

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D-2009 of 2015

Present:

Mr. Justice Muhammad Junaid Ghaffar.

Mr. Justice Muhammad Humayon Khan.

Sikandar Ali Mallah ----- Petitioner

Versus

National Accountability Bureau

and others ----- Respondents

C. P. No. D-3131 of 2015

The State through Chairman NAB ----- Petitioner

Versus

Presiding Officer and another ----- Respondents

Date of hearing: 17.05.2017.

Date of order: 17.05.2017.

Petitioner: Through Mr. Ahmed Ali Ghumro Advocate.

**Respondent: Through Mr. Muhammad Altaf Special
Prosecutor NAB in C.P. No.D-2009/2015
and for Petitioner in C.P.No.D-3131/2015.**

ORDER

Muhammad Junaid Ghaffar, J. Through this common order both the aforesaid Petitions are being finally disposed of at Katcha peshi stage. In both these Petitions, one filed by Petitioner in C.P.No.D-2009/2015 and by NAB in C.P. No. D-3131/2015 a common order dated 12.3.2015 passed by the Administrative Judge; Accountability Courts, Sindh at Karachi, has been impugned through which the request of NAB under Section 9(c) of the NAB Ordinance 1999 for

approval of closure of investigation against the accused has been regretted.

2. Learned Counsel for the Petitioner as well as Special Prosecutor NAB contends that such order is against the provisions of Section 9(c) as well as Section 18 of the NAB Ordinance wherein, it has been provided that if after completing the investigation of an offence against a holder of public office or any other person, Chairman NAB is satisfied that no prima facie case is made out against the accused, he can refer the matter to a Court for approval and for the release of the accused, if in custody, and so also that no Court shall take any cognizance under the NAB Ordinance except on a Reference made by the Chairman NAB. The Learned Counsel for the Petitioner as well as the Prosecutor NAB, both have placed reliance on the case reported as ***Syed Khursheed Ahmed Shah V. National Accountability Bureau (NAB) and others [S B L R 2014 (Sindh) 821]***.

3. We have heard both the learned Counsel and perused the record. It would be advantageous to refer to Section 9(c) as well as Section 18(a) of the NAB Ordinance, which reads as under:-

“9. Corruption and Corrupt Practices. (a)

(i) -----

(ii) -----

(iii) -----

(iv) -----

(v) -----

(vi) -----

(vii) -----

(viii) -----

(ix) -----

(x) -----

(xi) -----

(xii) -----

(b) -----

(c) If after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused if in custody.

18. Cognizance of Offences. (a) The Court shall not take cognizance of any offence under this Ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorized by him.”

4. Perusal of Section 9(c) reflects that after completing the investigation of an offence against a holder of public office or any other person, if the Chairman NAB is satisfied that no prima facie case is made out against him, and the case may be closed, he shall refer the matter to the Court for approval and for the release of the accused, if in custody. Similarly Section 18(a) reflects that Court shall not take cognizance of any offence under this Ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorized by him. A harmonious interpretation of both these Sections reflects that the Chairman NAB has been authorized under the NAB Ordinance to close an inquiry or investigation if he is satisfied to that effect. In this matter perusal of the request made under Section 9(c) of the NAB Ordinance, reflects that reasonable justification was found with Chairman NAB as during investigation it revealed that Anti-Corruption Establishment Karachi had already registered FIR No. 4/2013 which was pending before the Special Judge Anti-Corruption (Provincial) Court, Karachi wherein, interim charge sheet as well as final challan was filed and charge was also framed. It was further observed that such closure of the investigation by NAB will not grant any benefit to the accused person or prejudice the proceedings before the Anti-Corruption Court. Through the impugned order such request has not been acceded to and the NAB Authorities have been directed to file a Reference against the accused. This to our understanding is not justifiable in view of the mandatory provisions of the NAB Ordinance as discussed hereinabove as the learned Judge has acted in excess of jurisdiction.

5. A learned Division Bench of this Court in the case of **Syed Khursheed Ahmed Shah (supra)** had the occasion to examine a similar order passed by the Administrative Judge of the Accountability Court wherein, an application under Section 9(c) of the NAB Ordinance was filed and the same was declined with directions to file Reference within 30 days. The learned Division Bench was pleased to hold as under:-

“8. Adverting to the authority of the Chairman NAB for final disposal of investigation report, it is correctly argued that section 18 [a] of NAB states that the Accountability Court shall not take cognizance of any offence except on the reference made by the Chairman NAB or any officer duly authorized by him as after receiving material collected during the inquiry or investigation, the Chairman has to decide under clause [g] of the ibid section of the Ordinance, whether or not to refer the matter to the Accountability Court. Having decided to refer the matter to Accountability court, the Chairman makes a reference and thus, it is only on reference Accountability Court takes cognizance. Learned counsel for the petitioner in this context also referred the case of ‘Khan Asfand Yar Wali [supra] wherein a question as to ‘whether section 18 of the impugned Ordinance which prohibits the Accountability Court to take cognizance of any offence under the impugned ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorized by him amounts to excessive delegation, was decided with the follow observation;-

“As to above question, suffice it to say that the offences under the NAB Ordinance are special in nature and their investigation and inquiry extends to complicated transactions, bank accounts and books of accounts for which aid of experts may be required by investigating authority to unearth and detect such offences. It is, therefore quite reasonable as well as practical that the investigating agency should first thoroughly inquire into suspected offences and then decide whether or not to refer the same to an Accountability Court. There is, therefore, no excessive delegation of power in the above section. It may be observed that the Ehtesab Act, 1997 also contained a similar provision, which was declared to be valid piece of legislation by this Court in M. Nawaz Khokhar (supra).

9. Similarly clause (c) of Section 9 of the NAB states that if after completing the investigation of an offence against a holding of public officer or any other person, the Chairman NAB is satisfied that no prima facie case is made out against them and the case may be closed, then the Chairman NAB shall refer the matter to the Court for approval and for the release of the accused, if in custody. In this provision of law, no discretionary powers are invested to the Court to pass any order otherwise the jurisdiction which is explicitly provided as such, in view of above legal position, the findings of learned Administrative Judge, Accountability Court that the Chairman was not competent to order for closure of the case and directions to submit his reference within thirty (30) days, are not sustainable in law and in excess of jurisdiction. Consequently while allowing these petitions we set aside the impugned order.”

6. In view of hereinabove facts and circumstances, of this case and so also by following the dicta laid down in the case of **Syed Khursheed Ahmed Shah (supra)** we are of the view that the order impugned through both these Petitions cannot be sustained and is accordingly set aside by allowing both these Petitions. However, this order shall not have any effect on the proceedings pending, if any, before the Special Judge Anti-Corruption (Provincial) Court, Karachi, which shall be decided strictly in accordance with law.

7. Both the petitions are allowed in the above terms.

J U D G E

J U D G E

ARSHAD/