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IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-3251 of 2016.

Before:

Mr. Justice Irfan Saadat Khan, J.

Mr. Justice Mohammad Karim Khan Agha, J.

Petitioners: Abdul Sattar Dadabhoy & others,
through Mr. Asim Iqbal, Advocate.

Respondents: Director General National
Accountability Bureau & others,
through Mr. Amjad Ali Shah, DPGA
NAB, Mr. Muhammad Altaf ADPGA
NAB a/w Sabih Rafay, Assistant
Director Investigation NAB.

Amicus Curiae: Mr. Syed Mahmood Alam Rizvi,
Advocate.

Date of hearings: 16-08-2016 and 22-09-2016

J U D G M E N T

Mohammed Karim Khan Agha, J:- Through this petition, the petitioners approached this Court by invoking the constitutional jurisdiction of this Court, whereby they have primarily challenged the Order dated 19-04-2016 passed by the learned Administrative Judge Accountability Courts Sindh Karachi whereby the National Accountability Bureau's (NAB) application for closure of its investigation against the petitioners under S.9(c) National Accountability Ordinance (NAO) was rejected (the Impugned Order).

2. The brief facts of the case are that the petitioners are Directors of Dadabhoy Multipurpose Co-operative Society Limited, which is a duly registered Co-operative Society

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within the meaning of S.10 of the Co-operative Society's Act (VII 1925) (the Society).

3. The Society embarked upon two housing projects in Karachi known as Dadabhoy Nagar and Dadabhoy Town situated on land bearing Survey Nos. 63, 64, 65, 66 and 68 of Deh Toor, Tappo Kanker, Taluka and in Deh Drigh Road, Tapo Malir, District Karachi, which it had acquired and were located approximately 25 KM from Karachi on scheme 33 of the Super Highway.

4. Plots in the Project were allotted to members of Dhadabhoy Society against payment subject to certain terms and conditions.

5. NAB received a complaint dated 2nd September 2013 on behalf of a number of members of the Dadaghoy Nagar Project who had been allotted plots in the Dadabhoy Nagar Project alleging that the petitioners had failed to develop the Society as agreed and that the Society had been making illegal and unjustified monetary demands from them and this may be a case of cheating the public at large.

6. NAB on the complaint opened an inquiry under the National Accountability Bureau Ordinance 1999 (NAO) into the matter which was later converted into an investigation.

7. In the meantime the complainants settled their dispute with the petitioners and withdrew their complaint. Thereafter

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no more members of the society made any complaint to NAB in respect of this issue.

8. That having completed its investigation into the matter the Chairman NAB was satisfied that no prima case had been made out against the petitioners under the NAO and as such moved to close the matter under S.9(c), which application was rejected by the Impugned Order.

9. The Court was of the view that the interpretation of S.9(c) NAO was an important aspect of the case and by order dated 16-08-2016 appointed Mr. Mahmood Alam Rizvi as amicus curiae to assist the Court in answering the following question:

"Whether the Accountability Court has the jurisdiction to reject the recommendation of the Chairman NAB under section 9(c) of the National Accountability Ordinance, 1999, when the accused is not in custody?"

10. Learned amicus curiae submitted that S.9© NAO only applied to accused in custody and since the petitioners were not in custody it was not applicable to this case and as such the Impugned Order had been passed without jurisdiction.

11. In this respect he placed reliance on the case of **Asfandiyar Wali Khan V Federation of Pakistan** (PLD 2001 SC P.607) and the findings which had been made in respect of S.9© at P.884 Para 192.

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12. According to him the purpose of S.9© was to ensure that the Court as opposed to the Chairman NAB exercised power in terms of the release of a person from custody as this was a judicial power which could not be exercised by the Chairman NAB who in effect was exercising executive/administrative functions.

13. As such when the accused was not in custody, as in this case, S.9© was not applicable and the approval of the Chairman was not required to close the investigation

14. He further submitted that the Chairman did not need the permission of the Court to close an investigation which was within his sole domain. Under S.9© once the chairman was satisfied that no prima facie case was made out against the accused he could close the investigation and his decision of closure could not be challenged. In this respect he stressed upon the vast powers given to the Chairman NAB under the NAO especially under S.18 NAO whereby the Accountability Court could only take cognizance of a case on a reference by the Chairman NAB.

