

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-5005 of 2018

Before:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Shamsuddin Abbasi,

Date of hearing : 01.10.2018

Date of announcement : 12.10.2018

Mr. Sarmad Sattar Leghari, Advocate for the petitioner.

Mr. Muhammad Akram Javed, Special Prosecutor for MAB.

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J U D G M E N T

SHAMSUDDIN ABBASI, J:- Petitioner has filed this petition for following reliefs:-

- a) That this Honourable Court may be pleased to suspend/stop the operation of the call up notice dated 20.07.2017 issued by the Respondent No.4 as the same controversy is already pending in Anti-Corruption Court and NAB Court at Hyderabad vide Ref:No.01/2017 (Re:The State V/s Abdul Sattar and others) till the final disposal of instant petition.
 - b) To stay/quash the proceedings of Ref:No.01/2017 (Re:The State V/s Abdul Sattar and others) pending at NAB Court Hyderabad as the same controversy is already pending before the Anti-Corruption Court, which proceedings were initiated since two years prior to Ref:No.01/2017.
 - c) To direct the respondents not to cause any harassment to the petitioner directly or indirectly or in any manner whatsoever and treat him as respectable citizen of Pakistan.
 - d) Any other relief which this Honourable Courts may deems to be fit and proper for interest of justice.
2. Notices were issued to the respondents as well as D.A.G.
 3. It is contended by the learned counsel for the petitioner that vide notification dated 08-05.2014 petitioner was appointed as Liquidator of Sindh Provincial Cooperative Bank Ltd.Karchi in place of Mr.Muhammad Akhtar Pathan and he has completed liquidation process which was already

initiated by his predecessor in accordance with rules and regulations but due to departmental grudge an enquiry was conducted by Anti-Corruption Establishment. He next contended that on 27.08.2015 an FIR was registered against petitioner by Muhammad Suhrab Khan Assistant Director ACE Sindh Karachi on behalf of the State vide Crime No.43 of 2015 u/s 409, 420, 468, 471, 34 read with Section 5(2) Act-II of 1947 alleging therein that petitioner in connivance of officers of M/s Quetta Town CHS has fraudulently, malafidely and illegally sold out immovable properties/assets of the society including amenity plots and illegally withdrawn huge amount from Account No.010-1878-3 UBL Dastagir Branch Karachi and Account No.2655-67 HBL Gulshan-e-Iqbal Branch Block-5 Karachi in shape of cash/cross cheques and misappropriated society funds/costs of the plots amounting to Rs.33,911,792/- by violation of circular/bylaws and caused heavy loss to the societies/government. After usual investigation case was challaned in which the details of properties were given. He further contended that after submission of challan the court took the cognizance and thereafter NAB has filed reference against the present petitioner and other accused bearing Reference No.01/2017 in the Accountability Court, Hyderabad in respect of property admeasuring area 3.8 $\frac{3}{4}$ acres of Cooperative Farm Services Center Tando Allahyar and 1 acre of Cooperative Farm Services Center Mirpurkhas through fake auction and it is alleged in the reference that petitioner with malafide intentions withdrew Rs.10 Million from account of Registrar Cooperative Societies Sindh without approval of competent authority and deposited the same amount in his personal account. He, however, drawn our attention to a call up notices dated 29.05.2017 and 29.07.2017 issued by NAB Authorities to the petitioner in respect of enquiry for illegal auction of Hanifa Bai Building of

Sindh Provincial Cooperative Bank Ltd., wherein it is also alleged that petitioner had opened an account in favour of liquidator SPCB in KASAB (New Bank Islami) Hyderabad by submitting fake documents and he has used account of Registrar Cooperative Societies Hyderabad Sindh of NBP Shahbaz Building Branch and Liquidator SPCB accounts funds. He further contended that NAB Authorities are dragging him time and again with same allegations being subject matter of Special Case No.43 of 2015 arising out of the FIR bearing No.43 of 2015 pending in Anti-Corruption Court Hyderabad and in Reference No.01/2017, pending in Accountability Court, Hyderabad and that in presence of both these cases NAB has no jurisdiction to issue another call up notice which amounts to continuously harassing and blackmailing the petitioner with malafide intentions and ulterior motives and the law is very much clear on the point of double jeopardy and Article 13 of Constitution of Pakistan as well as Section 403 Cr.P.C. provides safeguard for trial twice in same charges.

