

**IN THE COURT OF ABUAL HASNAT MUHAMMAD ZULQARNAIN,
 JUDGE, SPECIAL COURT (OFFICIAL SECRET), CAMP COURT AT
 CENTRAL PRISON, Rawalpindi.**

Case No:- 01 of 2023

Date of institution: -02.10.2023

Date of decision: -30.01.2024

The State: through Yousaf Naseem Khokhar
 Secretary Ministry of Interior Government of
 Pakistan

Versus

1. Imran Ahmad Khan Niazi, son of Ikram Ullah
 Niazi, aged about 73 years, r/o Bani Gala,
 Islamabad

2. Makhdoom Shah Mehmood Qureshi son of
 Makhdoom Sajjad Husain Qureshi, aged about
 66 years, r/o House No. 03 Street No.52, F/8-4
 Islamabad

(Accused)

CASE F.I.R NO. 06/2023, DATED 15.08.2023
U/S 5 & 9 OF THE OFFICIAL SECRET ACT, 1923,
READ WITH SECTION 34 PPC
P.S FIA/CTW ISLAMABAD.

Accused by: Malik Abdur Rehman, advocate and Mr.
 Hazrat Younis, advocate representing
 accused persons at state expense.

Mr. Sikandar Zulqarnain Saleem, Barrister
 Salman Safdar and Mr. Muhammad Usman
 Riaz Gill, advocates, on behalf of accused
 Imran Ahmad Khan Niazi.

Barrister Taimur Altaf Malik and Syed
 Mohammad Ali Bokhari, advocates, on
 behalf of accused Shah Mahmood Qureshi.

State by: Raja Rizwan Abbasi and Syed Zulfiqar
 Abbas Naqvi, learned SPPs (FIA)
 Mian Sabir Hussain, A.D. FIA.

JUDGMENT
30.01.2024.

FACTS

Brief facts of the case are that FIR No.06/2023 was registered on 15.8.2023 against the accused persons Imran Ahmad Khan Niazi and Shah Mehmood Qureshi u/s 5 and 9 of the OSA read with Section 34 of the Pakistan Penal Code, 1860 (PPC) at PS Counter Terrorism Wing, FIA, Islamabad. As per the contents of the said FIR, while the accused Imran Ahmad Khan Niazi was serving as the Prime Minister and his co-accused Shah Mehmood Qureshi, as Foreign Minister, they and their associates were involved in the communication of information (contained in a secret classified document which was a cypher telegram sent by Pakistan Representative (Parep) Washington on 07.03.2022 to the Secretary, Ministry of Foreign Affairs to the public at large. The accused persons Imran Ahmad Khan Niazi and Shah Mehmood Qureshi were alleged to have twisted the facts to achieve their ulterior motive and personal gains in a manner prejudicial to the interest of State security. They were also alleged to have held a clandestine meeting at village Bani Gala on 28.3.2022 in furtherance of a conspiracy to misuse the contents of the cypher in order to accomplish their nefarious designs. The accused persons Imran Ahmad Khan Niazi and Shah Mehmood Qureshi were also accused of having directed the former Secretary to the Prime Minister, Muhammad Azam Khan, to prepare minutes of the said meeting by manipulating the contents of the cypher so as to use it for his vested interest at the cost of national safety. The accused Imran Ahmad Khan Niazi deliberately retained in his custody the accountable copy of the cypher sent to the Prime Minister's office never to be returned to the

Ministry of Foreign Affairs. In the FIR, it was also stated that the cypher being an official secret document and classified as such was still in the possession of accused Imran Ahmad Khan Niazi and that the unauthorized retention and misuse of the cypher had compromised the entire cypher security system of the State and secret communication methods used by Pakistan's Missions abroad. The actions of the accused persons were said to have directly or indirectly benefitted the interest of foreign powers and caused loss to the State of Pakistan. The said FIR was registered after an inquiry in the matter was concluded on 05.10.2022, later on both the accused were formally arrested and sent to judicial lock up in instant case. Challan/report u/s 173 Cr. PC was submitted by the FIA/CTW in court on 02.10.2023 for trial in accordance with law.

2. *It is pertinent to mention here that Honorable Islamabad High Court Islamabad vide its order in ICA NO.367/2023 dated 21.11.2023 in his para-8 observed and clearly directed to this court that the trial of the instant case will commence from 29.8.2023. The relevant para-8 is reproduced as under: -*

“Consequently, the proceedings with effect from 29.08.2023 and the trial conducted in case FIR No.06/2023, dated 15.8.2023 registered under Section 5 and 9 of the Official Secret Act, 1923 read with Section 34 of the Pakistan Penal Code, 1860 at Police Station Counter Terrorism Wing, Federal

Investigation Agency, Islamabad, in jail premises in a manner that cannot be termed as an open trial stand vitiated.”

Then this court proceeded further w.e.f. 29.8.2023. In terms of proviso to sub section 1 of section 352 of Cr.PC 1898 read with Rule 3 Part A of Chapter 1 of the Volume III of the High Court Rules and Orders (as applicable) this court was constrained to hold that the trial of the accused in the light of notification of Federal Government No.F.40(68)/2023-A-VIII dated 29th November, 2023 for jail trial and keeping in view the direction which was issued by Honorable Islamabad High Court Islamabad in Criminal No.1664/B/2023 dated 8.11.2023 has directed to conclude the trial within 4-weeks, hence, further proceedings of the case were conducted at Central Prison, Rawalpindi subsequently.

3. The copies were supplied to both the accused namely Imran Ahmad Khan Niazi and Shah Mehmood Qureshi on 04.12.2023 and charge was framed on 13.12.2023 to which they pleaded not guilty and claimed trial. Subsequently prosecution evidence was summoned and started on 15.1.2024 in shape of recording of below mentioned PWs: -

PROSECUTION WITNESSES

PW-1 Iqra Ashraf, Director MOFA stated that on 24.8.2023, she was posted as Director Spokesperson, MOFA, Islamabad. She

handed over attested copy of transcript of press briefing of spokesperson MOFA dated 25.4.2022 before the IO at FIA Headquarters, Islamabad who took the same in possession vide memo Ex.PW1/A, transcript of press briefing dated 25.4.2022 is Ex.PW1/B/1-14, and respective letter is Ex.PW1/C. Her statement was recorded by the IO on 15.12.2023 who produced attested copy of transcript of press briefing of spokesperson of MOFA dated 25.4.2022 as Ex.PW1/B/1-14 and letter Ex.PW1/C before the IO who secured the same vide memo Ex.PW1/A.

PW-2 Imran Sajid, Deputy Director, Cypher Security, MOFA, Islamabad stated that cypher is a coded way of communication between MOFA and Foreign Missions Abroad or vice versa. Ambassador of Pakistan provides plain text to the cypher section of concerned Embassy and cypher assistant converts the plain text into literal text and then literal text is further converted into cypher/encrypted text and then it is forwarded to the MOFA, Islamabad. In MOFA above said process is reversed and encrypted message is converted into plain text. Foreign Secretary is a competent authority to approve its (cypher) distribution. For the purpose of safety and security of cypher system, every copy of cypher telegram is numbered for the purposes of tracking and every recipient has to return the copy of cypher telegram to cypher department for destruction. Cypher in question was numbered as I-0678 and it was classified as secret, no

circulation with precedence of high priority, moreover, it is NI action/Most Immediate. Above said cypher telegram was sent by the then Ambassador of Pakistan Asad Majeed to Foreign Secretary MOFA, Islamabad.

On 8.3.2022 his duty timings were from 08:00 a.m. to 02:00 p.m. as a Cypher Officer, Crypto Centre, MOFA, Islamabad. Muhammad Noman, Cypher Assistant handed over to him above said cypher telegram after numbering the same for further necessary action. He dispatched the above said cypher telegram to Foreign Secretary Office of approval of its distribution. He did not receive the above said cypher telegram from the F.S. Office till 02:00 p.m. (my duty hours). He informed Shamoon Qaiser, Cypher Officer of his succeeding batch to seek approval of distribution of above said cypher telegram from F.S. office and distribute the same accordingly. He certified the extract of incoming cypher register Ex.PW2/A and cypher movement register internal and external which are Ex.PW2/B and Ex.PW2/C/1-5.

PW-3 Shamoon Qaiser, Deputy Director Operation, Cypher Section, MOFA, Islamabad deposed that on 8.3.2022, he was deputed as a cypher officer in Ministry of Foreign Affairs, Cypher Bureau, Islamabad. He was working in evening shift which was from 02:00 p.m. to 08:00 p.m. His predecessor Imran Sajid told him that a cypher telegram No. I-0678 sent by PAREP Washington was transmitted by him to F.S. office for its approval for further

transmission. After approval same may be sent to the approved recipients. He received the above said telegram from F.S. office and he was making requisite arrangements for its delivery as per approval of the F.S. Meanwhile, he received a call from Director SSP office who told him that cypher telegram meant for P.M. office would be distributed by his office. In the light of above said communication and direction of Director SSP office Haseeb Bin Aziz, said telegram was handed over in sealed envelope to Director SSP office and recipient this regard was issued. He also endorsed his signatures on the said register. Cypher telegram i.e.No. I-0678 issued to Secretary to P.M. office has not been returned in cypher center, MOFA for destruction. On 18.8.2023, he produced following documents regarding receiving and movement of cypher i.e. I-0678 exhibited as Ex.PW3/A (attested by him), Ex.PW2/A (already exhibited), copy of movement register internal Ex.PW2/B (already exhibited), copy of movement register external Ex.PW2/C (1-5). IO took all the documents in possession vide memo Ex.PW3/B, signed by him. All cyphers sent to respective recipients are separately numbered which is always mentioned on said cypher copy and super copy. Those separate numbers are not mentioned in register or anywhere else.

PW-4 Haseeb Bin Aziz, Director FSO, Foreign Secretary office, Islamabad deposed that in March, 2022 he was posted as a Director Secret Section Political in Foreign Secretary Office, MOFA, Islamabad. His duty was to assist

the Director FSO Noman Bashir Bhatti. In fact he was coordinating and managing day to day affairs and correspondence of F.S. Office. On 8.3.2022 Noman Bashir Bhatti was not present on duty because of his ailment and he was handling his day to day affairs, at about 09:30 a.m. cypher telegram No. I-0678 was received in his office which was classified as "Secret, no circulation and for Foreign Secretary only". Above said telegram was sent by Parep Washington. During those days Sohail Mehmood was Foreign Secretary who reached his office at about 10:30 a.m. He immediately put up the said cypher telegram before him. On same evening i.e. 8.3.2022 the then Foreign Secretary Sohail Mehmood approved its distribution at about 07:00 p.m. The then Foreign Secretary instructed him to distribute the copy of cypher telegram to the then SPM Azam Khan, who also instructed him that working copy of the cypher telegram was to be handed over to F.S. The F.S. further instructed him that copy of cypher telegram meant for P.M. office was to be delivered through his office. He conveyed these instructions to Cypher Bureau accordingly that cypher telegram of SPM was to be distributed through our office and not by cypher bureau. He further instructed that he should contact Haseeb Gohar, the then Deputy Secretary, FSA in P.M. office in order to collect the copy of the then SPM by hand. He accordingly conveyed this message to Haseeb Gohar PW. After receiving the cypher telegram meant for SPM, Haseeb Gohar received the copy of cypher telegram on the same day i.e. 8.3.2022

between 8.45 to 10:00 p.m. Above said cypher telegram handed over to Haseeb Gohar PW was in sealed envelope which was marked as "Secret and to be opened by addressee only". Extract of movement register attested and signed by me is Ex.PW4/A which was taken into possession by the IO vide seizure memo Ex.PW4/B.

He was further instructed by F.S. that his working copy was to be given to Ali Sattar, the then Director, Foreign Minister's office for onward transmission to the then Foreign Minister Shah Mehmood Qureshi. Accordingly, he handed over the said copy to Ali Sattar in a sealed envelope marked as "Secret and to be opened by the addressee only". Working copy handed over to Ali Sattar was received back on next day i.e. 9.3.2022 at about 11:00 a.m. through Fahad Saleem, the then Assistant Director, Foreign Minister office.