15. Even if the Accountability Court's approval was required to close the investigation the Accountability Court could not examine the Chairman's decision and simply had to endorse it. In this respect he emphasized that if the Accountability Court rejected the Chairman's decision then it would have no impact as the Accountability Court could not direct the

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Chairman to file a reference. In this respect he relied on the case of **Syed Khusheed Ahmed Shah V NAB** (SBLR 2014 P.821).

16. He also placed reliance on the case of **Muhammed Afaq Shamsi V NAB** (PLD 2011 (4) Kar P.24) for the proposition that once the parties had settled a matter amicably between themselves then the NAB case terminated on completion of the amicable settlement even if it was pending before the Accountability Court.

17. In essence the learned amicus curiae was of the view that the purpose of S.9© was to regulate the custody of any arrested accused after the closure of an investigation to ensure his release by a judicial authority if he was in custody and that the Accountability Court under S.9© had no power to refuse to close the investigation on the application of the Chairman NAB and as such the Impugned Order should be set aside.

18. Learned Counsel for the petitioners adopted the arguments of learned amicus curiae. He further argued that in any event NAB did not have the jurisdiction to hear the case under the NAO since in effect the matter was a civil dispute/nature between private parties which had now been amicably settled between the concerned parties and involved no aspect of criminality. In this respect he placed reliance on **Rafi Haji Usman V Chairman NAB** (2015 SCMR 1575) and

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as such he submitted that the Impugned Order may be set aside.

19. Learned DPGA for NAB submitted that the NAB did have jurisdiction under the NAO to open an inquiry in this case as it was potentially a case of cheating the public at large. With regard to the applicability of S.9© he was of the view that since the matter had been settled between the parties and NAB had completed its investigation it would serve no useful purpose to consider this academic issue. ADPGA NAB in his capacity as a prosecutor of NAB supported the Impugned Order however as an officer of the Court he was of the view that the Accountability Court Judge under S.9© did have the power to decline the Chairman's application to close the investigation which could be interpreted as an implied direction to the Chairman NAB to file the reference and that the role of the Accountability Court Judge was not simply to regulate the custody of the accused if he had been arrested.

20. We have considered the arguments of learned counsel, the amicus curiae and studied the record, the relevant law and the case law cited at the bar.

21. At the outset it would be helpful to set out S.9© NAO as it stands today, which is reproduced below for ease of reference:

"9. (c). If after completing the investigation of an offence against a holder of public office or any other person, the

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Chairman NAB is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused, if in custody."

22. In our view S.9(c) contains 2 parts:

- (a) The approval of the Chairman NAB's decision to close the case after completion of the investigation and
- (b) The release of the accused, if in custody.

23. **Turning to the first issue which concerns the approval of the Chairman's decision to close the investigation by the Accountability Court Judge.**

24. It is true that the Chairman NAB enjoys an extremely powerful and important position under the NAO and indeed it can be said that the entire NAO revolves around him.

25. As was held in the case of **Bank of Punjab V Haris Steel Industries** (PLD 2010 SC 1109) whereby the Hon'ble Supreme Court described the pivotal role that the chairman NAB plays in the scheme of the NAO as under at P.1141 Para 40's and 41.

"40. Be that as it may, what is still strikingly noticeable is that irrespective of the fact whether the said Chairman was appointable with or without the consultation of the Chief Justice of Pakistan, the fact remains that the qualifications prescribed for the said office are a definite indicator of the high status of the said office which is obviously in consonance with the high obligations cast on the incumbent i.e. a Chairman being a person who had held the office of the Chief Justice of Pakistan or of the Judge of the Supreme Court or of the Chief Justice of a High Court or was a

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retired officer of the Armed Forces of Pakistan of the rank of a Lieutenant General or who was a retired Federal Government Officer in BPS-22.

