

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Ahmed Ali M. Shaikh, C.J. and Omar Sial, J.***Crl. Misc. Application No. 171 of 2017**

Applicant : Shoukat Hussain Jokhio
through Mr. Mohsin Shahwani, Advocate

Respondents : 1. Accountability Court No.II, Karachi
2. The State
3. Director General, NAB Sindh
4. Investigation Officer of Deh Rehri
through Mr. Riaz Alam Khan, Special Prosecutor NAB

ORDER

Omar Sial, J. The applicant Shaukat Hussain Jokhio is one of the accused facing trial in Reference No. 55 of 2016. Through this application he has impugned an order dated 3.7.2017 of the learned Accountability Court No. II at Karachi. In terms of the said order an application under section 265-K Cr.P.C. filed by the applicant was dismissed.

2. The background to the Reference filed by NAB is that 77 acres of government land was illegally and unlawfully leased out for 30 years by virtue of eight false and fabricated leases in Na Class No. 26, Deh Rehri, Bin Qasim Town, Malir, Karachi. It is alleged that the fake entries were incorporated in the record of rights of the subject land by the accused persons, which incorporation then facilitated the execution of the leases. The applicant, who was the Deputy District Officer (Revenue), Bin Qasim Town, Karachi is accused of facilitating the transfer of 22 acres out of the 77 acres.

3. The learned counsel for the applicant has argued that his client is innocent and that his role in the transaction is limited to forwarding reports of the concerned Mukhtiarkars to the District Officer (Revenue). According to the learned counsel the custodian of the records was the Mukhtiarkar and that the role of the applicant is confined to acting as a post box, in that he simply forwarded the letters and reports of the Mukhtiarkars to the District Officer without making any recommendations. He has also argued that the lease period of 30 years has also expired and that the possession of the land has been resumed by the Government. Accordingly, no loss has been caused to the national exchequer. He has argued that the transaction complained of does not fall within the ambit of section 9 of the NAO 1999 and that NAB has employed a pick and choose policy in that several players in the transaction were not impleaded as accused in the Reference. Finally, he argued that the learned trial court erred by holding in its

order that the application under section 265-K Cr.P.C. was premature and that the said section of law can be invoked at any stage.

4. We have heard the learned counsel for the applicant and the learned Special Prosecutor, NAB.

5. We agree with the submissions of the learned counsel to the extent that under section 265-K Cr.P.C. a court is empowered to acquit an accused at any stage of the case, if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence. We also agree with the learned counsel that the Mukhtiarkar is the custodian of the records. We are however unable to agree with the learned counsel that the learned trial court has erred in its decision in rejecting the section 265-K Cr.P.C. application. Simply because the applicant was not the custodian of records cannot form a basis of acquitting the accused when only one out of the 195 prosecution witnesses has been examined at trial. The case of the applicant is not as black and white as the learned counsel has argued it to be. The complicity and role of the applicant in the said transaction cannot be conclusively decided at this early stage of trial. Prima facie it seems that the allegations against the applicant fall within the ambit of NAO 1999 and even otherwise, it is the learned trial court which was the correct forum to decide whether NAB had jurisdiction or not. Similarly, no conclusive finding can be given on the other grounds raised by the counsel and which are narrated above.

6. In view of the above, we concur with the learned trial court that at this stage it cannot be said that the charge against the applicant is groundless or that it is crystal clear that there is no chance of conviction. The evidence that NAB has gathered upon a tentative assessment shows involvement of the applicant in the transactions over the disputed land. It is only after the learned trial court has had an opportunity to record evidence and review the same that it will be in a position to form a conclusive view. Prosecution cannot be stifled at this early stage on the grounds urged by the learned counsel. We accordingly, dismiss the application.

JUDGE

CHIEF JUSTICE