SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present
Justice Jamal Khan Mandokhail
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Crl. Petitions No. 585, 625, 642, 661 of 2018 & CMA 560/2026
(Against the judgment dated 13.04.2018 passed by the Islamabad High Court, Islamabad in Crl. Appeals No. 530/2010)

Bashir Ahmed Malik **Petitioners**
Mrs. Nuzhat Akbar
Ch. Zafar Iqbal and others
Sadaqat Saeed Malik

Versus

The Director thr. Regional Director, ANF, Rawalpindi & others **Respondents**

For the Petitioners: Mr. Muhammad Shahid Kamal Khan, ASC (in Crl. P. 585/18)

Mian Tahir Iqbal, ASC (in Crl. P. 625/18)

Mr. Agha Muhammad Ali, ASC (in Crl. P. 642/18)

Mr. Naveed Ahmad Khawaja, ASC (in Crl. P. 661/18)

For the Respondent: Dr. Muhammad Waseem Ahmed Qureshi, Spl. Prosecutor, ANF

Ch. Ehtisham ul Haq, Spl. Prosecutor, ANF a/w Muhammad Tariq, Joint Director, ANF

Mr. Riasat Ali Gondal, ASC (for CDA)

Date of Hearing: 08.10.2026

JUDGMENT

Jamal Khan Mandokhail, J.- These appeals have a chequered history. Since the proceedings in respect of the subject matter were conducted twice and have culminated in these appeals, it is

necessary to give a brief history of the case. Mr. Khalid Latif, a British national, was convicted and sentenced in a narcotics case by the Southwark Crown Court, United Kingdom, on 08.03.1991. On 24.07.1995, the Regional Director, Anti-Narcotics Force (**ANF**), issued a notice under subsections (4) and (5) of section 6 of the Anti-Narcotics Force Ordinance, 1995 (**Ordinance of 1995**) to the Deputy Commissioner/Registrar and the Chairman, Capital Development Authority (**CDA**). It was alleged that Mr. Khalid Latif and his father, Ch. Muhammad Shafi, had acquired properties (a) Plot No. 69, West Ratta Mansion Plaza, Jinnah Avenue, Blue Area, Islamabad and (b) House No. 208, Street No. 18, Sector F-10/2 Islamabad, through illicit involvement in narcotics. They were directed not to remove, transfer or otherwise dispose of the said properties/assets in any manner, except with the prior permission in writing of the Regional Director, ANF. Thereafter, the Regional Director sought legal advice from the concerned authorities of the ANF with regard to forfeiture of the said properties. In response thereto, the Assistant Director ANF on 10.03.1997, replied that the provisions of the Control of Narcotic Substances (**CNS**) Ordinance, 1995 for forfeiture of the properties were not attracted and advised the Regional Director to initiate proceedings under section 31 of the Prevention of Smuggling Act, 1977 (**Act of 1977**), against the persons named in the notice. Consequently, no further step was taken upon the notice dated 24.07.1995 by the Regional Director.

First Round of Litigation:

2. Almost one and a half years after the advice of the Assistant Director, the Regional Director ANF, on 22.08.1998, submitted written information before the Special Judge, Customs, Anti Smuggling/Narcotics, Lahore for initiating proceedings against Mr. Khalid Latif, Ch. Muhammad Shafi and Mst. Rashida Begum under the Act of 1977. Upon receiving the information, the Special Judge, Lahore, for the first time on 07.09.1998 issued notice under section 31 of the Act of 1977 to Mr. Khalid Latif, Ch. Muhammad Shafi and Mst. Rashida Begum. In response thereto, Mr. Khalid Latif and Mst. Rashida Begum submitted their written reply on 09.05.2001, stating therein that they jointly owned the first property. Whereas Ch.

Muhammad Shafi, despite service, did not appear and was proceeded against ex parte. On 07.06.2001, the case was transferred to the Special Judge (Customs, Taxation and Anti Smuggling), Rawalpindi/Islamabad, (Special Judge) who, by means of the judgment dated 30.08.2003, declared that Mr. Khalid Latif and Mst. Rashida Begum owned plot No. 69 in equal proportion. It was held that Mr. Khalid Latif had failed to justify legal means in acquiring his half share in the property and, as such, on the basis of his conviction in a narcotics case in the United Kingdom, Mr. Khalid Latif was found to have purchased his half share through drug proceeds, which was confiscated in favour of the State. To the extent of remaining half share in the property, it was held that no case under the provisions of the Act of 1977 was made out against Mst. Rashida Begum, as such, her share was defreezed and released in her favour. As regards the second property, the house, the Special Judge, on account of the non-appearance of Ch. Muhammad Shafi, held that the allegations against him stood proved and ordered its confiscation.

