

IN THE HIGH COURT OF SINDH, KARACHI
Cr. Accountability Appeal No.01 of 2006

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hassan Shah

For order on M.A. No.11731/2025

Appellant:- Pervaiz Ahmed Dahri through M/s. Farooq H. Naek,
Qaim Ali Shah and Taimoor Ali Mangrio, Advocates.

Respondent:- The State/NAB through Syed Khurram Kamal,
Special Prosecutor NAB.

Date of hearing:- 23.01.2026

Date of decision:- 03.02.2026

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MUHAMMAD IQBAL KALHORO J: Against conviction and sentence, among others, of 05 years under sections 9 and 10 of National Accountability Ordinance, 1999 to the appellant by the Accountability Court at Karachi vide judgment dated 31.01.2006 in Reference No. 1-B/2001, this appeal has been pending.

2. Meanwhile, the appellant has filed listed application (M.A. No.11731/2025) praying that this Court does not have jurisdiction to proceed with the appeal and therefore this matter may be referred to the appropriate court, tribunal, forum, agency, authority or department as the case may be for further proceedings.

3. The sequence to this application is various amendments brought about in the National Accountability Bureau Ordinance from time to time. The first one was through the National Accountability Bureau Amendment Act, 2022 dated 22.06.2022; the second amendment was done through National Accountability Bureau (2nd Amendment) Act, 2022

dated 12.08.2022; and the last amendment was introduced through the National Accountability Bureau (Amendment) Act, 2023 dated 29.05.2023.

4. Initially, through the first amendment, section 5 of NAO, 1999 was substituted vide section 3 and the offence was defined to mean the offences of corruption and corrupt practices and other offences as defined to include the offences specified in schedule to this Ordinance. Section 5 of NAO, 1999 was further amended through second amendment, whereby, among others, the words “of the value not less than five hundred million rupees” were inserted. The effect of which took away jurisdiction from the NAB to investigate in the matter involving the amount less than that amount.

5. The case of the applicant is that by virtue of such amendments, the jurisdiction of NAB Court including High Court, as it stands in NAB cases, has been ousted as amount involved in this case is less than Rupees five hundred million. It is further stated that because of such amendments, all inquiries, investigations, trials and proceedings relating to matters not falling within the definition of offence have been transferred to the concerned agencies, authorities, departments, courts, tribunals or forums having jurisdiction under the respective laws. It is next stressed that such amendments have been given retrospective effect in terms of subsection (2) of section 1 of each Amendment Act in the manner that it shall be deemed to have taken effect, on or from the commencement of the NAO, 1999.

6. Learned counsel for appellant has reiterated aforesaid facts in his arguments, and in addition has contended that by virtue of amendment through National Accountability (Amendment) Act, 2023 all pending inquiries, investigations, trials and proceedings relating to matters not

falling within the definition of offence have been transferred to the concerned agencies, authorities, departments, courts, tribunals or forums having jurisdiction under the relevant laws. He submits that word “proceedings” occurring therein includes appeals. He further submits that Supreme Court in various cases has defined “proceedings” to mean appeal as well and in support of his view has relied upon certain case-law¹. Since this is an appeal pending in this Court, therefore, by virtue of the amendments, this appeal also needs to be transferred to the relevant forum as this Court has no jurisdiction. Even otherwise, according to him, the appeal is continuation of trial and since trial has been specifically mentioned in the amendment to stand transferred; hence this appeal would be deemed to have been transferred.

7. Learned Special Prosecutor NAB on the other hand, in his arguments, has relied upon clause (f) of subsection (4) of section 2 (amending section 4) of Amendment Act 2023 which reads that all final orders, decisions or judgments passed by the Court before the commencement of the National Accountability (Amendment) Acts, 2022 and 2023 shall remain in force and operative unless reserved, notwithstanding anything contained in sub-section (2) of section 1 each of the National Accountability (Amendment) Acts, 2022 and 2023.

