilance and Security



Department shall have discretion, where he/she deems appropriate, to stay his/her own investigation pending the outcome of investigations being conducted by the ICC and/or other National Cricket Federations and/or other relevant authorities."

17. As is clear from the contents of this Article the reasons stated are not a valid defence and PCB has absolute discretion to suspend or continue with the investigation notwithstanding other proceedings on this issue. The PCB opted to continue with the investigation therefore it exercised a discretion vested in it declining the request of the Participant thus no illegality was committed by the PCB and it acted within the domain of the Code and powers bestowed upon it, thus the defence put up by the Participant on this count also fails.



18. The learned counsel for the Participant Mr. Hassan Iqbal Warriach has highlighted and pointed to us several discrepancies and anomalies in the deposition and cross-examination of PW-1, unfortunately, they relate to corrupt practices which are beyond our mandate, therefore we will not give any finding in this respect because it may prejudice the cause of the parties. The defence put up by the Learned Counsel for the Participant at best, in our viewpoint is a case of mitigating circumstances for non-appearance, this in our opinion can only help the Participant's cause for a less sentence but cannot save him from the rigor and mischief of Article 2.4.6 of Code. Thus the defence put up by the learned Counsel for the Participant that as Mr. Nasir Jamshaid had nothing to declare he therefore was not



required to appear before the PCB's Vigilance and Security Department is untenable as these are disciplinary and administrative proceedings so when a demand for appearance is made to the Participant he is duty bound to appear and state whatever he desires including if he has nothing to declare, but no provision in the Code arms the Participant to disobey the demand for appearance on any pretext. Lastly after clear refusal by the Participant not to appear before the PCB the non-communication of Venue by it in London is immaterial and is of no consequence. The strategy adopted by Abbey Solicitors demanding full disclosure of questions defeats the very purpose of inquiry and cannot therefore sustain in law. Before venturing further we would also like to point out here that the appearance of



Mr. Nasir Jamshaid through Skype before this Tribunal does not in any manner absolve him from his duty to make appearance on the asking of the PCB under the Code as both forums are different and independent of each other, thus the contention of the learned Counsel for the Participant that this appearance mitigates and absolves Mr. Nasir Jamshaid from the charge under 2.4.6 is untenable because these are disciplinary proceedings and as stated earlier the Participants are required to adhere to each Article of the Code, therefore non-appearance for any reason cannot be countenanced. Consequently we hold that Mr. Nasir Jamshaid is **guilty of non-cooperation** under Article 2.4.6 of the Code but we will be mindful of the mitigating circumstances while imposing sanctions on him.



19. Now adverting to the other charge as contained in Article 2.4.7 of the Code for Participants, 2015, viz delaying or obstructing investigation that may be carried by the PCB Vigilance and Security Department in relation to possible corrupt conduct under the Anti-Corruption Code by the Participant. We have very carefully applied our mind and perused the record as well as the depositions PW-1 and PW-2 and the cross-examination made, in our humble view although Mr. Nasir Jamshaid did ask the PCB to withhold its investigation till decision by the NCA as continuing these proceedings may cause him prejudice in the investigation before the NCA but it is worthwhile to note here that this request was turned down by the PCB there is no material or evidence available on record to hold that Mr. Nasir



Jamshaid got delayed or obstructed the investigation which the PCB has undertaken. After detailed examination of both Documentary and Oral evidence we hold that Mr. Nasir Jamshaid has not obstructed or delayed the investigation conducted by the PCB, resultantly, he is held not guilty of any infraction under Article 2.4.7 of the Code.

20. To conclude and encompass the requirements as set in Article 7 of the PCB's Anti-Corruption Code, we elaborate hereinunder:-

CHARGES	PERIOD OF INELIGIBILITY TO PLAY CRICKET	Fine
<u>Charge No. 1</u> Breach of Article 2.4.6 of the Code by refusing, without compelling justification, to cooperate with any investigation carried out by PCB Vigilance and Security Department in relation to possible corrupt conduct under the Code.	Proved he shall be ineligible to play cricket for One year.	Nil

<u>Charge No. 2</u> Breach of Article 2.4.7 of the Code by obstructing or delaying any investigation that may be carried out by the PCB in relation to possible corrupt Conduct under the Code, including concealing information that may be relevant to that investigation.	Not Proved	NII
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The period of suspension already undergone by the Participant shall stand deducted from the sanction imposed.

The parties shall bear their own costs, however, the costs of the Proceedings shall be borne by the PCB.

The record of these proceedings with all incidental and ancillary material shall stand consigned and be sealed and handed over by the Registrar of this Tribunal for safe keeping and custody to the Senior General Manager, Vigilance and Security Department of the Pakistan Cricket Board. This material can and may be used by the

Chairman of the Pakistan Cricket Board, in his discretion,
if and when required.

The PCB is directed to put the decision of this Tribunal on
its Website after the hard copy is handed over to both
parties for information of the General Public.

The parties may, if they so desire, file an Appeal under
Article 7 read with Article 7.4 of the PCB's Anti-Corruption
Code for Participant's, 2015, within 14 days as detailed
therein.



Mr. Wasim Bari
Member



Justice [®] Syed Asghar Haider
Chairman



Lt. Gen. [®] Tauqir Zia
Member

Certified that this decision consists of 35 pages and each page has been initialed by us (the Chairman and Members of the Tribunal) and the final page has been signed by us.

Note:

- The word "Code" appearing in this decision anywhere means "The Pakistan Cricket Board's, Code for the Participants, 2015.
- The reference made to General Laws in the Decision means the Laws of Pakistan.

Issued this 11th day of December, 2017 at 1.00 p.m at National Cricket Academy, PCB, Lahore.



Mr. Wasim Bari
Member



Justice Syed Asghar Haider
Chairman



Lt. Gen. Tauqir Zia
Member

