

# IN THE HIGH COURT OF SINDH, KARACHI

598

Before Mr. Justice Ahmed Ali M. Shaikh  
Mr. Justice Muhammad Karim Khan Agha

## **Petition No. and name of petitioner along with counsel.**

1. C.P. No.D-1508 of 2012 Dr. Ghulam Raza V. Director General (Sindh Region) NAB & another.  
Dr. Ghulam Raza S/o Late Akber Ali  
through M/s. Aamir Raza Naqvi & Shabeeh Ishrat Hussain, Advocates.
2. C.P. No.D-986 of 2011 Muhammad Jahangir V Federation of Pakistan through Secretary (Law & Justice) & others.  
1. Muhammad Jahangir S/o Syed Mian  
2. Raja Muhammad Zarat S/o Makhan Khan  
through Mr. Aamir Raza Naqvi, Advocate.
3. C.P. No. D-1260 of 2011 Mukhtar Hussain Lakhani & another V The NAB through its Chairman & another.  
1. Mukhtar Hussain Lakhani S/o Karam Hussain Lakhani  
2. Muhammad Raza S/o Akbar Ali,  
through Mr. Khawaja Shams-ul-Islam, Advocate.
4. C.P. No. D-4008 of 2011 Qazi Muhammad Hayat V Federation of Pakistan through Secretary (Law) & others.  
Qazi Muhammad Hayat S/o Muhammad Baqar  
through Mr. Shabeeh Ishrat Hussain, Advocate.
5. C.P.No.D-563 of 2012 Muhammad Raza & another V. Federation of Pakistan & others.  
1. Muhammad Raza S/o Late Akber Ali  
2. Raja Muhammad Zarat S/o Late Makhan Khan  
through Mr. Abdul Ghaffar Khan , Advocate.
6. C.P. No.D-1509 of 2012 Dr. Ghulam Raza V. Director General (Sindh Region) NAB & another.  
Dr. Ghulam Raza S/o Late Akber Ali  
through Mr. Shabeeh Ishrat Hussain, Advocate.
7. C.P. No.D-1510 of 2012 Dr. Ghulam Raza V. Director General (Sindh Region) NAB & another.  
Dr. Ghulam Raza S/o Late Akber Ali  
through Mr. Shabeeh Ishrat Hussain, Advocate.
8. C.P. No.D-390 of 2012 Dr. Ghulam Raza V. Director General (Sindh Region) NAB & another.  
Dr. Ghulam Raza S/o Late Akber Ali  
through Mr. Shabeeh Ishrat Hussain, Advocate.
9. C.P. No. D-3217 of 2010 Mukhtar Hussain Lakhani V Federation of Pakistan & others.  
Mukhtar Hussain Lakhani S/o Karam Hussain Lakhani  
through Mr. Shabeeh Ishrat Hussain, Advocate.



**Counsel for the Respondents.**

Mr. Muhammad Altaf, Special Prosecutor, NAB a/w Javed Ali IO.

Dates of Hearing: 28.09.2017, 18.10.2017, 26.10.2017,  
21.12.2017

Date of Order: 16-01-2018

**ORDER**

**Mohammed Karim Khan Agha, J.** By this common order, we propose to dispose of the above petitions filed by the above named petitioners whereby they have mainly prayed that the authorization of another further investigation by the National Accountability Bureau (NAB) under the National Accountability Ordinance (NAO) be declared unlawful, sought a declaration that NAB had no lawful authority to file a supplemental reference under the NAO, sought the quashment of references No.13/2007, 14/2007, 15/2007 and 16/2007 along with each supplementary reference on account of double jeopardy under Article 13 of the Constitution, to declare that certain statements recorded by NAB to be inadmissible, set aside the Order dated 01-08-2011 whereby the petitioners application under S.265 (K) Cr.CP was dismissed (the 265 K Order), set aside the order dated 31-01-2009 affirming the Chairman's pardon to two co-accused (the pardon order) and hold that the Acting Chairman had no authority to approve a pardon nor file a reference in the absence of the Chairman NAB and as such the pardons and the supplementary references are liable to be struck down by this court on this count.