4. On the other hand, learned Special Prosecutor for NAB has contended that FIR which has been produced by the petitioner, which was registered by the Anti-Corruption Authorities in respect of illegally disposal of the property situated at Quetta as well as misappropriation of amount Rs.31,800,44/- which he had misappropriated in the capacity of liquidator SPCB Ltd.Karachi. He further contended that notification dated 08.05.2014 which shows his appointment as liquidator SPCB Ltd.Karachi was fake notification and he was never appointed as liquidator of SPCB Ltd. Karachi. He further stated that as for the Reference No.01/2017 is concerned, it is in respect of properties situated at Tando Allahyar and Mirpurkhas and have nothing to do with Hanifia Bai Building's side. He further contended that during enquiry proceedings in the reference

petitioner had entered in the V.R. with NAB and he returned 3.4 Million as down payment out of 10 Million but thereafter he defaulted in further payment and resultantly V.R. proceedings were dropped as the same had become nullity. He further contended that subject call up notice to the petitioner vide its letter dated 29.05.2017 and 20.07.2017 is in respect of properties situated in Hanifa Bai Building of Sindh Provincial Cooperative Bank Ltd. as the allegations of conducting illegal auction. He further contended that there are different properties situated in Hanifa Bai Building the Anti-Corruption Establishment's case, is in respect of a different property situated in Hanifa Bai Building, whereas NAB Authorities have initiated another inquiry in respect of a different property situated in Hanifa Bai Building. He further submits that petitioner in the capacity of Assistant Registrar of Cooperative Societies, Hyderabad and liquidator of SPCB Ltd. Karachi has misappropriated amounts from various accounts of different banks situated at Hyderabad and Karachi and therefore, the call up notices issued to the petitioner are totally in different scams, thus question of double jeopardy does not arise and this petition is not maintainable and liable to be dismissed.

5. Heard learned counsel for the petitioner, learned Special Prosecutor NAB with the assistance by Mr.Parkash, investigating officer and perused the record.

6. Record reflects that petitioner was Assistant Registrar Cooperative Societies Hyderabad and vide notification dated 08.5.2014 he was appointed as liquidator of SPCB Ltd. Karachi and in the said capacity he disposed of various properties situated at Quetta, Tando Allahyar, Mirpurkhas and Karachi. It is admitted fact that on the departmental request an enquiry was initiated by the Anti-Corruption Establishment against the

petitioner, which was converted into FIR bearing No.43 of 2015 in which specific allegations were leveled against the petitioner, the relevant portion, is reproduced here as under:-

“It is alleged that Abdul Sattar Laghari, Assistant Registrar (BPS-17) was posted as Ex-Administrator, Quetta Town CHS from 18.10.2012 to 30.04.2013. He during his tenure in collusion with Javed Arshad Khan, Office Superintendent, Usman Ahmed Clerk, Humair Shoukat, Secretary, and others of M/s Queta Town CHS have fraudulently, malafidely illegally sold out the immoveable properties/assets of the society including amenity plots and illegally withdrawn huge amount from Account Nos.010-1878-3 UBL Dastagir Branch Karachi and 2655-67 HBL Gulshan-e-Iqbal Branch Block-5 Karachi in shape of cash/cross cheques and misappropriated society funds/cost of the plots amounting to Rs.3,39,11,792/- by violation of circular/bylaws and caused heavy loss to the Society/Government.”

7. After usual investigation police submitted challan against the petitioner in respect of same allegations with the details of property as well as misappropriation in accounts. The challan also reveals the allegations that his appointment as a liquidator of SPCB Ltd.Karachi was on the basis of a fake notification.

8. Insofar as Reference No.01/2017 is concerned, the allegations against the petitioner are mentioned in para No.1 to 3, which are reproduced as under:-

“1. That on receipt of a complaint against Abdul Sattar Leghari and others, alleging therein that accused persons in connivance with each other disposed of precious government land measuring 3.8¾ acres of Cooperative Farm Service Center at Tando Allahyar, and one acre of Cooperative Farm Service Center Mirpurkhas through fake auction further that misappropriation of Rs.10.7 millions was done through take auction. Any inquiry followed by investigation

was authorized by undersigned vide letter No.221090/IW-I/CO-A/T-2/NAB(khi)/3661 dated 15-07-2016.

2. That the investigation revealed that accused No.1 Abdul Sattar Leghari, the then D.O. Cooperative Society Sindh who was appointed as liquidator Cooperative Farm Service Center Tando Allahyar had illegally and with malafide intention auctioned land measuring 3.8 $\frac{3}{4}$ acres of Cooperative Farm Service Center Tando Allahyar, to accused No.2 Ratan Lal for consideration of Rs.10 Million. Further, accused No.1 with malafide intention withdrew Rs.10 Million from the account of Registrar Cooperative Societies Sindh without the approval of competent authority and deposited the said amount in his personal account. The investigation also revealed that accused No.2 after unlawful grabbing of land launched a housing scheme on the said land for allotment to general public.

