

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-6399 of 2015

Present:

Mr. Justice Zafar Ahmed Rajput
Justice Mrs. Rashida Asad

- Petitioners : Al-Abid Silk Mills Ltd., Reena Azim,
No.1, 7, 8 & 9 Asra Amir & Azim Ahmed, respectively,
through Mr. Ovais Ali Shah Advocate.
- Petitioner No.2 : Naseem Abdul Sattar, through
Mr. Ali Mehdi, Advocate.
- Petitioners : S.M. Jawed Azam, Zareena Naseem,
No.3, 4, 5 & 6 Adia Naseem & Sadaf Nadeem, respectively
(*Nemo*)
- Respondent No.1 : Governor State Bank of Pakistan (**SBP**),
through Mr. Muhammad Qassim, Deputy
Attorney General for Pakistan (**DAG**), along
with Mr. Manzoor-ul-Haq, Law Officer, SBP
- Respondent No.2 : National Accountability Bureau (**NAB**),
through its Chairman, through Mr. Syed
Dilshad Hussain Shah, Special Prosecutor
NAB.
- Respondents : Jahangir Siddiqui Bank Limited (**JS Bank**)
No.3 & 5 & Summit Bank Limited (**Summit Bank**),
respectively, through Mr. Abid Hussain,
Advocate.
- Respondent No.4 : The Bank of Punjab (**BoP**) (*Nemo*)
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- Date of hearing : 03.04.2024
Date of order : 03.04.2024
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ORDER

ZAFAR AHMED RAJPUT, J: Through instant petition, the petitioners, *inter alia*, seek the following relief(s):

- i. *To declare that the Show Cause Notices dated 06.06.2014, 19.09.2014 and 31.10.2014 issued to the Petitioners pursuant to Section 31-D of the NAB Ordinance by the Respondent No.1 on the complaint of the Respondent Nos. 3 to 5 and any/all subsequent proceedings consequent thereof or in connection thereto by the Respondent No.2, including but not limited to, the arrest of the Petitioners, are completely illegal, unlawful, mala fide, without jurisdiction and to no legal effect;*
- ii. *To suspend the operation of the Show Cause Notices dated 06.06.2014, 19.09.2014 and 31.10.2014 issued to the Petitioners pursuant to Section 31-D of the NAB Ordinance by the Respondent*

No.1 and/any all subsequent proceedings initiated by the Respondent No.2 in connection therewith until the final disposal of the present Petition;

- iii. To permanently restrain the Respondent Nos. 1 and 2 and their officers from taking any further action against the Petitioners on the basis of the Show Cause Notices dated 06.06.2014, 19.09.2014 and 31.10.2014 and/or from taking any further coercive measures against the Petitioners including any arrests until the final disposal of the present Petition;*
- iv Quash the reference No.46 of 2015 filed by the Respondent No.2.*

2. Briefly stated facts of the case, as narrated in the memo of petition, are that the petitioner No. 1 is a Public Limited Company engaged in the manufacturing and export of home textile products to international retailers. It availed finance facility from respondent No. 3/JS Bank in 2011 and executed certain securities in favor of the respondent No. 1/SBP. In February 2013, the respondent No. 2/NAB, initiated an inquiry against the petitioners, allegedly bypassing statutory requirements of Section 31-D of the National Accountability Ordinance, 1999 (NAO), based on a complaint by the JS Bank. Petitioners challenged the alleged inquiry in Constitutional Petition No. D-720 of 2013, which was allowed by a Division Bench of this Court, vide judgment dated 07.05.2013, quashing the proceedings. Petitioners also filed Suit No. B-42 of 2013 against the JS Bank, seeking declaration, permanent injunction, rendition of accounts, etc. JS Bank also filed Suit No. B-76 of 2013, seeking recovery under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (FIO 2001). During pendency thereof, the JS Bank issued a notice, dated 04.06.2013, to pay Rs. 335.105 million along with the cost of funds within 30 days. Later, the SBP, based on a complaint from the JS Bank, issued separate Show Cause Notices (SCNs) dated 06.06.2014 to the petitioners to initiate criminal proceedings against them. The petitioners submitted a joint reply on 12.06.2015, pointing out that civil suits on the same subject were pending between the same parties and that the SCNs violated the Division Bench's order in C.P. No. D-720 of 2013, however their pleas allegedly were not considered by the SBP.