On 27.9.2023 he was asked by the FIA to update regarding status of 9-copies of cypher telegram No. I-0678. After obtaining the instructions from F.S. and getting information from Cypher Bureau he informed the FIA that all copies of cypher telegram were returned and destroyed except copy of SPM vide letter/report Ex.PW4/C which bears his signature.

PW-5 Jawad Ali Chatta deposed that in the month of August, 2023 he was posted as Director SSP MOFA, Islamabad. He is/was custodian of all the master copies of cypher telegrams. He was contacted by the FIA on 18th August, 2023 to provide a master copy of cypher

telegram No. I-0678 dated 7.3.2022 which was/is in safe custody of SSP section. In response, he informed the concerned FIA officials that it was highly classified document copy of which cannot be provided.

PW-Nadir Khan, he was posted as a Deputy Director Monitoring, PEMRA Headquarters, Islamabad. He has provided the FIA DVD Ex.PW6/1 containing clips and transcripts of speeches/interviews of Imran Ahmad Khan Niazi downloaded by him. DVD contained 7 clips of speeches and interview of Mr. Imran Ahmad Khan Niazi dated 27.3.2022 (transcript Ex.PW6/A/1-18), 30.3.2022 (Ex.PW6/B), 01.4.2022 (Ex.PW6/C), 2.4.2022 (Ex.PW6/D), 4.4.2022 (Ex.PW6/E), 15.5.2022 (Ex.PW6/F) and interview dated 1.10.2022 (Ex.PW6/G). Above said DVD Ex.PW6/1 also contained record of speeches of Shah Mehmood Qureshi dated 27.3.2022 and 9.4.2022 (transcript of speech dated 27.3.2022 is Ex.PW6/H/1-4 and 9.4.2022 is Ex.PW6/J/1-4). IO took the same into possession vide memo Ex.PW6/K.

(At this stage, learned prosecutor requested the court to play the DVD. so that witness may verify its contents.

Court observations: DVD has been played in court, contents of which have been verified by the witness it was the same DVD which was downloaded by him and provided to the IO.)

PW-7 Sajid Ullah, deposed that he was posted as an Assistant Director US-1, MOFA, Islamabad. He has joined the investigation in August, 2023. He has produced attested copy of internal note dated 28.3.2022 initiated by Additional Secretary (Americas) about his correspondence with U.S. Cd' Affairs with letter. Above said note is Ex.PW7/A. His covering letter is Ex.PW7/A/1 which was taken into possession by the IO vide seizure memo Ex.PW7/B.

PW-8 Sajid Mehmood, deposed that in March, 2022 he was posted as Deputy Secretary to Secretary to Prime Minister. His responsibility included to work as a staff officer to S.P.M. and provide him secretariat support in disposal of his official duty. On 8.3.2022 at about 09:00 p.m. Mr. Haseeb Gohar, Deputy Secretary to P.M. Office called him and informed that upon directions of the then F.S., the foreign secretary's office had handed over to him a sealed envelope marked as "Secret, to be opened by addressee only" with the directions that same was to be handed over to the then SPM Azam Khan PW. He told Haseeb Gohar PW that if the matter was urgent, the envelope could be delivered at the residence of the then SPM situated in F-6/3, Islamabad. He (Haseeb Gohar) insisted that he was under direction to deliver the same by hand. Thereafter he sent a message to the then SPM apprising him of the situation. He responded that he would see it in his office on following day.

On next date i.e. 9th March, 2022 around 09:45 a.m. Mr. Haseeb Gohar PW visited P.M.

House and handed over the sealed envelope to me, which he handed over personally, duly sealed, to Mr. Azam Khan, the then SPM.

As per procedure the cypher received from Foreign Office, after perusal by the concerned, are to be returned to the Foreign Office for destruction. As per record of the Prime Minister's office, the cypher in question was neither available on the record of the P.M. Office nor returned to the Foreign Office. A report regarding where about of the said cypher was submitted on 30.9.2022 which was signed by him, Mr. Haseeb Gohar PW and Mr. Shoaib Sarwar. Report is Ex.PW8/A.

PW-9 Muhammad Afzal, *deposed that in August, 2023 he was posted as Section Officer P.M. Office, Islamabad. He was authorized by his office to provide the record to the FIA collected from different wings of P.M. Office. On 25.8.2023, he has provided following documents to the investigating officer i.e. minutes of meeting regarding where about of cypher telegram dated 30.9.2022 (already exhibited as Ex.PW8/A), press releases of two meetings of NSC dated 31.3.2022 Ex.PW9/A and 22.4.2022 Ex.PW9/B along with internal note initiated by Haseeb Gohar which is Ex.PW9/C. Above said documents were taken into possession by the IO vide seizure memo Ex.PW9/D.*

PW-10 Muhammad Sibtain Khan, *deposed that in the month of October, 2022 he was posted as Assistant Director, FIA Cyber Crime Wing, Islamabad. His qualification is Ph.D.*

in Information Security. He is also certified digital forensic investigator. He has submitted a technical report regarding leaked audios of the then P.M. and his associates over the surface web pertaining to cypher. He has searched on surface web regarding the leaked audios publically available on different social media platforms. He has extracted all such audios and their available links i.e. URL and prepared a transcript of two audios and prepared a report which is Ex.PW10/A/1-7 along with letter Ex.PW10/B, CD containing two audios provided to the IO is Ex.PW10/1 which was taken into possession by the IO vide memo Ex.PW10/C.

(At this stage, learned prosecutor requested the court to play the C.D. so that witness may verify its contents.

Court observations: C.D has been played in court, contents of which have been verified by the witness it was the same C.D.)

PW-11 Muhammad Azam Khan,
stated that he served as Secretary to the Prime Minister (SPM) from August, 2018 till 9th April, 2022 i.e. one day before the last day of the then Prime Minister Imran Ahmad Khan Niazi. He received a call from the Foreign Secretary late evening regarding the cypher telegram and the F.S. told him that he is sending over a copy of the cypher. The then Foreign Minister Shah Mehmood Qureshi had already talked to the then P.M. about it and it needed to be given to the Prime Minister in the morning. The next morning most

probably it was 9th March, 2022 (however the date may be confirmed from record of MOFA and P.M. office) his staff (D.S) gave him the cypher copy which he took before the P.M. Imran Ahmad Khan Niazi who said that the Foreign Minister Shah Mehmood Qureshi had already talked to him about it and he was keen to read it. He took the cypher copy and when he read it, he got excited. The cypher copy contained details of our Ambassador's meeting with U.S. officials. The Prime Minister Imran Ahmad Khan Niazi said that the U.S. officials have blundered by saying what they said in the said cypher message. He said that it seemed that it was a sort of messaging to internal actors and can be used to expose collusion of the then COAS and opposition parties to change the elected government. He also said it can be used to defeat the vote of no confidence as the cypher message clearly mentions vote of no confidence and the two scenarios related to its successful failure. The P.M. perceived it as external interference in internal affairs of the country. The Prime Minister kept the cypher copy with him for further reading. Later after a few days when he inquired about the said cypher copy, the Prime Minister said it had been misplaced and he directed his Military Secretary, ADCs and personal staff to look for it. On the subsequent occasion, the Prime Minister Imran Ahmad Khan Niazi said he wanted to take the public into confidence to show how his government was a victim of conspiracy between external and internal actors based on the threat communicated in the cypher copy. He

advised the P.M. Imran Ahmad Khan Niazi that the cypher copy being a decoded document, its specific sequence of words cannot be disclosed to the public. He needs to hold formal meeting with the Foreign Minister and Foreign Secretary, MOFA as they were the political and bureaucratic heads of the Ministry from which the cypher copy has been received. He advised that in the said meeting the Foreign Secretary would read out the cypher message from the master copy of the cypher available with MOFA, he will record the minutes so that whatever decision is taken has a formal record. Subsequently, a meeting was held in Bani Gala which was chaired by the then Prime Minister, the then Foreign Minister and Foreign Secretary attended. He was present to record the minutes. In the said meeting, the Foreign Secretary read out the cypher message from the master copy of the cypher available with MOFA. If he recalls correctly the decision taken was to put the matter before the Federal Cabinet which is the Federal Government. The exact date of the meeting would be mentioned in the minutes of the meeting. Most probably it was the last few days of March, 2022. Consequent to that a Cabinet meeting was held. In it the representative of MOFA read out the cypher message from the master copy of the cypher available with MOFA. If he recalls correctly one of the decision was taken to put the matter before the National Security Committee (NSC). The NSC meeting was held (however the date may be confirmed from record). Its minutes were recorded by the National Security Division. If he

recalls correctly one of the decision was to issue a demarche to the concerned country for interference in the internal affairs of Pakistan. Cypher copy when received is to be returned in due course (maximum one year he thinks) to Crypto Centre MOFA. In this case, the said cypher copy was not returned to him till the time he relinquished charge as SPM to the then Prime Minister Imran Ahmad Khan Niazi which has been misplaced by him and he had directed his M.S. and personal staff to search for it number of times and they were still searching for it. However, the then P.M. waved a paper in public gathering implying that it contained the threat but as he did not open or read it therefore he does not know what the paper was. His statement u/s 161 Cr. PC was recorded by the IO and u/s 164 Cr. PC was recorded by the Magistrate without oath which is Ex.PW11/A (1-11). Each and every page of the said statement was signed by him. The statement had already been de-sealed and witness identified the same.

(Note: The statement has been de-sealed on 23.12.2023 under the law during examination in chief of witness, however, in the light of order dated 11.01.2024 passed in Crl. Revision Petition No.200/2023 by the Honorable Islamabad High Court, Islamabad, the proceedings conducted after 14th December, 2023 were declared of no legal consequence, hence, statement of witness is being reduced into writing today and said de-sealed statement u/s 164 Cr. PC be considered legal in the light of above said

observations. Since statement u/s 164 Cr. PC was already de-sealed and recording of statement of present PW pertaining to de-sealed document which was already de-sealed must be considered part and parcel of statement which has been recorded and exhibited today).

PW-12 Anees ur Rehman deposed that in the month of August, 2023 he was posted as Technical Assistant in FIA CCRC, Islamabad. His qualification is M. Phil in computer sciences with specialization in Cloud computing in information sector. His Additional Director FIA CCRC Islamabad assigned him a task to prepare a report regarding the propaganda of hostile states regarding cypher in the view of accused persons Imran Ahmad Khan Niazi and Shah Mehmood Qureshi. He analyzed the surface web, social media, YouTube, and collected the digital evidence regarding the interviews/speeches of the accused persons Imran Ahmad Khan Niazi and Shah Mehmood Qureshi regarding cypher. He extracted the URLs and preserved the videos from internet, social media regarding abovementioned contents. He made a C.D. Ex.PW12/1 in which he put up all the evidences, then he prepared technical analysis report V.1.0 which is Ex.PW12/A/1-24 which bears his signature on the last page of the report and the initials on the each and every page of the report. He produced the report along with C.D. to the IO who has taken the same into possession through

seizure memo Ex.PW12/B which was duly signed by him.

(At this stage, learned prosecutor requested the court to play the C.D. so that witness may verify its contents.

Court observations: C.D has been played in court, contents of which have been verified by the witness it was the same C.D.)

PW-13 Javed Iqbal deposed that in March, 2022 he was posted as a Superintendent Prime Minister's office, Islamabad. In the month of August, 2023 he has presented daily register agenda/engagements of P.M. dated 28.3.2022 which was Monday. As per daily agenda, no meeting of P.M., SPM, F.S. or P.M. was scheduled on 28.3.2022. Above said agenda dated 28.3.2022 is presented by him as Ex.PW13/A which was taken into possession by the IO vide recovery memo Ex.PW13/B which is duly signed by him.