41. The reason for looking for a person of such an eminence and prestige for appointment as the Chairman of NAB is not far to find. A bare perusal of the provisions of sections 5(m), 7, 8, 12, 16(a), 18, 19, 20, 21, 22, 24, 25, 26 and 28 of the said NAB Ordinance would show the importance and the momentousness of the office of the Chairman under the said Ordinance. He is the person to be consulted by the President of Pakistan for the appointment of a Deputy Chairman of the NAB and for the appointment of the Prosecutor General Accountability; he appoints all other officers of the NAB; he is the one to decide whether to make or not to make a Reference with respect to corruption or corrupt practices and no Court could take cognizance of any such offence unless such a Reference was made by him or by an officer authorized by him; he is the one who could order initiation of proceedings under this Ordinance or order an inquiry or investigation in the matter; he is one who directs and authorizes arrests of accused persons under the said Ordinance; he is the one who has the power to freeze properties which are the subject matter of an offence under the said Ordinance and who could, in certain cases, even order sale of the said property and he has the authority to call for any record or information with respect to any matter covered by the NAB Ordinance. All Banks and Financial Institutions stand commanded to report all unusual financial transactions to him. It is he who stands authorized to communicate with foreign Governments for their assistance; he is the authority to accept plea-bargains and he is the one who has the power to tender pardon to any person accused of an offence under the said Ordinance. Needless to add that such like orders could be passed by him against any holder of any Public Office **including a sitting Prime Minister of the country**". (bold added)

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26. The question therefore emerges that is the Chairman NAB so powerful that if he reaches a decision after completing the investigation of an offence against a holder of public office or any other person and he is satisfied that no prima facie case is made out against that holder of public office or any other person and the case may be closed the Accountability Court should act as a rubber stamp and simply endorse this decision without any application of judicial mind?

27. It is significant in this respect that under the NAO a complaint against a person is divided into 2 parts. Firstly, there is an inquiry. If the Chairman NAB is satisfied that no case is made out against the accused after the inquiry then he may close the case on his own motion and no permission is required from the Court in this respect.

28. However, if the Chairman NAB is of the view that there seems to be some evidence against the accused after the inquiry the case is upgraded to an investigation.

29. After the investigation is completed the Chairman NAB essentially has the following choices:

- (a) File a reference under S.18(g) NAO
- (b) Call for further investigation to assist him in making his decision under S.18(g) NAO
- (c) Close the investigation under S.9(c) NAO

30. It is significant that if the Chairman NAB chooses to close the investigation under S.9© he needs the approval of the Accountability Court (unlike the case of closure of inquiry where no such approval is required).

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31. Initially under the original National Accountability Bureau Ordinance 1999 (NABO) the Chairman did not require the approval of the court to close either an inquiry or an investigation.

32. This situation however changed after the seminal case of **Asfandiyar Wali Khan** (Supra) where a larger Bench of the Hon'ble Supreme Court through an exhaustive judgment around 350 pages long examined virtually every section of the NABO in terms of its vires under the Constitution.

33. In the amended S.9 (c) following the **Asfandiyar Wali Khan Case** which made specific observations on the old S.9(c) in NABO **for the first time** the Chairman NAB was required to seek the Courts approval to close an investigation.

34. It is trite law that no part of a statute can be made redundant and it is generally accepted that amendments are not made by the legislature to the legislation just for the sake of it. Generally there must be some logic or reason behind the amendment.

35. Had Parliament chosen it could have simply not required the approval of the Court to close the investigation as is still the case in respect of inquiries. In fact in the **Asfandiyar Wali Khan Case** there appears to be no specific direction to add to the NAO that the approval of the Accountability Court was required before an investigation could be closed by the chairman NAB. The NABO's silence on

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this aspect was not questioned or held unconstitutional by the Hon'ble Supreme Court by the **Asfandiyar Wali Khan Case**.

36. The question therefore is why Parliament added the requirement of the chairman NAB to seek the approval of the Accountability Court before closing the investigation?

37. In our view once an inquiry was converted into an investigation there was at least some material to suggest that an offense had been committed under the NAO since once this step was taken a voluntary return under S.25 (a) was no longer open to the accused which had hardly any adverse legal consequences on an accused as compared to that of a plea bargain which was then the only option open to the accused under S.25 (b) after conversion of the inquiry into an investigation in terms of return of ill gotten wealth and carried with it adverse legal consequences such as a deemed conviction.

38. In our view, therefore, the purpose of adding the requirement that an investigation could only be closed with the approval of the Accountability Court was to add a check and balance on the Chairman's power to close an investigation once it had already been determined that there was at least some material against the accused to warrant the case being converted from an inquiry into an investigation.