3. That investigation further revealed that accused No.1 Abdul Sattar Leghari also disposed of land measuring one acre of Cooperative Farm Service Center Mirpurkhas through sham auction process to accused No.3 Shafiq Ahmed Khan and accused No.4 Yousaf Jamal Mirani at meager amount of Rs.0.7 Million. The accused No.1 Further misappropriated the amount of Rs.0.7 Million by withdrawing the same amount illegally from the account of Registrar Cooperative Society Sindh.

9. As regards the call up notice dated 29.05.2017 the allegations mentioned against the petitioner are reproduced as under:-

“During the course of inquiry it is revealed that you have allegedly confirmed an illegal auction of Hanifa Bai Building of Sindh Provincial Cooperative Bank Limited without meeting the procedures and withdrawn the proceeds of auction of this property and other properties of SPCB as well. You have opened an account in favour of Liquidator SPCB in KASB (New Bank Islami) Hyderabad by submitting fake and false document. You allegedly have used Registrar Cooperative Societies Hyderabad Sindh account

in NBP Shahbaz Building Branch and Liquidator SPCB account and allegedly misappropriated the provincial exchequer funds/auction proceeds and amount received in lieu of loan from loanees of SPCB Ltd.”

10. And the letter dated 28.07.2017, reveals the following allegations:-
During the course of investigation it is revealed that you have allegedly confirmed an illegal auction of Hanifa Bai Building of Sindh Provincial Cooperative Bank Limited without meeting the procedures and withdrawn the proceeds of auction of this property and other properties of SPCB as well. You have opened an account in favour of Liquidator SPCB in KASB (New Bank Islami) Hyderabad by allegedly submitting fake and false documents. You allegedly have used Registrar Cooperative Societies Hyderabad Sindh account in NBP Shahbaz Building Branch and Liquidator SPCB account and allegedly misappropriated the provincial exchequer funds/auction proceeds and amount received in lieu of loan from loanees of SPCB Ltd.”
11. In order to appreciate the contentions of learned counsel on the proposition of double jeopardy, we have gone through the Section 403 of the Criminal Procedure Code, which is reproduced as under:-

“403. Persons once convicted or acquitted not to be tried for the same offence (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence, nor on the same facts for any other offence for which is different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted for any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under sections 235, subsection (1).

(3) A person convicted of any offence constituted by any act causing consequences which together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequence had not happened, or were not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for any other offences constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provision of section 26 of the General Clauses Act, 1897, or section 188 of this Code.

12. We have also gone through the article 13 of the Constitution of the Islamic Republic of Pakistan, which is also reproduced 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.

13. A bare reading of afore-quoted provisions of law would show that protection to a person in terms of the said law would be available when he is prosecuted for an offence and tried by a competent court of law and the trial has finally ended in shape of conviction or acquittal and he cannot be tried again on the same charge, this principle of law is based on maxim *autrefois convict autrefois acquit* i.e. that a person who has once been tried by a competent court for an offence and convicted or acquitted cannot be tried again for the same charge.

14. We have taken a guidance from a case **Syed Alamdar Hussain Shah Vs. Abdul Baseer Qureshi and 2 others reported in PLD 1978 Supreme Court 121** where Hon'ble Supreme Court has well-explained work "prosecution" in Article 13 of Constitution of Pakistan which is reproduced as under:-

"The important word in Article 13 is "prosecution". According to Corpus Juris Secundum the term "prosecution" has different meanings when used in different relations and it is regarded as a word of limited or extended signification according to the intention of the law maker or the persons using it. In its broadest sense the term would embrace all proceedings in the course of justice or even elsewhere for the protection or enforcement of a right or the punishment of a wrong, whether of a public or private character. In a more limited sense the term includes the act of conducting or waging a proceeding in Court; the following up or carrying on of an action or suit already commenced until the remedy be attained; the institution and carrying on of a suit in Court of law or equity to obtain some right or to redress and punish some wrong. It includes commencing, conducting and carrying a suit to a conclusion in a Court of justice. It is in this limited sense that the word "prosecution" appears to have been used in Article 13 of the Constitution. Significantly, the marginal heading indicates that this Article is a protection against double punishment, which tends to show that it is only where the prosecution has finally concluded and ended either in acquittal or conviction that a fresh prosecution for the same offence would be barred. Stroud's Judicial Dictionary explains the term "prosecution" amongst others in the following manner:-

"The "prosecution" of an action ends with the final judgment therein (*Hume v. Druff*, L R 8 Ex. 214)."

