

Not for reporting
Power of A/C Judge u/s 9(c)

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No. D-4863 of 2018.

DATE	ORDER WITH SIGNATURE OF JUDGE.
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Fresh case.

1. For orders on M.A. No.21447/2018.
2. For orders on M.A. No.21448/2018.
3. For orders on M.A. No.21449/2018.
4. For hearing of main case.

28.06.20'

Mr. Arshad Tayebaly, Advocate for the petitioner.

Mohammed Karim Khan Agha-J: Learned counsel for the petitioner has challenged the order dated 14.03.2018 passed by the learned Accountability Judge (impugned order), whereby, the Accountability Judge had declined to close the investigation against the petitioner and others under Section 9(c) of NAO 1999. Learned counsel for the petitioner submitted that the order was not a speaking order; that the Judge had not applied her judicial mind; that the judge had no power to order a reinvestigation and as such the impugned order should be set-aside. Learned counsel for the petitioner has placed reliance on PLD 2017 Sindh 331.

We have heard learned counsel for the petitioner, perused the record and considered the relevant law.

By way of assistance, paragraph 41 of PLD. 2017 Sindh 331 is reproduced as under:-

“41. In our view the role of the Accountability Judge under Section 9(c) while acting as a check and balance on the Chairman’s power to close an Investigation was to review all the material placed before him albeit in a cursory manner and then after applying his judicial mind as envisaged under Section 24 (A) of the General Clauses Act 1897 to pass a speaking order either approving the closure or not with reasons and /or recommendations of further avenues of inquiry.”

One of the objects and spirit behind the above mentioned judgment was to ensure that the investigations were not closed by NAB on account of any extraneous circumstances or suspicious reasons and that the Accountability Judge was able to skim NAB’s inquiry and investigation reports and other available record to ensure that this was not the case and to request NAB to further look into the matter if need be.

In our view having considered the impugned order we are of the opinion that this is a sufficiently speaking order and the main reason given by the learned trial Judge in declining to accept the application to close the investigation under Section 9(c) is the fact that the NAB has not been forth coming by not providing a copy of the inquiry report about the reasons for closing the investigation and in fact it appears that NAB may be deliberately concealing the material which it had collected against the petitioners which in effect denied the Judge the opportunity to consider such material and decide whether it was a fit case for closure. The trial Court Judge in the impugned order did not order that any reference be filed against the petitioner but instead ordered a reinvestigation by another honest IO since it appeared to the judge that NAB may have wanted to close the investigation on account of extraneous considerations.

In our view it is important that the integrity of the investigation process should not be called into question and when an order for closure is made it is incumbent upon the learned Judge to apply his/her mind to see whether the investigation warrants closure and if he/she has doubt or reason to believe based either on the material before him/her or the concealment of such material that the investigation has not been carried out in good faith he/she may ask for further investigation by the NAB. The conclusion reached by the new IO may be the same or be otherwise based on the material collected and analyzed by him but at a minimum the trial court under S.9 © NAO has the right to examine all such material collected by the NAB during the course of its investigation (including the inquiry report) and pass a speaking order as to whether the closure of the investigation under S.9© is justified based on the material collected by NAB which is placed before him/her.

Under these circumstances, we find no legal infirmity in the impugned order which is upheld and accordingly the petition along with listed applications are dismissed in limine. **However,** the reinvestigation ordered in the impugned order shall be concluded by the NAB within six weeks of receipt of this order which the office shall fax to DG NAB Karachi and Chairman NAB for compliance.