PW-14 Hidayat Ullah Baitani stated that in the year 2022 he was posted as Section Officer, National Security Division, Islamabad. He received a requisition from FIA vide their letter on 4th November, 2022 for providing record pertaining to meetings of National Security Committee dated 31.3.2022 and 22.4.2022. This matter was brought in the notice of Prime Minister being Minister Incharge National Security Division and Chairman National Security Committee. It was observed by the Prime Minister that all minutes of National Security Committee

has been classified as secret because of its nature therefore those cannot be supplied to the FIA. It was further observed that if FIA team wants to peruse the same, they can. Letter dated 22.2.2023 is Ex.PW14/A was taken into possession by the FIA vide seizure memo Ex.PW14/B.

PW-15 Muhammad Ashfaq deposed that on 4th November, 2022 he was posted as Deputy Secretary, Cabinet Division, Islamabad. They received a letter from the FIA for requisition of record/minutes of cabinet meeting which was responded to the effect that above said minutes were classified as secret and those could only be provided to the members of the cabinet for their perusal with further direction to return within 24 hours and those minutes could not be provided to the Secretaries of the Division. In consultation with P.M. office it was decided that if some investigating agencies or court required those documents could only be shared in camera for reading only. To this extent it was responded vide letter Ex.PW15/A which was taken into possession by the FIA vide memo Ex.PW15/B.

PW-16 Yousaf Naseem Khokhar deposed that he was posted as a Secretary, Interior till March, 2023. Pursuant to the recommendation of the FIA dated 6th October, 2022 and advice by the Law & Justice Division tendered to the M/O Interior on 11th October, 2022 in response to Ministry's letter dated 10th October, 2022 and the cabinet decision dated

30th September, 2022, M/O Interior on 13th October, 2022 authorized the FIA on behalf of the Federal Government to file a complaint u/s 13 (3) of OSA, 1923 against persons involved in this matter in the court of appropriate jurisdiction and in accordance with law. Complaint is Ex.PW16/A which bears his signature Ex.PW16/A/1. He endorses its contents.

PW-17 Muhammad Awaid Irshad

deposed that on 16th of August, 2023 he was posted as an Assistant Commissioner I-9, Islamabad. On the said date, witness Muhammad Azam Khan came to his office along with IO of a case FIR No.6/2023 u/s 5 & 9 of OSA with request to record a statement of a witness u/s 164 Cr. PC through an application duly marked by the District Magistrate, Islamabad to him which is Ex.PW17/A. He insured the free will and voluntariness of the witness and in order to insure, he expel all the persons from my office except himself and witness Muhammad Azam Khan. Thereafter he conducted inquiry from the witness regarding his free will and to ascertain his voluntariness and absence of duress. Above inquiry portion of statement is "A to A" of already Ex.PW11/A/1-11. After being insured that there was no pressure on the witness and he was available with all his free will in order to record the statement, he gave him an hour time to the witness to think over. After lapse of an hour, witness was called for recording of his statement u/s 164 Cr. PC and he got recorded his

statement, portion of his statement is “B to B” and my certificate is portion “C to C” in Ex.PW11/A/1-11. He got signature and thumb impression of the witness on each and every page of his statement. Thereafter he handed over copy of said statement to the IO and original statement was sealed in envelope which is Ex.PW17/B.

Note: The statement has been de-sealed on 23.12.2023 under the law during examination in chief of witness, however, in the light of order dated 11.01.2024 passed in CrI. Revision Petition No.200/2023 by the Honorable Islamabad High Court, Islamabad, the proceedings conducted after 14th December, 2023 were declared of no legal consequence, hence, statement of witness is being reduced into writing today and said de-sealed statement u/s 164 Cr. PC be considered legal in the light of above said observations. Since statement u/s 164 Cr. PC was already de-sealed and recording of statement of present PW pertaining to de-sealed document which was already de-sealed must be considered part and parcel of statement which has been recorded and exhibited today. **(Although the similar note also has been given while recording the examination in chief of PW11 Azam Khan, since it is interlinked with the instant PW, hence, the reproduction of the said note in the examination in chief of Awaid Irshad is placed for the purpose of legal clarity.)**

PW-18 Sohail Mahmood deposed that in March, 2022 he was posted as a Secretary,

MOFA, Islamabad. On 8th March, 2022 he was telephonically contacted by Ambassador of Pakistan in Washington, who informed him about his meeting dated 7.3.2022 with U.S. Assistant Secretary of the State for South and Central Asia at his residence in Washington D.C. In the above said meeting, Ambassador was accompanied by Deputy Head of Mission, Councilor and Defense Attaché. Assistant Secretary (US) was accompanied by Deputy Assistant Secretary. The Ambassador underlined the sensitivity of the matter and informed him that he had sent a communication in this regard to MOFA through a cypher telegram. He reached his office at about 10:30 a.m. and received a copy of cypher telegram No. I-0678 categorized as “No circulation and Foreign Secretary only” sent by Ambassador of Pakistan in Washington. He approved the distribution of cypher telegram with instructions that copy of SPM may be handed over to him by hand in a sealed envelope. His office complied with his instructions and sealed envelope of cypher telegram was handed over by his office to Mr. Haseeb Gohar PW, D.S. (FSA) for further transmission to SPM on 8th March, 2022.

On 27th March, 2022 there was a public gathering wherein former P.M. Imran Ahmad Khan Niazi waved a letter. On 28th March, 2022 he received an internal note from our Additional Secretary Americas informing that he had been contacted by U.S. C. dA who had expressed her concerns about the public statement made by the then P.M. Imran Ahmad Khan Niazi on 27th March, 2022. While forwarding this note to the

then Foreign Minister Shah Mehmood Qureshi, he advised that it would be prudent to remain engaged the U.S. and avoid public acrimony. His noting in this regard already exhibited as Ex.PW7/A. Purpose of this advice was to protect the relations of Pakistan with important country and to avoid public and politicized discussion on a secret and privileged communication. Above said note was send to him by Additional Secretary Americas Faisal Niazi Tirmizi PW. On 28th March, 2022 around mid-day he received a call to reach Bani Gala immediately for a meeting. It was not a prescheduled meeting and was called at a short notice. He was also not aware of its participants beforehand. He noticed that besides the P.M. Imran Ahmad Khan Niazi, the then Foreign Minister Shah Mehmood Qureshi and SPM Azam Khan were also present. He was handed over a telegram which was earlier in the day given to the Foreign Minister's office at his request, he was asked to read it out. During the reading, other participants of the meeting commented on the conversation between the U.S. Assistant Secretary of the State and the Pakistani Ambassador in Washington. The meeting was short and it ended without any decision or conclusion. He took the copy of cypher telegram with him and handed it over to Director FSO for safe custody. He was not asked to prepare any minutes of the above said meeting nor any minutes were prepared by the P.M.O or agreed to by the MOFA. Purpose of the meeting was not clear.

On 8th April, 2022 there was a cabinet meeting considering the question of “Declassification of cypher telegram”. The Secretary Cabinet, Secretary Law & Justice and he being a foreign secretary was asked to share views. In his briefing he underlined that declassification of cypher telegram was neither possible nor advisable in view of the cypher security guidelines, the legal position and the foreign policy implications. He noted that cypher security guideline allows sharing of cypher telegram with authorize persons. In past there was no example of declassification of cypher telegram nor there was any legal provision in this regard primary reason being disclosure of text could compromise the cypher communication system. He also added that it could affect the working of the missions and the Ministry as the trust underlying confidential exchanges with foreign interlocutors could be undermined. It could also affect relations with U.S and some other countries and strained relations with U.S could also complicate the matter with multi-lateral financial institutions. The Secretary Law and Cabinet for their part cited provisions of the Official Secrets Act which precluded the declassification. After protracted deliberations, it was decided to have in camera briefing in the Parliament on the authenticity and salient features of Cypher telegram to be provided by the MOFA.

By the time he retired from the MOFA on 29th September, 2022 the SPM’s copy of the cypher telegram was not received back in the

MOFA. At some stage in March, the SPM informally mentioned to me that the Prime Minister Imran Ahmad Khan Niazi could not locate his copy of the cypher telegram in his papers and if another copy could be provided. He was informed that it was numbered copy and should be located.

PW-19 Muhammad Nauman presently posted at Pakistan Embassy Parep Washington deposed that he was performing his duty as a cypher assistant in MOFA, Islamabad. On 8th March, 2022 he had morning duty from 08:00 a.m. to 02:00 p.m. Being cypher assistant his duty was to receive and decrypt the cypher telegram and transmit it to my seniors as per SOPs and cypher instructions. On morning he joined his duty and received a telegram from Parep Washington. He downloaded the above said message, numbered it as I-0678 and after decrypting handed it over to his cypher officer Mr. Imran Sajid. Entry in the cypher register is already exhibited as Ex.PW3/A.

PW-20 Aftab Akbar Durrani deposed that presently he is serving as Secretary, M/O Interior, Government of Pakistan, Islamabad. He has been duly authorized by the Federal Cabinet vide MOI Notification No.8/85/2020-Law dated 18th February, 2021 and on the recommendation of the agency (FIA) authorized the agency to file a case/complaint against in the court of competent jurisdiction for the purpose of prosecution and taking cognizance u/s 5 & 9 of the OSA, 1973

read with r/w section 34 PPC against the persons nominated/involved in FIR No.6/2023 under the rules and law. His letter in this regard is Ex.PW20/A which is duly signed by him.

PW-21 Asad Majeed Khan deposed that he was in BS-22 in Foreign Services of Pakistan and served as Foreign Secretary, MOFA, Islamabad until August, 2023. Before this appointment, he served as Ambassador of Pakistan in USA from January, 2019 to March, 2022. On 7th March, 2022 he arranged a working lunch with Donald Luo Assistant Secretary of the State South and Central Asia (USA) accompanied by Deputy Assistant Secretary of the State Department South and Central Asia. It was a pre-planned working lunch hosted by Pakistan as during Covid US State Department was not receiving Foreign Ambassadors at their premises so it was hosted by me at the Pakistan House. During the lunch he was assisted by Deputy Head of Mission Naveed Safdar Bukhari, Defense Attaché Brig. Noman Awan and Political Councilor Qasim Mohy-ud-Din. The lunch continued for 1 ½ hour and both sides were aware that it was minuted. Above said conversation was communicated by him through cypher to the Islamabad which was a way to communicate to foreign office on important and sensitive matter. In his communication he did not use the word threat or conspiracy. It was a political conclusion drawn by the leadership in Islamabad. The communication was addressed to the Foreign Secretary, who shared it with all concerned consistent with his competence.

Subsequently he was called in the meeting of NSC on 22nd April, 2022. Prior to that NSC recommended demarche to be issued to the US Embassy in Islamabad and State Department in Washington as suggested by him. During the NSC meeting based on the input of all the stakeholder, it was determined that there was no conspiracy. The same was position was reiterated by MOFA. The cypher episode was a setback to Pakistan US bilateral relationship and carried adverse implication for future diplomatic reporting culture.

PW-22 Farrukh Abbas Kiyani

deposed that in the month of March, 2022 he was working as a cameraman in PTV and deputed in P.M. House. On public gathering held on 27.3.2023 he was present there as a cameraman for the coverage of said public gathering at Parade Ground, Islamabad. For the coverage of above said event there was main O.B., Mini O.B., 10 cameras, JIB, Drowns and DSNG. The then Foreign Minister Mr. Shah Mehmood Qureshi addressing the gathering said that he had secrets which he had delivered to then P.M. Imran Khan Niazi. Thereafter the then P.M. Imran Khan addressed the gathering who took out a paper from his pocket and waved in front of gathering and said that it was a proof of conspiracy and foreign interference in the internal affairs of our country and then he put the said paper in his waist coat. He handed over video recordings of speeches of the then F.M. and P.M. to the IO which is Ex.PW22/1 which was

taken into possession by the IO vide memo Ex.PW22/A which bears his signature.

(At this stage, learned prosecutor requested the court to play the C.D. so that witness may verify its contents.

Court observations: C.D has been played in court, contents of which have been verified by the witness it was the same C.D. and recording of jalsa where he was present and later on provided its recording.)

