

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Syed Fiaz ul Hassan Shah

**Criminal Accountability
Acquittal Appeal No. 04 of 2017
[The State through Chairman NAB
vs. Dr. Asghar Abbas Sheikh & Others]**

Appellant : through Syed Meeral Shah,
Special Prosecutor, NAB.

Respondent No.3 : through Ms. Amna Usman,
Advocate.

Respondent No.4 : through Mr. Shaukat Hayat,
Advocate.

: Mr. Muhammad Iqbal Awan,
Additional Prosecutor General

Date of Hearing : 19.08.2025

Date of Decision : 22.10.2025

JUDGMENT

Omar Sial, J.: On 10.03.2017, the learned Accountability Court No. II at Karachi acquitted Dr. Asghar Abbas Sheikh, Muhammad Shahryar Khan Afridi, Syed Imran Ahmed, Dr. Kamran, and Muhammad Waseem (the answering respondents in this acquittal appeal), who were accused in Reference No. 15 of 2016. The National Accountability Bureau filed an appeal in this Court against the judgment dated 10.03.2017 on 03.04.2017. The first hurdle for NAB to cross, therefore, was the bar of limitation.

2. The record shows that the judgment was announced on 10.03.2017. NAB applied to obtain a certified copy, the very same day, i.e., 10.03.2017. Costs were assessed the same day, and NAB was informed accordingly. It was, however, not until 31.03.2017 that the cost was paid and a certified copy was obtained the same day. The appeal, as also mentioned above, was filed on 03.04.2017.

3. When the appeal was filed, section 32 of the Nationality Accountability Ordinance, 1999 stipulated that it should be filed within ten days of the final judgment. Admittedly, this was not done by NAB. The cost for the certified copy was paid after the expiry of the limitation period.

4. The National Accountability (Amendment) Act 2022 was enacted on 22.06.2022, which amended section 32 of the Ordinance and increased the period to file an appeal from ten days to thirty days. The only argument raised before us by the learned Special Prosecutor, NAB, is that limitation will not be a bar, as section 1 of the Amendment Act gave the 2022 amendment a retrospective effect and made the amendment applicable from the commencement of the Ordinance, hence the appeal was filed within time. Learned counsel for the appellants disagreed. According to them, the 2022 amendment will not apply to what they termed as “past and closed transactions”.

5. We have heard the counsels. Our findings and observations are as follows.

6. It is correct that the period of limitation to file an appeal was increased retrospectively from ten to thirty days vide the 2022 Amendment Act. The law of limitation primarily falls within the realm of procedural laws. Reference may be made to **Commissioner of Income Tax, Central Zone v. Karachi Asbestos Cement Industries Limited, Karachi, 1993 SCMR 1276**. Procedural laws are defined as, *“the rules that prescribe the steps for having a right or duty judicially enforced, as*

opposed to the law that defines the specific rights or duties themselves.” (Black’s Law Dictionary, 12th ed.) It is because limitation prescribes the time for the enforcement of a right and does not create a right in and of itself that the courts lean towards applying it retrospectively. Therefore, had the NAO been amended to increase the appeal period within 10 days in which the appeal had to be filed, NAB could have taken the advantage of the amendment. This was not so. The amendment came well after the lapse of the appeal period.

7. When a limitation period expires a vested right stands created. Reliance in this regard is placed on **Muhammad Faisal v. Commissioner Inland Revenue (2025 SCMR 930)**. In such a scenario, limitation would then fall within the ambit of substantive law which means that it becomes, *“part of the law that creates, defines, and regulates the rights, duties and powers of parties.”* (Black’s Law Dictionary, 12th ed.).

8. The courts have consistently held against the retrospective application of limitation where vested rights have accrued. In **Nagina Silk Mill, Lyallpur vs The Income Tax Officer (PLD 1963 SC 322)**, it was observed that *“courts must lean against giving a statute retrospective operation on the presumption that the Legislature does not intend what is unjust. It is chiefly where the enactment would prejudicially affect vested rights or the legality of past transactions. Or impair existing contracts, that the rule in question prevails”*.