2. The relevant facts for the disposal of the above petitions are that FIRs bearing Nos. (i) APPG-12/DCI/2006 dated 31.03.2006, (ii) 12-A/DCI/2006 dated 31.03.2006, (iii) 12-B/DCI/2006 dated 31.03.2006, (iv) 12-C/DCI/2006 dated 04.05.2006 and (v) 12-D/DCI/2006 dated 04.09.2006 were registered against the petitioners by the Custom's Intelligence Department under the provisions contained in the Customs Act, 1969 (Section 3 E). The interim challans were submitted by the Custom Intelligence in the Court of Special Judge (Custom) against the above FIRs.

3. During the pendency of above FIRs in the trial court, the Chairman NAB, issued authorization letter dated 21.11.2006 for inquiry within the meaning of Section 18(c) NAO alleging therein that M/s. Bawan Shah Group of Companies, CBR Officials & others were prima facie involved in the commission of offences under the provisions of the NAO. Thereafter, the Chairman NAB, split the allegations mentioned in Authorization letter dated 21.11.2006 into 12 (twelve) Authorization letters. Later on, the NAB authorities filed an application under Section 16-A(a) to transfer the above five cases from Special Judge (Custom and Taxation) to Accountability Court, Karachi which was allowed and these cases were assigned Reference Nos. 13, 14, 15, 16 & 17 of 2007 respectively. Reference Nos. 13, 14, 15, 16 & 17 of 2007 pertained to allegations of illegal Duty Draw Back under DTRE scheme and illegal Sales Tax Refunds.



4. According to the petitioners Reference No. 17 of 2007 is the SUMMED-UP-VERSION of all allegations of Duty Draw Back under DTRE Scheme and illegal sales tax refunds which were split up in Reference Nos. 13, 14, 15 & 16 of 2007.

5. The investigation report reflected the total alleged loss of Rs.2151.361 Millions to Government exchequer by M/s. Bawan Shah Group of Companies (BSGC) and its subsidiary companies.

6. Although the Reference No.46 of 2007 contained total alleged amount of corruption mentioned in all previous Reference Nos. 13, 14, 15, 16 & 17 of 2007 which was a consolidated reference the NAB authorities did not withdraw their split references. The petitioners were acquitted in consolidated reference No. 46 of 2007 and 17 of 2007 whilst references 13, 14, 15, and 16 of 2007 and their supplemental references still remain in the field which this Court stayed vide order dated 16-03-2012 over 5 years ago.

7. Learned counsel for Dr. Ghulam Raza, Muhammad Jahangir and Raja Muhammad Zarat submitted that the petitioners had been tried under Reference No.46 of 2007 and had been acquitted by judgment dated 30.03.2009 against which judgment NAB had filed an appeal against acquittal which was still pending before this court. According to him after the acquittal of the petitioners NAB had ordered a further investigation vide letter dated 03.03.2011 into the same subject matter of which the petitioners had already been acquitted in Reference No.46/2007. According to him

the NAB had no authority to reinvestigate this matter as it had already been decided and this was a case of double jeopardy falling within the ambit of Article 13 of the Constitution. According to him the mala fide of the NAB was shown by the fact that they have no proper seizure memo with the documents which were produced in the aforesaid case where the petitioners were acquitted and that the NAB was now trying to manufacture a seizure memo for its illegal purpose of reinvestigation. He further submitted that NAB had illegally split one reference into five separate references; that there had been no loss to the exchequer as the alleged misdeclaration had been prevented and that under these circumstances it was not possible to file another reference on a matter which had already been decided. In support of his contentions he placed reliance on the case of **Raja Muhammad Zarat Khan and another V. Federation of Pakistan through Secretary, Ministry of Cabinet Division and 2 others** (PLD 2007 Karachi 597). As such for all the above reasons he sought a declaration that none of the matters which had been decided in Reference No.46 of 2007 could be reinvestigated and that he could not be retried in respect of the same as this amounted to double jeopardy under Article 13 of the Constitution and as such references No.13/14/15 and 16 of 2007 and any supplemental references should be quashed by this court.