PW-23 Faisal Niaz Tirmizi deposed that from September, 2020 to October, 2022 he served as Additional Secretary Americas, MOFA, Islamabad. On 28.3.2022 he received a WhatsApp message from U.S. C. dA Angella Agglor wherein it was mentioned that she wanted to hand carry a document which was waved by the then P.M. in a public rally in Islamabad on 27th March, 2022 alleging U.S interference in Pakistan's internal affairs. She further mentioned in her message that above said message did not play well in D.C. He shared that WhatsApp message(which is already exhibited as Ex.PW7/A) to the Foreign Minister and the Foreign Secretary. He also wrote a note to the Foreign Secretary on that WhatsApp message. He immediately received a call from the then Foreign Minister that cypher message could not be shared with the U.S. C.dA. On 30th March, 2022, He received a call from Director FSO that he had to brief the Cabinet on the cypher telegram received from Washington D.C. as the

Foreign Minister and Foreign Secretary were travelling to China. That cypher telegram was handed over to him by the Director FSO at 14:25 hours which he carried to the Prime Minister office, Islamabad. The Cabinet was briefed on that message. After the briefing Cabinet said cypher telegram was returned to Director FSO. On 31st March, 2022 at 22:45 hours he was asked to deliver a demarche to the acting U.S. C. dA Richard Snelsire on the U.S. interference in Pakistan internal affairs. His two statements were recorded by the IO.

PW-24 Haseeb Gohar, deposed that in March, 2022 he was posted as Deputy Secretary Foreign and Social Affairs, P.M. Office, Islamabad. One of his responsibility was to receive cypher from J.S. FSA which were addressed to SPM. On the instructions of J.S. FSA, they used to place such cypher telegrams for the perusal of SPM. On 8th March, 2022 around 09:00 p.m. he received a call from Director FSO Haseeb bin Aziz who informed that Foreign Secretary directed him to deliver a cypher available in the office of Foreign Secretary to the SPM. He briefed/informed his J.S. about the instructions of the Foreign Secretary. Upon the instructions of the F.S. he received a sealed envelope which was classified as "Secret and to be opened by the addressee only" for onward transmission to the SPM. He informed Joint Secretary FSA and D.S. to SPM Sajid Mehmood PW about the instructions of F.S. to deliver sealed envelope to SPM. D.S. SPM Sajid Mehmood PW

upon seeking instructions from the SPM conveyed him to deliver the sealed envelope tomorrow i.e. next morning 9th March, 2022. On 9th March, 2022 after showing the same sealed envelope to JS FSA, the same was delivered to D.S. SPM Sajid Mehmood around 09:45 a.m.

As per practice in vogue, cypher telegrams were required to be returned to the cypher office after perusal of the concerned recipient. By the time he was serving the P.M. office, FSA wing had not received the cypher telegram received by SPM.

On 30th September, 2022 new SPM inquired about the cypher telegram received by the earlier SPM, copy meant for the then P.M. In this context a joint statement was signed by him, D.S. SPM Sajid Mehmood and J.S. Shoaib Sarwar which is Ex.PW8/A. A separate note was also initiated by him regarding the receipt of the cypher telegram which was delivered to the SPM as stated above (already exhibited as Ex.PW9/C).

PW-25 Mian Sabir Hussain (IO) *deposed that in the month of October, 2022 he was posted as Assistant Director Investigation in FIA/CTW, Islamabad. On 5th October, 2022 inquiry No.111/2022 was registered in FIA CTW, Islamabad upon the directions of D.G. FIA on the basis of decision of the Federal Cabinet received in FIA through M/O Interior. An inquiry team was constituted by the D.G. FIA and he was also a member of the inquiry team. Formal complaint already exhibited as Ex.PW16/A by the then*

Secretary MOI. After bringing on record the relevant documentary and oral evidence, the inquiry team concluded the inquiry and recommended the registration of case under provisions of the OSA, 1923. Formal FIR No.6/2023 dated 15.8.2023 was registered in FIA CTW, Islamabad which is Ex.PW25/A bears his signature. On the same day i.e. 15.8.2023 the Director General, FIA constituted investigation team and he was member of the investigation team and nominated as IO. After seeking permission Ex.PW25/B from the court in the District Jail, Attock. His application is Ex.PW25/B/1. The nominated accused Imran Ahmad Khan Niazi was investigated in District Jail, Attock and after interrogation by the investigation team the accused was found connected with commission of offence mentioned in the FIR. Therefore, his arrest was effected in the instant case in District Jail, Attock as he was already confined there in some other case.

On 16.8.2023 request for physical remand of the accused Imran Ahmad Khan Niazi was submitted before the court which were turned down and the accused was committed to the judicial custody till 30.8.2023. On the same day, Muhammad Azam Khan, former SPM has joined the investigation. His statement was recorded u/s 161 Cr.PC. Furthermore, he volunteered to get recorded his statement before a Magistrate u/s 164 Cr.PC. In this regard, application already exhibited as Ex.PW17/A was submitted to the District Magistrate, Islamabad which was marked to the A.C. Industrial Area, Islamabad.

The witness was taken to the court of A.C. Islamabad PW who recorded his statement u/s 164 Cr. PC as per law. The certified true copy of the statement was obtained and made part of the record.

The co-accused Shah Mehmood Qureshi was arrested on 19.8.2023 after getting his physical remand, he was sent to judicial custody on 30.8.2023.

During investigation, on 15.8.2023 the technical report regarding leak audios relating to cypher telegram already exhibited as Ex.PW10/A/1-7 along with C.D. already exhibited as Ex.PW10/1 was seized from Muhammad Sibtain Ahmad Khan, technical expert, FIA Cyber Crime Wing vide seizure memo already exhibited as Ex.PW10/C signed by me and witness.

On 18.8.2023, the documentary record pertaining to receipt and distribution of the cypher telegram i.e. I-0678 was seized vide seizure memo duly signed by me and witness already exhibited as Ex.PW3/B from Mr. Shamoan Qaiser Hassan, Deputy Director, MOFA. The details of documents are that certified copy of page of cypher register Ex.PW3/A, Ex.PW2/A, copy of movement register internal Ex.PW2/B, copy of movement register external Ex.PW2/C/1-5. On the same day, the DVD Ex.PW22/1 comprising video recording of PTI Jalsa on 27.3.2022 containing speeches of former Prime Minister Imran Ahmad Khan Niazi and former Foreign Minister Shah Mehmood

Qureshi was seized from Farrukh Abbas Cameraman PTV vide memo already exhibited as Ex.PW22/A signed by him and witness.

On the same day i.e. 18.8.2023 the transcripts of speeches and media talks of the accused persons are already exhibited as Ex.PW6/A (1-18), Ex.PW6/B, Ex.PW6/C, Ex.PW6/D, Ex.PW6/E, Ex.PW6/F, Ex.PW6/G, Ex.PW6/H (1-4), Ex.PW6/J(1-4) and DVD containing video clips of speeches/media talks already exhibited as Ex.PW6/1 were seized from Nadir Khan, Deputy Director PEMRA vide seizure memo Ex.PW6/K signed by him and witnesses.

On 19.8.2023 Javed Iqbal, Supdt. P.M. Office internal produced certified copy of daily agenda/engagements of Prime Minister dated 28.3.2022 already exhibited as Ex.PW13/A which was seized vide memo Ex.PW13/B signed by him and witness.

On 23.8.2023 Sajid Ullah, A.D. US-I, MOFA produced attested copy of the internal note dated 28.3.2022 initiated by Additional Secretary (Americas) MOFA regarding his communication with U.S. C. dA Ex.PW7/A which was seized by him through seizure memo Ex.PW7/B which was signed by the witness.

On 24.8.2023 Haseeb Bin Aziz, the then Director FSO MOFA produced attested copy of the movement register showing the receiving of cypher telegram No. I-0678 by Mr. Haseeb Gohar, D.S. FSA PM Office on 08.3.2022 Ex.PW4/A taken into possession vide memo

Ex.PW4/B which was signed by him and witness.

On the same day, the Technical Analysis Report Ex.PW12/A/1-24 regarding propaganda by the hostile states against Pakistan and interviews of accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi on social media and electronic media concerning cypher issue was produced by Mr. Anees ur Rehman, Technical Expert, Cyber Crime Wing, FIA. The same was seized vide memo Ex.PW12/B which was signed by him and witness.

On 24.8.2023 Miss. Iqra Ashraf, Director Spokesperson, MOFA produced transcripts of press briefing by the spokesperson of MOFA on 25.4.2022 already exhibited Ex.PW1/B (1-14) seized vide memo Ex.PW1/A signed by him and witness.

On 25.8.2023 Mr. Muhammad Afzal, S.O. P.M. Office produced record comprising attested copy of letter regarding meeting-whereabouts of Parep Washington cypher dated 7.3.2022 already exhibited as Ex.PW8/A, attested copies of press releases of two NSC meetings held on 31.3.2022 and 22.4.2022 already exhibited as Ex.PW9/A and Ex.PW9/B respectively, attested copy of internal note initiated by Haseeb Gohar, D.S. FSA regarding delivery of sealed envelope (cypher telegram No.I-0678) to Mr. Sajid Mehmood, D.S. to SPM on 09.3.2022 Ex.PW9/C vide memo Ex.PW9/D signed by him and witness.

On 5.9.2023 Mr. Muhammad Ashfaq, D. S (Cabinet) Cabinet Division, Islamabad produced letter No.Dy.1109/2022-S.O.-Cab dated 8th November, 2022 already exhibited as Ex.PW15/A in response to FIA letter No. FIA/CTW/PS-Isb/RE-111/2022/506 dated 04.11.2022 Ex.PW25/C seized vide memo Ex.PW15/B signed by him and witness.

On the same day Mr. Hidayat Ullah Baitani, Section Officer, National Security Division, Islamabad produced the letter of NSD vide U.O.No.NSD-II/2/2022-NSC (38) dated 22.2.2023 already exhibited as Ex.PW14/A in response to the FIA letter No.FIA/CTW/PS-Isb/RE-111/2022/503 dated 04.11.2022 Ex.PW25/D seized vide memo Ex.PW14/B signed by him and witness.

On 27.9.2023 letter vide No.FIA/CTW/PS-Isb/FIR-06/23/2053 was sent to the Secretary MOFA with request to apprise the investigation team regarding the present status of all numbered copies of cypher telegram distributed to various quarters Ex.PW25/E. The reply was received from Mr. Haseeb Bin Aziz, Director FSO vide MOFA's U.O.No.FSO-80/2/2023 dated 27.9.2023 Ex.PW4/C. The complaint/sanction for taking cognizance by the court u/s 13(3) OSA was sought from Secretary, M/O Interior vide FIA Headquarters letter No.FIA/CTW/HQ/ FIR-06/2023-4241-42 dated 31.8.2023 which was received from the Secretary M/O Interior Aftab Akbar Durrani already exhibited as Ex.PW20/A. He being the IO/member of the investigating team recorded statements of witnesses u/s 161

Cr.PC. After completion of the investigation and considering all the facts, statements and evidence, the investigating team found that former Prime Minister Imran Ahmad Khan Niazi accused had un-authorizedly retained numbered copy of cypher and avoided to return the same deliberately. On other hand, the accused waved and willfully communicated the information of secret classified document to public at large to achieve political benefit. Above said acts of using the information also benefitted foreign power/hostile states and the mannerism of this reckless act was prejudicial to the security and safety of secret communication system of Pakistan with active connivance and abetment of co-accused Shah Mahmood Qureshi the then Foreign Minister of Pakistan. After conclusion of the investigation, the challan/report u/s 173 Cr. PC was prepared by him and submitted in court for the trial of accused.

