

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Appln No.192 of 2020.

Date: Order with signature(s) of the Judge(s)

1. For Orders on Office Objections at 'A'
2. For Hearing of Main Case.

25th June, 2021.

Mr. Nawab Deen advocate for the applicant.
Mr. R.D. Kalhoro, Spl. Prosecutor NAB.
Mr. Hussain Bux Baloch, Additional P.G. Sindh.

At the outset learned Special Prosecutor NAB contends that Anti-Corruption Court was not competent to transfer the case pending to NAB Court while holding that the matter pertain to NAB jurisdiction and only Anti-Corruption Court was competent to decide 16-A application filed by NAB authority that was not filed. Learned Additional P.G. Sindh also contends that impugned order is not in accordance with law and plea of learned Addl. P.G. supported by judgment passed in Cr. Accountability Appeal No.06/2019 by Division Bench of this court. It would be conducive to refer relevant para, which reads as under:

"8. It is obvious that the Accountability Court would assume jurisdiction to try a case under the NAO, 1999, when the reference is filed before it. There appears no other form in the said provision of law or in the entire Ordinance whereby a case be brought on the file of the Accountability Court for trial. This disposition also stands fortified by Section 18 of NAO, 1999, which in clear terms provides for that Accountability Court shall not take cognizance of any offence under the Ordinance except on a reference made by the chairman NAB or an officer of the NAB duly authorized by him. This provision of law is couched in the negative language which unless the context would otherwise require shall be considered as mandatory in nature and not directory. Meaning thereby that prosecution in the Accountability Court shall be started only on a reference filed by the Chairman NAB therein and not otherwise. Because it is a settled law that when a mandatory condition for the court to exercise the jurisdiction is not satisfied, the entire proceedings that ensue shall become coram non judice. However, the only exception to above enabling the Accountability Court to

assume jurisdiction otherwise has been provided under Section 16A NAO, 1999 whereby the chairman NAB can apply to any court or Tribunal for transfer of any case pending before it to the Accountability Court on the ground that it involves an offence which is triable under the Ordinance. It is to be noted that on such transfer, which cannot be refused by such court or tribunal in the said context, the case would be deemed to be a reference under Section 18 of NAO, 1999, and hence, the Accountability Court will have jurisdiction to hold trial therein. It may be added that in such event, where the case is transferred to the Accountability Court, it shall not be necessary for it to recall any witness or again to record any evidence that may have been recorded'.

Accordingly, impugned order is set-aside and case shall be treated as pending before Anti-Corruption Court Karachi.

In view of above instant Cr. Misc. Application is disposed of.

M.Zeeshan

JUDGE