08. Learned counsel for Mukhtar Hussain Lakhani and Muhammad Raza adopted the contentions of learned counsel



for petitioners No.1,2 and 3. In addition he emphasized that the documents which had not been recovered under a seizure memo could not again be produced in court under a manufactured seizure memo; that there had not been any loss to the exchequer and that in essence the remaining references on the same subject (13, 14, 15 and 16/2007 and their supplemental references) could not now proceed and had to be quashed as the same issues had already been ruled upon in the acquittal of the petitioners in references No.46/2007 and 17/2007 and in any event the NAO did not apply as this was a case of attempt which was not covered in the NAO. In support of his contentions he placed reliance on **Central Board of Revenue & another V. Khan Muhammad** (PLD 1986 SC 192), **Sajid Dadabhoy V NAB** (2015 P.Cr.LJ 729) and **Assistant Collector of Customs V Messrs Khyber Electric Lamps** (2001 SCMR 838). He sought the same declaration as learned counsel for petitioners No.1 and 2 as mentioned above.

09. Learned counsel for Qazi Muhammad Hayat adopted the arguments of learned counsel for the petitioners No.1 to 5. In addition he emphasized that the authorization for investigation only related to the company known as Early Morning Textile Mills and as such it was not possible for the NAB to file References in respect of companies, other than Early Morning Textile Mills.

10. Learned counsel for the petitioner in CPD 563/2012 submitted that there was no provision in the NAO which



allowed the NAB to file a supplementary reference and that NAB should be debarred from doing so; that the transfer of the case from the Special Judge to NAB under S.16 (A) NAO was unlawful; that the Acting chairman of the NAB had no power to file the references ; that the Chairman NAB had illegally granted a pardon to two of the accused vide order dated 31-01-2009 (namely Raheel and Mohammed Aagul) which had been affirmed by the Court (the pardon order) during the pendency of reference No.14/2007 as no pardon could be given once the reference had been filed against the petitioner; that order dated 01-08-2011 whereby the petitioners S.265 (K) application was declined (the 265 K order) was not sustainable on account of his above made submissions. In support of his contentions in respect of the illegal transfer under S.16 (A) NAO he placed reliance on **Anti Corruption Establishment Punjab V NAB** (2016 SCMR 92) and in support of his contention that an Acting Chairman could not file a reference when the Chairman was absent he placed reliance on **Bank of Punjab V Harris Steel Industries (pvt) Ltd** (PLD SC 2010 P.1109)

11. On the other hand, learned Special Prosecutor for the NAB submitted that this was not a case of double jeopardy under Article 13 of the Constitution and that the NAB were entitled to reinvestigate any matter even after a reference had been filed. He submitted that reference No.46 of 2007 related only to one illegal sales tax issue whereas the other references related to different issues as they **each related to a separate**



**container** which was intercepted by the customs authorities containing misdeclaration of different goods and as such the NAB was entitled to file separate references in respect of each misdeclared container which amounted to a separate offence under the NAO and as such there was no question of double jeopardy. In support of his contentions he produced a brief summary which is reproduced below and according to him clearly showed that each reference arose out of a separate misdeclared container relating to different amounts.

### **Brief summary**

S#	Ref #	Case Title	Gist of allegation	Amount inv.	Container Name	Date of FIR	Name of accused persons
1	13/2007	Reference No.13/2007 against Raja Zarat Khan & others.  Custom Case No.APPG-12-DCI/2006)	Misuse of DTRE remission scheme and illegal Custom Rebate Payable on Exports of leather goods under SRO No.509(1/20 03)	926,082	IRSU-427256-5(1x40ft)	31 March 2006	1. Raja Mohammed Zarat S/o Mekhan Khan.  2. Mohammad Raza S/o Akbar Ali.  3. Dr. Ghulam Raza S/o Akbar Ali. 4. Mukhtar Hussain Lakhani S/o Karam Hussain.  5. Khalid Pervez, Examining Officer, East Wharf, Collectorate of Customs (Exports), Karachi.  6. Zulfiqar Ali Sheikh, Appraising Officer, Collectorate of Customs (Exports), Karachi.  7. Asad Alim, Principal Appraiser, Collectorate of Customs (Exports), Karachi.  8. Mujahid Hussain Khan Niazi, S.P.O. Collectorate of Customs (Preventive), Karachi.