4. *Raja Rizwan Abbasi, Syed Zuliqar Abbas Naqvi, advocates, learned SPPs on behalf of the State vide statement dated 23.1.2024 gave up PWs namely Aqeel Haider, Deputy Director PEMRA and Kamran Aslam, F.C. FIA and Noman Bashir Bhatti PWs being unnecessary and closed the case for prosecution.*

DEFENSE PLEAS

5. *Statements of both the accused u/s 342 Cr. PC were recorded on 29.01.2024. Accused Imran Ahmad Khan Niazi in reply to Q.No.34 why this case*

against him and why the PWs deposed against him stated as under: -

“The conspiracy to remove my Government was set into motion in October, 2021 when General Bajwa changed DG ISI General Faiz,. This was done through an understanding with General Bajwa had with Shahbaz Sharif and Nawaz Sharif who had promised him an extension. General Bajwa hired Hussain Haqqani one of the most virulent Anti-Pakistan Army lobbyist in the United States. He was involved in the famous Memo Gate Scandal where on behalf of Asif Zardari and as Pakistan Ambassador to the U.S he had asked the U.S. Army Chief to rescue Asif Zardari from the Pakistan Army and this case was instituted in the Pakistan Supreme Court. Haqqani was hired to lobby for General Bajwa in the United States and campaign to malign me with the U.S. Government. It is noteworthy that my Government was used to hire Hussain Haqqani for a payment of 35,000 Dollars and he in April, 2022 tweeted that Imran Khan was Anti-American and General Bajwa was pro-American. Throughout the winter of 2021-22 he lobbied against me in the U.S on behest of General Bajwa. General Bajwa then used the ISI to start working on our allies BAP, MQM to leave our coalition. Moreover, ISI started telling our back benches and our

MNAs to leave PTI saying that the future belongs to PML (N) and Sharif and the establishment had made up their mind to withdraw support from PTI. I approached General Bajwa and asked him about this conspiracy, he assured me that there was no such plan in repeated meetings. When I told him about the ISI's role in working against our Government, he asked me to form a committee which he will work through the committee which will ensure that no such conspiracy takes place. The committee from our side was Shah Mehmood Qureshi, Asad Umar and Pervez Khattak. Despite the meetings of this committee with General Bajwa, ISI kept on undermining our Government.

On 1st week of March, I was due to undertake a trip to Russia. The trip was planned with not just the consensus of the Foreign Office but all the ex-foreign secretaries were invited by me to the P.M. House a week before the trip and all of them were of the view that this was an extremely important trip for the sake of Pakistan. On the morning when I was about to leave, I specifically called General Bajwa and asked him that was it O.K. to still undertake the trip since there had been some movement of Russian troops on the border of Ukraine. General Bajwa assured me that it was important that I should go and he has

consulted with all his commanders. When I came back few days later, Shah Mehmood Qureshi informed me that there was a cypher message from our Ambassador Asad Majeed in Washington and he stressed that it is the most shocking cypher message which was not to be shown to the P.M. and Foreign Minister. Shah Mehmood directed called Asad Majeed in Washington and got the details of the contents of the message and then insisted on getting the cypher. When I read the contents of the cypher, I was absolutely shocked and astounded. As someone who had studied international relations and politics in the university, I knew that there was no precedent ever of an American official in an official meeting with any Ambassador where he threatens that unless the P.M. is removed there would be consequences for the country and if he is removed in a vote of no confidence, then everything will be fine. Moreover, Donald Lou insisted to Asad Majeed that Imran Khan had taken the trip to Russia completely on his own initiative. While Asad Majeed kept assuring him that all the stakeholders were on board. Clearly someone had briefed Donald Lou that the trip was solely organized by Imran Khan to antagonize the U.S. Government against me and with the unfolding of the subsequent events I had no doubt that Donald Lou was fed by Hussain Haqqani on behalf of General Bajwa. The

Ambassador was so incensed by the tone of Donald Lou that he actually wrote in the cypher that the United State should be demarched as there was no precedent of any state official telling an Ambassador in an official meeting that the Prime Minister should be removed. Witnesses have been effectively cross examined to this effect.

I would have immediately gone to the public because this was not just an insult to the P.M. it was an insult to the 200 million peoples of Pakistan who had elected the P.M. but because there was an OIC conference on the 22nd and 23rd of March, I only spoke with my senior colleagues about this shocking and insulting cypher from Donald Lou. I waited until the OIC Ministers have left and then decided that I would go public with this threat. In the meanwhile, our allies in the Government were sending us messages that there was too much pressure from the ISI to leave the coalition. Also in the past two months the American Embassy was extremely active in Pakistan. They were being called our back benchers especially ones who were estranged from the party. They were calling to the American Embassy for regular meetings. Our Minister in K.P. Atif Khan was called to a meeting in the American Consulate at Peshawar and he was asked if there could be a vote of no confidence against the then PTI Chief Minister. In this time, I had several

meetings with General Bajwa and I told him that if the Government was removed at the time, the Pakistani economy will go into tailspin because the aftermath of the Covid-19 crises, the world was experiencing what was called the commodity super cycle. Energy prices internationally had gone through the roof and our rupee was under severe pressure because of the high oil price. I told him that if there was any political destabilization, the Government of Shahbaz Sharif was planned by Bajwa would not be able to control the economic situation. I had a specific meeting with him where I asked him a simple question when it was clear to us that the ISI was bent upon removing our Government. I asked him that I have two ways and your answer will determine which route you will take. If this conspiracy to remove my Government is going to go ahead then I will go to the people, if on the other hand you allow the Government to continue then there is another route that I will take. He lied again saying he wanted continuity. I even sent Shaukat Tareen, the Finance Minister to meet him and explain the gravity of this economic situation if there is any political destabilization. When I went in a jalsa in Islamabad on 27th, I waved a paper. I only spoke about the threat and did not name any country and was careful with my words. The paper I waved was a paraphrase of the

paraphrase copy of the cypher. The idea was to tell General Bajwa that if he went to go ahead with this conspiracy I will reveal the whole plot to topple an elected Government. On my last day in office, intelligence officials came to see me and conveyed that I should not talk about the cypher because clearly the cypher was addressed to General Bajwa from Donald Lou as clearly neither the Foreign Secretary had the capability of removing the P.M. and the Prime Minister certainly would not remove himself on the threat of a U.S. official. General Bajwa was the only one to have the powers and the agencies to topple my Government. When Attorney General went to the Supreme Court to plead our case that rather than have a Government replace us through an auction which was being held in the Sindh House (where a price of over Rs. 20 Crore fixed on any of our MNA who jump ship) and at the same time the working of the U.S. Embassy and our agencies. Amazingly our own Attorney General representing my Government in the Supreme Court refused to talk about the cypher because he had been approached by the ISI not to talk about it because it was impacting General Bajwa.

When our Government was removed I went to the people and the people of Pakistan responded in a way they had never responded in our history. Massive crowds came out and despite total Government and

Establishment backing all the PDM parties in the next few months, PTI won 30 out of 37 bye-election. General Bajwa and I had a meeting in August in the Presidency. Bear in mind at this time, the Pakistan economy was crashing. Inflation hit record levels touching 38%. Growth rate crashed from 6.17% to negative. Unemployment as a result began to soar. General Bajwa told me that he would try to get elections but in response he told me that I had to stop talking about the conspiracy to topple the Government and the Mir Jaffars and Mir Sadiqs. He said if I played ball nothing would stop the PTI in getting 2/3rd majority in the elections as he said even 80% of the Army was with PTI but on the other hand if I kept on talking about conspiracy against my Government and PTI would be reduced to around 30 plus seats there will be court cases lodged on me and my party members, and he then mentioned that there would be a secrecy Act violation case against me and Shah Mahmood. This was in August, 2022.

What happened in Pakistan when our Government was toppled in April, 2022 will go down as one of the worst chapters in the history of this country. An Army Chief, General Bajwa to get his extension which had been promised to him by Shahbaz Sharif, bear in mind that Shahbaz Sharif at that time was undergoing trial of corruption cases of

Rs.24 billion, 16 billion in FIA cases where he had taken money in the name of his factory workers-the famous Maqsood Chaprasi case who had 4 billion in his account and 8 billion in money laundering cases where fake accounts were used to launder money. All these cases were slowed down by General Bajwa, cases which were open and shut cases because of his deal for extension. Subsequently what followed was a disaster for the people of Pakistan who faced a record devaluation, unprecedented inflation and rising unemployment.

I had kept insisting from the time I was P.M. that there should be an inquiry into the regime change. The Cabinet had appointed General Tariq, a brave and an incorruptible soldier to head the Committee. After studying the case, General Tariq decided to decline because he knew the finger was being pointed to the Army Chief. The cypher was also put in front of the National Security Committee which issued a demarche to the United States for interfering in the internal affairs of Pakistan. The cypher was offered to all the opposition leaders to see for themselves the insulting threat by Donald Lou to the people of Pakistan. The cypher was also sent to the Chief Justice of Pakistan to conduct an inquiry into this conspiracy against Pakistan. Unfortunately, they were all scared of the office of the Army Chief and

so no inquiry was conducted into this travesty that the people had to bear as a result of regime change. Instead as General Bajwa had warned me and earlier had warned Shah Mehmood Qureshi which he will talk about his testimony, almost 200 cases were lodged against me and as he had warned PTI as a political party was being dismantled. Never in Pakistan's history has a political party being put to such coercive and draconian measures as what PTI and his leadership suffered and all because they would not sit down and quietly accept this conspiracy against the nation. This case has been instituted against me to shut my mouth, silence all criticism of General Bajwa and Donald Lou and my party and I have been taught a lesson that whoever dares to take a stand against the powerful Army Chief will face consequences. I want to finish my statement by saying if the sentence is given, no Pakistani Prime Minister will ever stand up for the interest of Pakistan to defy the unjust demands of the United States. Our country has a history where we have forsaken the interest of the people of Pakistan to comply with the orders of the United States. General Musharraf and I am a witness to the time when on one phone call from the U.S. Secretary of State Richard Armitage he took Pakistan into the devastating war on terror which cost Pakistan 80000 lives and the

economy lost over a 100 billions of Dollars in the chaos that followed or complying with U.S. wishes. During the time of Asif Zardari and Nawaz Sharif between 2008 and 2018, 400 drone attacks were conducted by the U.S. against Pakistani citizens with 1000s of them were blown up. There is no precedent in history of a country being bombed by its ally. Neither Nawaz Sharif nor Asif Zardari uttered one word of condemnation against this extra judicial killing of its citizens. No civilized country allows another country let alone an ally in whose war it is sacrificing its citizens to become judge, jury and executioner and eliminating people in its territory. The reason why the two leaders were conspicuous by their silence was because they were petrified that the U.S. might remove them from power. Therefore, this case has significances far beyond the present date when this case will decide will a Pakistani Prime Minister will stand up for his country or will he out of fear of losing power, of fear being in prison as one our Prime Minister was hanged. Will he sacrificed the interest of Pakistan to appease the U.S. History will bear witness where the people of Pakistan will finally get Haqiqi Azadi and their leaders will take decisions for the benefit of the people or will we be condemned to a life of eternal slavery. The witnesses have deposed falsely and the prosecution has miserably failed to bring any

cogent or convincingly reliable evidence against me. The prosecution failed to prove its case. I am innocent in this case which was lodged against me on false pretext and in view of the facts as I have explained in the preceding paras of this reply. I am absolutely innocent and deserve to be acquitted of all charges.“

6. *Accused Shah Mehmood Qureshi in reply to Q.No.34 why this case against him and why the PWs deposed against him stated as under: -*

“This is case of political victimization and I have been accused for not switching my loyalties as many others senior leaders has done and they were set free. I reiterate my innocence and state that I am not guilty of any offence under OSA, 1923 or any other provision of law which may be read with it.”

Both the accused did not opt to lead any defense evidence or to appear themselves u/s 340 (2) Cr.PC.

