

3. Case of the prosecution against accused (who was a bank employee) was initiated on the complaint of the Regional Chief of National Bank of Pakistan regarding misappropriation and embezzlement of money payable in relation to custom duty collected at AFU Booth of National Bank of Pakistan, where the accused was posted in the period of 2008 to June, 2011 and at AFU Karachi Airport from November, 2011 to March, 2013. According to the case of prosecution, Zuberi instead of depositing the money into the designated Treasury Accounts opened personal accounts *inter alia* in Bank Al Habib in the name of the present petitioner (wife of the accused) jointly with the accused himself. These details are provided under NAB Reference No.13 of 2014, where the accused pocketed a sum of over than Rs.610 million. Not only the above referred money was misappropriated, the racket operated by the accused also frauded the Excise and Taxation Department, Government of Sindh in the sum over Rs.6.9 million. Per NAB Reference No. 13 of 2014, the racket embezzled over one billion rupees in total. A second reference being Reference No.48 of 2015, where additional money pocketed in the period 2009 to 2010 in the tune of Rs.500 million (approx.) was also filed against the accused.

4. During the course of the arguments in the instant case, the learned counsel for the Applicant (the petitioner previously) did not bring any fresh proof of the various credit entries made in the above referred accounts jointly owned and operated by the accused and his wife, except that one of the entry being entry dated 14.04.2009 in the sum of Rs. 2 million, which per assertion of the learned counsel was on account of sale of some property by the accused and in respect of the rest of the entries, the defence was that there were generated from the business of selling milk by the accused in partnership of one Muhammad Jamil.

5. After thorough examination of the record, the Court came to the conclusion that notwithstanding the one entry of Rs. 2 million, there were no satisfactory answers as to the remaining 166 credit entries into the account of the accused. The defence as to these entries emanating out of

sale of milk was also shaken when documents were filed by the prosecution which included a statement from Mr. Muhammad Jamil (whom the accused showed as partner in the Dairy Form), who denied that he had such a beneficial relationship with the accused.

6. During the course of the arguments of the present application, learned counsel for the petitioner only brought details of the property documents which have already been discussed hereinabove in respect of the sale of the property in Gulistan-e-Johar in the sum of Rs. 2 million. Learned counsel beside the copy of the pay order in the sum of Rs.2 million (made by one Mrs. Zareena favouring the accused), also submitted copies of two other pay orders dated 13.04.2009 made by the same individual, one in the sum of Rs.300,000/- and the other in the sum of Rs.3.3 million. Learned counsel contended that these two additional payments were also made to the accused on account of the sale of other properties of the accused.

7. It is interesting to note that all of the above referred pay orders are dated 13.04.2009, however, other than the payment of Rs.2 million credited on 14.04.2009, the statement of account of Bank Al Habib, as produced by the prosecution, does not depict these two remaining cheques having been credited in to the account in question, meaning thereby even after bringing the copies of certain fresh material, the case made up by prosecution with regard to over 160 entries in the account of the accused remains unblemished.

8. The learned counsel also re-agitated his earlier assertion that no grounds of arrest were given to the accused which warranted filing of the instant constitutional petition. The learned counsel in support of his contention, placed reliance on 2002 SCMR 1408 and PLD 2007, Karachi 597.

9. On the other hand, learned ADPG, NAB submitted that there is no provision of bail under the National Accountability Ordinance, therefore, the instant petition was filed under Section 497 Cr.P.C was not competent

particularly when the petition having been disposed of, no review application is maintainable. Learned counsel while going to the facts said that it was already so pointed out by the learned counsel for the petitioner that the entry of Rs. 2 million was arising out of the sale of certain property at the time of earlier arguments thus, even through the fresh material, the learned counsel has not brought any justification as to the other 160+ entries made to the account of the accused and other two pay orders, as shown to the Court are not reflected in the statement of account of Bank Al Habib, therefore, are irrelevant to the controversy at hand. The learned counsel vehemently challenged the instant review which as per his contentions has been filed as an appeal, of which there is no provision. Placing reliance on Order XLVII Rule 1, learned counsel submitted that if a review at all is to be made such option requires the discovery of any new material and evidence, which after the exercise of due diligence was not within the knowledge when the earlier order was passed; which is not the case at hand. Even in the first round of litigation before this Court, the counsel for the petitioner did contend that the entry dated 14.04.2009 for Rs.2 million was arising out of sale of certain property sold by the accused, which fact was fully taken cognizance of in the order of this Court dated 13.06.2016, therefore, no fresh material has been brought on the surface, which could have made any ground for the consideration of the instant review application.

10. The learned counsel also stated that the matter in which the instant constitution petition has been disposed of, and of the references in question are being trialed before the concerned Accountability Court (being Reference No.13/2014, filed on 01/10/2014 and Reference No.48/2015) in respect of which the order dated 13.06.2016 has already been passed by this Hon'ble Court on merits, which has attained the finality.

11. The learned counsel further stated that the grounds of the review are misconceived and malafide since this Court has justifiably placed

reliance upon section 161 Cr.P.C Statement and the investigation report and has given its findings in accordance with the well settled principles of law. He further submitted that the accused persons have no unbridled right to be granted bail as of right for the offence of corruption and corrupt practices under Section 9(b) of NAO, 1999.

12. Heard the learned counsel for the petitioner, as well as, ADPG, NAB and reviewed the record. As stated in the foregoing, the documents brought forward alongwith the instant review application with regard to sale of certain property in the name of the accused at best satisfies one entry dated 14.04.2009 in the sum of Rs. 2 million, even that being the case, prosecution's case still remain strong as to the other entries made into various accounts of accused in which sums over than Rs. 1 billion were deposited by the racket operated by the accused remains unanswered.

13. With regards counsel's contentions that no reasons were assigned at the time of arrest of the accused, in this connection reference is made to Warrant of Arrest dated 27.06.2014 (page 21) which clearly gives pith, substance and reasons for the arrest of the accused. It mentions that the accused was found involved in "misappropriation and embezzlement at National Bank Airport Branch funds". Also the applicable legal provisions of the Ordinance were also referred in the Arrest Memo dated 01.07.2014 (page 23). Also, Reference Nos.13/2014 and 48/2015 gave full factual background of the allegation made and the manner in which the accused operated its racket, notwithstanding therewith the accused was in fact released on bail under the first reference (13/2014) and it was on account of the second reference (48/2015) that he was re-arrested, for which complete dossier of information was provided in the form of the later reference.

14. To conclude, placing reliance on SBLR 2016 Sindh 1828, it is well established that where a court had applied its mind to particular facts or law and then had come to a conclusion after conscious reasoning, it could never be contended that error was one apparent on the face of the record

and could be corrected by it. While dismissing the instant petition, this court considered and appreciated all relevant facts and law, and only thereafter arrived at the resolute conclusion. It is also been established that case cannot be re-opened on merits just on review since scope of review is very limited under of Section 114, read with Order XLVII, Rule 1 CPC and an application for review not being maintainable on those points which have been decided one way or the other, and review being by its very nature not an appeal, or rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the court (2008 SCMR 554 and 2009 SCMR 394).

15. As a result of the above discussion, we have reached to a firm conclusion that neither any mistake or error is apparent on the face of the record, nor any other sufficient reason or justification is made out by the applicant to review the earlier judgment of this court even to the extent applied for. Consequently, this review application is dismissed.

Karachi: 26th December 2016

Judge

Judge