

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Muhammad Saleem Jessar.

Mr. Justice Muhammad Hassan (Akber) .

CPD NO 696 OF 2025

Roshan Ali Shakih V. National Accountability Bureau Karachi and another

For Petitioner :

Roshan Ali Shaikh : Mr. Ahmed Masood Advocate

For Respondents

NAB : Syed Manzoor Ali Shah and
Ms. Hina Ashraf Awan
Special Prosecutors Accountability

Date of hearing: 25.05.2026

Date of Judgment 29.06.2026

JUDGMENT

MUHAMMAD SALEEM JESSAR I.- Through instant Petition, the Petitioner has claimed following relief:

- I. *Declare the impugned order dated November 19, 2024 to be unlawful, and a nullity in the eyes of the law and set aside the same.*
- II. *Return the Subject Reference to Respondent No 1 for presentation before an appropriate forum.*
- III. *Declare that the subject reference is unlawful and premature given the pendency of suit No 245 of 2017.*
- IV. *Any other relief that Court deems just and appropriate in the facts and circumstances of the instant case.*

2. Facts in brief leading to this Petition are that Petitioner is a civil servant and arrayed as accused in reference No 27 of 2018 (Re The State V. Ghulam Mustafa Phul and others). The accusation against the Petitioner was that during his incumbency as Executive District Officer Revenue, City District Government Karachi (CDGK) from 25.02.2010 to 41.02.2021, District Coordination Officer CDGK from 30.09.2011 to 09.11.2011 and

Commissioner Karachi Division from 09.11.2011 to 08.10.2012 misused his authority and in violation of Section 24 - A of the Colonization of Government Lands Amendment Act 2009 by misreporting to Secretary LU and not fully clarifying the title of land, which carried already leases of for 30 and 99 years and encroachment on the said area in addition to violation of purpose of the leases in connivance with the land mafia. Further more, vide letter dated 02.07.2012 Petitioner submitted his report mala fidely and recommended the Secretary LU that mutation entry is as per law and there appeared no lapse. All the facts were already reported to him by AEDO Mustafa Jamal Qazi vide letter dated 01.11.2010 but he ignored. Based on letter dated 02.07.2012 of Petitioner, the Secretary LU floated summary to the CM Sindh for seeking post facto approval of the letter dated 29.09.2011. it is further alleged that accused in connivance with other accused persons fraudulently allotted and leased out 221.55 acres of land in the shape of 276 plots and caused loss of RS 6.22 Billion to national exchequer.

3. The Petitioner filed an application before Learned Trial Court seeking benefit of amendments in the National Accountability Ordinance, 1999, "NAO" through Amendment Act No XI of 2022 and Second Amendment Act No XVI of 2022, which was turned down vide orders dated 19.11.2024.

4. It is contended by Learned Counsel for the Petitioner contended that Petitioner was innocent and he had no nexus with the allotment and lease of plots as alleged in the reference. He contended that there was no allegation of monetary gains against the Petitioner and misuse of authority without gains was not an offence triable by Accountability Court. He therefore prayed to allow this petition.

5. Learned Special Prosecutor NAB contended that Learned Trial Court has rightly rejected the application. He further contended that National Exchequer suffered huge loss due to the illegal and unlawful acts of the accused involved in the reference and question of gains or otherwise was a matter of evidence, ought to be recorded by Accountability Court. He contended that Learned Trial Court has committed no illegality while passing order on application section 4 of NAO, therefore, the impugned orders did not suffer from any illegality. He prayed to dismiss the petition.

6. Heard arguments and perused the material made available before us on record.

7. Before proceeding further it would be conducive to go through the amendments affecting the references pending trial.

A. **Retrospective Effect of Amendments:** The amendments in “NAO” through Amendment Act No XI of 2022 and Second Amendment Act No XVI 2022 were made retrospectively and applied to all the pending inquiries, investigations and trials which reads as; **“It shall be deemed to have taken effect on and from the commencement of the National Accountability Ordinance 1999 (XVIII of 1999”**

