

**BEFORE MR. JUSTICE (RETD.) FAZAL-E-MIRAN CHAUHAN,**  
**INDEPENDENT ADJUDICATOR, PAKISTAN CRICKET BOARD, QADAFI**  
**STADIUM, LAHORE**

Appeal No. \_\_\_\_\_/2020

Muhammad Saleem Malik son of Barkat Ali, resident of 105-B,  
 Baber Block, New Garden Town, Lahore.

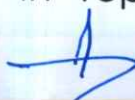
Appellant

Versus

1. Pakistan Cricket Board, Qadafi Stadium, Lahore through its Chairman.
2. The Manager, Security, Anti Corruption, Pakistan Cricket Board, Qadafi Stadium, Lahore.

**JUDGMENT:**

1. Brief facts of the case are that the appellant is a former test cricketer and Test Captain of Pakistan Cricket Team. In the year 1998, allegations (match fixing and betting) were leveled against the appellant and certain other players. The then Government of Pakistan, Cultural, Sports and Tourism Division, appointed Mr. Justice (Retd.) Malik Muhammad Qayyum, as one Member Commission of Inquiry under Pakistan Commission of Inquiry Act, 1956. The said Commission after holding inquiries, submit his inquiry report dated 12-10-1999. In his report, Inquiry Commission recommended that life ban be imposed on the appellant and he shall not be allowed to play cricket at any level, he shall not be allowed to associate with any kind of cricket affairs, such like coaching, managerial office and selection committee. Fine of Rs.1,000,000/- was also imposed as a punishment.
2. On 19-7-2002, the then Chairman, PCB, Lt. Gen. Tauqir Zia, served the appellant with a Show Cause Notice requiring him to show cause within 15-days, as to why action in the terms of one man Commission recommendations be not taken against him. He was also offered a chance of personal hearing. Detailed reply to show cause notice was given by the appellant in reply dated 20-8-2000. The



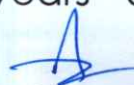


Chairman, PCB being not satisfied with the reply, vide letter dated 19-9-2000 proceeded to impose as punishment, fine of Rs.1,000,000/- and directed the appellant to pay the same. The appellant filed a Civil Suit on 11-11-2000 in the Court of Senior Civil Judge, Lahore which was tried and decided by Malik Muhammad Alfaf, Civil Judge, 1<sup>st</sup> Class, Lahore. At the first instance, the suit was rejected under Order 7 Rule 11 CPC by the Civil Court. Appeal filed was also dismissed. Civil Revision No. 2350/2001, filed against the order of Civil Judge and order of Additional District Judge, Lahore was also dismissed by the learned Single Judge, Lahore High Court, Lahore. However, CPLA No. 505/2008 was accepted and case was remanded back to the Civil Court to decide the suit on merits. The learned Civil Judge vide its judgment and decree dated 23-10-2008 decreed the suit of the appellant. After getting set aside the penalty imposed vide letter dated 19-9-2000, being without jurisdiction and lawful authority, the appellant submitted an application on 24-10-2012 for appointment as Batting Coach in PCB. On receiving no response from PCB, the appellant filed Writ Petition No. 30177/2012 before the Honourable Lahore High Court, Lahore, which was disposed of vide order dated 07-12-2012 and PCB was asked to pass appropriate order on the application in accordance with law. On receiving the order of the Honourable Lahore High Court, Lahore, the respondent PCB vide letter dated 22-4-2013, asked the appellant to give his explanation and clear his position viz-a-viz, his conduct brought in picture by ICC in transcripts dated 25-5-2000. In these transcripts the appellant was found talking with 3 to 4 persons about betting, how to operate a book and to approach players for match fixing. The appellant refuted the allegations of conversation of transcripts. PCB vide letters dated 24-4-2020, 12-5-2020 and 17-8-2020 has been asking the appellant to clarify his position viz-a-viz the transcripts. Hence this appeal.

3. Learned counsel for the appellant argued that in the year 1998, Mr. Justice (Retd.) Malik Muhammad Qayyum as a one man Commission, after holding inquiries, found appellant guilty of Match Fixing and recommended (i) imposition of life ban (ii) not to associate appellant with PCB without checking his affairs, not to give him the job of coaching, or member of Selection Committee or Manager of any Team and finally imposed a fine of Rs.1,000,000/-. Argued that the then Chairman, PCB imposed a fine of



