

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P. No.D-545 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE(s)

For orders on office objections.
For hearing of M.A. No.2768/2023.
For hearing of main case.

26.04.2023.

Mr. Farooq H. Naek advocate for the petitioners.

Mr. Jangu Khan Special Prosecutor NAB along with Abdul Fatah Deputy Director NAB I.O. of the case.

ORDER

MUHAMMAD IQBAL KALHORO, J:- By making a reference to the National Accountability (Amendment) Act, 2022, and the National Accountability (Second Amendment) Act, 2022, the petitioners, standing a trial before the Accountability Court No.1 Hyderabad in Reference No.01/2020, have filed this petition for, among others, transfer of the said Reference to the Department / Authority / Court having jurisdiction to adjudicate upon the matter. They filed a similar application before the trial court, which has been dismissed vide impugned order dated 07.03.2023.

The subject reference contains allegations against the petitioners mainly of commission of money laundering punishable under Section 03 of the Money Laundering Act, 2010 and offences of corruption and corrupt practices as defined u/s 9 (a), (v), (xi) & (xii) of the National Accountability Bureau Ordinance, 1999 (*hereinafter referred to as "NAO, 1999"*). It is revealed in the reference that investigation against petitioner No.1 and his group of companies i.e. Associate Group Pvt. Ltd., started on a report of suspicious transactions whereby billions of rupees were credited into corporate and personal accounts and accounts in foreign banks indicating higher than actual sale / revenue of companies: doing business involving LPG and CNG besides, Power companies, Media companies and associated organizations. Petitioner No.1 is Chief Executive Officer/ head of the such companies followed by his sons, brother

and others. Allegedly during period of 2011 to 2019 the companies maliciously declared sale of Rs.72 billion and Rs.22 billion respectively, which is higher than the actual sale, with sheer intention to mask up injection of black money into corporate bank accounts of the associate companies. Along with the necessary details reflecting actual figures of sale of LPG etc. against the declared figure of sale of LPG, it has been declared in the reference that petitioners have laundered an amount of more than Rs.16 billion in the following manner:-

“a. The loss related to JJVL by accepting the sales as Rs.72 billion is Rs.16.54 billion. However, on actual sale it would be more than 22 billion.

b. The loss identified against Lub Gas is Rs.7.7 billion.

c. The loss identified Mehran LPG for cash is Rs.625 million.

d. The loss of Iqbal Z Ahmed’s personal accounts is Rs.4.069 billion.

e. Total loss is Rs.16.54+7.7+0.625+4.069 =Rs.28.995 billion.”

Summing up the gist of allegations against the petitioners, the I.O. in paragraph No.2 of the reference has declared as under:-

“2. That the case has been established against the accused No.1 to 6 through oral as well as documentary evidence on the allegations as under:

a. Corruption and Corrupt practices / Money Laundering which fall under section 9(a), (v) of the NAO, 1999 and section 3 of AMLA, 2010.

b. Exaggerated declaration of sale / revenue against the actual sale with intention to mask the illicit money.

c. Malicious gains of unauthorized dividend obtained through artificially enhanced financial accounts of JJVL, Lub and Mehran LPG.

d. Loss to national exchequer by declaring less production of LPG and NGL and sale of same at more than 200% margins.

e. Layering of funds from one company to others to hide the possible origination of illicit / ill gotten money.

f. Involvement of low-level staff in deposit & withdrawal of heavy cash transaction in order to conceal true identity of conductor of transactions.

g. Unjustified cash turnover / transactions up to the tune of Rs.10 billion.”

Learned defence counsel has argued that by virtue of recent amendments in NAO, 1999, the allegations set out in reference against the petitioners do not stand any chance of success in the Court of law as neither any public office is involved, nor any loss to national exchequer has accrued. The transactions alleged against the petitioners have been exempted, and are covered under the two amendments brought about in the NAB law; that even provisions of money laundering against the allegations of showing bloated sale against actual sale are not attracted, for, no predicate offence as required under the provisions of Anti Money Laundering Act, 2010, has been alleged in this case or found to have been committed by the petitioners, as an instrument to earn the money from and inject in the subject business.

Learned Special Prosecutor NAB and I.O. of the case have admitted that in this case none of the petitioners is a public office holder and that government money is not involved and in fact no loss to national exchequer has occurred. Regarding allegations of money laundering, it has been conceded by them that there is no predicate offence alleged against the petitioners to give rise to allegations of money laundering. The I.O. submits that he had submitted the material before the Chairman NAB u/s 18 (g) of NAO 1999 and the Chairman NAB had decided to file reference against the petitioners. They have given no objection if the reference is withdrawn from file of the trial Court and sent to the Chairman NAB through I.O. for passing appropriate orders.