B. **Application of Amendments:** The provisions of NAO were made applicable to all persons including those who were in service of Pakistan, except the persons and transactions specified in sub section 2 of section 4 of the NAO. Section 4 reads that the Ordinance extends to the whole of Pakistan and shall apply to all persons, including those persons who are or have been in the service of Pakistan. The provisions of the Ordinance shall not be applicable to all matters pertaining to Federal, Provincial or Local taxation, other levies or imposts, including refunds, or loss of exchequer pertaining to taxation transactions or amounts duly covered by amnesty schemes of Government of Pakistan; decisions of Federal or Provincial Cabinet, their Committees or Sub-Committees, Council of Common Interests (CCI), National Economic Council (NEC), National Finance Commission (NFC), Executive Committee of the National Economic Council (ECNEC), Central Development Working Party (CDWP), Provincial Development Working Party (PDWP), Departmental Development Working Party (DDWP), Board of Directors of State Owned Enterprises (SOEs) and Board of Trustees/Directors of all Statutory Bodies, the State Bank of Pakistan and such other bodies except where the holder of the public office has received a monetary gain as a result of such decision; any person or entity who, or transaction in relation thereto, which are not directly or indirectly connected with the holder of a public office except offences falling under clauses (ix), (x) and (xi) of sub-section (a) of section 9; procedural lapses in performance of any public or governmental work or function, project or scheme,

unless there is evidence to prove that a holder of public office or any other person acting on his behalf has been conferred or has received any monetary or other material benefit from that particular public or governmental work or function, whether directly or indirectly on account of such procedural lapses, which the said recipient was otherwise not entitled to receive; a decision taken, an advice, report or opinion rendered or given by a public office holder or any other person in the course of his duty, unless there is sufficient evidence to show that the holder of public office or any other person acting on his behalf received or gained any monetary or other material benefit, from that decision, advice, report or opinion, whether directly or indirectly, which the said recipient was otherwise not entitled to receive; all matters, which have been decided by, or fall within the jurisdiction of a regulatory body established under a Federal or Provincial law ; and all matters where the funds, property or interest not involving or belonging to the appropriate government, except for the offences under clauses (ix), (x) or (xi) of sub-section (a) of section 9. Upon the National Accountability (Amendment) Act, 2022 (XI of 2022), coming into force, all pending inquiries, investigations, trials or proceedings under this Ordinance, relating to persons or transactions mentioned in sub-section (2), shall stand transferred to the concerned authorities, departments and courts under the respective laws. Upon commencement of the National Accountability (Amendment) Act, 2022 (XI of 2022) and the National Accountability (Second Amendment) Act, 2022 (XVI of 2022), all pending inquiries, required to be transferred under sub-section (3), shall be examined by the Chairman. If the Chairman is satisfied that no case is made out against an accused, the inquiry shall be closed after recording reasons and where the Chairman is of the opinion that prima facie case is made out against an accused under any other law for the time being in force, he shall refer the matter to the relevant agency, authority or department, as the case may be; all investigations, required to be transferred under sub-section (3), shall be examined by the Chairman. If the Chairman is satisfied that no case is made out against an accused and the investigation may be closed, he shall refer the matter to the Court for approval and for the release of the accused, if in custody. Where the Chairman is of

the opinion that prima facie, case is made out against an accused under any other law for the time being in force, he shall refer the matter to the relevant agency, authority or department, as the case may be; the agency, authority or department, to which inquiry or investigation is transferred under clauses (a) and (b), may proceed with such inquiry or, as the case may be, investigation in accordance with the applicable laws, from the stage at which it was pending immediately before such transfer; where the Court seized with a case is of the opinion that it is not triable by that Court under this Ordinance, the Court shall, after examination with assistance of the National Accountability Bureau, refer it to the appropriate court, tribunal, forum, agency, authority or department, as the case may be, for exercise of jurisdiction in accordance with the applicable law; upon transfer under clause (d), the court, tribunal or forum of competent jurisdiction may proceed with the case from the stage at which it was pending in the Court and shall try and decide the same under the law regulating its jurisdiction and procedure; and all final order, decisions or judgments passed by the Court before the commencement of the National Accountability (Amendment) Act, 2022 (XI of 2022), the National Accountability (Second Amendment) Act, 2022(XVI of 2022) and the National Accountability (Amendment) Act, 2023 (of 2023), shall remain in force and operative unless reversed, notwithstanding anything contained in sub-section (2) of section 1 each of the National Accountability (Amendment) Act, 2022 (XI of 2022), the National Accountability (Second Amendment) Act, 2022 (XVI of 2022) and the National Accountability (Amendment) Act, 2023 (of 2023). The court, tribunal, forum, agency, authority or department may, after receipt of the case, re-examine any witness or examine a new witness, in accordance with their jurisdiction under the laws for the time being in force. Upon commencement of the National Accountability (Amendment) Act, 2022 (XI of 2022), the National Accountability (Second Amendment) Act, 2022 (XVI of 2022) and the National Accountability (Amendment) Act, 2023 (of 2023). All pending inquiries, investigations, trials, appeals and proceeding relating to matters not falling within the definition of offence under clause (o) of section 5 shall be transferred to the concerned agencies, authorities, departments, courts, tribunals or forums having

jurisdiction under the respective laws; and the provisions of clauses (a) to (f) of sub-section (4) shall mutatis mutandis apply to the transfer of all matters under clause (a).