							9 Naseer, Clerk, Collectorate of Customs, (Preventive), Karachi
2	14/2007	Reference No.14/2007 against Raja Muhammad Zarat Khan & others  Custom Case No APPG-12- A/DCI/2006)	Misuse of DTRE remission scheme	567,794	IRSU- 218816- 2(1x20 ft)	31 March 2006	1. Raja Mohammed Zarat S/o Makhan Khan.  2 Mohammed Raza S/o Akbar Ali  3. Dr Ghulam Raza S/o Akbar Ali.  4 Mukhtar Hussain Lakhani S/o Karam Hussain L  5 Khalid Pervez, Examining Officer, East, Wharf, Collectorate of Customs (Exports), Karachi  6 Altaf Ali Chandio, Appraising Officer, Collectorate of Customs (Export), Karachi  7 Asad Alim, Principal Appraiser, Collectorate of Customs (Exports), Karachi.
3	15/2007	Reference No 15/2007 against Raja Mohammad Zarat Khan & others	Misuse of DTRE remission scheme	576,794	IRSU- 222231- 2(1x20ft)	31 March 2006	1 Raja Mohammed Zarat Khan S/o Makhan Khan  2. Mohammad Raza S/o Akbar Ali  3 Dr Ghulam Raza S/o Akbar Ali  4. Mukhtar Hussain Lakhani S/o Karam Hussain  5 Khalid Pervez Examining Officer, East Wharf, Collectorate of Customs (Exports), Karachi  6 Altaf Ali Chandio, Appraising Officer, East Wharf, Collectorate of Customs (Exports),



							Karachi. 7. Asad Alim, Principal Appraiser, Collectorate of Customs (Exports), Karachi.
4.	16/2006	Reference No.16/2007 against Raja Muhammad Zarat Khan & others  Custom Case No.APPG-12- C/DCI/Seiz/ 2006	Misuse of Custom Rebate under SRO 509(1/2002)	2573746	IRSU- PMLU- 9001933 (1x40ft)	4 May 2006	1. Raja Mohammed Zarat Khan S/o Makhani Khan.  2. Mohammad Raza S/o Akbar Ali.  3. Dr. Ghulam Raza S/o Akbar Ali.  4. Mukhtar Hussain Lakhani S/o Karam Hussain.  5. Khalid Pervez Examining Officer, East Wharf, Collectorate of Customs (Exports), Karachi.  6. Muhammad Akram, Appraising Officer, Collectorate of Customs (Export), Karachi  7. Asad Alim, Principal Appraiser, Collector of Customs (Exports), Karachi.
5	17/2007	Reference No.17/2007 against Raja Muhammad Zarat Khan & others  Custom Case No.APPG-12- D/DCI/2006	Misuse of DTRE remission scheme and Custom Export Rebate	DTRE Remission 27.202 Million (Approx) Customs Export Rebate 43.348 Million (Approx)		2 Sept. 2006	1. Raja Mohammed Zarat Khan S/o Makhani Khan. 2. Abdul Rasheed Qureshi. 4. Abdul Jabbar Khan. 5. Munawar Burney. 6. Irfan Ahmed. 7. Asad Aleem. 8. Saleem Lodhi. 9. Ilahi Bux Soomro. 10. Agha Muhammad Aslam. 11. Ashique Ali Memon. 12. Zulfiqar Ali Memon. 13. Fazal Ahmed Abbasi. 14. Muhammad Akram. 15. Khalid Pervez.