9. The only exception to this is when the parliament by necessary intendment and clear express terms requires that the amendment be applied retrospectively despite the accrual of vested rights. In **Muhammad Hussain & others v. Muhammad & others (2000 SCMR 367)**, it was observed that the parliament has the all-encompassing power to diminish vested rights, *“but to provide for such consequences, the Legislature must use words which are clear, unambiguous and are not capable of any other interpretation or such interpretation follows*

as a necessary implication from the words used in the enactment. Therefore, while construing a legislation which has been given retrospective effect and interferes with the vested right of the parties, the words used therein must be construed strictly and no case should be allowed to fall within the letter and spirit of the Act which is not covered by the plain language of the legislation.”

10. In the said case, the period of limitation for filing of suits was curtailed retrospectively. The Court held that though the Act under consideration had been amended retrospectively, the words used therein were not wide enough to cover pending proceedings.

11. It is also a well-settled position that a subsequent change in the law cannot affect past and closed transactions. Reference in this regard may be made to **Ahmad Ali Khan vs Muhammad Raza Khan and others (1977 SCMR 12)**. In **East Pakistan vs Shrafatullah and others (PLD 1970 SC 514)**, it was reiterated that *“a statute cannot be read in such a way as to change accrued rights, the title to which consists in transactions past and closed or in facts which are events that have already occurred. The Court observed, “in other words, liabilities that are fixed or rights that have been obtained by operation of law upon facts or events for or perhaps it should be said against which existing law provided are not to be disturbed by a general law governing future rights and liabilities unless the law so intends.”*

12. A similar situation (as in this case) arose before the Supreme Court in **Chief Land Commissioner vs Ghulam Haider Shah (1988 SCMR 715)**. The Court observed that *“to resolve this doubt, the matter naturally falls within the domain of interpretation by the Court to determine whether the law as amended will also be applicable to past and closed questions”*. The Court held that *“the main and primary rule is that every statute is deemed to be prospective, unless by express provision or necessary intendment it is to have a retrospective*

effect. Also, the rule that no statute shall be construed so as to have retrospective operation affecting vested rights to a greater extent than its language renders.”

13. The position that emerges from the above review is that procedural laws have retrospective operation but that retrospective laws cannot take away or impair vested rights, unless the legislature has expressly or by necessary implication intended it.

14. In the subject case, no specific mention has been made in the Amendment Act 2022 to the effect that the parliament intended to obfuscate vested rights. In fact, after the 2022 Amendment Act, the NAB Ordinance was amended again on 29.05.2023 through the National Accountability (Amendment) Act 2023. Section 2(ii)(f) of this Act provided that: *“all final orders, decisions or judgments passed by the Court before the commencement of the National Accountability (Amendment) Act, 2022 (XI of 2022), the National Accountability (Second Amendment) Act, 2022 (XVI of 2022) and the National Accountability (Amendment) Act, 2023 (XXIV of 2023), shall remain in force and operative unless reversed, notwithstanding anything contained in sub-section (2) of Section 1 each of the National Accountability (Amendment) Act, 2022 (XI of 2022), the National Accountability (Second Amendment) Act, 2022 (XVI of 2022) and the National Accountability (Amendment) Act, 2023 (XXIV of 2023).”*

15. There is no doubt that the Amendments to the NAO 1999 were expressly given a retrospective effect. We are of the view, however, that the legislature did not intend to take away vested rights by giving the Amendments a retrospective effect. This is clear from the language of Section 2(ii)(f) of the 2023 Amendment (reproduced above) which stipulates that *all final orders, decisions or judgments passed by the Court before the commencement of the National Accountability (Amendment) Act, 2022 (XI of 2022), the National Accountability (Second*

Amendment) Act, 2022 (XVI of 2022) and the National Accountability (Amendment) Act, 2023 (XXIV of 2023), shall remain in force and operative unless reversed. The case of the Respondents was a past and closed transaction, and vested rights stood accrued, which did not stand vitiated by the subsequent amendment. The acquittal order had reached finality when NAB did not file an appeal within the stipulated time of ten days. NAB's lack of interest in the matter is reflected by the fact that, at the time of filing the appeal, in fact, till we reserved this case for judgment, an application under section 5 of the Limitation Act, 1908, seeking condonation of delay and laying out reasons for the delay was not filed. NAB cannot be given a premium for its own negligence.

16. The appeal is dismissed.

JUDGE

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