

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Const. Petition No. D- 2857 of 2016**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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- 1. For katcha peshi.
- 2. For hearing of CMA 7694 of 2016.

Present:  
**Mr. Justice Hasan Azhar Rizvi &**  
**Mr. Justice Aftab Ahmed Gorar.**

Mr. Zulfiqar Ali Naich Advocate for Petitioner.  
Mr. Abdul Majeed Memon, Special Prosecutor NAB (Sukkur).  
Mr. Mian Mumtaz Rabbani, D.A.G.

Date of hearing:        07-12-2016

**ORDER**

**Aftab Ahmed Gorar J.,** The petitioner Ghulam Hussain has sought quashment of NAB Reference No. 23/2015 pending against him in the Accountability Court, Sukkur on the ground that the said reference is illegal and void.

2.        Briefly the facts are that wheat stock from Sukkur and Larkana was misappropriated by the officers/officials of Food Department and consequently an inquiry was initiated and subsequently converted into investigation vide letter dated 11.06.2015 by D.G, NAB, Karachi. During course of inquiry, wheat crop-2011-2012, petitioner/accused Ghulam Hussain Kalwar while posted as Food Inspector/Incharge of Wheat Procurement Centre, Sunhari, district Naushehro Feroze misappropriated 2374 wheat bags causing loss of Rs. 71,22,000/- to the public exchequer. The petitioner after admitting his guilt offered Voluntary Return under Section 25(a) of NAO, 1999 for Rs. 71,22,000/- on 26.04.2013, which was approved on 08.05.2013, however, after approval of VR, the petitioner/accused failed to make over the payment of VR, as such legal and procedural steps were taken against petitioner. It is further alleged that during

course of investigation, the evidence collected in the shape of statements of witnesses and documents, which revealed that petitioner/accused during wheat crop 2011-2012 was responsible for misappropriation of 2378 wheat bags containing 263.817 MT at WPC Sunhari and 48.437 MT of wheat at WPC New Jatoi, District Naushehro Feroze. The total liability of petitioner/accused in respect of above said misappropriated wheat is accumulated as Rs. 92, 82, 743/-.

3. Learned counsel for the petitioner contended that there is no iota of evidence justifying alleged charges against the petitioner and he has nothing to do with alleged misappropriation of wheat bags causing loss to the Government Exchequer; that the petitioner after payment of Rs. 24,00,000/- to the Food Department was reinstated in services; that the proceedings against the petitioner in the Accountability Court are nothing but abuse of process of law; that even if the petitioner faces entire trial, he would not be convicted as no confidence inspiring material establishing his nexus with the alleged scam has been collected during investigation carried out by the NAB authorities.

4. Learned Special Prosecutor, NAB (Sukkur) did not agree with the arguments advanced by learned counsel for petitioner and vehemently contended that the petitioner without first availing the appropriate remedy in terms of section 249-A or 265-K CrPC before the Accountability Court, has approached this directly; that the petitioner has failed to make over payment of V.R and the alleged payment of Rs.24,00,000/- to the Food Department has no concern with the NAB Authorities; that the sufficient evidence was found against the petitioner during the investigation conducted by the NAB. He further contended that disputed questions of facts are involved that could not be decided by this Court while exercising powers under the Constitution.

5. We heard the counsel and with their able assistance scrutinized the

material available on record. No doubt, this court under inherent jurisdiction can quash the proceedings in exceptional cases without waiting for trial Court to invoke powers under section 249-A or 265-K, Cr.P.C, but here in this case, the material collected by the NAB authorities is that while being posted as Food Inspector/Incharge of Wheat Procurement Centre (WPC) Sunhari, district Naushehro Feroze, the petitioner was allegedly found responsible for misappropriation of wheat crop 2011-2012, calculated to Rs. 92,82,743/-. So far reinstatement of petitioner in service after alleged payment of Rs. 24,00,000/- to the Food Department is concerned, learned Special Prosecutor has categorically contended that the NAB Authorities have no concern with the alleged payment, but as the petitioner failed to honour his VR, as such Reference was submitted against him. Furthermore, from the above facts and circumstances, intricate questions of facts have been proposed by the prosecution for trial which need to be thoroughly enquired by the trial court by giving a proper opportunity to the prosecution to prove them and without such an exercise, releasing the petitioner prematurely could amount to pre judge his guilt which is without any legal justification. In the investigation, the NAB Authorities have found material showing involvement of the petitioner and on the basis of thereof reference has been submitted in the Court concerned which has taken cognizance of the offence. Moreover, if the petitioner is innocent and has been implicated without any cogent evidence against him and there is no probability of his conviction or the charge against him is groundless, he can seek remedy of his premature acquittal in terms of sections 249-A/265-K, Cr.P.C. While acting under the constitutional jurisdiction under Article 199, we cannot indulge such exercise to thresh out disputed and complicated questions of facts.

6. For the above reasons, we did not find any merit in the instant petition and

dismissed it in limine vide our short order dated 07.12.2016. Interim order dated 07.09.2016, earlier passed by this court in this petition is also hereby recalled.

7. The observations made hereinabove are tentative in nature and shall not come in the way of the petitioner to seek his remedy as discussed above. The trial court to proceed with the trial expeditiously in terms of NAO, 1999.

JUDGE

JUDGE

Ahmed