Rs.1,000,000/- upon the appellant vide letter dated 19-9-2000. Imposition of Rs.1,000,000/- as fine was challenged by the appellant in a suit for declaration and permanent injunction. In the first round of litigation, the suit was dismissed under Order 7 Rule 11 CPC. The matter went upto the August Supreme Court of Pakistan. The August Supreme Court of Pakistan, while accepting the CPLA No. 505 of 2008, filed by the appellant, remanded the case back to the learned trial court with the direction to decide the same on merits. Argued that after remand, the suit of the appellant was decreed vide judgment dated 23-10-2008. This order of the Civil Judge, 1<sup>st</sup> Class, Lahore was not challenged by the defendant in that suit and the judgment and decree dated 23-10-2008 attained finality. Argued that the stigma of Match Fixing and betting was washed away. The recommendations of one Member Commission were set aside. The letter dated 19-7-2002 was declared to be without lawful authority and legal justification. Argued that on 24-10-2012, appellant submitted an application to the Chairman, PCB with the request to appoint him as "Batting Coach" in PCB. No reply was given by the PCB. The appellant filed Writ Petition No. 30177/2012, in the Honourable Lahore High Court, Lahore, seeking direction in the name of the Chairman, PCB to consider the application of the appellant. Writ Petition was disposed of with the direction in the name of the Chairman, PCB to decide / pass order on the application of the appellant. Further argued that the then Chairman, PCB instead of deciding the application of the appellant, raised an other issue vide letter dated 22-4-2012 and asked the appellant to explain his position viz-a-viz. transcripts of 25-5-2000 of ICC. Reply to this letter is dated 22-4-2013. Argued that before issuance of letter dated 22-4-2013, the appellant was called upon for personal hearing on 19-02-2013. On this date, he was not confronted with any such letter. He was told that he would be informed about the fate of the application later on and finally on 22-4-2013, through this letter, he was asked to explain his position viz-a-viz the transcripts of ICC dated 25-5-2000. Argued that reply to the letter dated 22-4-2013 and 12-5-2000 were given in letter dated Nil to the PCB. Appellant challenged the genuineness of letter dated 25-5-2000 of ICC. Argued that letter dated 25-5-2000 was allegedly received by PCB in the year 2000. The same was not produced before the Civil Court. Argued that a 20 years' old letter which was not





produced before any legal forum, cannot be used against the appellant. Argued that these are forged and fabricated transcripts prepared by PCB itself to use against the appellant with malafide intention to keep the appellant away from the game of cricket. Argued that PCB had failed to establish the legitimacy of the said transcript and is asking the appellant to explain his position with regard to the transcript which still requires to be proved to be genuine. Had this material or letter was in existence on 19-02-2013, PCB, then must have confronted the appellant with the same. The appellant cannot be forced to explain his position viz-a-viz. a fake and unproved document. Learned counsel by relying on 2020 SCMR 601 at page 607, para (a) Para 10 page 608 argued that a document kept in dark for a long time and suddenly produced after 20 years created doubt about the genuineness of the document. Again relying on 2009 SCMR 1109 argued that a spy information neither produced before a court of law nor proved cannot be used against the present appellant. Argued that as per its own showing, the document / transcripts have yet to be verified against the original tapes. Argued that no letter or document or any proof has been placed on the record to show that the transcripts have been verified by ICC against the original tapes. Hence, unproved document cannot be used against the appellant. Respondent be directed to remove the restriction and allow him to associate him with cricket.

4. Conversely the learned counsel for the appellant Mr. Taffazal H. Rizvi, Advocate, replying the arguments of learned counsel for appellant, argued that Annexures R//2 of his reply at page 79 is a letter dated 05-5-2014, addresses by Appellant Saleem Malik to Mr. Najam Sethi, Chairman, PCB has not been referred and answered by the learned counsel for the appellant. Admittedly, this letter was written and signed by the appellant. Argued that in this letter, the appellant in 2014 has accepted his wrong doing and sought apology from the PCB and his fans and wants to start his rehabilitation process. He further undertook to cooperate to any extent with ICC and PCB for his rehabilitation program. Argued that PCB has an effective and operative Anti Corruption Regime and it has established a PCB Vigilance and Security Department (V&S Department). This department is there to ensure prevention of corruption / corrupt conduct as defined in the PCB Anti Corruption code for participants in Pak Cricket and to



