

# IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh, CJ.  
Mr. Justice Mohammed Karim Khan Agha, J.

**C.P. No. D-6105 of 2017**

Mukhtiar Ahmed Dharejo & another

Vs.

The Chairman NAB & others

Petitioners through: Mr. Muhammad Arshad Khan Tanoli,  
advocate a/w. I.O. Kashif Noor.

Respondents through: Mr. Abdul Majeed Memon, Special  
Prosecutor, NAB.

Date of Hearing : 04.10.2017

Date of Order : 04.10.2017

## **ORDER**

**Mohammed Karim Khan Agha, J.** Through this petition, the petitioners have prayed for following declaration:-

"To declare the Interim Progress Report dated 14.10.2016 to the extent of two schemes i.e. CONSTRUCTIONS OF PROTECTION WALL ALONG KUPRI MINOR (RD 0+000 TO 8+000) AND CONSTRUCTION OF RETAINING WALL ALONGWITH K.F. WEST (RD 51+800 TO 54+300), as unlawful, malafidely, arbitrarily and in violation of settled norms of equity and same may not be acted upon against the present petitioners in any manner"

2. Learned counsel for the petitioners contended that the Interim Progress Report dated 14.10.2016 should be declared unlawful, malafide, arbitrary and in violation of settled norms of equity and should not be acted upon on account of malafides of the Investigating Officer Kashif Noor. According to him, the Investigating

Officer Kashif Noor at a site inspection at the time of preparing the report had been abusive and disrespectful and therefore had not impartially prepared his report on account of malafide. In support of his contention he placed reliance on a request for inquiry against Kashif Noor dated 06.10.2016, available at page-59 of his petition, material part of which is reads as under:-

"I was directed by my XEN Mr. Syed Fayyaz Hussain Shah, West Division, to be present on 05.10.2016 because the works will be checked by Mr. Kashif Noor IO NAB, Sukkur, and Technical Officer, Mr. Junaid Ahmed Talpur and others, as such on yesterday i.e. 05.10.2016 I along with SDO Piryallo Mr. Ali Hassan Mangi, were available when Mr. Kashif Noor, IO, Technical Officer, Mr. Junaid Ahmed Talpur, XEN Fayaz Hussain Shah, SDO Rohri, Mr. Sharafuddin Bhabhan, came and they recorded the measurement and visited the other works in Piryallo Sub Division and when they were on visit at KUPRI MINOR RETAINING WALL, on some query Mr. Kashif Noor, used harsh and filthy words, on which I requested him that I am aged person and am Officer therefore you have no right to abuse me before the other Officers and general public gathered there, on which he became more annoyed and started abusing me and extended threats that he will put me behind the bars and will get dismiss me from the service, then he telephoned to various authorities and police and in aggressive manner tried to beat me."

3. On the other hand, learned Senior Prosecutor, NAB denied that there had been any malafides on the part of NAB in preparing the report in question which had been prepared fairly and accurately. Investigating Officer Kashif Noor, present in Court, also denied that he had been abusive in any manner as suggested in the above mentioned extract from the inquiry request.
4. We have heard the parties and perused the record as well as considered the relevant case law.



5. It is well settled law since the case of **Shahnaz Begum V Hon'ble Judges of High Court of Sindh and Balochistan (PLD 1971 SC 677)** that the Court shall only exceptionally interfere in an inquiry / investigation if some element of malafide has been shown on the part of police / Investigating Officer since inquiry/investigation is the domain of the investigating agency and not the courts. Such malafides must be specific and obvious from the record as a whole. As is well known in our constitutional jurisdiction we cannot go into the factual aspects as to what was said and what was not said by the Investigating Officer during the time of inspection. Suffice it to say that it is the petitioner's word against that of the Investigating Officer.

6. We are also of the view that the extract referred to above does not show any specific malafide and would have no nexus with the preparation of the inquiry report which also had the input of the technical officer and was not the IO's alone. Furthermore, this is only a small part of the investigation and no other malafides has been raised in respect of any other aspect of the investigation by either the IO or the NAB. As such this petition stands dismissed. However, we would observe that notwithstanding our findings in this particular case, all NAB Investigating Officers shall treat all accused or other persons, who are called before them, with respect and dignity and shall not in any way attempt to humiliate such persons. A copy of this order shall be sent to the Chairman, NAB and D.G. NAB Karachi

and Sukkur who shall ensure that Investigating Officers when performing their duties under the National Accountability Ordinance, 1999 conduct themselves in the aforesaid manner and strictly in accordance with law.

7. These are our reasons for our short order dated 04-10-2017 whereby the petition was dismissed for reasons to be recorded later.

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