8. We have heard the parties, perused material available on record and the case-law cited at bar. Our research on the issue has led us to a judgment by a Peshawar High Court in Ehtasab Cr. Appeal No.09-P/2003. In this decision, proposition that the given amendments in NAO, 1999 do not affect the pending appeals has been enforced. This opinion seemingly has been founded on various principles governing

¹ Mst. Karim Bibi and others vs. Hussain Bakhsh & another (PLD 1984 SC 344); Abdul Karim vs. Kala Khan & another (PLD 1987 Azad J&K 139); The State through Advocate General NWFP vs. Naeemullah Khan (2001 SCMR 1461); and Chief Justice of Pakistan Iftikhar Muhammad Chaudhry vs. President of Pakistan & others (PLD 2010 SC 61)

interpretation of law. It has been recalled that the amendments if relied upon must be examined in light of their object, purpose and underlying legislative intent and not as instruments for undoing concluded or substantially advanced judicial processes.

9. Further, it has been reminded that the amendment at the time of its promulgation expressly excludes matters already decided from the ambit of its operation. It is stressed that *the legislative intent in this behalf is neither obscure nor capable of competing interpretation. Once such exclusion is provided in clear terms, the interpretative exercise stands significantly narrowed. Therefore, those cases finally adjudicated upon by NAB Courts prior to coming into force of the amendment, even though presently pending appeals before this Court, partake the character of past and closed transactions insofar as the applicability of amendment is concerned.* The Peshawar High Court has next urged that the pendency of an appeal is continuation of proceedings for certain limited procedural purposes does not efface the fact that the ordinary adjudication stands concluded under the law as it existed at the relevant time. In this back drop, it is further stated that *the appellate forum examines the legality and characteristic of a completed act of adjudication does not render the concluded trial an open or undecided transaction for the purposes of subsequent legislative intervention, unless the statute so mandates.*

10. We find above references to such valued tenets relevant to forthcoming discussion. Keeping them in mind, we may recall that the interpretation of a word or a proposition has a direct nexus and is relevant only to particular context in which it has been used. The same word or proposition would supply a different connotation when used in a different context other than the one it is ordinarily used. To assume that the same word, may be used in an altered context, would invariably

carry the same meaning is absurd and in violation of the rule of interpretation.

11. With this in focus, we do not contest the contention in defence that word proceedings used in certain contexts may or could mean an appeal. However, to presume that the word proceedings used in clause (a) of sub-section (6) of section 2 of the Amendment Act, 2023 shall necessarily mean an appeal needs a proper examination. Tentatively, to us, it is notable that the legislature has not inserted word “appeal” in the said clause while conveying otherwise that all pending inquiries etc. shall be transferred to the concerned agencies etc. Omission of word “appeal” is of paramount significance therefore and does not seem accidental. When the legislature has specified all the relevant stages of criminal process starting from pending inquiries onwards, absence of reference to appeals is not without a well thought-out intention; and seems to aim at drawing attention to overall contour and effect of the amendments: applicable only when the adjudication in allegation is pending at any stage — and not in the cases already decided. Otherwise, there was no reason for the legislature to omit the word appeal and insert instead “proceedings” thereby rendering any reference to the appeals obscured, when easily the word “appeal” could have been introduced. Hence, we cannot simply assume the “proceedings” in the present context means pending “appeals” unless we take a survey of the cited case-law to find a favour to such a view, as argued before us.

12. There is no denying the fact that in certain contexts, as is mentioned in the cited case law, the word “proceedings” has been understood to include the word “appeal” but such contexts, we have found, are quite different to the ones we are dealing herewith. For

example, in a cited case² the Court has observed that the word “proceeding” is very comprehensive as no specific form or kind of action is ascribed to it. Ordinarily, a matter on the file of a Court or tribunal necessitating application of judicial mind for its settlement, may be called a “proceedings”. The Court then has referred to section 52 of the Transfer of Property Act and has held that provisions thereunder are not confined to suits only. They apply to suit or proceeding pending in a Court of competent jurisdiction where a right to immovable property is in question. Having said so, the Court has held that the term “proceeding” also includes an application for restoration of a suit, which, it seems, was then pending.