						16. Jalal Mhemood. 17. Muhammad Aagul. 18. Mukhtar Hussain Lakhani. 19. Abdul Hafeez. 20. Muhammad Raza. 21. Dr. Ghulam Raza.
6	46/2007	Reference No.46/2007 against Raja Muhammad Zarat Khan & others	Fraudulent refund of sales tax refunds by M/s Early Morning Textile Mills.	279.474 million		1. Raja Mohammed Zarat Khan S/o Makhan Khan.  2. Mohammad Raza S/o Akbar Ali.  3. Dr. Ghulam Raza S/o Akbar Ali.  4. Mukhtar Hussain Lakhani.  5. Muhammad Hanif S/o Karam Hussain Lakhani.  6. Muhammad Jahangir S/o Syed Mian.  7. Muhammad Sarfaraz S/o Muhammad Farooq.  8. Altaf Haroon.  9. Muhammad Arif Khan S/o Muhammad Yaqoob Khan.  10. Syed Asim Raza Shah S/o Syed Arif Shah.  11. Habib-ur-Rehman  12. Naseem Ahmed S/o Ibrahim Ahmed Khan.  13. Saleem Akhtar.  14. Tanveer Ahmed Siddique S/o Ejaz Ahmed Siddqui.  15. Munir Ahmed. 16. Syed Tahir Raza Zaidi 17. Dr. Nasir Khan S/o Malik Khitab Gul. 18. Qazi Hayat 19. Zahid-ul-Bari S/o



							Shams-ul-Bari
							20. Altaf
							Muhammad
							S/o Gul
							Muhammad.
							21. Qamar
							Hussain Naqvi
							S/o Syed
							Akbar
							Hussain.
							22.
							Muhammad
							Asif
							23. Kashif
							Khan.
							24.
							Muhammad
							Sualeh.

12. Learned counsel for NAB further submitted that it was legal for NAB to file a supplemental reference; that issue of transfer under S.16 (A) had not been raised in any pleadings and was now a past and closed transaction; that both the pardon order and 265 K order did not suffer from any legal infirmities.

13. We have heard learned counsel for the parties, perused the record, considered the relevant law and the cases cited at the bar.

14. At the outset we are of the view that it is not the role of the High court in its constitutional jurisdiction to go into the admissibility of any documents through seizure memo or otherwise or S.161 statements which will be a matter, if so advised, to be raised by either party at the trial and be decided by the trial court and as such we have restrained ourselves from considering this issue. Even otherwise we observe that S.540 Cr.PC which is applicable to NAB cases entitles the trial court to call any relevant witnesses on its own motion.



15. S.540 Cr.P.C is set out below for ease of reference:

"S.540 Cr.CP. Power to summon material witness or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and reexamine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case".

16. With respect to the contentions that there is no offense of "attempt" under the NAO and as such there was no loss to the government exchequer we find this submission to be without substance. This is because the petitioners attempted (as they have admitted) to commit an offence falling within the ambit of S.9 NAO notwithstanding that the commission of an offence was foiled by the timely intervention of the Customs Authorities and according to the petitioners no loss accrued to the exchequer. The offence of "attempt" is clearly covered by section 9 (xii) of the NAO which for ease of reference is set out below.

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) .....

(ii) ..... Etc

(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).(bold added)

17. Furthermore, with profound respect the case of **Central Board of Revenue and another V. Khan Muhammad** (supra)



is distinguishable because firstly it concerned an offence under the Customs Act, 1969 and not the NAO and **more importantly** because it indicated that in such cases there may be an opportunity to back out of the attempt at the last minute. However, based on the particular facts and circumstance of this case it would not be possible to back out at the last minute as the containers had already passed through customs and were thereafter intercepted by the Customs authorities and as such once the containers had cleared the customs process the offence may have been committed and once the containers were intercepted **after** they cleared customs they became a case of "attempt" since the carrying out of the offence had been foiled. We do not find the case of **Raja Muhammad Zarat Khan** (Supra) to be of much relevance since this concerned the NAB's power of arrest which is not relevant for the purposes of this case which mainly concerns quashment on the basis of double jeopardy and the case only prima facie showed that a shoddy investigation had initially been carried out in this case which would be exposed, if true, during the trial. With regard to the case of **Sajid Dadabhoy V NAB** (2015 P.Cr.LJ 729) this concerned "willful default" and as such is not relevant to these proceedings. Likewise the case of **Assistant Collector of Customs V Messrs Khyber Electric Lamps** (2001 SCMR 838) is also not relevant as that case concerned recovery under the customs Act 1969 whereas the instant case concerns corruption under the NAO which under S.3 of the NAO is a special law which will have overriding effect over



other laws. Even if the Customs Act was considered to be a special law it would be trumped by the NAO which is a special law later in time.