39. In our view Parliament had deliberately and consciously determined that the Chairman's power to close an

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investigation under the NAO should not be unbridled by the amendments which were made to S.9© in terms of the requirement of the approval of the decision of the Chairman NAB by the Accountability Court. This would prevent any potential abuse of office by the Chairman NAB and increase public confidence when an investigation was closed as the Court would have had a second look albeit cursory at the decision of the Chairman NAB before granting its approval

40. In this respect it is notable that when the Chairman sends his application for closure of the investigation under S.9© he does not send a bare application but also the investigation report and all the material gathered during the course of the inquiry and later investigation.

41. In our view the role of the Accountability Judge under S.9© 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 S.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.

42. The question has been raised that the accused would be left in limbo if the accountability Court refused to approve the closure of the case and the Chairman failed to file a reference under S.18 (g) after such refusal.

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43. We do not necessarily consider this to be the case. In our view by legislative intent as per scheme of the NAO especially S.18 relating to cognizance and as per **Khusheed Shah's case** ((Supra) the Accountability Court Judge cannot direct the Chairman to file a reference which in relevant part (placitum ©) held as under:

"the findings of Administrative Judge, Accountability Court that the Chairman was not competent to order for closure of the case and direction to submit his reference within thirty (30) days, are not sustainable in law and in excess of jurisdiction. Consequently while allowing these petitions we set aside the impugned order."

44. However in our view what the accountability Court can do is to make non binding recommendations to the Chairman on areas where he feels the investigation is defective or deficient and lines of inquiry which he believes have not been addressed in the investigation and need to be followed up on and even request the Chairman to reconsider his decision in the light of the Accountability Courts observations.

45. Whether a reference is filed or whether an investigation is closed is not a matter of ego between the Chairman NAB and the Accountability Court Judge rather it is a question of law and the need to do justice and the need to increase the public's confidence in the fair administration of justice.

46. It would be expected that the Chairman NAB would in good faith follow up any recommendations made by the Accountability Court Judge in respect of the investigation and then re consider whether or not to file a reference under S.18
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(g) or apply for closure under S.9© having addressed the concerns of the Accountability Court Judge.

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47. In the event that the Accountability Court Judge again declined to close the investigation then it would be open to the Chairman NAB or even the accused (in order to seek finality of the case) to apply to the High Court to judicially review the decision of the Accountability Court Judge. Of course this could be done at first instance by the Chairman NAB but in the interests of justice we consider that it may be preferable for the Chairman NAB to follow up on the recommendations made by the Accountability Court which may be valid and assist the Chairman to reach a fair and just decision under S.18 (g) NAO based on the evidence or additional evidence which was collected after following up on the recommendations of the Accountability Court Judge.

48. What the Chairman, in our view, cannot not do is to sit on the decision of the Accountability Court Judge if his application to close the investigation has not been approved. He should either follow up immediately on the recommendations made therein or immediately move for judicial review as the accused should not be left in limbo for years on end and subject to the mercy of a new Chairman NAB who may have different views/policies. In such an instance the Chairman should finish his further investigation within 3 months of the date of the refusal of the Accountability Court to refuse closure and then either make a decision to file a reference under S.18 (g) NAO or move for

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closure again of the investigation under S.9(c) NAO. If closure is then again declined by the Accountability Court the Chairman should immediately move for a judicial review of that decision so that the matter can hopefully reach finality and the sword of Damocles does not continue to remain hanging over the head of the accused for years on end. To allow such an eventuality may also reduce the public's confidence in the Chairman NAB's decision making abilities and may lead the public to believe that such decisions may have been driven by ulterior motives which would undermine the position of the Chairman and NAB as an institution.

49. In the event that the Accountability Court Judge, on the Chairman's first application declined to approve the closure of the investigation after giving reasons then if the Chairman NAB chose to address those reasons/recommendations in our view if the Chairman NAB was again to apply for closure of the investigation then the matter should be decided by an Accountability Court Judge who did not make the original decision on the Chairman's application for closure

50. Thus, in our view the Accountability Court's role under S.9(c) through legislative intent is not to act as a post box or rubber stamp on the Chairman's decision to close the investigation but to try and play a meaningful role in determining whether that decision required reconsideration by the collection of additional evidence or rethinking of the evidence already collected or even whether legitimate lines of