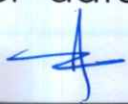
educate the participants. Argued that no cricket or cricket Sports Personnel can associate with the game of cricket unless he or she satisfies the V&S Department about his or her integrity. Argued that the appellant after the decision of Civil Court of 2008 in his favour, of his free will on 05-5-2014 admitted his wrong doings, giving a fresh cause to the V&S Department to inquiry into about his integrity. Argued that instead of submitting to jurisdiction of V&S Department, PCB the appellant had tried to by-pass the V&S Department by filing this appeal. Argued that even today, the appellant has failed to clarify his position viz.-e-viz. transcripts and why is not submitting to the V&S Department for his rehabilitation program. His appeal is liable to be dismissed in view of his letter of confession dated 05-5-2014. Appellant has clearly refused to cooperate with PCB program. He cannot bye-pass the scrutiny of V&S Department before joining the cricket world. On merits, it is argued that the prayer made in his appeal cannot be granted to the appellant. Appellant cannot seek any kind of declaration and direction for issuance of No Objection as prayed for in this appeal. No Objection is always issued subject to the satisfaction of the issuing authority. Argued that after admission of his wrong doings, in the letter dated 05-5-2014, the appellant has subjected himself to certain clarifications and PCB has every right to demand from him to clarify his position as reflected in 3 transcripts 25-5-2000 of ICC. Argued that he is now trying to wriggle out of his admission / confession by filing this premature appeal. Argued that Anti Corruption Department, was established in August, 2010. After the establishment of this Department, every cricketer or cricket personnel is supposed to submit himself before the Anti Corruption Department as and when called upon. Argued that after having admitted his wrong doings, the appellant is bound to submit to the Rehabilitation Program of PCB, and after issuance of a clearance certificate, the appellant can be considered for granting permission to associate with the cricket world. Argued that appellant in the last para at page 26 of his appeal admits that letter dated 05-5-2014 bears his signatures, thus he cannot deny the admissions made by him. Argued that he has not challenged before any legal forum that letter dated 05-5-2014 has no bearing and whatever is written therein is not binding upon him and the same be declared to be of no legal effect and cannot be used against him as admissions





of wrong doings. Argued that the Code of Anti Corruption for participants is applied to everybody as defined in Para 1.4.2 of Anti Corruption Code and under Para 1.5, every participant is bound by the Code as soon as he becomes a participant. Argued that under Para 1.5 of the Anti Corruption Code, every participant had agreed to submit to the jurisdiction of PCB to investigate apparent or suspected corrupt conduct. By referring to Rule 2.4 and 2.4.6 argued that the participant shall be in breach of these rules if he or she fails or refuses, without compelling justification, to co-operate with investigation carried out by PCB Vigilance and Security Department in relation to any possible corrupt conduct under Anti Corruption Code or failing to provide accurately and completely an information or documentation requested by PCB V&S Department. States that the appellant cannot ask any relief from PCB directly or through this tribunal. Argued that finally transcripts were sent to the appellant with letter dated 22-4-2013. Again were sent along with letter dated 12-5-2020. Argued that at Page 17 para (xi), (xii) it is admitted that transcripts were received by the appellant but he failed to appear and give explanation before the PCB Anti Corruption Department. By referring to the letter dated 07-7-2020, in which it was made clear to the appellant that his act of continuously avoiding to respond with regard to contents of the transcripts, is leading to draw a negative inference against the appellant. Through this letter he was again reminded of admission / confession made by him in his letter dated 05-5-2014. It was made clear to the appellant that till the time he responds to the queries which the transcripts raise about his integrity, behavior and conduct. This request cannot be considered. It is argued that instead of responding to the request of PCB Anti Corruption Department queries, the appellant request to include him in the PCB Cricket World is not possible. Finally, argued that appellant cannot get indirectly and by by-passing the scrutiny process of the Anti Corruption Department through his appeal, which he could get directly, by answering queries of the Anti Corruption Department.

5. In rebuttal, learned counsel for the appellant states that the Anti Corruption Code was made in 2010, thus cannot be imposed with retrospective effect and appellant cannot be forced to give explanation of transcripts of 2000. Argued that in the letter dated 25-5-2000 of RMG Hire,





General Manager, ICC, London it is clearly written that these transcripts 'have not yet been verified against the original tapes. Argued that there is proof on the record to show that these transcripts were verified against the original tapes and such proof, are with PCB Anti Corruption Department. These unverified transcripts cannot be used against the appellant.