3. The judgment was separately challenged by Mr. Khalid Latif to the extent of his half share in property (a), and the ANF to the extent of the share of Mst. Rashida Begum, before the Lahore High Court through appeals, which were dismissed vide judgment dated 08.04.2008. The High Court, while deciding the appeals, held "*To my mind, it stood sufficiently established on record within the meaning of section 31 of the Anti-Smuggling Act, 1997 (sic) that the properties were acquired by father and son through drug related income.*" Criminal Petition No. 298 of 2008, filed by Mr. Khalid Latif before this Court, was dismissed on 03.04.2009, being barred by time. Hence, the first round of litigation came to an end. However, it is important to mention here that as per the report of the CDA dated 09.01.2018, the property at (a) still stands in the names of Mr. Khalid Latif and Mst. Rashida Begum, whereas the house is in the name of Mrs. Nuzhat Akbar, despite its forfeiture in favour of the Federal Government.

Second Round of Litigation:

4. In the first round of litigation, the appellants were neither parties before the Special Judge nor were they aware of the notice issued to Mr. Khalid Latif and others under section 31 of the Act of 1977. There is no evidence to prove knowledge of the appellants regarding the first round of litigation and decisions of the courts referred to hereinabove. After coming to know about the decisions, the appellants filed applications before the Special Judge, seeking release of the properties, claiming that they were bona fide purchasers of the house and various units in the building (as described in their respective applications), and that they were in possession of the same. Admittedly, most of these properties were purchased prior to the issuance of notice under section 31 of the Act of 1977, by the Special Judge on 07.09.1998, to Mr. Khalid Latif and others. The Special Judge dismissed the applications vide order dated 12.07.2010. The application of Sadaqat Saeed Malik was separately dismissed on 13.02.2014. Feeling aggrieved, the appellants filed appeals before the Islamabad High Court, which were also dismissed through the impugned judgment dated 13.04.2018. The appellants challenged the impugned judgment before this Court through petitions, which were converted into appeals and were allowed by the following short order dated 08.10.2026, for the reasons to be followed:

> *For the reasons to be recorded later, the petitions are converted into appeals and are allowed. The impugned judgments dated 13.04.2018 and 12.07.2010 passed by the High Court and the Trial Court, respectively are set aside. The properties, subject matter of these petitions, stand defreezed.*

REASONS:

5. In the second round of litigation, the Special Judge and the Special Appellate Court (the Appellate Court), respectively, have held that since the appellants had acquired the properties after issuance of the notice in the year 1995, the transactions were void, as provided by section 35 of the Act of 1977. The question for consideration before us is whether, after issuance of the notice by

the Regional Director under subsections (4) and (5) of section 6 of the Ordinance of 1995 on 24.07.1995, the restriction imposed by section 35 of the Act of 1977 applies to the transactions regarding the properties in question. It is therefore necessary to examine sections 31 and 35 of the Act of 1977, which are reproduced herein below:

> ***31. Notice to person holding property suspected to be acquired by smuggling.***___ *(1) Whenever a Special Judge receives information that within the limits of his jurisdiction any person, either in his own name or in the name of any relative or associate, is holding property which is reasonably suspected to be acquired by smuggling, the Special Judge may issue to such person a notice calling upon him to show cause, within such time as may be specified in the notice, which shall not be less than thirty days, why the whole or any part of such property should not be declared to be property acquired by smuggling and to be forfeited to the Federal Government:*
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> *Provided that no such notice shall be issued unless, having regard to the value of his assets, his known sources of income, his style of living, his previous involvement in smuggling or conviction under any law relating to the prevention of smuggling and other similar factors, the Special Judge has reason to believe (which reason he shall record in writing) that there is sufficient ground for proceeding against such person.*
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> *(2) A notice issued under sub-section (1) shall, among other things, require such person to indicate the sources of his income the income and assets out of which, or by means of which, he has acquired such property, the evidence he relies upon and other relevant information and particulars.*
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> *(3) Where a notice under sub-section (1) issued to any person specifies any property as being held on his behalf by any of his relatives or associates, a copy of the notice shall also be served upon such relative or associate.*
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> ***35. Transfer of certain property void.***___ *(1) After the issue of a notice or copy of a notice under section 31, the property mentioned in such notice shall not be transferred by any mode whatsoever, nor shall any charge be created thereon, which proceedings under this Chapter are pending and any transfer of such property or creation of charge in contravention of this section shall be void; and if such property is subsequently forfeited to the Government under section 32, it shall vest in that Government free of any encumbrances created after the issue of the notice.*