C. **Definition of Offence:** The offence under the “NAO” was subject to a corruption and corrupt practices amounting to Rs 500 Million, earlier no such limit was prescribed, however, as per NAB Standard Operative Procedure (SOP) corruption and corrupt practices of Rs 100 Million fell within the cognizance by NAB prior to amendment. Section 5(o) defines the “**Offence**” means the offences of corruption and corrupt practices and other offences as defined in this Ordinance 1 [of the value not less than five hundred million rupees, which shall be adjusted for each financial year starting from the 1st day of July, 2022, based on inflation index published by the Pakistan Bureau of Statistics and includes the offences specified in the Schedule to this Ordinance; and section 5(s) defines the “**Public at Large**” means at least one hundred persons.

D. **Amendment in Section 9:** Amendments in section 9 of NAO also affected the pending trials, inquiries, and investigations, wherein introduction of subsection a(vi) benefited the accused in the cases where element of personal gains was lacking. Amended section 9 reads as under:

9. Corruption and corrupt practices. – (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices –

(i) if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Pakistan Penal Code (Act XLV of 1860) for doing or forbearing to do any official act, or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person; or

(ii) if he accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or from any person whom he knows to be interested in or related to the person so concerned; or

(iii) if he dishonestly or fraudulently mis-appropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or willfully allows any other person so to do; or

(iv) if he by corrupt, dishonest, or illegal means, obtains or, seeks to obtain for himself, or for his spouse or dependents or any other person, any property, valuable things or pecuniary advantage; or

(v) if he or any of his dependents or other Benamidars, through corrupt and dishonest means, owns, possesses or acquires rights or title in assets substantially disproportionate to his known sources of income which he can not reasonably account for.

Explanation I.—The valuation of immovable property shall be reckoned on the date of purchase either according to the actual price shown in the relevant title documents or the applicable rates prescribed by District Collector or the Federal Board of Revenue whichever is higher. No evidence contrary to the later shall be admissible.

Explanation II.—For the purpose of calculation of movable assets, the sum total of credit entries of bank account shall not be treated as an asset. Bank balance of an account on the date of initiation of inquiry may be treated as a movable asset. A banking transaction shall not be treated as an asset unless there is evidence of creation of corresponding asset through that transaction.

(vi) if he intentionally misuses his authority by disregarding law so as to gain any monetary benefit or favour for himself or any other person related to him or on his behalf.

Explanation I.—That an act done in good faith and in discharge of duties and performance of official function shall not constitute an offence under this clause.

Explanation II.—That nothing shall be an offence of misuse of authority unless it is proved through material evidence that the holder of public office has gained any monetary benefit or asset from the person in whose favour the act of misuse of authority has been rendered.

Explanation III.—That the authority of the holder of a public office shall be clearly specified as per the applicable Government rules and regulations.

(vii) Omitted;

(viii) if he commits an offence of willful default; or

(ix) if he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and thereby dishonestly induces members of the public at large to deliver any property including money or valuable security to any person:

Provided that nothing shall be an offence under clause (ix) unless it is established that there was an intention of cheating at the time of initiation of a transaction.

Explanation. — *The civil and commercial disputes between parties shall not be triable under the provisions of this Ordinance.*

Illustration I: *A runs a Ponzi scheme and gives profit to its investors with intent to allure public. A is said to have committed cheating.*

Illustration II: *A receives investments in a lawful business and continued to pay agreed profits to the investors. Later the business runs into losses and a default on his obligations. A has not committed cheating.*

(x) if he commits the offence of criminal breach of trust as defined in section 405 of the Pakistan Penal Code, 1860 (Act XLV of 1860) with regard to any property including money or valuable security entrusted to him by members of the public at large;

(xi) if he, in his capacity as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust as provided in section 409 of the Pakistan Penal Code, 1860 (Act XLV of 1860) in respect of property entrusted to him or over which he has dominion; and

(xii) if he aids, assists, abets, attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clauses (i) to (xi).