The word "prosecute" is derived from a Latin word and signifies not only "to follow", but "to follow intensively" without intermission; thus, to follow or pursue with a view to reach, execute or accomplish.

According to the Webster's New International Dictionary (Second Edition) "prosecution" means, *inter alia*, "the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing them to final judgment on behalf of the State or Government as by indictment or information." And in the Oxford English Dictionary "prosecution" means "the following up, continuing, or carrying out of any action, scheme, or purpose, with a view to its accomplishment or attainment."

15. Thus, it is made clear that legislatures provides protection to a person from second trial on the same allegations, if the first has already ended either in conviction or acquittal. At this stage we would take guidance from a case of **Mansoorul Haque V/s Govt. of Pakistan and another reported in PLD 2003 Kar 105**, whereby this court has passed a land mark judgment on the point of Double Jeopardy. The relevant para is reproduced as under:-

"Law does not permit grant of any such blank cheque to an accused that if he shall plead his guilt in a particular offence, he shall not be tried in future for any other offence committed by him if detected afterwards. Article 13 of the Constitution of Pakistan or section 403, Cr.P.C. also do not stand attracted. Trial or prosecution of a person for different offences committed at different times and if detected at a later stage is not violative of the principle of double jeopardy or doubt prosecution or punishment. Further, we find that the petitioner could have approached the Accountability Court under section 249-A or 265-K Cr.P.C. for challenging the proceedings if the same were defective, illegal or not maintainable under the law, hence invoking the Constitutional jurisdiction is not an appropriate remedy."

16. In another case this court has well-discussed on the issue of Double Jeopardy in view of Section 403 Cr.P.C. and Article 13 of Constitution of Pakistan in a case of **Manzoor Ahmed V/s The State (PLD 2003 Karachi 97)**. The relevant paras are reproduced as under:-

“11. Regarding the issue of double jeopardy, it would be seen that Article 13(a) of the Constitution provides that no person shall be prosecuted or punished for the same offence more than once whereas section 403(1), Cr.P.C. prohibits the second trial for an offence during the course of existence of conviction or acquittal of a person as the case may be in consequence of final adjudication of such offence by the Court of competent jurisdiction. Hence the rule against *autrefois acquit* finds place in section 403(1) Cr.P.C. and the counterpart of the said rule viz. *autrefois convict* has received recognition. Per article 13(a) of the Constitution of Pakistan, 1973. Secondly, it would be seen that the Constitutional guarantee is only available if the accused is convicted and punished. Thus if the prosecution results in acquittal so far as this Article is concerned the second prosecution is not prohibited. However, section 403(1) prohibits the second trial for an offence during the course of existence of conviction or acquittal of a person as the case may be in consequence of final adjudication of such an offence by a Court of competent jurisdiction. Section 403(2), Cr.P.C. further provides exceptions to the rule regarding double jeopardy enunciated in section 403(1) Cr.P.C. viz. a person acquitted or convicted of any offence may afterwards be tried for any distinct offence for which a separate charge might have been framed against him on the former trial so also subsection (3) provides a further exception in cases where different offences are in issue. Finally, subsection (4) provides that even though a person has been acquitted or convicted by the previous Court he may subsequently be charged with and tried for any other offence constituted by the same. Act, which he may have committed if the Court in which he was tried first was not competent to try the offence with which he was subsequently charged. On an analysis of the foregoing provisions of law it is clear that Article 13(a) of the Constitution operates as a bar to prosecution and punishment of an accused for the same offence more than once. In the case of *Shed Alamdar Hussain Shah v. Abdul Baseer Qureshi* (supra) the Hon’ble Supreme Court has interpreted the meaning of the word “prosecution” in Article 13(a) to include the commencing, conducting and carrying a suit to a conclusion in a Court of justice

meaning thereby that a fresh prosecution for the same offence is barred only where such prosecution has been finally concluded and ended either in acquittal or conviction. In the instant case, the petitioner was first tried by a Military Court and later upon lifting of Martial Law the case was tried by a Magistrate and lastly the case was ordered to be transferred to a Sessions Court. In none of these forums the prosecution has come to any conclusion. Consequently, the petitioner's trial was held in no way to be derogatory to the principle of double jeopardy as enunciated in the then Article 13(a) of the Constitution. Similarly, in *Muhammad Ashraf v. the State* (supra) it was held that the word "prosecution" appearing in Article 13(a) of the Constitution means a trial followed by a judgment of acquittal or punishment. It includes the entire prosecution starting with the cognizance of an offence by a Court of law, followed by examination of evidence, addressing of arguments and ending with the pronouncement of judgment.

