

IN THE HIGH COURT OF SINDH, KARACHI

C. P No. 841 of 2022

Date Order with signature of Judge

**Present: *Mr. Justice Muhammad Junaid Ghaffar*
*Mr. Justice Agha Faisal***

Petitioner: **Gulab Khan,
Through Mr. Muhammad Rehman
Ghous, Advocate.**

Respondents **Chairman National Accountability
Bureau & Others,
Through Mr. Shahbaz Sahotra, Special
Prosecutor NAB.
Mr. Syed Yasir Shah, Assistant
Attorney General.
Mr. Muhammad Shafiq I.O. NAB.**

Date of hearing: **12.09.2022**
Date of Order: **12.09.2022.**

ORDER

Muhammad Junaid Ghaffar, J: Through this Petition, the Petitioner has impugned order dated 17.01.2022 passed by the Accountability Court No. II at Karachi in Reference No. 11 of 2018, (*The State v Gulab Khan & Others*), whereby, the application filed by the Petitioner under Section 265-K Cr.P.C has been dismissed.

2. Learned Counsel for the Petitioner submits that the learned trial Court has failed to appreciate the fact that various other co-accused have already been acquitted by the same trial Court under Section 265-K Cr.P.C; that petitioner had always acted in accordance with the bye-laws of the Association and by following the mandate of the KPT Act; hence, did not commit any offence as alleged; that the Hon'ble Supreme Court in its case reported as *Naimatullah Khan Advocate Vs. Federation of Pakistan* (2020 SCMR 513) taking a Suo Motu notice has already cancelled the allotment of land to the KPT Officers Housing Society and therefore, the case cannot proceed any further before the NAB Court; that the NAB court had no jurisdiction to proceed with the case as it falls within the domain of the Societies Act; hence, the application under Section 265-K Cr.P.C merits consideration and be allowed.

3. On the other hand, learned Special Prosecutor NAB has opposed this application on the ground that the Petitioner is the principal accused and he was the Secretary of the Society, whereas, this is a matter of

evidence that as to whether the Petitioner was involved in any crime or not.

4. We have heard the Petitioner's Counsel as well as learned Special Prosecutor NAB and perused the record.

5. It appears that Reference No. 11 of 2018 (*The State v Gulab Khan & Others*) was filed by NAB before the Accountability Court at Karachi; wherein, it had alleged the following against present Petitioner:-

“4. -----

a. The accused No. 1 & 2 namely Gulab Khan and Ahmed Pervaiz Younsi, the then Secretary and Chairman, KPTOCHS, respectively illegally and malafidely allotted 16 FL Sites / Commercial plots to different allottees without advertisement in newspapers and following due procedure of auction and competitive bidding. The accused No. 1 further manipulated the Minutes of Meetings of Management Committee by inserting the decisions of allotments, despite the fact that no such decisions were taken in the respective meetings. Moreover, he signed allotment letters and executed lease deeds in favour of these allottees.”

6. Pursuant to the filing of Reference the matter is now proceeding before the trial Court and in between the Petitioner had filed an application for quashment of proceeding which has been dismissed through the impugned order. Insofar as the acquittal of other co-accused by the trial Court by way of an application under Section 265-K Cr.P.C is concerned, admittedly, those persons were the allottees of the plots in question, whereas, the present Petitioner was the Secretary of the Karachi Port Trust Officers Cooperative Housing Society; hence, admittedly the role assigned to the Petitioner is different than the other accused persons who stand acquitted. To that extent this ground does not hold field and the benefit of the same cannot be granted to the Petitioner.

7. Insofar as the allegation as contained in the Reference and whether the Petitioner acted bonafidely and pursuant to the KPT Act or under the bye-laws of the Society is concerned, we may observe that this is a question which requires evidence and this Court cannot, at the present stage grant any such application for quashment of the proceedings. While confronted, Petitioner's Counsel has vehemently argued that this is a legal question and therefore, can always be considered. However, we are not inclined to agree with such contention inasmuch as the Petitioner was admittedly the Secretary of the Society in question and there is allegation to the effect that he manoeuvred the allotment of the plots in question, and therefore, we, at this stage of the proceedings without a full-fledged trial

and recording of evidence are not in a position to hold that the Petitioner was not involved in the alleged crime.

8. Though an accused can be acquitted under Sections 249-A and 265-K Cr.P.C., at any stage of the proceedings, if the Court considers that the charge is groundless or that there is no probability of conviction; however, each case must be judged on its own special facts and circumstances, whereas, if there is remote possibility of conviction then of course courts are not empowered to invoke the said provisions¹. Per settled law an application under section 265-K Cr.P.C., should not normally be pressed into action for decision or fate of a criminal case especially when apparently there is probability of conviction after recording evidence². It is always desirable that as and when an application is moved for quashment of a case in terms of section 265-K Cr.P.C., for which though there is no bar and can be moved at any stage of the proceedings, yet the fact and circumstances of the prosecution case will have to be kept in mind and considered in deciding the viability or feasibility of filing of such an application at any particular stage³. Reliance may also be placed on the cases of *Azam Malik*⁴, *Muhammad Sharif*⁵ and *Ghulam Farooq*⁶.

9. In view of hereinabove facts and circumstances of the case, we do not see any reason to interfere with the order already passed by the trial Court on the quashment application of the Petitioner under Section 265-K Cr.P.C. and therefore, by means of a short order in the earlier part of the day, we had dismissed instant Petition and above are the reasons thereof.

J U D G E

J U D G E

Arshad/

¹ Per Sardar Tariq Masood, (judgment dated 18.05.2022 in Criminal Petition No.209 of 2018 and other connected matters)

² Bashir Ahmed v Zafar Ul Islam (PLD 2004 SC 298)

³ The State v Raja Abdul Rehman (2005 SCMR 1544)

⁴ PLD 2005 SC 686

⁵ PLD 1999 SC 1063

⁶ 2008 SCMR 383