> *(2) Any person who transfers any property, or creates a charge thereon, in contravention of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.*

According to section 31 of the Act of 1977, a Special Judge, upon receiving information to the effect that within the limits of his jurisdiction, any person either in his own name or in the name of any relative or associate, is holding property which is reasonably suspected to be acquired by smuggling, the Special Judge may issue to such person a notice calling upon him to show cause why the whole or any part of such property should not be declared to be property acquired by smuggling and to be forfeited to the Federal Government. The jurisdiction of the Special Judge appointed under the Act of 1977 is limited to determining and declaring whether the property held by the person to whom a notice under section 31 of the Act was issued was acquired through the proceeds of smuggling only. For such determination, issuance of a notice under section 31 of the Act of 1977, by the Special Judge against a person holding such property in his own name or in the name of any relative or associate, is a condition precedent. The proviso to sub-section (1) of section 31 of the Act of 1977 places a condition upon the Special Judge that before issuing a notice, he shall record in writing the reasons to believe that there is sufficient ground for proceedings against such person. Section 35 of the Act of 1977 mandates that after issuing of a notice under section 31, by a Special Judge, the property subject matter of such notice shall not be transferred by any mode, whatsoever, and any transfer in contravention of section 35 shall be void. Thus, the restriction contained in section 35 of the Act of 1977 takes effect only upon the issuance of a notice by a Special Judge under section 31 of the Act of 1977.

6. It is a fact that the notice dated 24.07.1995 was issued by the Regional Director under the provisions of the Ordinance of 1995, who sought legal advice from the judicial branch of the ANF, with regard to forfeiture of the properties. The Assistant Director conveyed the opinion of the competent authority to the Regional Director that the provisions of the CNS Ordinance of 1995 for forfeiture were not attracted to these properties, as the same had been acquired prior to its promulgation, and instead advised to

proceed against the persons under the Act of 1977. The Regional Director agreed with the advice and did not proceed further upon the notice dated 24.07.1995; rather, he opted to proceed against Mr. Khalid Latif and others under the Act of 1977. It is important to mention here that a notice under the provisions of the Ordinance of 1995 could only be issued during an investigation under the provisions of the CNS Ordinance of 1995, when it was in force, and thereafter under the Control of Narcotic Substances Act, 1997. Under such circumstances, the notice dated 24.07.1995 issued under the Ordinance of 1995 had no nexus with the proceedings under the Act of 1977. Thus, it could not be treated as a notice under section 31 of the Act of 1977. Despite this, in the second round of litigation, the Special Judge as well as the Appellate Court treated it as a notice under section 31 of the Act of 1977. On that basis, the transactions in favour of the appellants were declared void and their applications were dismissed simply on the ground that they had purchased the properties after 24.07.1995. We are surprised to note as to how the *fora* below relied upon the said notice for the purpose of applying the restriction provided by section 35. The notice was issued under a different law and by a person other than a Special Judge, therefore, it was not applicable to the properties. Under such circumstances, the restriction under section 35 was not attracted to the transactions effected after the issuance of notice dated 24.07.1995. The *fora* below were required to have examined the facts of the case in the light of the relevant provisions of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**'), the Act of 1977 and the Ordinance of 1995, but they did not consider that most of the properties had passed out of the hands of Mr. Khalid Latif before the notice dated 07.09.1998 was issued. Since the restriction contained in section 35 of the Act of 1977 took effect only from 07.09.1998, it was not attracted to the properties purchased by the appellants prior to that date. This misapplication of law on the part of both the Courts has resulted in the negation of the fundamental right of the appellants guaranteed by Article 24 of the Constitution, and is a glaring mistake. As regards the grounds discussed hereinafter, the same apply equally to all the appellants,

irrespective of whether they purchased their properties before or after 07.09.1998.