7. *Learned prosecutor Rizwan Abbasi on behalf of State assisted by Syed Zulfiqar Abbas Naqvi for the complainant has stated that both the accused/petitioners in the light of charges leveled against them have committed the offence as mentioned u/s 5, 9 of OSA, 1923. They are the real culprits and specific role have been assigned to them, thus, they have committed the offences in the light of five heads of*

charges. The witnesses PW-1 to PW-25 have fully corroborated the prosecution version from the sending process of cypher from U.S. Washington through PW-21 Asad Majeed to MOFA, Pakistan. The entire procedure adopted by the MOFA with respect to sending the above said cypher telegram to the addressee namely Prime Minister Imran Ahmad Khan Niazi through SPM PW-11. Same has been received by the accused Imran Ahmad Khan Niazi. So far as receiving and retaining of cypher is concerned, there is a complete chain of custody right from Asad Majeed PW, the then Ambassador of Pakistan, Noman PW, Cypher Assistant, until the then SPM Azam Khan PW who himself handed over the said cypher telegram to the accused Imran Ahmad Khan Niazi and said cypher was not returned till date. SPM Azam Khan, being the official custodian of all the documents of the PMO, he very rightly demanded the copy of cypher back from PM however, PM Imran Ahmed Khan Niazi never paid heed to an important demand/suggestion of his principle staff office. Statement of Azam Khan is very much pivotal with regard to charge u/s 5(1)(c) and 5(1)(d) of OSA showing that cypher telegram numbered copy which was accountable document was retained by Imran Ahmad Khan Niazi accused and same was not returned to MOFA and no rebuttal came from defense side in this regard, thus, charge u/s 5(1)(c) of OSA stand proved. It is also mentioned that by the same PW instructions were issued to search for cypher telegram received by Imran Ahmad Khan Niazi accused but it could not be found shows that said cypher telegram was negligently handled that is why after search it could not be found,

hence, charge u/s 5(1)(c) of OSA, 1923 stands proved. Most important question involved is that accused Imran Ahmad Khan Niazi having in his possession and control a document containing secret cypher information which was entrusted to him in confidence because he was holding an office of Prime Minister and he had obtained and having access owing to his position as the then Prime Minister and he willfully communicated the said information to public at large which was not at all in the interest of the State of Pakistan and directly or indirectly it was for the benefit of foreign powers and this fact is to be calculated and ascertained by the court in the light of evidence of those witnesses who were expert in relation to foreign services, those are ex-foreign secretaries namely Asad Majeed and Sohail Mehmood. The cypher episode was a setback for Pakistan U.S bilateral relationship and carried adverse implication for future, diplomatic reporting culture and Sohail Mehmood PW has shared his views in the Cabinet meeting that there was no example of de-classification of cypher and disclosure of text could compromise the cypher communication system and it could affect the working of Missions and the Ministry as the trust underlying confidential exchanges with foreign interlocutors could be undermined and it could also affect relations with U.S. and some other countries and strained relations with U.S. could also complicate the matter with multi-lateral financial institutions and at the same time statement of Faisal Niaz Tirmizi is also relevant who said that he was contacted through Whats-App message by U.S. C.ds Affairs who wanted to hand carry a document which was waved by the then P.M. in public

rally at Islamabad alleging U.S. interference in Pakistan's internal affairs, she further mentioned that above said message did not play well in D.C. All the above said statements if seen in juxta position, it clearly shows that above said act of accused Imran Ahmad Khan Niazi who disclosed the above said information before un-authorized persons in fact damage Pakistan and so far as this damage is concern, word "Calculated" mentioned in section 5 means that it is to be inferred in the light of facts and circumstances of the case or through surrounding circumstances and this is a matter of public knowledge that different international institutes gave a tough time to Pakistan. Hence, I am constrained to conclude that charge u/s 5(3)(a) of OSA, 1923 stands proved against the accused Imran Ahmad Khan Niazi who in his statement u/s 342 Cr.PC accepted receiving, retention, misplacing and waver of cypher before the public "The paper I waved was a paraphrase copy of the cypher" is not a good defense rather it acts adversely against the accused to the effect that it is not a paper rather information in the paper which is of high important and makes it classified as secret/accountable document. The accused miserably failed to establish any malafide or animosity or grudge on the part of PWs for their false implication in the instant case. The prosecution has succeeded to prove this case and charge against the accused beyond any shadow of doubt as all the PWs remained consistent during the period of cross-examination and argued that accused be punished in accordance with law.

8. *Learned defense counsels have argued that both the accused were falsely implicated in the instant case. Both the accused have not committed the offences leveled in the charges. Both the accused one Imran Khan Niazi is ex-Prime Minister of Pakistan and Shah Mehmood Qureshi is ex-Foreign Minister. They have not taken the law in their own hands, they be acquitted from the charges. This is case of political victimization and they have been accused for not switching any loyalties as many others senior leaders has done and they were set free. That they are not guilty of any offences under OSA, 1923 or any other provision of law which may be read with it. The witnesses have deposed falsely and the prosecution has miserably failed to bring any cogent or convincingly reliable evidence against them. The prosecution failed to prove its case. We are innocent in this case which was lodged against us on false pretext and in view of the facts as we have explained in the preceding paras of their reply u/s 342 Cr.PC. They are absolutely innocent and deserve to be acquitted of all charges.*

9. *I have heard arguments from both the sides and perused the record carefully.*

FINDINGS

10. *This court is going to decide the instant controversy in the light of below mentioned glimpses which revealed during proceeding in order to understand the true pith and understanding of entire proceeding: -*

- 1) *Cypher Telegram (classified document)*
- 2) *Ocular Account.*
- 3) *Conduct and attitude of both the accused during proceedings towards court.*
- 4) *Demand of fair trial through unfair practices of both the accused during proceedings.*
- 5) *Self-inflicted miseries of both the accused and demand of “Audi Alterm Partem”.*
- 6) *Despite having defense showing defenseless to get sympathy in future.*
- 7) *Protection of fundamental rights under the Constitution, 1973 of Pakistan is for righteous approached citizens.*
- 8) *Article 10 and 10-A of the Constitution is umbrella for law abiding citizen not as a tool for tricky minded accused.*
- 9) *Tricky acts of both the accused throughout proceeding.*
- 10) *Secret documents and the sanctity.*
- 11) *Manipulation of secret, sensitive and classified information.*
- 12) *Impact of misuse of cypher by the Ex-Prime Minister accused Imran Ahmad Khan Niazi in connivance with co-accused.*
- 13) *Violation of oath by ex-Prime Minister Imran Ahmad Khan Niazi*

- 14)** *Violation of oath by ex-Foreign Minister Shah Mehmood Qureshi.*
- 15)** *Considerable damage to Pak U.S. relationship in terms of trust and confidence.*
- 16)** *Deliberate and well planned manipulative lie aimed of both the accused.*
- 17)** *The veracity of confessional statement of Muhammad Azam Khan PW-11 and impact on prosecution story.*
- 18)** *Compromising the integrity of cypher communication system of Pakistan due to the act of both the accused defined in the instant case.*
- 19)** *The acts of omission and commission of the accused persons has had serious adverse affect on Pakistan's diplomatic and political standing among comity of nations. This, in turn, has benefited foreign powers hostile to Pakistan.*
- 20)** *Onus probandi upon accused Imran Ahmad Khan Niazi regarding lost document/telegram (cypher) which not returned back to MOFA (block warning).*

11. *This court is not oblivion of the fact that case in hand is with respect to secret cypher telegram bearing No. I-0678 through Ministry of Foreign Affairs, Islamabad and information contained in secret classified document (cypher telegram) received from Parep*

Washington dated 7.3.2023 to Secretary, Ministry of Foreign Affairs, Islamabad which was most confidential and same was trust inter se the States. The ocular account by way of producing prosecution evidence through 25-PWs is on record. It is observed with pain that attitude of defense was not serious throughout the proceedings on 27.01.2024 when case was taken up around 09:00 a.m. defense counsels were not available but defense counsels at state expense were present. Both the accused misbehaved with learned defense counsels at state expense and files were thrown, time was granted to the accused and meanwhile their learned defense counsels namely Mr. Muhammad Usman Riaz Gill, advocate and Syed Mohammad Ali Bokhari, advocate for both the accused reached and initially different applications were submitted which were decided by the court and both the counsels requested to allow them an hour time to prepare cross-examination. Request was allowed and when court resumed both of them were multiple times asked to cross-examine the witnesses and after their denial, learned defense counsels at state expense were asked to cross-examine the witnesses and remaining PWs were cross-examined.

12. The instant case was registered after adopting all legal measures and inquiry was conducted in a detailed manner and that took approximately 17-months, hence, the registration of FIR cannot be termed as filed through inordinate delay. Same is in time because the time consumed during inquiry will be excluded and the registration of FIR No.6 will be

considered in time registered FIR. The purpose of registration of FIR is to set the law into the motion. Any informer may give information with respect to any criminal act, hence, the complainant only set the law into the motion and further proceeding initiated by the FIA department keeping in view the legal umbrella. It is special law under the Official Secret Act and gravity of the cypher can be considered keeping in view the most confidential secret documentation which cannot be disclosed at public at large in any manner. It is observed that the FIA department after conducting an inquiry observed all legal measures and it is the domain of the investigating agency to observe the accusation against any person who is true delinquent and after observing all the facts, two accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi were challaned and report u/s 173 Cr. PC was submitted against these two accused to face the trial. It was the obligation of Ex-Prime Minister Imran Ahmad Khan Niazi to return back the said document because that was block warning and it was the liability of the recipient to send the same wherefrom it was send by way of sending process meant for it that said document should have been returned back to MOFA. Since Imran Ahmad Khan Niazi was serving Prime Minister at that time, hence, MOFA was not in a position to ask with respect to the returning of said document (cypher) because being Prime Minister of Pakistan nobody can take liberty to direct to serving Prime Minister to adopt legal measures. It was duty of Ex-Prime Minister Imran Ahmad Khan Niazi to return back said document in time but till to date said document is not available in MOFA because same was

not returned by the Ex-Prime Minister Imran Ahmad Khan Niazi for the purpose of destruction of the said document as per MOFA Rules. The Official Secret Act, 1923 and the provisions of the said Act are exclusively measures for the production of secret, top secret, confidential, classified documents. In case of any failure with respect to any document, which is linked with the security or safety of the country, the production of the said document like cypher telegram under dispute must be protected in any manner. No doubt, it is never happened in past with respect to cypher case like this but this court believes that it should not have happened because the safety of all secret documents inter se the States should have been given most importance because it is sacred trust inter se the States. The Official Secret Act is not only linked with the Pak Army, a defense of the country, it has other social, economic and political links with every correspondence which is secret in nature inter se the States. The Official Secret Act, 1923 is not only restricted to the extent of Pak Army, Navel or Air-Force including other agencies but other officials who commits delinquency regarding the secrecy of any document also comes under this purview. The said Official Secret Act, 1923 is 100 years old law but entire provisions of law stand against the accusation according to the commission of an offence as per the role of the accused. There is no discrimination while dealing the Official Secret Act, 1923 whether any person who commits crime is a common person or whosoever having a rank in Pakistan. If any person commits crime under this Act, he will be definitely dealt in accordance with law. The section 5 (1)(a) is not restricted that,

“Any information should be communicated to enemy country but the language of the above said sub section clearly speaks that information to any person other than a person to whom he is authorized to communicate it.”

It means that application of above said provision of section 5(1)(a) also extend to any person other than the person to whom any one is authorized to communicate it. Cypher or any information which is sensitive and secret in nature cannot be shared to anyone. The cypher document, same was retained by the Ex-Prime Minister Imran Ahmad Khan Niazi and same was waved in the air before public at large in order to achieve the political gain. It is pertinent to mention here that one copies which was sent to the Ex-Prime Minister Imran Ahmad Khan Niazi, same was not returned back and it was used outside without any legal course and cypher cannot be discussed at public.