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inquiry had not been followed. The Accountability Court Judge however should be mindful that the Chairman himself would have applied his mind to the case and considered all the evidence with the advice and assistance of his expert legal and investigative teams and should not lightly interfere with the decision of the Chairman to close the case also bearing in mind the Chairman's own qualifications to hold such an exalted office. In our view such non approval of the Chairman's decision should only be rarely made and not as a matter of routine and should only be made in cases where it is quite clear that the investigation has not been carried out thoroughly or that the conclusions so reached appear to be clearly incorrect which may even suggest bad faith on the part of the Chairman in seeking closure. The Accountability Court judge in deciding whether or not to approve the application of the Chairman for closure of the investigation must also remain within the bounds of what the Chairman is required to do under S.9(c) NAO. Namely, be satisfied that no prima facie case is made out. We would however re-iterate, as mentioned above, that the Accountability Court Judge can in no circumstances direct the Chairman to file a reference which is contrary to the legislative intent of the NAO and whilst considering his approval under S.9(c) NAO the Accountability Court Judge should only make a tentative assessment of the material before him rather than go into it in great detail as his role, in our view, is limited to that of a watch dog to ensure that no completely unjustified decision based on the material before him has been made by the

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Chairman as opposed to running the investigation which is outside his domain

51. We are fortified, to an extent, in our view by a comparison with S.31 (B) NAO which allows the Prosecutor General NAB to withdraw cases from the Accountability Court with the consent of the Court.

52. S31 (B) NAO is set out as under for ease of reference:

"The Prosecutor General Accountability may, **with the consent of the Court**, withdraw from the prosecution of any accused person generally or in respect of any one or more of the offences for which he is tried and upon such withdrawal.

- (i) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; and
- (ii) If it is made after a charge has been framed, he shall be acquitted in respect of such offence or offences.

53. In giving such consent the Court does not simply rubber stamp the Prosecutor General's decision to withdraw from the case. It is but obvious that the Prosecutor General must set out reasons for seeking withdrawal which the Court may reject if these reasons are completely unjustified. For example, if the Prosecutor General seeks withdrawal after all the PW's have been examined and a S.265 (K) Cr.PC application of the accused has been rejected by the Accountability Court. Such consent of the Court is thus a check and balance on the Prosecutor Generals powers under S.31 (B) NAO.

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54. Turning to the second issue, "and for the release of the accused, if in custody".

55. In our view the use of the word "and" makes it quite apparent that this is a separate limb of S.9© to the approval and will only be of relevance **after** the Accountability Court Judge has made his decision whether or not to approve the closure of the investigation under S.9©

56. Thus, if the person is not in custody in our view it is irrelevant whether the approval is given or not. It only becomes an issue if the accused is in custody.

57. If the approval to close the investigation is given then it would follow that the Accountability Court Judge would order the release of the accused from custody since he would no longer be required.

58. If however the approval was not given and the accused was in custody in our view it would not be open to the Accountability Court Judge to release the accused as it seems that he has no such power under the NAO to do so.

59. In our view however we do not consider the words "and for the release of the accused, if in custody" to be of any great import. They seem to have been added to S.9 © to give effect to the observations made by the Hon'ble Supreme Court in the **Asfandiyar Wali Khan Case** in respect to the old S. 9©

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NABO which gave the Chairman NAB the power to regulate custody especially in terms of release of an accused.

60. In order to fully appreciate the arguments of the parties vis a vis S.9 © NAO in respect of only regulating custody we need to consider the wording of the original S.9© in the NABO which was interpreted by the Ho'ble Supreme Court at para 192 of the **Asfandiyar Wali Khan Case** (Supra).

61. The old S.9(c) in the NABO which was under challenge and interpreted in the **Asfandiyar Wali Khan Case** (Supra) read as under:

" (c) Where the Chairman, NAB decides to release from custody or detention a holder of a public office or any other person accused of an offence under this Ordinance, he shall do so after considering the gravity the charge against such person and where the accusation specifies any amount in respect of which the offence is alleged to have been committed, he shall not be released unless such amount is deposited with the NAB. Provided that the Chairman NAB may impose other conditions for release from custody or detention."

62. The old S.24 (a) and (d) NABO are also relevant in this respect in interpreting old S.9(c) and read as under:

"24. (a) The Chairman NAB shall have the power, at any stage of the investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested.

(b).....

(c).....