18. With regard to S.16 (A) NAO concerning the transfer of the case from the Special Court to the accountability court by the Chairman NAB we observe that this issue has not been raised in the prayer clause nor mentioned in the 265 K order and as such the petitioner is debarred from raising it at this belated stage which is a past and closed transaction.

19. Even otherwise S.16 (A) NAO is set out below for ease of reference as under:

“S.16 (A) Transfer of case, (a) Notwithstanding anything contained in any other law for the time being in force, the Chairman NAB may apply to any Court of Law or Tribunal that any case involving any offence under this Ordinance pending before such Court or Tribunal shall be transferred to a Court established under this Ordinance, then such other Court of Tribunal **shall** transfer the said case to any Court established under this Ordinance and it shall be deemed to be a reference under Section 18 of the Ordinance, and it shall not be necessary for the Court to recall any witness or again to record any evidence that may have been recorded”. (bold added)

20. It is apparent from a plain reading of S.16 (A) that the Chairman NAB can transfer any case from any court provided that it concerns an offense under the NAO. In this case the offense falls under the NAO and as such the chairman is entitled to have the case transferred. In this respect reference is made to the case of **Sardar Ahmed Siyal V NAB** (2004 SCMR 265). We do not find the case of **Anti Corruption**



**Establishment Punjab V NAB** (Supra) to be of any relevance since this concerned malafide on the part of NAB in applying for a transfer under S.16 (A) which is not applicable to the facts and circumstances of this case. As such we find no substance in this contention.

21. Turning to the issue of further investigation. It is settled law that reinvestigation/further investigation can be carried out right up to and during the course of a trial so this contention has no substance.

22. The back ground of the case reveals that five separate FIRs which had been challaned by the Special Court were got transferred by NAB to the Accountability Court under Section 16 (A) NAO. It is settled law that once an investigation has been transferred to the NAB it may carry on further inquiries / investigations and may if it deems fit file a supplementary reference or further references after further investigation if it unearths new evidence.

23. In this regard reliance is placed on the case of **Asif Ali Zardari V Federation of Pakistan** (2002 P.Cr.LJ 310 (Lah) which held as under:

“21. The filing of the third reference has been accepted by the learned trial Court which has given detailed reasons for such an acceptance and this Court agrees with the contentions of the learned Prosecutor-General as well as of the trial Court whose order has been assailed that the third reference being supplementary to the previous references was in fact meant to place additional evidence before the Court on the same subject-matter which had been subsequently discovered from



**abroad and the delay about its filing has been explained with good reason.**

22.....

23. However, when a charge-sheet/supplementary charge-sheet/report is filed under section 173, Cr.P.C. it is incumbent upon a Court to advert to it, examine it and to take cognizance in the matter as envisaged by section 190, Cr.P.C. had been initially filed.

24. The word "cognizance" is not defined by the Court but it really means the application of mind by a Trial Court with respect to the new facts unfolded before it and its ascertainment about the seriousness of the approach and the evidentiary value of such new facts.

**25. Taking cognizance on very report submitted is essential for the ends of justice because on one hand the prosecution has been given the concession to lay before the Court the newly discovered evidence and other facts but on the other hand this cannot be something to be taken for granted. But has to be subjected to a formal check before the parties and for a formal decision whether a further action was proceed-able on the basis of the fresh report or reference. This exercise is, therefore, called taking of cognizance.**

26. **Without taking cognizance even on supplementary report of a reference, a Court cannot proceed further.** The question is, has the Court taken cognizance in this case on basis of fresh material? The learned Prosecutor-General has informed that the Court has taken cognizance as it has summoned the witnesses and recorded their examination-in-chief. While this petition was pending. It was stated that there was no injunctive order restraining the Court in recording a statement. This is true but the Court could have only recorded the statements after taking cognizance of the matter and having passed an order to that effect and which does not find a place in the dismissal order which is impugned before this Court.