13. *It is pertinent to mention here that prosecution produced full ocular account by producing PWs along with documentary evidence which is in the light of PWs 1 to 25 and exhibited documents Ex.PW1/A to Ex.PW25/E. The entire prosecution evidence fully corroborated the stance in the light of statements of PWs alongwith documentary evidence. There is not a single dent available on record to show that there is any flaw in the ocular account of the prosecution witnesses.*

14. It is painfully noted that accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi were represented through number of lawyers/defense counsels but during entire proceedings the above said accused played hide and seek just in order to prolong the instant proceedings which were very high profile and sensitive in nature and ample opportunity on various occasions were given to the accused in order to lead their respective defense for cross-examination on PWs which were produced by the prosecution on record in a detailed manner along with documentary evidence entire interim orders clearly shows the conduct of the accused. They just played hide and seek and considered the entire proceedings in a mockery manner which is not warranted by law and twisted their various stance by way of filing different applications just in order to protract these proceedings. The reasons best known to them in presence of their respective clients/accused party. Apart from it, in the first round of the litigation when the copies were supplied, both the accused did not bother to make signatures on the margin of the order sheet. Similarly, while framing charge, they also were not inclined to make signatures and placed thumb impression on the charge sheet. Interim orders of this court from 24.1.2024 to 29.1.2024 itself speaks volume with respect to the conduct of both the accused persons that must be read as part and parcel with it. Then again in this third round of litigation, the accused did not bother to make thumb impression and signature on the charge and now ultimately even on 342 Cr.PC when they themselves recorded their replies when court offer them to add any further reply despite

detailed reply which was dictated by both the accused themselves in presence of their state counsels being defense counsels on state expenses, again in a tricky manner refused to make signature or place thumb impression on statement recorded u/s 342 Cr.PC which speaks volume. This adverse act and tricky conduct on the part of both the accused who are highly qualified one being ex-Prime Minister and other being ex-Foreign Minister of this Pak homeland were never expected to delay these proceedings on account of these malignant practices which definitely badly put impression regarding their attitude during these proceedings which is in no way warranted under ethics as well as any code of law which means if they can play hide and seek in this manner, then it is surely expected that accusation leveled in the light of charge cannot be kept isolated that said cypher telegram under discussion was wrongly misused and the act of the accused is deliberate and well planned manipulative lie aimed at rousing populist sentiments in the masses with no regard of its consequences for Pakistan's external relations as well as national security interest. These chain of wrongful acts of the accused badly put impression regarding the integrity, sovereignty and security including sacred trust inter se the State of Pakistan and USA.

15. *In the above said situation, it is crystal clear that under the law and keeping in view the fair trial under the umbrella of constitution, proper and due time was given to the defense to cross-examine the PWs but they deliberately not cross-examined them and voluntarily deprived themselves from the valuable right*

of cross-examination which speaks volume against the conduct of both the accused. It is further very painfully noted that both the accused were literally and having good education because accused Imran Ahmad Khan Niazi who being Ex-Prime Minister of Pakistan who is highly qualified. On the other Shah Mehmood Qureshi being Ex-Foreign Minister of Pakistan who is also very high qualified but this court felt embarrassed that it was not expected from both the accused to adopt this irresponsible attitude when throughout proceedings through court on administrative as well as judicial side provided very favorable directions in their favor but this court cannot anticipate why these accused deliberately avoided to cross-examine the prosecution PWs when they were available on various dates which shows that this act on the part of accused party is deliberate and just in order to design future ulterior objective by way of getting benefit post decision of this case from higher ups. This act of the accused party cannot be kept isolated at the time of adjudication of the instant controversy. Moreover, it should not be taken light because this court is fully aware that under the law defense is primary right of the accused but if accused party deprived themselves not to enjoy this valuable right under the constitution, it tantamount to commit suicide of their right which properly and at various times were guaranteed and ensured through giving them various opportunities. This failure on the part of the accused shows that accused misused and took liberty just in order to observe the fate of the instant matter in the light of future oriented goal and expected that ultimately if the defense will not be adduced they will be benefitted

under the law by Honorable Apex Courts in case of conviction. Only 4 PWs were at a stretch recorded on 15.1.2024 but after further adjournments throughout the proceedings, more than 40 applications have been filed just to linger on the trial on one pretext or the other specifically at the time of recording of prosecution evidence.

16. *The accused should introduce his defense at the earliest stage as possible, failing this may, gives rise to the presumption that the defense raised was mere invention. It is clear that accused has the right to present their defense to prove their innocent. The effect of successfully raising a defense can either absolve the accused criminal liability or at least reduced the seriousness of offence that they have been charged with. In this case shows that the defense should have been raised at the early stage through cross-examination which refers to the prosecution stage. Otherwise, the defense may be criticized for keeping the defense a secret where it can be regarded as mere invention. It was also rightly informed by this court and also the prosecution from the very beginning of their line of defense, which indirectly avoids the occurrence of any element of surprise. It is further notable that at the very outset of recording of evidence before this court, when court calls upon the accused for their defense, they were represented by the advocates, and they were informed of his right to give evidence on their own behalf, and they were given an opportunity to elect to an evidence on their behalf shall call their attention to the principle points in the evidence for the prosecution which tell*

against them in order that they may have an opportunity of explaining them but they have not done so. Although the principle has been regarded as a law in raising defense, there are still cases where the accused did not present his defense at an early stage, it would definitely take adverse against the defense. Prime facie in the light of material available on record through prosecution evidence, the case against the accused has been made out because the prosecution has adduced credible evidence proving each ingredient of the offence, which if unrebutted or unexplained due to the deliberate action of the accused party by way of not cross-examining the PWs, it would warrant conviction because facts proved need not be proved. Since the prosecution evidence is credible and relevant documents tendered by the prosecution Ex.PW1/A to EX.PW25/E when all the elements have been proved, then the offence against the accused has been established. The words "...unrebutted or unexplained would warrant conviction" indicate that the case has been established. The defense will then be called to give opportunity for the accused to rebut or to provide explanation, these both accused persons namely Imran Ahmad Khan Niazi and Shah Mehmood Qureshi were called to enter upon their defense, and three options were available to the accused to remain silent, to give sworn or unsworn evidence. Should they opt for second and third options, they were in a position to deny committing the offence or raise a defense to defend themselves but they decide to remain silent and in this case only conviction comes in this way. After considering the evidence adduced by the prosecution, it is found that prosecution has made out a case in the light of section 5

and 9 of Official Secret Act against the accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi respectively.

17. *When both the accused chooses to remain silent, the court is put a situation where it has no other choice but to convict the accused in the light of charge leveled against them because both of them have been failed to rebut the evidence adduced by the prosecution witnesses which means that the accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi failed to give convincing evidence to raise defense or to rebut the prosecution's case leave the court with no choice but to convict them.*

18. *The pivotal questions involve whether cypher was received by the accused and retained unauthorizedly? Whether cypher was dealt with negligent? Whether its contents were communicated to unauthorized persons for the benefit of which directly or indirectly caused foreign powers? Whether the co-accused abated the commission of offence?*

19. *So far as receiving and retaining of cypher is concerned, there is a complete chain of custody right from Asad Majeed PW, the then Ambassador of Pakistan, Noman PW, Cypher Assistant, until the then SPM Azam Khan PW who himself handed over the said cypher telegram to the accused Imran Ahmad Khan Niazi and said cypher was not returned till date. SPM Azam Khan, being the official custodian of all the documents of the PMO, he very rightly demanded the*

copy of cypher back from PM however, PM Imran Ahmed Khan Niazi never paid heed to an important demand/suggestion of his principle staff office. Statement of Azam Khan is very much pivotal with regard to charge u/s 5(1)(c) and 5(1)(d) of OSA showing that cypher telegram numbered copy which was accountable document was retained by Imran Ahmad Khan Niazi accused and same was not returned to MOFA and no rebuttal came from defense side in this regard, thus, charge u/s 5(1)(c) of OSA stand proved. It is also mentioned that by the same PW instructions were issued to search for cypher telegram received by Imran Ahmad Khan Niazi accused but it could not be found shows that said cypher telegram was negligently handled that is why after search it could not be found, hence, charge u/s 5(1)(c) of OSA, 1923 stands proved. Most important question involved is that accused Imran Ahmad Khan Niazi having in his possession and control a document containing secret cypher information which was entrusted to him in confidence because he was holding an office of Prime Minister and he had obtained and having access owing to his position as the then Prime Minister and he willfully communicated the said information to public at large which was not at all in the interest of the State of Pakistan and directly or indirectly it was for the benefit of foreign powers and this fact is to be calculated and ascertained by the court in the light of evidence of those witnesses who were expert in relation to foreign services, those are ex-foreign secretaries namely Asad Majeed and Sohail Mehmood. The cypher episode was a setback for Pakistan U.S bilateral relationship and carried adverse implication for future,

diplomatic reporting culture and Sohail Mehmood PW has shared his views in the Cabinet meeting that there was no example of de-classification of cypher and disclosure of text could compromise the cypher communication system and it could affect the working of Missions and the Ministry as the trust underlying confidential exchanges with foreign interlocutors could be undermined and it could also affect relations with U.S. and some other countries and strained relations with U.S. could also complicate the matter with multi-lateral financial institutions and at the same time statement of Faisal Niaz Tirmizi is also relevant who said that he was contacted through Whats-App message by U.S. C.ds Affairs who wanted to hand carry a document which was waved by the then P.M. in public rally at Islamabad alleging U.S. interference in Pakistan's internal affairs, she further mentioned that above said message did not play well in D.C. All the above said statements if seen in juxta position, it clearly shows that above said act of accused Imran Ahmad Khan Niazi who disclosed the above said information before un-authorized persons in fact damage Pakistan and so far as this damage is concern, word "Calculated" mentioned in section 5 means that it is to be inferred in the light of facts and circumstances of the case or through surrounding circumstances and this is a matter of public knowledge that different international institutes gave a tough time to Pakistan. Hence, I am constrained to conclude that charge u/s 5(3)(a) of OSA, 1923 stands proved against the accused Imran Ahmad Khan Niazi who in his statement u/s 342 Cr.PC accepted receiving, retention, misplacing and waver of cypher before the

public “The paper I waved was a paraphrase copy of the cypher” is not a good defense rather it acts adversely against the accused to the effect that it is not a paper rather information in the paper which is of high important and makes it classified as secret/accountable document.

20. *So far as role of co-accused Shah Mehmood Qureshi is concerned, he was the then Foreign Minister very much conversant with sensitivity involved in disclosure of contents of cypher telegram who also addressed a public meeting dated 27.3.2022 prior to Mr. Imran Khan Niazi and used following words: -*

Clearly established that he abetted through instigation the commission of offence u/s 5(3)(a) of OSA, 1923, thus, he is also found guilty u/s 9 of OSA as well as section 34 read with section 5 (3)(a) of OSA, 1923.