6. I have heard learned counsel for the parties, have gone through the documents annexed with the appeal and reply. At the first instance, appellant was found to be involved in match fixing and betting, by one Member Commission, Mr. Justice (Retd.) Malik Muhammad Qayyum and he vide his report dated 12-10-1999 recommended punishment of life ban and imposition of fine of Rs.1,000,000/-. The then Chairman, PCB, on receiving the report, served a Show Cause Notice dated 19-7-2000 upon the appellant. The appellant was also offered a personal hearing. The appellant denied all the allegations in his reply dated 20-8-2000. The Chairman being not satisfied with the reply, imposed a fine of Rs.1,000,000/- as punishment. This decision of the Chairman, PCB and report of one Member Commission was challenged by the appellant in suit for declaration filed on 11-11-2000. At the first instance, suit was dismissed under Order 7 Rule 11 CPC. Appeal was filed, which was also dismissed. Civil Revision No. 2350 of 2001 filed in the Honourable High Court was also dismissed. But CPLA No. 505/2008 filed in the August Supreme Court of Pakistan, was allowed. Order passed by the learned Civil Judge, order passed by the learned Additional District Judge, Lahore and order passed by the learned Single Judge of Lahore High Court, Lahore were set aside and suit was remanded back to the learned Civil Court for decision on merits within two months. The learned Civil Judge after recording of evidence of the parties, decreed the suit on 23-10-2008. This judgment and decree of learned Civil Judge was not challenged by the respondent PCB and it attained finality. The relief granted by the learned Civil Judge reads as under:

**"As a result of what has been discussed above, a decree for declaration to the effect that imposition of penalty vide letter dated 19-9-2000 on the basis of Show Cause Notice dated 19-7-2000 is without lawful authority and jurisdiction, is passed in favour of the plaintiff and against the defendant, permanently restraining the defendant from imposing / demanding**



**the fine of Rs.1,000,000/- or subjecting him to any punishment. No order as to cost, file be consigned to the record room after due completion".**

From the above, it is clear that prayer for declaration that plaintiff cannot be restrained from playing professional cricket and there is no lawful or factual basis and authority for:

- (i) The initiation and continuation by the defendants of quasi judicial / disciplinary proceedings against the plaintiff.

AND

- (ii) To Show Cause Notice dated 19-7-2000 issued to the plaintiff, decree of the Civil Court dated 23-10-2008 was not granted. Only imposition of fine of Rs.1,000,000/- vide letter dated 19-9-2000 was set aside.

The prayer that the plaintiff now appellant cannot be restrained from playing professional cricket and initiation and continuation by the defendants of quasi judicial /disciplinary proceedings against the appellant (plaintiff) was not granted and the right to proceed against the appellant was not restricted and that is why respondent chooses not to challenge that judgment and decree of the Civil Court dated 23-10-2008. The dispute again cropped up on 24-10-2012, when the appellant applied for appointment as "Batting Coach" in PCB. No reply was given by the PCB and the appellant filed Writ Petition No.30177 of 2012 in the Honourable Lahore High Court, Lahore. Writ Petition was disposed of by directing PCB to decide the application in accordance with law. It is now at this point of time on 22-4-2013, the PCB Vigilance and Security Department asked the appellant to explain his position viz.-a-viz. transcripts forwarded by ICC on 25-5-2000. The appellant straightaway refuted the allegation, by disputing the transcript of 25-5-2000 of ICC. I have gone through the transcripts with the help of learned counsel for PCB and found that first conversation was recorded on 21-4-2000 between News of the world reporters and Saleem Malik at Kensington Hilton Hotel, London. Learned counsel referred to Pages 23 to 28, 30 to 35, 37-38 of reply, second conversation was recorded on 22-4-2000 between the news of world reporters and Saleem Malik at Bombay, Brasserie Restaurant, London, learned counsel for PCB, referred to pages 43 to 45 and 59, 61 and 63 of the reply.



Third, conversion was recorded on 25-4-2000 between the News of the World Reporters and Saleem Malik at a restaurant opposite Selfridge Department Store, London, learned counsel referred to pages 65, 69 and 75 of reply. The transcripts annexed with the reply of the PCB were sent to PCB by ICC with letter dated 25-5-2000 addressed to Mr. Yawar Saeed, an official of PCB. In this letter it required by RMG Hill General Manager, ICC that transcripts for the time being be remained strictly confidential. It was also mentioned in the letter that 'these have not as yet been verified against the original tapes'. Learned counsel for the appellant's argument is that PCB has not produced any evidence showing that transcripts have been verified against original tapes by ICC or PCB. It is a document which is yet to be proved. The learned counsel for PCB has no answer to this argument, anyhow, replied that the appellant shall produce his passport to prove that he was not in London on those dates, when conversation was recorded.