3. The petitioner No. 1 also availed finance facility from the respondent No. 4/BoP, which also led to a similar dispute regarding the repayment of liability, resulting in the filing of Suit No. B-95 of 2013 under FIO 2001 by the BoP before this Court, wherein the petitioners filed an application for leave to defend. During pendency thereof, the BoP issued a notice, dated 22.10.2013, under Section 9(a)(viii) read with Section 5(r) of the NAO, demanding payment of Rs. 434.400 million with markup, which was responded by the petitioners. Thereafter the BoP filed a complaint with the SBP, based on which a separate SCN, dated 31.10.2014, under Section 31-D of the NAO, was issued against them. The petitioners submitted a written response, dated 12.11.2014, informing the SBP that Suit No. B-95 of 2013 was still pending, and the question of 'willful default' did not arise, but the SBP did not respond.

4. The petitioner No.1 also availed finance facility from the respondent No.5/Summit Bank, resulted in similar consequences to those mentioned above. Summit Bank served a 30-days demand notice, dated 04.06.2013, upon the petitioners for payment of Rs. 433.796 million, which was responded vide letter, dated 24.06.2013. Later, the Summit Bank filed Suit No. B-84/2013 before this Court against the petitioners for recovery of the said amount, wherein leave to defend was granted to petitioners. Thereafter, the SBP, on the basis of a complaint filed by the Summit Bank, issued SCNs, dated 19.09.2014, against the petitioners to initiate criminal proceedings in terms of Section 5(r) and 31-D of the NAO, which were responded by them vide letters, dated 27.09.2014 and 29.09.2014, requesting the SBP to withdraw the notices. It is under these circumstances that the instant petition has been filed.

5. It is pertinent to mention here that pursuant to the order dated 28.11.2023, allowing CMA No.22529/2022, under Order VI, rule 17, C.P.C., an amended petition was filed by the petitioners, *inter alia*, stating that although, vide order

dated 15.10.2015, the respondents were restrained from taking any action in connection with the impugned SCNs, the NAB proceeded further and filed Reference No. 46/2015 (*The State v/s. Naseem Abdul Sattar & Others*) under Sections 9 & 10 of the NAO. Subsequently, vide order dated 28.01.2016, passed on CMA No. 139/2016, filed by the petitioners, the Reference proceedings pending in the National Accountability Court No. II, Karachi (**Accountability Court**) were stayed. It is claimed that after the promulgation of the National Accountability (Amendment) Act, 2022, NAB no longer has jurisdiction to take cognizance of matters related to private individuals.

6. Learned counsel for the petitioners has contended that the impugned SCNs issued by the SBP at the behest of respondents Banks and the subsequent actions taken by the NAB are unconstitutional, unlawful, and void ab initio, thus liable to be set aside; that these actions violate the fundamental rights of the petitioners as enshrined under Articles 10-A, 12, 13, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 and contravene the principles of natural justice; that the liability of the petitioners under the FIO 2001, is under adjudication before the competent forum, hence, the petitioners cannot be labeled as "willful defaulters" under Section 5(r) of the NAO, as such, the SCNs and related complaints are premature, illegal, and without jurisdiction; that disputes between a financial institution and its borrower fall exclusively within the jurisdiction of the Banking Court under the FIO 2001 and, therefore, any attempt to invoke the NAO before the final determination by a Banking Court was without lawful authority; that whatever liabilities the financial institution claimed that has been settled in the Banking Suits by way of compromise and the proceedings under the NAB Reference filed in violation of interim order passed by this Court is liable to be quashed.