We have considered submissions of the parties and perused material available on record. The first amendment in NAO 1999 was brought about on 22.07.2022 through an Act titled as ‘the National Accountability (Amendment) Act, 2022’ whereby in Section 4 following clauses, among others, have been substituted:-

“4. Application.—(1) This Ordinance extends to the whole of Pakistan and shall apply to all persons, including those persons who are or have been in the service of Pakistan, except persons and transactions specified in subsection (2).

(2) The provisions of this Ordinance shall not be applicable to the following persons or transactions, namely:—

(a) all matters pertaining to Federal, Provincial or Local taxation, other levies or imposts, including refunds, or loss of exchequer pertaining to taxation;

(b)

(c) any person or entity who, or transaction in relation thereto, which are not directly or indirectly connected with the holder of a public office except offences falling under clauses (ix), (x) and (xi) of sub-section (a) of section 9;

(3) Upon the National Accountability (Amendment) Act, 2022, coming into force, all pending inquiries, investigations, trials or proceedings under this Ordinance, relating to persons or transactions mentioned in clause (a) of sub-section (2), shall stand transferred to the concerned authorities, departments and Courts under the respective laws.”

The second amendment in NAO, 1999 was introduced on 12.08.2022 through an Act called as ‘the National Accountability (Second Amendment) Act 2022’, Section 2 thereof has amended the Section 4 of NAO, 1999, in the following terms:-

“2. Amendment of section 4, Ordinance XVIII of 1999.- In the National Accountability Ordinance, 1999 (XVIII of 1999), hereinafter referred to as the said Ordinance, in section 4, in subsection (2),-

(iv) in clause (f), for full stop at the end, a semi colon and the word "and" shall be substituted and thereafter the following new clause (g) shall be added, namely:-

"(g) all matters where the funds, property or interest not involving or belonging to the appropriate government, except for the offences under clauses (ix), (x) or (xi) of sub-section (a) of section 9.”

Both the subject Acts i.e., the first amendment Act and the second amendment Act as referred above speak of their applicability to have taken effect on or from the commencing of National Accountability Ordinance, 1999. In Section 02 of the first amendment Act, it has been clearly provided that this Ordinance will extend to whole of Pakistan and shall apply to all persons including those persons who are or have been in service of Pakistan, except persons and transactions specified in sub-section (2). Sub-section (2)

indicates that the matters pertaining to Federal, Provincial or Local taxation, other levies or imposts, including refunds, or loss of exchequer pertaining to taxation have been excluded from the purview of NAB law, besides decision of Federal or Provincial Cabinet etc. except where holder of public office has received a monetary gain as a result of such decision; and in respect of any person or entity who, or transaction in relation thereto, which are not directly or indirectly connected with the holder of a public office except offences falling under clauses (ix), (x) and (xi) of sub-section (a) of section 9. Section 9 (a) (ix) refers to commission of the offence of cheating as defined in section 415 of the Pakistan Penal Code and thereby the accused dishonestly has induced members of the public at large to deliver any property etc. to any person; sub-section (x) makes a reference to commission of an offence of criminal breach of trust as defined in section 405 PPC with regard to any property including money or valuable security entrusted to him by members of the public at large and sub-section (xi) refers to criminal breach of trust as provided in Section 409 PPC by a person in his capacity as a banker, merchant, factor, broker, attorney or agent etc. in respect of property entrusted to him or over which he has dominion and thereafter dishonestly misappropriate it is said to have committed the offence of corruption and corrupt practices.

Both Special Prosecutor NAB and I.O. have admitted that the allegations against the petitioners are not covered by the offences mentioned in Section 9 (a) (ix, x & xi) of NAO, 1999 and insofar as allegations of money laundering are concerned, no predicate offence prima facie is found to have been committed by the petitioners to induct an impression of injecting black money by them in the subject business for laundering purpose. Both have further conceded that neither any public office has been exploited by them nor any government funds, causing loss to national exchequer, are involved to confer jurisdiction upon the Accountability Court. In these facts and circumstances when apparently the petitioners are not shown to have committed any of the offence u/s 9 (a), (ix), (x) and (xi) NAO, 1999, particularly when such legal position has been conceded by learned Special Prosecutor NAB as well as by I.O., we are of the view that learned Accountability Court, Hyderabad lacks jurisdiction to adjudicate upon this matter. Resultantly, this petition is allowed and trial Court is directed to return reference to the Chairman NAB

through Investigation Officer of the case for passing appropriate orders including but not limited to referring the matter to relevant forum in accordance with law.

JUDGE

JUDGE

Irfan Ali