

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammad Karim Khan Agha, J.

C.P. No.D-1925 & 1926 of 2017

Petitioner: Imtiaz Ahmed Dev S/o Ghulam Hassan
through Mr. Nisar Ahmed Tarar,
Advocate.

Respondent: National Accountability Bureau,
through Mr. Muhammad Altaf, Special
Prosecutor, NAB.

12th
.09.2017.

ORDER

Mohammad Karim Khan Agha, J:- The petitioner (Imtiaz Ahmed Dev) through these petitions has challenged both the impugned orders dated 24.02.2017, passed in Reference No.11/2015 (State v. Imran Ghani & others) and Reference No. 12/2015 (State v. Noor Muhammad & others) by the learned Judge Accountability Court No. II, Karachi, whereby the petitioner's applications u/s 265-K Cr.P.C. were dismissed through the impugned orders (the impugned orders).

2. The brief facts of both of the references are that they both involve sales tax refund scams to the tune of approximately RS 48 million and RS 49 million respectively whereby the petitioner who at the time of the scam was Additional Collector Sales Tax Department who in connivance with other co-accused who were also Sales Tax officials and one Bank official of Askari commercial Bank by sanctioning

sales tax refunds on the basis of fake sales tax invoices allowed two owners/proprietors (Ms Usman Textiles Mill and Ms Noor Textile Mills) by misusing their authority/failing to exercise their authority enabled the aforesaid proprietorships to illegally receive payment of the aforesaid sales tax refunds in respect of bogus and fraudulent sales tax invoices which caused a huge loss to the State and thus the petitioner along with the co-accused committed acts of corruption coming within the ambit of the National Accountability Ordinance 1999 (NAO) and hence the National Accountability Bureau filed the aforesaid references against the petitioner and other co-accused.

3. Learned counsel for the petitioner contended that per prosecution his role was of a sanctioning officer but not a single piece of evidence had come on record to show that he had in fact sanctioned any of the fake invoices and thus there was absolutely no evidence against him and he was entitled to be acquitted under S.265-K Cr.PC.

4. Per contra learned senior Prosecutor for the NAB submitted that there was strong probability of conviction of the petitioner as he was the person who sanctioned the illegal sales tax refunds and in support of his contention referred to the audit report which specifically named the petitioner as the sanctioning officer.

5. We have heard learned counsel for the parties and carefully perused the record.

6. It is worth reproducing Section 265-K Cr. P.C under which the applications were moved by the petitioner to see precisely what are the requirements of that section which this petition in effect revolves around which is set out as under:-

*"265-K. Power of Court to acquit accused at any stage. Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case, if after hearing the prosecutor and the accused and for reasons to be recorded, it considers that **there is no probability of the accused being convicted of any offence.**"(bold added)*

7. The allegation against the petitioner as per both References is as follows:-

*"In the investigation it appears that accused/petitioner Imtiaz Ahmed Dev (the petitioner) was the then Additional Collector Sales Tax Department **who sanctioned Sales Tax Refund without any verification.**"*

8. The main piece of evidence that the prosecution appears to be relying on are the audit reports in respect of both the proprietorships which was prepared by Mr. Raza (Deputy Director) and Mr. Naeem Akbar (auditor). Both these signatories to the audit report have given evidence.

9. Mr. Raza was called as PW 1 who stated in cross examination as under in material part.....

*"It is correct to suggest that if STARR system verifies any claim through analysis sheet that claim could not be refused and it is to be paid. **It is correct to suggest that whenever any refund claim in sanctioning of Refund Payment Order (RPO) is assigned by sanctioning officer.** The other process of verification of the sanction claim for sanctioning is the note sheet of the respective case. **It is correct to suggest that when***

the auditor submitted the audit report there was no RPO and note sheet available in the record which shows that these claims were allegedly sanctioned by accused Imtiaz Ahmed Dev.” (bold added)

10. Mr. Naeem Akbar, who was the auditor was called as PW 2 who stated in cross examination as under in material part.....

“It is fact that I did not produce the documents referred in para 6 of the audit report placed at **Ex.19/1** to the NAB. However I had given the same to my higher authorities. **I see the note sheet and analysis sheet of the claim in question and say that these documents do not reflect that the claim in question was sanctioned by accused Imtiaz Ahmed Dev. It is correct to suggest that during audit, I did not see any document to support the contents of Para 9 of the audit report that the claim in question was sanctioned by accused Imtiaz Ahmed Dev.” (bold added)**

11. Both of these star witnesses in no way implicate the petitioner in connection with the allegation made against him in the references as mentioned above in their evidence

12. Furthermore, when confronted as to whether he had any other statement of a PW, S.161 statement or any document which implicated the petitioner in any way with the allegation against him the learned senior prosecutor for NAB reluctantly conceded that he had no such statement or document as NAB had not been able to unearth such documents from the concerned department. As such NAB's sole piece of evidence against the petitioner was the audit report which has not been corroborated or substantiated with regard to the petitioner in any manner whatsoever.

13. Under these circumstances we are of the considered view that in the absence of any tangible evidence against the petitioner implicating him in the offences so charged to allow the proceedings to continue may amount to an abuse of the process of law and it would serve no useful purpose in allowing the proceedings to continue as such we hereby set aside both the impugned orders in references 11/2015 and 12/2015 pending before Accountability Court No.II Karachi and quash the proceedings in both references to the extent of the petitioner (Imtiaz Ahmed Dev). It is made clear however that the Sales Tax Authorities shall be free to recover the defrauded amount of sales tax in accordance with law.

14. Above are the reasons for our short order dated 05.09.2017 which for ease of reference reads as under:-

“For reasons to be recorded later on, captioned petitions stand allowed. Consequently proceedings culminating from References 11/2015 and 12/2015 to the extent of petitioner Imtiaz Ahmed Dev are quashed”