13. In the next cited case³ the Supreme Court has expanded the meaning of proceedings and has stated that word “proceedings” in the legal terminology means the instituting or carrying on of an action of law. Generally, a proceeding is the form and manner of conducting judicial business before a Court of Judicial Officer, including all possible steps in an action from its commencement to the execution of a judgment and in a more particular sense it is any application to a Court of justice for aid in enforcement of rights, for relief, for redress of injuries, or damages or for any remedial object. Proceedings in its general use comprehends every step taken or measure adopted in prosecution or defence of an action. It is in such context, the Supreme Court has held that Hazara Forest Act, 1936 has to be construed liberally and as a right of appeal has not been expressly provided, word “proceeding” would be construed to include the right of appeal to both the convict and acquitted persons.

² Abdul Karim v. Kala Khan and another (PLD 1987 Azad J & K 139)

³ The State through Advocate-General N.W.F.P. Peshawar v. Naeemullah Khan (2001 SCMR 1461)

14. Yet, in another cited case⁴, it is stated in clear words that there is no cavil with the proposition that the word proceedings is a comprehensive term and would ordinarily include every step towards the progress of a cause in a Court or before a tribunal. But, at the same time, the Supreme Court has reminded that **one also needs to remember that a narrow or a wider import could be given to the said word depending upon the nature and the scope of the enactment in which the same was used with particular reference to the language of the law in which it appeared.** This observation aligns entirely with what we are trying to convey that it is essentially the context which defines the import and purport of a word used therein.

15. It appears that in this case the Supreme Court has examined the word “proceedings” qua Article 209 of the Constitution and has referred to three steps contained therein viz. (i) proceedings before the Council; (ii) report of the Supreme Judicial Council to the President, as a result of the said proceeding; and finally; (iii) the removal of the concerned Judge. In such backdrop, the Supreme Court has held that the word “proceedings” does not stand alone or unqualified in the said provision but stands restricted and qualified by three other words i.e. ‘BEFORE THE COUNCIL’. Further on this score, it is observed by the Supreme Court, what had to be found out was not what was meant by the word ‘proceedings’ but the meaning of the expression “PROCEEDINGS BEFORE THE COUNCIL”.

16. In the last cited case⁵ the Supreme Court has held that word “proceedings” should not be given restricted meaning so as to confine it to the proceedings before the authority which passed the order under challenge in the Constitution Petitions. It has then accepted the notion

⁴ Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. Federation of Pakistan and others (PLD 2010 SC 61)

⁵ Mst. Karim Bibi and other v. Hussain Bakhsh and another (PLD 1984 SC 344)

that the word “proceedings” under the Displaced Persons (Compensation and Rehabilitation) Act would seem to commence with the application of a person entitled to the transfer of a property in the compensation pool under the Schedule and the Scheme framed thereunder.

17. The review of above case-law evinces that the word “proceedings” has been understood to convey different meanings when employed in diverse contexts and it is not necessary that it has always been comprehended to convey a singular meaning like pending appeals. In the present case, the word “proceedings” follows word “trials” in clause (a), sub-section (6) of section 2 of Amendment Act, 2023. But before it, clause (f), sub-section (4) of section 2 conveys that all final orders, decisions or judgments passed by the Court before the commencement of the Amendment Acts (2022 and 2023) shall remain in force and operative unless reserved, notwithstanding anything contained in sub-section (2) of section 1 of the Amendment Acts, 2022 and 2023.

18. It is notable that in clause (f) non obstante clause has been used with an object to transmit emphasis that this provision has an overriding effect over others amendments. If the word “appeal” is attempted to be derived from the word “proceedings”, then the said clause (f) would be rendered useless and absurd (it is settled that absurdity cannot be read in any provision of law). Because, in such eventuality, the protection to final orders, decisions or judgments provided therein would go away. And there would arise a serious question over wisdom of legislature who on the one hand would seem to strive to give protection to final orders, judgments etc. by withdrawing retrospective effect of the amendments to their extent, and on the other hand would seem to nullify them by extending effect of such amendments to the cases already decided by such judgments etc.

19. Yet, it was urged by the counsel that through all these Amendment Acts, the amendments have been given retrospective effect from commencement of NAO, 1999, which will hit the appeals as well. We may further say on this point in reply that the non obstante clause has been employed in clause (f) *ibid* which means that despite such retrospective effect, the final orders, decisions or judgments already rendered, unless reserved, by the competent forum would be considered protected, meaning thereby as if no amendment has been made as far as they are concerned.