12. Applying the foregoing principles of law to the facts of the present case it is quite clear that the rule of double jeopardy as per Article 13(a) of the Constitution would not be applicable thereto since admittedly the first prosecution of the appellant/accused under the Customs Act has still not reached any conclusion. It would also be seen that section 403(1) of the Cr.P.C. also contemplates a previous acquittal or conviction of an accused for an offence and prohibits a fresh trial for the same offence on the same facts for any other offence for which a different charge for the one framed against him might have been made under section 236 or for which he might have been convicted under section 237. Consequently, in our opinion, both the foregoing provisions of law contemplate that before the same can be pressed into service the first trial of the accused must have been concluded which may either result in an acquittal or conviction which is not the case. For all the foregoing reasons, we are of the view that the second trial of the accused under the NAB Ordinance is neither violative of Article 13(a) of the Constitution nor in contravention of section 403(1) Cr.P.C.

17. We have also taken the guidance from a case of **Muhammad Nadeem Anwar V. Security & Exchange Commission of Pakistan reported in 2014 SCMR 1376**. The Hon'ble Supreme Court has held as under:-

“It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence. In *Bhangwan Swarup v. State of Maharashtra* AIR 1965 SC 682, the accused was convicted with regard to a conspiracy to commit criminal breach of trust in respect of the funds of one Jupiter company. There was another prosecution against the accused for the conspiracy to lift the funds of another company, through its object was to cover the fraud committed in respect of the Jupiter company. This Court held that the defalcations made in the Jupiter may afford a motive for new conspiracy, but the two offences are distinct ones. Some accused may be common to both of them, “some of the facts proved to establish the Jupiter conspiracy may also have to be proved to support the motive for the second conspiracy. The question is whether that in itself would be sufficient to make the two conspiracies the one and the same offence. The ingredients of both the offences are totally different and do not form the same offence within the meaning of Article 20(2) of the Constitution and, therefore, that Article has no relevance.”

This view is also supported by *Manipur Administration, Manipur v. Thokchom Birasingh* (AIR 1965 SC 87), *Sangeetabar Mahendrabhai Patl v. State of Gujarat and another* (2012) 7 Supreme Court Cases 621), *Muhammad Ashraf and others v. The State* (1995 SCMR 626), *Brothers Steal Mills Limited and others v. Mian Illayas Mairaj and 14 others* (PLD 1996 SC 543) and *Sher Muhammad Unar and others v. The State* (PLD 2012 SC 179).

10. The fact of the instant case, viewed from any angle are suggestive of the fact that the petitioner committed offences under two different enactments though by commission of act and omission in one go and do not at all fall within the ambit of same offence. In

such circumstances provisions of Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973, section 403 of the Code of Criminal Procedure, 1898 and section 26 of the General Clauses Act, 1897 are not relevant in the instant case because the petitioner committed offences which are neither similar to each other nor under the same enactments, therefore, the learned High Court has rightly held so while dismissing the constitutional petition and intra court appeal filed by the petitioner before Peshawar High Court, Peshawar. The learned High Court has, thus committed no illegality or material irregularity while passing the impugned judgments, as such, the same warrant no interference by this Court in its constitutional jurisdiction.”

18. In the present case, we have gone through the material available on record which reveals that the petitioner is facing different charges in special case pending trial in Anti-Corruption Court Karachi from the charges alleged in reference pending in Accountability Court Hyderabad. The subject matter pending trial in both courts are in respect of disposals of different properties situated in different cities at different timings, which he disposed of in the capacity of liquidator of SPCB Lt. Karachi, However, as far as properties situated at Hanifia Bai Building are concerned, as per learned counsel for NAB, there were many different properties situated in Hanifia Bai building which were disposed of by the petitioner at different times. He is also facing charges in respect of misappropriation of amount in different Bank accounts. Both the cases are pending trial and none of them has been concluded. As for the allegations leveled against him in call upon notices are, the same are different in nature and are still under enquiry/investigation stage. If we concede to the arguments of learned counsel for petitioner that the allegations are same in nature, yet section 403 Cr.P.C. and Article 13 of constitution of Pakistan would not be

attracted. Article 13 provides protection against double prosecution and punishment against the offence which has already been concluded, whereas the cases against present petitioner have not been concluded, therefore, we are of a considered view that the case of petitioner does not fall within the purview of Article 13 of Constitution of Pakistan or section 403 Cr.P.C., therefore, we dismissed this petition.

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