(d) Notwithstanding the provisions of the Code, where the holder of a public office or any other person accused of an offence under this Ordinance is arrested under the order of

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the Chairman NAB through a warrant, he may authorize his detention in custody for a term not exceeding 90 days **and no accused arrested under this Ordinance shall be released without the written order of the Chairman NAB under his seal or under the orders of the Accountability Court.**"(bold added)

63. When read together it can be seen that the old S.9(c) NABO read with S.24 (a) and (d) NABO in effect allowed the Chairman NAB to arrest and then regulate the custody of the accused in allowing his release from custody.

64. When seen in this context it appears that the finding in para 219 of the **Asfandiyar Wali Khan Case** which is set out below was to ensure that the custody and release of an arrested accused was regulated by a judicial authority as opposed to the Chairman NAB which could be regarded as an executive/administrative authority :

"Para 192. Section 9(c) read with section 24(d) of the NAB Ordinance vests the power of release of any person accused of an offence under the NAB Ordinance in the Chairman NAB and that too on the basis of any conditions as he may think fit are unwarranted. **The power to set conditions for the release of an accused from custody or detention is a judicial power which ought not to be exercised except by a Court** which is established under Article 175 of the Constitution and is subject to the supervisory jurisdiction of the High Court in terms of Article 202 and 203".(bold added)

65. This being the case the old S.9 (c) of the NABO was suitably amended to cure this defect as pointed out by the Hon'ble Supreme Court and a new S.9 (c) was added, which is in place today, and reads as under:

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"9. (c). If after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall **refer the matter to a Court for approval and for the release of the accused, if in custody.**" (bold added)

66. Thus, in our view the words in S.9(c), "and for the release of the accused, if in custody." were added to ensure that it was the Court which had the power to regulate custody and release an arrested accused under the NAO as opposed to the Chairman NAB as pointed out by the Hon'ble Supreme Court.

67. Thus, we find that the question of whether the accused is in custody or not is not relevant to the approval of the Accountability Court Judge since both are separate and distinct issues. The question of releasing the accused if in custody will only come into play **after** the Accountability Court has made its decision whether or not to approve the closure of the investigation under S.9© NAO.

68. **Turning to the Impugned Order.**

69. The Impugned Order is a speaking order giving solid reasons for not approving the application for closure of the investigation by the Chairman NAB and it cannot be faulted on this score.

70. However, looking to the particular facts and circumstances of this case we find that the Impugned Order has failed to consider whether after investigation by NAB this

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matter did turn out to be a case of cheating the public at large as per NAB's own SOP so as to come within the purview of the NAO and whether in fact this was a civil case so as to be hit by the case of **Rafi Haji Usman V Chairman NAB 2015 SCMR 1575** and not fall within the purview of the NAO.

71. As such the Impugned Order is set aside and the application is remanded back to the Accountability Court to rehear the same taking into consideration the additional two legal issues mentioned in paragraph 70 and decide the application, including the above referred legal issues, through a speaking order within 30 days of receipt of this Judgment.

72. Before parting with this judgment we would however observe that going forward private parties, especially banks and other financial institutions, and parties involved in disputes should not settle matters which have been referred by them to NAB without seeking the views of the NAB on such proposed settlements as NAB should in no circumstance be used as a tool by such institutions or parties in order to pressurize individuals to settle cases.

73. **In summary**

(a). We find that under S.9© NAO the approval of the Accountability court to an application by the Chairman NAB to close an investigation is to be considered in a meaningful way as discussed earlier in this Judgment and that the Accountability Court Judge may not give his approval to the closure of the investigation through a speaking order if he deemed it

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appropriate after a cursory review of the material before him which order is subject to judicial review by this Court under Article 199 of the Constitution.

(b). The question of whether or not the accused is in custody does not detract from the Accountability Court Judges obligation under S.9© to give a meaningful decision through a speaking order whether or not to approve the Chairman's application to close an investigation. Only after the Accountability Court has made its decision whether or not to approve the closure of the investigation under S.9(c) NAO will the question of the release of the accused if in custody become an issue. **The Accountability Court is to first decide the approval of the application and then turn to the issue of the release of the accused if in custody**

(c) That based on the particular facts and circumstances of this particular case the Impugned Order is set aside and remanded back to the Accountability Court for a rehearing of the application in terms of Para 70 of this Judgment.

74. Finally we would like to place on record our appreciation to all the learned counsel and the amicus curiae for their able assistance during the course of hearing this case.

Dated: 05-10-2016