20. The phrase “unless reserved” clearly seems to convey that those orders or judgments can only be upset by the next forums competent to hear appeals/revisions etc. against such orders, judgments etc. Reversal of an order entails applicability of judicial mind to the relevant facts and law and finding it reversible on merits which job can only be done by the next competent forum and not by the legislature. The legislature through an amendment could declare a judgment or an order as null, void or unexecutable but cannot reverse them, because reversal implies the decision of something already concluded/decided to its opposite by the next higher forum. Such an object cannot be achieved by an amendment in law. Generally, the aim and object of amendments in a law is to improve, update, or refine existing legislation to better serve the needs of society. The amendments clarify ambiguities or inconsistencies; address new issues or challenges; update outdated provisions; enhance effectiveness or efficiencies; align with changing societal values or technological advancements. In short, amendments essentially aim to make the law more effective, fair and relevant. These aims and objects have nothing to do with the transactions already concluded before the amendments are made in the relevant law. The conviction or acquittal, once recorded by the competent Court of law,

would not be open to reversal through an amendment in the law, but by the next higher judicial forum on merits only.

21. Further, the effect and import of non obstante clause in a provision of law has been examined by the superior Courts including the Supreme Court time and again. Various case-laws in this regard can be cited⁶. It is held mainly in these case-laws that the proper way to construe a non obstante clause is first to ascertain the meaning of the enacting part on a fair construction of its words. The meaning of the enacting part which is so ascertained is then to be taken as overriding anything inconsistent to that meaning in the provisions mentioned in the non obstante clause. A non obstante clause is usually used in a provision to indicate that that provision should prevail despite anything to the contrary in the provision mentioned in such non obstante clause. In case there is any inconsistency between the non obstante clause and another provision one of the objects of such a clause is to indicate that it is the non obstante clause which would prevail over the other clauses. It does not, however, necessarily mean that there must be repugnancy between the two provisions in all such cases. The principle underlying non obstante clause may be invoked only in the case of ‘irreconcilable conflict’.

22. With this comprehensive connotation in mind, when we read clause (f) sub-section (4) of section 2 together with clause (a) sub-section (6) of section 2, the irreconcilability becomes writ large in case the appeal is understood to have been included in the word “proceedings” appearing in latter provision. The intention of legislation to use non obstante clause would be rendered meaningless and well

⁶ Muhammad Mohsin Ghuman and others v. Government of Punjab through Home Secretary, Lahore and others (2013 SMCR 85); Syed Mushahid Shah and others v. Federal Investment Agency and others (2017 SCMR 1218); Muhammad Iltaf Khsan v. Basheer and others (2002 SCMR 356)

entrenched proposition that the provision with non obstante clause should prevail despite anything to the contrary in another provision would stand disturbed for good. Such a connotation, in view of opinion formed in preceding paras on the basis of relevant analysis, would create a conflict and insurmountable incompatibility between the two provisions. We therefore do not feel persuaded by the arguments of learned counsel that word “proceedings” appearing in clause (a) sub-section (6) of section 2 shall also mean “appeal”.

23. Learned counsel also in addition to above contended that the word “trials” has been used in the same provision and since the appeal is a continuation of trial, the same could be construed to have the same meaning for the purpose — transfer to relevant forum — ingrained in the same provision. We may however, observe that proposition that an appeal is a continuation of a trial is based on a quite different understanding than the one pressed by learned defence counsel. It basically implies that the appellate Court shall approach the matter as though it is seized of it for the first time, unfettered by mere fact that a prior decision exists, and shall be uninfluenced by any constraint that might otherwise foreclose a full and open adjudication. It also means that appellate court has to appreciate and appraise the entire evidence available on record like the trial Court does but independently and unswayed by any finding recorded by the trial Court on any particular fact. The concept of appeal as a continuation of a trial, quite distinct, cannot be pressed into service in the present context.

24. We therefore find no merit in this application. This application is dismissed and disposed of accordingly.

25. Before parting with this order, we may observe that this appeal is pending since long and is an old one, we adjourn it to 18.02.2026 and

are hopeful that on the next date of hearing learned defence counsel would proceed with the matter on merits.

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