27. The learned Prosecutor-General stated that no such objection has been taken by the petitioner before the Accountability Court. This appears so but the Accountability Court has to follow the dictates of law itself and has to take



cognizance of the case before passing an order summoning witnesses under section 540, Cr.P.C.

28. **Whereas, this Court upholds the order of 20-10-2001 but it would direct the Accountability Court to take cognizance of the case as envisaged by law and through an illuminative order, determine whether the evidence reflected to the third supplementary reference was necessary and then proceed to summon the witnesses having justified their summoning under section 540, Cr.P.C.”** (bold added)

24. Furthermore the Hon'ble Supreme Court has affirmed the ability of NAB to file a supplementary reference in the recent case of **Imran Khan V Mian Nawaz Sharif and others** (PLD 2017 SC 692) commonly referred to as the “Panama Papers” case in the following terms at P.711 at Para 14 (f) which reads as under:

“14 (f) NAB **may file supplementary Reference(s)** if and when any other asset, which is not prima facie reasonably accounted for, is discovered;”

25. Hence it would appear that the Supreme Court has even in recent times affirmed the ability of NAB to file a supplementary reference. Thus we find that the NAB can file a supplementary reference especially in cases where the matter has been transferred under S.16 (A) NAO (as in this case) and further inquiry/investigation may be necessary to uncover further evidence as the case had not originally been inquired into/investigated by NAB. Thus we find the submission that NAB cannot file a supplementary reference to be without substance.



26. Turning to the question of double jeopardy whereby a person cannot be in effect vexed twice for the same offence this is dealt with by Article 13 of the Constitution, which provides as under:-

“13. Protection against double punishment and self-incrimination. **No person---**

(a) **shall be prosecuted or punished for the same offence more than once;** or

(b) shall, when accused of an offence, be compelled to be a witness against himself.”(bold added)

27. In our view this is not a case of double jeopardy and Article 13 of the Constitution is not attracted. This is because having briefly reviewed all the references as indicated by NAB each of the references 13, 14, 15, 16 of 2017 **related to separate containers, separate allegations and separate amounts of loss as compared with Reference 46/2007 which only relates to M/s Early Morning Textile Mills (one unit of BSGC) illegally claiming Sales Tax refunds whereas the other references as alluded to above concern different allegations and in some cases different companies. In so far as reference 17/2007 is concerned this reference does not relate to the containers mentioned in reference No.'s 13,14,15,16 of 2007 and as such the issue of double jeopardy does not arise.** Thus, we find that NAB is entitled to file separate references in respect of each container which it has done in this case through References 13, 14, 15 and 16 of 2017 along with supplementary references. It is to be kept in mind that the language used in S.17 (d) which is reproduced for ease of reference below is **only directory in**



**nature and not mandatory** even if it is found to be applicable in the instant case which we do not consider it to be as mentioned above.

“S.17 (d) Notwithstanding anything in Section 234 of the Code, a person accused of more offences than one of the same kind committed during the space of any number of years, from the first to the last of such offences, **may** be charged with and tried at one trial for any number of such offence”.

28. With regard to the pardon order. Pardon under the NAO is dealt with by S.26 which reads as under in material part;

“S.26. Tender of a pardon. (a) Notwithstanding anything contained in the Code, **at any stage of inquiry, investigation or trial**, the Chairman NAB may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to any offence, tender a full or conditional pardon to such a person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the said offence including the names of the persons involved therein whether as principals or abettors or otherwise”.

