

IN THE HIGH COURT OF SINDH, KARACHI
Criminal Accountability Acquittal Appeal No.13 of 2022

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Appellant: National Accountability Bureau,
Through Dr. Raja Muhammad Ali,
Special Prosecutor NAB.

Respondent: M/s Karachi International Container
Terminal (KICT)

Date of hearing: 18.11.2022.
Date of Order: 18.11.2022.

ORDER

Muhammad Junaid Ghaffar, J.- Through this Criminal Accountability Acquittal Appeal NAB has assailed order dated 10.03.2022, whereby, an Application under Section 265-D Cr.P.C has been allowed in favour of Respondent by discharging it from the case.

2. learned Special Prosecutor NAB submits that Respondent was arrayed in Reference as Respondent No.4 through its Chief Executive Officer only for the purposes of recovery of liability, whereas, in the investigation report, it has come on record that the land in question was allotted to the said Respondent without due process of law, and therefore, the impugned order is liable to be set-aside.

3. We have heard learned Special Prosecutor NAB and have perused the record. The present Respondent i.e. Respondent No.4 in Reference No.03 of 2021 pending before Accountability Court No. IV Sindh at Karachi, is not an individual; but "Karachi International Container Terminal" a Limited Liability Company, whereas, it has been arrayed as an accused through its Chief Executive Officer, without naming him, with a further rider that the present Respondent has been arrayed only for the purpose of recovery of alleged liability. We are at a loss to understand this analogy of NAB inasmuch as the then Chief Executive of the Company is already an accused in the Reference, as accused No.3, whereas, as per record even the name of the Chief Executive Officer is not mentioned in the Reference; nor it is their case that the present Chief Executive is an accused. Their case is only that the Company must remain as an accused for the purposes of recovery of liability. We are afraid a Company by itself

cannot be made an accused in this Reference until and unless the officers of the Company are arrayed as accused, which in fact has already been done by implicating the then Chief Executive. Para-14 of the Reference states as under:-

“14. That in view of the above, it has been established that Accused 1 to 3 in connivance with each other have involved in commission of offences under section 9(a)(iv)(vi)&(vii), punishable U/s 10 of the NAO 1999 and Schedule thereto in order to extend illegal favour to accused No.4 M/s KICT (the beneficiary accused through its CEO, HUI Kin Kie for the purpose of recovery of liability only) and caused loss to the exchequer to the tune of Rs.21.45 Billion.”

4. From the above it is clear that case of NAB is against Accused No. 1 to 3, whereas, the Respondent herein has been joined as a beneficiary accused through its Chief Executive Officer for the purposes of recovery of liability. The learned Trial Court, in our considered view, was fully justified in exercising its powers under Section 265-D Cr.P.C; in discharging the Respondent in view of the facts and circumstances of this case. It is a matter of record that no criminal intent or role of the Respondent has been shown or its' Chief Executive Officer; but is only an accused for the purposes of recovery of liability. It has also come on record that the current Chief Executive Officer was not in fact Chief Executive Officer at the time of commission of alleged offence. It is also observed by the learned Trial Court insofar as the recovery of any liability is concerned, reliance can be placed on Section 33(e) of the NAB Ordinance, whereas, there are other provisions within the Ordinance which can be invoked in respect of the assets of the Respondent herein.

5. In view of hereinabove facts and circumstances of this case, it appears that the impugned order is correct in law and there is no reason for NAB to challenge the same any further. At this juncture, we may observe that time and again we have come across Acquittal Appeals filed by the NAB authorities against such orders without proper appreciation of the material as well as law and in every run of the mill case an Acquittal Appeal is being filed. This, in our view, is a case in which cost ought to be imposed upon the NAB Authorities; however, we have restrained ourselves but may state that in future if such frivolous Acquittal Appeals are filed, then this Court would be compelled to impose exemplary costs on NAB Authorities. This Acquittal Appeal being misconceived was dismissed in *limine* by means of a short order in the earlier part of the day and these are the reasons thereof.

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