7. From the above discussion, it is held that there is no document or evidence on the record, to show that these transcripts were verified against the original tapes. PCB had not produced the original tapes or witness to prove that transcripts were recorded and conversation is between the appellant and News of the World Reporter. Since the respondent is relying on the transcripts to be used against Saleem Malik, then responsibility to prove that transcripts is on PCB. Since the recording of transcripts is not proved, it cannot be used against the appellant. However, as discussed above, the learned Civil Court has not given any declaration with regard to prayer of the appellant / plaintiff restraining the PCB (defendant) from holding or continuing any quasi judicial / disciplinary proceedings against the appellant or to conduct any proceedings under **Pakistan Cricket Board Anti Corruption Code for Participants**. It is argued by the learned counsel for PCB that according to Clause 1.4.2 of PCB, Anti Corruption Code of Participants, a Coach, Trainer, Manager, Selector, Team Owner or official doctor, physio therapist or any other person, is governed by the definition of Participant, hence can be called upon by the Vigilance & Security Department. The appellant is bound to appear and clarify his position viz-a-viz the admission made by him in letter dated 05-5-2014. Argument of learned counsel for PCB that appellant is covered by the definition of Participant and



being a participant is bound by PCB Anti Corruption Code, as he has agreed to submit to the jurisdiction of PCB to investigate his apparent and suspected corrupt conduct and submissions would amount to a violation of Anti Corruption Code. This argument has no force, appellant Saleem Malik is neither a cricketer as is defined in Clause 1.4.1.1 nor a player as defined in Clause 1.4.2, thus, is not covered by the definition of Participant, and rules of Anti Corruption Code are not applicable to him. He cannot be called upon as a Participant to appear and clarify his position by PCB Vigilance & Security Department.

8. Lastly, learned counsel has referred to a letter dated 05-5-2014, written by Saleem Malik, addressed to the Chairman, PCB. In 3<sup>rd</sup> para of this letter, there are admissions of Saleem Malik of his wrong doings and shows his willingness to start the rehabilitation process and willing to cooperate to every extent with ICC and PCB for his rehabilitation program. By referring to this letter, it argued that admission of wrong doings by the appellant in 2014 has given a new reason / cause to ask the appellant to explain his position about the wrong doings before considering his request to join the Cricket World of PCB. Argued that this letter is not challenged by the appellant till date, thus, he is bound to join the rehabilitation program.

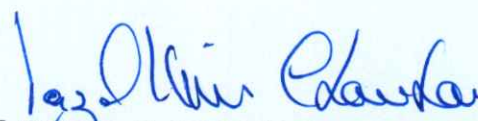
Learned counsel for appellant in reply to this argued that letter was prepared and typed by Chairman and the appellant put his signatures on it and is a document which was not executed with free will and consent, thus cannot be used as an admission against him.

9. From the above discussed facts, it is held that to some extent there were clouds of wrongdoings in the past on the conduct of appellant. The admission of wrongdoing by appellant in his letter dated 05-5-2014 provides a valid reason to ask question about his credential. This is also a fact that the appellant has not showed his willingness to join the rehabilitation program of PCB to show that he is trying to remove doubts / clouds of involving in match fixing and betting.
10. An employer or authority had every right to verify the credential of applicant and if not satisfied with that has every right and authority to refuse or reject his request / application. The respondent had every right or authority to verify the conduct of the appellant. Respondent after verification if satisfied may grant him permission to enter in the fold of cricket world of PCB.



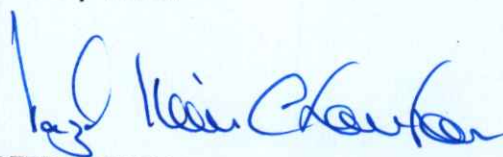
11. Prayer of No Objection Certificate, popularly abbreviated as NOC. It is a type of legal certificate issued by any agency organization, institute or in certain cases an individual. This certificate is a requirement at the most, government based departments. Appellant is seeking a Clearance Certificate from PCB to the effect that he is not involved in any kind of Match-Fixing or betting. This prayer for issuance of NOC from PCB (The Employer) is unnatural. Appellant has applied for a job or post in PCB or permission to run a Cricket Academy under PCB and at the same time is seeking NOC from PCB. This prayer cannot be granted. The appellant had to show his good character independent of PCB. He cannot ask PCB to issue NOC for providing him job or granting him permission.

In view of above, the appeal in hand is disposed of holding that PCB shall not use the transcripts dated 25-5-2000 against the appellant without verifying the same against original tapes. PCB is further directed to decide the application of the appellant for the post of batting coach, either way. No order as to cost.



**MR. JUSTICE (RETD.) FAZAL-E-MIRAN CHAUHAN,**  
**INDEPENDENT ADJUDICATOR**

It is certified that this judgment consists of 11 pages and has been dictated, corrected and signed by me.



**MR. JUSTICE (RETD.) FAZAL-E-MIRAN CHAUHAN,**  
**INDEPENDENT ADJUDICATOR**

Dated. 26-10-2020