29. As a matter of statutory interpretation the court must strictly follow the wording of the statute and if that wording is clear and is unambiguous then the courts must apply it. This is because under our constitutional system of the trichotomy of powers it is the role of the legislature to make law and the role of the courts to interpret that law if such law requires interpretation and not to superimpose its own views on that of Parliament. There is no room to interpret the statute to try to discover the intention of the legislature in this case as the words are clear and unambiguous. In this respect reliance is placed on the case of **Justice Khurshid Anwar Bhinder V**



**Federation of Pakistan** (PLD SC 2010 P.483. Relevant P.492

-493 whereby it was held as follows:

"A fundamental principle of Constitutional construction has always been to give effect to the intent of the framers of the organic law and of the people adopting it. The pole star in the construction of a Constitution is the intention of its makers and adopters. **When the language of the statute is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Such language beside declares, without more, the intention of the law givers and is decisive on it. The rule of construction is "to intend the Legislature to have meant what they have actually expressed". It matters not, in such a case, what the consequences may be. Therefore if the meaning of the language used in a statute is unambiguous and is in accord with justice and convenience, the courts cannot busy themselves with supposed intentions, however admirable the same may be because, in that event they would be traveling beyond their province and legislating for themselves. But if the context of the provision itself shows that the meaning intended was somewhat less than the words plainly seem to mean then the court must interpret that language in accordance with the indication of the intention of the Legislature so plainly given. The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the court to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.** (bold added)

30. From a plain reading of S.26 NAO it seems that the Chairman NAB has the authority and power to grant a pardon to any accused at any stage of inquiry, investigation **or trial** and as such we find the contention that the Chairman NAB had no power to approve a pardon once the reference had been filed without substance and untenable. It



is notable that such pardon does not even need the permission of the court. As such we uphold the pardon order.

31. With regard to the 265 K order under S.265 (K) Cr.PC we set out S.265 (K) Cr.PC below for ease of reference.

"S.265 (K) Cr.P.C. 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.**"

32. In essence for an application to succeed under this section it must be shown that the charge was groundless or there is no probability of the accused being convicted. In our view with the addition of two witnesses who have been granted a pardon and recorded their statements under S.164 Cr.PC and the other material on record the petitioners have not been able to show that there is no probability of them being convicted. So far no evidence has been lead and in our view it is premature for such a conclusion to be reached that the petitioners had no probability of being convicted and thus in our view we up hold the 265 K order. Even from a tentative review of the references it appears that Raja Mohammed Zarat a retired customs official with 21 years of service was allegedly using his old contacts in the customs department and other associates to massively engage in abuse of the DTRE scheme, claiming of illegal customs rebate and sales tax which lead to a colossal loss to the national exchequer which needs to be examined and decided at trial based on



merits which is only likely to be determined once some evidence is lead which has not been the case so far since for the last 5 years the petitioners have been avoiding facing such a trial based on the oxygen provided by a stay order of this court.

33. With regard to the Acting Chairman filing the supplementary references and approving the pardon's we find no illegality in this by virtue of S.6 © NAO which reads as under;

"S.6 (c) Acting Chairman, National Accountability Bureau:

**As and when the Chairman NAB is absent or unable to perform the functions of his office due to any reason whatsoever, the Deputy Chairman NAB will act as the Chairman NAB**, and in case the Deputy Chairman NAB is absent or unable to perform the functions of the office, any officer of the NAB duly authorized by the Chairman NAB, shall act as Chairman NAB".

34. In our view the decision relied on by the petitioners in the case of the **Bank of Punjab** (Supra) was made **after** this reference was filed thus in our view is inapplicable as although it concerns an interpretation of law in our view it cannot have retrospective effect based on the particular facts and circumstances of this case especially as the case was decided **3 years after** the references had been filed in this case. Thus we find that in the year 2007 S.6 © NAO as yet uninterrupted at that time on a plain reading allowed the Acting Chairman NAB to file a reference in the absence of the Chairman NAB.



35. Thus, we find all the petitions to be without merit which are accordingly dismissed. **Any stay order pursuant to these petitions stands automatically lifted and the trial court is directed to proceed with references 13/14/15/16 of 2007 and any supplemental references connected therewith immediately on a day to day basis as these references have already been subject to restraining orders for over 5 years.** The office shall immediately transmit a copy of this order to the concerned Accountability Court for compliance.

36. Before parting with the order we would like to clarify that any observations made herein above are tentative in nature and shall have no bearing on the outcome of the trial which shall be decided by the trial court on merit based on the evidence before it.