7. Without prejudice to the foregoing, in the first round of litigation, Mr. Khalid Latif, while recording his statement on oath as RW-5 before the Special Judge on 29.01.2003, categorically stated that he had sold the basement, ground floor and mezzanine of the commercial building to different people, who were running their businesses in their shops. The relevant portion of his statement finds mention at page No. 5 of the judgment dated 30.08.2003, which brought to light that Mr. Khalid Latif was no longer holding the said units of his share in the property. Once this fact came to the knowledge of the Special Judge, he was legally bound to issue notices to all those who claimed to have purchased different units of the property, directly or indirectly, from Mr. Khalid Latif and were occupying the same. No such notices were issued, which shows that neither due process was adopted nor were the appellants provided an opportunity of being heard in the first round of litigation, before the order of forfeiture of the properties was passed.

8. The case of Mrs. Nuzhat Akbar, who purchased the second property at (b), stands on a still better footing. According to the report of the CDA dated 09.01.2018, the second property was transferred by Ch. Muhammad Shafi to Syed Shabbir Hussain Jaffari on 09.07.1998, and thereafter in her name on 06.08.1998, before the Special Judge issued notice under section 31 of the Act of 1977 on 07.09.1998. Thus, on the date of the notice, Ch. Muhammad Shafi was no longer the owner; instead, Mrs. Nuzhat Akbar was the owner in possession of the second property. In the absence of any notice to the appellants of the proceedings initiated under the provisions of the Act of 1977, how could their properties be forfeited? A third-party interest had been created in the properties, as the appellants had purchased the same and were in possession thereof. Legally, unless the claim of the appellants to be their owners was rebutted, they could not be deprived of their right to hold the properties, which is guaranteed by Article 24 of the Constitution, providing that "*no person shall be deprived of his property save in accordance with law".* The Special Judge as well as

the Special Appellate Court in the first round of litigation did not consider this aspect of the case while ordering forfeiture of the properties claimed by the appellants, in violation of Article 24 of the Constitution. This constitutional and legal aspect of the case also escaped the attention of the Special Judge and the Appellate Court in the second round.

9. Another important aspect of the case is that the Special Judge, at page 11 of his judgment dated 30.08.2003, delivered in the first round of litigation, held that "*the plot was not divisible under the condition of allotment order*". Mr. Khalid Latif and Mst. Rashida Begum stated before the Court that they had jointly owned the property, however, they had privately partitioned the property through a partition deed, which was exhibited. Moreover, the appellants are also claiming to have purchased different units in the commercial building constructed upon the plot. The Special Judge did not agree and held that the partition deed, being a private document, carried no legal authenticity, in view of the fact that the plot was indivisible under the condition of the allotment order. Under such circumstances, the appellants have become co-owners in the property falling in the share of Mr. Khalid Latif, and the share remaining with Mr. Khalid Latif obviously became less than half of the entire property. It became more difficult to identify the share of Mr. Khalid Latif, and it was also not possible to separate the units purchased by the appellants from his share. Keeping in view the stated facts and the fact that, as per the allotment orders, the property was indivisible, it was held so by the Special Judge. In such view of the matter, though the share of Mr. Khalid Latif in the property has been forfeited, it is not clear as to which portion of the property falls in his share, nor whether the units purchased by the appellants formed part of that share. Thus, the share of Mr. Khalid Latif in the property was indivisible.

10. As per the record, till date, the first property is still in the name of Mr. Khalid Latif and Mst. Rashida Begum. The Federal Government has not yet taken over the same, whereas, the second property is in the name of Mrs. Nuzhat Akbar, as is evident from the report of the CDA dated 09.01.2018. In a situation when less than

half of the property stood forfeited, and that property was indivisible and could not be easily separated from the rest, the Special Judge was required to give an option to Mr. Khalid Latif to pay, in lieu of forfeiture of that part of the property, a fine equal to the market value of the property prevalent at the time of its forfeiture, as mandated by section 34 of the Act of 1977. The needful was not done, which has resulted in such anomaly. Even this could have easily been done by the Special Judge, especially when Mr. Khalid Latif, through a petition filed during the second round of litigation under section 34 of the Act of 1977, offered to pay the value of his share in the property. The ANF, in its reply, stated that if he was ready to pay the present market value of his share, he might negotiate with the ANF. Had the *fora* below exercised their jurisdiction under section 34, the rights of the appellants could have been protected. The *fora* below have failed to exercise their jurisdiction under section 34 of the Act of 1977, which amounts to non-exercise of jurisdiction and is, therefore, again an illegality.