21. *This court during these proceedings given full opportunities to the accused to lead their defense by way of cross-examining the PWs but ultimately due to the failure of accused party not to cross-examine the PWs, their right of cross-examination was not closed on 26.1.2024 and this court felt appropriate without causing any serious damage by way of closing the defense of both the accused requested to the Advocate General for the purpose of appointment of defense counsels at state expense and in this regard this court through jail requested to Advocate General for providing the list of two competent defense counsels at state expenses and two defense counsels namely Malik Abdur Rehman, advocate was appointed on behalf of accused Imran Ahmad Khan Niazi and Hazrat Younis, advocate on behalf of Shah Mehmood Qureshi. Due to their own fault and this court under the umbrella of constitution provided all legal measures in order to guarantee the legal right of accused regarding their valuable right of defense for cross-examination but the act of both accused not to cross-examine the PWs, they took absolutely light despite having knowledge and legal wit coupled with their defense counsels. In this situation, the constitution and the law does not favor such like of tricky thought accused which they applied*

very malignant practice just to protract these proceedings and keeping in view the extraneous reasons just in order to achieve their future goal that if the instant prosecution evidence will not be cross-examine, and they were under this expectation done it that in future ultimately, the law will protect both the accused because they will be considered that prosecution evidence was defenseless and court of law has not given them opportunity to lead their respective cross-examination but the instant situation is entirely different and due to the failure and dereliction on the part of both the accused when they were not inclined to cross-examine the remaining PWs just in order to protract these proceedings on account of their ulterior design, this court provided sufficient opportunities to cross-examine the remaining PWs and due to this reason the defense counsels at state expenses were appointed through a request which was extended to the Advocate General and then the learned state counsels as defense counsels on state expenses properly cross-examined the remaining PWs. In such like situation, these two accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi cannot secure mercy or sympathy just on this ground that their right of cross-examination was not properly given. In my humbly view, these two accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi does not deserve any leniency due to their deliberate and advertent act in order to avoid cross-examination on the PWs which was obligatory upon the accused especially in the special case which is of most confidential and classified secret information which in fact act of the accused tantamount to commission of murder of trust of

States which definitely put adverse impact and effect on the political, social, economic and other foreign policies inter se the States which marked very bad dot on the security, sovereignty and the integrity of the country of Pakistan which should have been protected by any manner whatsoever so that nobody should be at liberty to damage the very fragile fabric of relations of inter se States because every country prosper and get developed on account of good relations and trust inter se the States and above said cypher telegram which has been retained by the accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi subject to their connivance which was misused in public at large by way of waving the same in order to achieve their respective nefarious designs and that document was classified secret document which was block warning and Ex-Prime Minister Imran Ahmad Khan Niazi was under obligation to return back the same to the concerned quarter i.e. MOFA under the guided principles of secret codes and that document till to date yet not have been returned back to the MOFA and subject to connivance with Shah Mehmood Qureshi, in the light of clandestine meeting which was held at Bani Gala along with the other documents through various audio CDs, including video CDs and other supportive material draw the attention of this court that both the accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi committed offence u/s 5 & 9 of Official Secret Act, 1923.

22. *The revelation and manipulation of secret, sensitive and classified information contained in an encoded diplomatic Cipher (recollecting the account of an*

informal meeting between Pakistani and American officials in Washington by the accused, Imran Ahmed Khan Niazi and Shah Mehmood Qureshi) in order to achieve their personal and political interests, at the altar of national stability and national security, patently constitute grave violations of the laws of Pakistan.

23. *When, on 27 March 2022, the accused Imran Ahmed Khan Niazi, as the incumbent Prime Minister, unfurled a piece of paper, referring to it as the letter, at a public rally and went on to hurl baseless and unfounded accusations of a foreign conspiracy to topple his government. This act of the accused Imran Ahmed Khan Niazi, in connivance with accused Shah Mehmood Qureshi, resulted in having grave adverse consequences for the safety, integrity and credibility of Pakistan's Cipher system and had a chilling effect on its relations with foreign governments. There is no doubt that the accused persons, with ulterior motives, undermined the Cipher system of Pakistan, which, in turn, benefits unfriendly foreign powers, directly and/or indirectly.*

24. *It is amply clear that this was a deliberate and well-planned manipulative lie aimed at rousing populist sentiment in the masses with no regard of its consequences for Pakistan's external relations as well as national security interests. On Thursday, 31 March 2022, while in office as the Prime Minister of Pakistan, the accused Imran Ahmed Khan Niazi named the United States as the country that had sent the so-called "threatening memo." This generated immediate and predictable stress in Pak-U.S. relations at a critical time*

when Pakistan's economic situation needed its support vis-vis international lenders. Within a short space of about a week (i.e. between 31 March and 8 April), the U.S. side reacted to the situation thrice at the State Department and the White House levels, declaring there was "no truth" to the accused Imran Ahmed Khan Niazi's allegations.

25. *After doing a considerable damage to Pak-U.S. relationship in terms of trust and confidence, and when he apparently realized the consequences of his manipulative anti-U.S. campaign towards his political prospects, the accused Imran Ahmed Khan Niazi began to falsely accuse the Pakistan's military leadership of conspiracy to oust him from power.*

26. *In a confessional statement by Muhammad Azam Khan, PW-11, duly recorded before a Magistrate pursuant to the Section 164 of Code of Criminal Procedure, Muhammad Azam Khan, PW-11, has revealed that he had warned the accused Imran Ahmed Khan Niazi about potential breaches of the Official Secrets Act, 1923 by talking about or revealing the contents of the Cipher. Paying no heed to such warnings, the accused Imran Ahmed Khan Niazi went on to recklessly talk about the Cipher at public rallies, in various interactions with local and foreign press, and on social media. This deliberate misuse of his privileged access to classified information as Prime Minister of Pakistan implies that he along with the co-accused did in fact committed criminal conspiracy and committed offence(s) under the Official Secrets Act, 1923.*

27. He also admitted to having lost/misplaced a copy of the Cipher which was entrusted to him in his capacity as the Prime Minister. The oath of office of the Prime Minister prescribed under Third Schedule to the Constitution mandates that the Prime Minister cannot communicate or reveal to any person any matter which he becomes aware of or is communicated to him. The relevant part of the oath of the Prime Minister is reproduced as follows:

"And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Prime Minister, except as may be required for the due discharge of my duties as Prime Minister."

28. It is quite clear from the above that a heavy duty burden is cast upon the Prime Minister, who becomes privy to the most confidential information. The Constitution requires a person occupying the high office of the Prime Minister to act in most responsible manner and absolutely refrain from doing anything which undermines interests of Pakistan. Sadly, the accused Imran Ahmed Khan Niazi, besides committing offences under the Official Secrets Act, 1923 has also violated his oath.

29. It is quite clear from the evidence brought on record that by compromising the integrity of Cipher

communications system of Pakistan, the accused, Imran Ahmed Khan Niazi, in connivance with the accused, Shah Mehmood Qureshi has compromised Pakistan's international standing, the credibility and standing of our diplomats and diplomacy with adverse implications for our future diplomatic reporting culture. Pakistan has clearly faced consequences of this. It is evident that Pakistan has faced serious economic, diplomatic and political consequences due to the offences committed by the accused Imran Ahmed Khan Niazi and Shah Mehmood Qureshi, which in turn weakened Pakistan's economy thus, adversely affecting the national security. Pakistan's standing at various international organizations was adversely affected by the offences committed by the accused and has benefited foreign powers, who are not necessarily friendly towards Pakistan.

30. *It is an open and shut case wherein receipt of cypher message along with chain of custody is proved through tangible evidence which is supported by cypher movement registers. Moreover, in the light of statement of Azam Khan, the then SPM un-authorized retention of cypher even after his advice, negligent handling of telegram containing cypher message is also proved. So far as section 5(3)(a) of OSA is concerned, there are statements of three witnesses other than IO which says that disclosure of cypher information implicates adverse effects and learned prosecutors relied upon statements of Mr. Asad Majeed, the then Ambassador, Sohail Mehmood, ex-Foreign Secretary and Faisal Niaz Tirmizi. Moreover, scientific evidence by technical experts and*

their reports are relevant, waver of telegram and disclosure of information before public at large are also not denied and factum of benefit to foreign power is to be evaluated in the light of attending circumstances and this fact is to be inferred they emphasized on word “calculated” used in the relevant provision. They have further argued that Mr. Shah Mehmood Qureshi accused had instigated and spoke in public meeting dated 27.3.2022 and each and every word of his speech tantamount to abetment through instigation. Since he was the then Foreign Minister after his speech Imran Ahmad Khan Niazi, shared confidential information of cypher telegram to public at large who were unauthorized for sharing of this information and this public meeting and speeches of both the accused one after the other are sufficient to prove that principal accused Imran Ahmad Khan Niazi has violated the provisions of Official Secret Act on the instance of his co-accused Shah Mehmood Qureshi and both are responsible for violation of section 5 read with section 9 of OSA, 1923 along with section 34 of PPC. If for the sake of arguments, the defense version of both the accused above stated contention is correct, then why he avoided and did not opt to produce himself in the witness box for his examination on oath u/s 340 (2) Cr.PC. Even he has not inclined to produce any defence. His departure from such exercise depicts that he has concocted a false and fabricated version. Both the accused have also failed to establish that they have not committed the offences leveled as per charge. The stance of both the accused in the light of all the PWs specifically the statement of PW-21 Asad Majeed, PW-23 Faisal Niaz Tirmizi, PW-18

Sohail Mahmood, F.S. and PW-11 Azam Khan including PW-25 Mian Sabir Hussain badly shattered by the above said PW who all the PWs while recording evidence fully supported the stance of prosecution. The prosecution version and defense version are taking into juxta position. The prosecution version seems to be plausible, tangible and coherent. In the given circumstances, the defence version is turned down after perusing version of both the accused through defense version discarded in limini.

31. *This court considered all the prosecution evidence which has been adduced before this court by the prosecution and defense counsels, learned state counsels as defense counsels on state expenses conducted the cross examination on all the remaining PWs which is on record. In the above said scenario the prosecution has proved its case beyond any shadow of doubt. Since the accused party themselves created this situation due to their own dereliction through deliberate ill advice actions. This court finds that prosecution has proved its case beyond reasonable doubt, and accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi held guilty.*

32. *The PWs and other pieces of evidence Ex.PW1/A to Ex.PW25/E is on record by the prosecution remained corroborative according to the statements recorded by this court. Though 25 PWs were cross-examined but the fact is that they remained natural, consistent and confidence inspiring without any element of exaggeration or planted thought.*

33. *Therefore, prosecution has become successful in proving the charges leveled in the light of charge against the accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi.*

34. *This court holds that Imran Ahmad Khan Niazi and Shah Mehmood Qureshi are guilty u/s 5(3)(a), 5(1)(c) punishable u/s 5(3)(b) of OSA, 5(1)(d) Punishable u/s 5(3)(b) of OSA, and section 9 of OSA read with 34 PPC. Moreover, accused Imran Ahmad Khan Niazi is held guilty. In view of the foregoing evidence available on record which is unrebutted, it is clear that due to advertent and willful acts of accused persons, the accused Imran Ahmad Khan Niazi is held guilty in the light of charge u/s 5(3)(a) of the Official Secret Act, 1923 and he is convicted and sentenced u/s 5(3)(a) of the OSA, 1923 and punished with rigorous imprisonment for a term of 10-years. Secondly, the accused Imran Ahmad Khan Niazi is also held guilty in the light of charge u/s 5(1)(c) and he is convicted and sentenced u/s 5(3)(b) of the OSA, 1923 and punished with rigorous imprisonment for a term of 2-years and with fine of Rs.10 Lacs. Thirdly, accused Imran Ahmad Khan Niazi is held guilty in light of charge u/s 5(1)(d) of OSA, 1923 he is convicted and sentenced u/s 5(3)(b) of OSA, 1923 and punished with rigorous imprisonment for a term of 2-years and with fine of Rs.10 Lacs. Fourthly, both the accused Imran Ahmad Khan Niazi and Shah Mehmood Qureshi are held guilty in light of charge u/s 5(3)(a) of the OSA, 1923 read with section 34 PPC and are convicted and sentenced u/s 5(3)(a) read with section 34*

PPC and are convicted and sentenced u/s 5(3)(a) read with section 34 PPC and punished with rigorous imprisonment for a term of 10-years, each. Fifthly, the accused Shah Mehmood Qureshi is held guilty in light of charge u/s 9 read with section 5(3)(a) of the OSA, 1923 and is convicted and sentenced u/s 5(3)(a) of OSA, 1923 with rigorous imprisonment for a term of 10-years. The benefit of section 382-B Cr. PC shall also be awarded to both the convicts. All the supra mentioned sentences shall run concurrently. Copy of the judgment be supplied to both the convicts free of cost. Both the convicts are present in court on bail, they be taken to the jail to undergo sentences awarded to them. File be consigned to record after due completion and compilation.

Announced (Abual Hasnat Muhammad Zulqarnain)
30.01.2024 Judge, Special Court (Official Secret)
Camp Court at Central Prison,
Rawalpindi

It is certified that this judgment consists of 77 pages. Each page has been dictated, corrected and signed by me.

Dated: (Abual Hasnat Muhammad Zulqarnain)
30.01.2024 Judge, Special Court (Official Secret)
Camp Court at Central Prison,
Rawalpindi