7. Learned DAG appearing for the respondent No.1/ *SBP*, has asserted that the petition is false, frivolous, and improperly filed due to a mis-joinder of necessary parties, making it liable to be dismissed; that under Section 31-D of the NAO, the Governor of SBP is empowered to refer cases to the NAB regarding imprudent, defaulted, or rescheduled bank loans, but only upon a request from the concerned financial institutions, which, in this case, had been received from JS Bank, Summit Bank, and the BoP; that all actions taken by the SBP have been in accordance with the law, thereby negating any violation of the petitioners' fundamental rights; that the SCN dated 06.06.2013 does not contravene the Court's order dated 07.05.2013 in C.P. No. D-720 of 2013, as the previous case involved NAB-initiated inquiry proceedings without a reference from the Governor SBP, whereas in the present case, after the order, JS Bank Limited had requested a Reference to NAB due to the willful default of the petitioners, leading to the issuance of the SCN under Section 5(r) of the NAO; that it is a settled principle of law that criminal and civil proceedings can be instituted simultaneously by the aggrieved party, with each case to be decided on its merits; that the proceedings under the FIO 2001, being civil in nature, and the proceedings under the NAO, being criminal in nature, may run concurrently, and the proceedings initiated under the NAO will not affect the outcome of civil proceedings; that there is no cause of action against SBP, as all actions were carried out in accordance with the law.

8. Learned Special Prosecutor appearing for respondent No.2/**NAB** has maintained stated that the instant petition is not maintainable under the law as it raises disputed questions of fact that cannot be resolved by this Court within the scope of Article 199 of the Constitution; that in the instant case, the SBP, with lawful authority, filed the complaint, and the NAB lawfully proceeded therein; that civil and criminal matters may proceed simultaneously, and there is no bar under NAO in this regard; and that the petitioner lacks a valid cause of action to

invoke this Court's constitutional jurisdiction, rendering the petition legally flawed, misconceived, mala fide, and liable to be dismissed. He has admitted the fact of settling the disputes by the respondents Bank with petitioner but has contended that pursuant to the reference forwarded by the Governor of SBP regarding the alleged commission of willful loan default by the petitioners, the Reference filed by NAB before the Accountability Court is pending adjudication. Hence, NAB is not in favor of the settlements, as the option of a plea bargain under Section 25(b) of NAO is available for returning the defaulted amount to the petitioners, whereas the settlement amount is significantly lower than the liability identified in the Reference.

9. Learned counsel appearing for respondents No.3 & 5/Banks while referring joint statements dated 07.12.2022 have maintained that the respondents Bank have already settled their disputes by entering into compromise and such Compromise Decree in Banking Suits have been passed by the Court. They have also submitted that the respondents No.3 & 5/Banks have no further grievance against the petitioners.

10. Heard, record perused.

11. It may be relevant to mention here that none has made his appearance on behalf of the respondent No.4/ BoP; however as per joint statement, dated 07.12.2022, the grievance of said respondent Bank has been resolved by the petitioners by executing additional, Mortgage of immovable property.

12. It is an admitted position that there are three separate statements filed jointly by the petitioners and respondent Nos. 3 & 5 (*JS Bank and Summit Bank, respectively*), the petitioners and respondent No. 4 (*BoP*), and the petitioners and respondent No. 3 (*JS Bank*), which reflect that the financial disputes between the petitioners and the respective banks have been settled. It is a matter of record that vide order dated 15.10.2015 notice was ordered to be issued to the respondents,

DAG and Prosecutor General NAB with directions that no further proceedings on the basis of impugned notices shall be initiated against the petitioner. However in utter defiance of the said order the respondent NAB submitted the subject Reference No.46/2015 against the petitioners. Hence, vide order dated 28.01.2016, this Court, while issuing notice to the alleged contemnor No.2, stayed the proceedings under the said Reference before the Accountability Court. It also appears from the record that the respondent financial institutions have entered into compromise with the petitioner No.1 in Banking Suits, consequently the Banking Suits filed against the petitioner(s) have been decreed in terms of compromise; hence the issue of “willful default” is no more in field. So far as the objection of learned Special Prosecutor NAB regarding settlement amount being lower than the liability identified by the NAB is concerned, suffice it to say that it is sole discretion of the financial institution to settle the liabilities with the borrowers/customers as per the terms and conditions settled and agreed by them.

13. In view of the above, the instant petition is allowed, as prayed, by quashing the proceedings under NAB Reference No.46/2015 filed by the respondent NAB in defiance of this Court’s order dated 15.10.2015. The pending applications also stand disposed of.

Above are the reasons of short order dated 03.04.2024.

JUDGE

JUDGE

(Retired on 21.08.2024)

Karachi:
Dated: 21.09.2024
Tahseen/PA