

**IN THE HIGH COURT OF SINDH, KARACHI.**

**Before:-**  
**Mr. Justice Muhammad Iqbal Kalhoro.**  
**Mr. Justice Shamsuddin Abbasi**

**Constitutional Petition No.D-1726 of 2020**

Syed Nasir Abbas

**Vs.**

National Accountability of Bureau (NAB)

**Constitutional Petition No.D-5365 of 2020**

Syed Ubaid Ahmed

**Vs.**

National Accountability of Bureau (NAB) & another

**Date of Hearing** : 18.11.2020  
**Date of order** : 18.11.2020

Mr. Aamir Raza Naqvi, advocate for the petitioner in C.P. No.D-1726/2020  
 Mr. Shabeeh Ishrat, advocate for petitioner in C.P. No.D-5365/2020  
 Mr. Shahbaz Sahoootra, Special Prosecutor NAB

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**ORDER**

**Muhammad Iqbal Kalhoro, J:-** Petitioners, accused in Reference No.07/2018 before learned Accountability Court No.IV at Karachi, faced with dilemma of vague response from Investigating Officer (IO) to the questions in cross examination filed an application before the trial court seeking directions for him to bring police file for refreshing his memory for replying the questions properly and aptly in the interest of justice. This application has been decided vide impugned order in the manner whereby the trial court has allowed the request to the extent of bringing police file by I.O. for refreshing his memory but at the same time has declined a request calling for case diaries.

2. Essentially, it is this distinction made by the trial court between the case diaries and the police file, which has prompted the petitioners to file these petitions. Learned defence counsel have submitted that the learned trial court was requested to call for the case diaries only for the purpose of enabling I.O. to refresh his memory for replying the questions in cross examination properly and aptly so that interest of justice could be served well, which is exactly the scheme u/s 172(2) Cr. P.C. that permits the police official to use the case diaries for refreshing his memory.

3. Learned Special Prosecutor, NAB, has however, disagreed with the learned defence counsel.

4. After hearing both the parties and perusing the material including the impugned order, we have come to view that distinction between the case diaries and the police file treating the former as distinctive material by the learned trial court is not in accordance with law. In one breath, it has directed the I.O. to bring the police file, which shall necessarily contain the case diaries, for refreshing his memory and in second breath it has scuttled its own observation by dismissing the request calling for the case diaries. It skips our understanding to construe the case diaries as a separate entity from the police file. Further the contextual background of the application, i.e. I.O's indistinct replies to certain questions in cross examination entailing a reminder to him for refreshing memory for replying properly was also completely ignored by the trial court while passing the impugned observation. We in the circumstances, allow these petitions in the terms and for the purpose as stated above. Let I.O. of the case use the case diaries for refreshing his memory, if required.

Rafiq/P.A.

JUDGE

JUDGE