(b) A Court established under this Ordinance and the High Court having the jurisdiction in the area shall have the power to grant bail or order release of the accused under sections 439, 496, 497 and 498 of the Code.

(c) If after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused, if in custody.

(d) The closure of an inquiry or investigation shall be communicated to the accused and such inquiry and investigation shall not be reopened without prior permission of the Court.

8. The instant petition has been filed by Petitioner an accused facing trial before Accountability Court, seeking the transfer of case\ from Accountability Courts to other forums / Courts. For the transfer of cases from Accountability Court to any other forum Section 4(4)(d) and 4(4)(e) of NAO being relevant provisions are reproduced below:

4. Application. – (1) This Ordinance extends to the whole of Pakistan and shall apply to all persons, including those persons who are or have been in the service of Pakistan, except persons and transactions specified in sub-section (2)

(2)

(3)

(4) Upon commencement of the National Accountability (Amendment) Act, 2022 (XI of 2022) and the National Accountability (Second Amendment) Act, 2022 (XVI of 2022),

(a)

(b)

(c)

(d) where the Court seized with a case is of the opinion that it is not triable by that Court under this Ordinance, the Court shall, after examination with assistance of the National Accountability Bureau, refer it to the appropriate court, tribunal, forum, agency, authority or department, as the case may be, for exercise of jurisdiction in accordance with the applicable law;

(e) upon transfer under clause (d), the court, tribunal or forum of competent jurisdiction may proceed with the case from the stage at which it was pending in the Court and shall try and decide the same under the law regulating its jurisdiction and procedure; and

(f)

9. From the perusal of the above provisions of law, it is crystal clear that if the Accountability Court is of the opinion that the case is not triable by that Court under the provisions of NAO, the Court shall, after examination with assistance of the NAB, refer it to the appropriate court, tribunal, forum, agency, authority or department, as the case may be, for

exercise of jurisdiction in accordance with the applicable law; and upon transfer of the case, the court, tribunal or forum of competent jurisdiction may proceed with the case from the stage at which it was pending in the Court and shall try and decide the same under the law regulating its jurisdiction and procedure. The use of word “may” in sub section 4(e) leaves it at the discretion of the Transferee Court either to try the case afresh or from the same stage it was received from Accountability Court.

10. Petitioner mainly seeks benefit of section 9(a)(vi). The accusation contained under reference was that the Petitioner misused his authority in his official capacity and allotted precious Government land and caused huge loss to National Exchequer and amount of loss fell within the definition of offence envisaged under section 5(o) of NAO. Learned Trial Court has not rendered its definite finding on issue of monetary gains. Section 9(a)(vi) reads as under:

9 (a) (vi) if he intentionally misuses his authority by disregarding law so as to gain any monetary benefit or favour for himself or any other person related to him or on his behalf.

Explanation I.—That an act done in good faith and in discharge of duties and performance of official function shall not constitute an offence under this clause.

Explanation II.—That nothing shall be an offence of misuse of authority unless it is proved through material evidence that the holder of public office has gained any monetary benefit or asset from the person in whose favour the act of misuse of authority has been rendered.

Explanation III.—That the authority of the holder of a public office shall be clearly specified as per the applicable Government rules and regulations.

11. The careful perusal of the impugned orders revealed that while passing orders on applications for return of reference, the Accountability Courts did not seek the assistance of NAB for examination of the case, that was a mandatory requirement envisaged under subsection 4(d) of section 4 of NAO, as spelt out from use of word “shall” in the said provisions.

12. For the foregoing reasons a case for indulgence of this Court, under its writ jurisdiction to exercise the powers of judicial review conferred

under article 199 of the Constitution of Islamic Republic of Pakistan, of 1973 is made out. As a result thereof, instant constitution is allowed. The impugned order dated 19.11.2024 passed in Reference No 27 of 2018 (Re The State V. Ghulam Mustafa Phul and others) is hereby set aside. The application filed by the Petitioner shall be deemed to be pending before Learned Trial Court. The application shall be referred to NAB for examination and heard and decided afresh keeping in view the amendments in NAO, after giving an opportunity of hearing to all concerned.

The Petitions stand disposed of in above terms.

Judge

HEAD OF CONSTT. BENCHES

Judge

Approved for reporting