11. It is also important to mention that the Special Judge while exercising his jurisdiction under the Act of 1977 has limited power only to pass an order as to whether the property, subject matter of the notice, was acquired by **smuggling**. Notably, in his judgment dated 30.08.2003, passed in the first round of litigation, the Special Judge held that Mr. Khalid Latif's share in property No. 69-W, Blue Area, Islamabad, along with the construction thereon, and the house held by Ch. Muhammad Shafi, had been acquired through **drug proceeds**. The Special Judge under section 32 of the Act of 1977 is empowered only to declare that the property is acquired by smuggling. There is no order by the Special Judge that either of the properties was acquired as a result of income from smuggling. Once the Special Judge reached the conclusion that the properties were acquired through **drug proceeds**, he lost jurisdiction to pass any order regarding their forfeiture under the provisions of the Act of 1977. Only a Special Judge notified under the provisions of the Control of Narcotic Substances Act, 1997 can make an order for forfeiture of property, if, during the trial under the CNS Act 1997, it is proved before him that the property was acquired through **drug proceeds**. Neither were any proceedings initiated under the relevant

Act before a Special Judge CNS, nor was any such order passed by him. The only ground for forfeiture of the properties that prevailed with the Special Judge was that Mr. Khalid Latif had been convicted by a court in the United Kingdom, but there is nothing on the record to prove that the said court had ordered forfeiture of the property belonging to Mr. Khalid Latif. The order of forfeiture passed by the Special Judge under the Act of 1977, as affirmed by the Lahore High Court, was, therefore, without jurisdiction. This fundamental legal aspect touching the jurisdiction of the Court also escaped the attention of the Special Judge as well as the Special Appellate Court in the second round of litigation.

12. Section 40 of the Act of 1977 empowers the Special Judge and the Special Appellate Court to re-examine their own judgments and rectify any mistake apparent on the face of the record either on their own motion or on an application by an aggrieved person. The said section is reproduced below:

> ***40. Rectification of mistakes****. The Special Judge or the Special Appellate Court may at any time rectify any mistake apparent on the face of the record and amend any order by such rectification:*
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> *Provided that, if such amendment is likely to affect any person prejudicially, no such amendment shall be made without giving such person a reasonable opportunity of being heard.*

To invoke the jurisdiction under section 40 of the Act of 1977, the mistake must be apparent on the face of the record. It must be obvious upon a bare perusal and must not require detailed scrutiny of the evidence and detailed arguments. Where a decision is based on a wrong application of the law or on a repealed law, or is in violation of or in conflict with the Constitution or a mandatory provision of law, it is a mistake of law, which is a ground for its rectification. The constitutional violation and the legal grounds discussed in the paras *supra* disclose mistakes of law so manifest and apparent that they float on the face of the record. These mistakes of law escaped the attention of the Special Judge and the Special Appellate Court, who were empowered under section 40 of the Act of 1977 to rectify and amend their previous judgments, but

they have failed to exercise jurisdiction vested in them, which is an illegality. Therefore, in exercise of our appellate jurisdiction and to do complete justice under Article 187 of the Constitution, we rectify and amend the judgment dated 30.08.2003 passed by the Special Judge and the judgment dated 08.04.2008 passed by the Appellate Court, to the extent of the properties purchased by the appellants. Consequently, the judgments of the Special Judge dated 12.07.2010 and 13.02.2014 and the judgment dated 13.04.2018, passed by the Special Appellate Court, Islamabad (the High Court) are set aside. The properties purchased by the appellants, subject matter of these appeals, stand defreezed and are released in their favour.

These are the reasons of our short order.

Judge

Judge

Judge

Islamabad
8th October, 2026
APPROVED FOR REPORTING
K.Anees and Saniya Diyar, LC