

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Ahmed Ali M. Shaikh, CJ and Omar Sial, J

Constitutional Petition No. D - 5209 of 2017

Muhammad Safdar Petitioner

versus

Presiding Officer, Accountability
Court No.IV, Karachi & others Respondents

Mr. Shoukat Hayat, Advocate for petitioner.

Mr. Muhammad Bashir Ahmed, Advocate for respondent No.4.

Mr. Riaz Alam Khan, Special Prosecutor, NAB a/w I.O. Mir Ali Raza.

ORDER

Omar Sial, J. The petitioner Muhammad Safdar is one of the accused facing proceedings in Reference No. 13 of 2016 filed by the National Accountability Bureau in the Accountability Court No. IV at Karachi.

2. During proceedings in the aforementioned Reference, the petitioner moved an application in the trial court praying that certain documents which the investigating officer had collected during the course of inquiry and investigation, but which were not provided to the petitioner, be provided to him. The learned Accountability Court No. IV at Karachi, after hearing the parties, declined the prayer of the petitioner on the grounds that (i) the copies of statements of the prosecution witnesses recorded under section 161 Cr.P.C. along with all other documents that the prosecution had relied upon in the case had already been provided to the petitioner at the start of the trial, and (ii) the petitioner would be at liberty at the time of recording his statement under section 342 Cr.P.C. to produce the said documents in its defence. It is this order of the learned trial court which was passed on 18-7-2017 that has been impugned in these proceedings.

3. We have heard the arguments of the learned counsel for the petitioner as well as those of the learned Special Prosecutor, NAB. Our observations are as follows.

4. Rule 25.2(3) of the Police Rules, 1934 categorically stipulates that:

"It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

Unfortunately, in many cases, the investigating officer of a case loses sight of his primary duty as outlined in the aforementioned Rule. It appears that the focus of the investigating officer is to only successfully establish a case against a person nominated as an accused in a criminal case, and in this desire and exuberance of his, material which is collected by him during investigation of a case and which material would, establish the innocence of the accused or at the very least help in his defence, is discarded from consideration. Such a practice has become even more common in organizations in which the investigator and the prosecutor, though wearing separate hats, work and act under the same umbrella, with a common object of convicting a nominated accused. The very important difference, in the respective roles of the prosecution and the investigation is therefore often blurred to the detriment of the accused. It is then left to the accused to himself procure and produce such evidence which is in support of his defence. This, in many cases is not possible for the accused to do. In any event, it is also not the duty of an accused to procure such evidence but that of the investigating officer because as Rule 25.2(3) provides "It is the duty of an investigating officer to find out the truth of the matter under investigation". This role of the investigating officer to do a fair, neutral and comprehensive investigation upon a reported offence, and not confine and "commit himself prematurely to any view of the facts for or against any person," has also been observed by the Honorable Supreme Court in its landmark judgment rendered in the case of **Sughran Bibi vs The State (PLD 2018 SC 595)**. Earlier, in a case titled **Bank of Punjab vs Haris Steel Industries (Pvt.) Limited, (PLD 2010 SC 1109)**, the Honorable Supreme Court had observed that "Investigation, therefore, means nothing more than collection of evidence. Needless to say that it is evidence and evidence alone which could lead a court of law to a just and fair conclusion about the guilt or innocence of an accused person. It is, therefore, only an honest investigation which could guarantee a fair trial and conceiving a fair trial in the absence of an impartial and a just investigation would be a mere illusion and a mirage. It is, hence, only a fair investigation which could assure a fair trial and thus any act which ensures a clean investigation which is above board, is an act in aid of securing the said guaranteed right and not in derogation thereof."

5. Fortified by the above, we are of the view that it is the duty of the investigating officer to procure and produce all evidence required by a court to reach a fair and just decision, irrespective of whether it supports the prosecution or the defence with the object of conducting an "honest investigation which could guarantee a fair trial and conceiving a fair trial".

6. One of the arguments raised before us by the learned Special Prosecutor, NAB is that all documents required by section 265-C Cr.P.C. were provided to the accused at the time the trial commenced. Indeed, the learned trial court has also given the same reasoning in the order impugned. This however is not the issue with which the petitioner is aggrieved. The petitioner admits that the documents stipulated in section 265-C Cr.P.C. were provided to him however his grievance is that the material collected by the investigator that revealed the innocence of the petitioner was deliberately and intentionally not brought on the record. NAB has not denied that it is in possession of the documents sought by the petitioner.

7. The allegation against the petitioner is that at the relevant time he was the CEO of the Karachi Dockyards Labour Board and that he in violation of the applicable rules to give an extension in the lease of the property (on which Dr. Ziauddin Hospital is situated) to a co-accused Dr. Asim Hussain, which property was then unlawfully used for the purposes of a hospital and nursing home.

8. We note from the list of documents that the petitioner has sought, that he too seems to have gone on a fishing and roving exercise. For example, one document that the petitioner has sought is the charter of the KDLB while another is record of a case pending in the courts. These documents could have been obtained by the petitioner without resorting to the writ jurisdiction of this court. The remaining documents all appear to be minutes of meeting in connection with the matters of the KDLB and Dr. Ziauddin Hospital – having nexus to NAB's accusation against the petitioner. As NAB has not denied being in possession of the documents sought by the petitioner and that the documents appear to have a direct nexus with the allegation against the petitioner, we are of the view that not providing those documents would adversely impact his fundamental right to have a fair trial as enshrined in Article 10-A of the Constitution.

9. It would not be out of place to mention that a Divisional Bench of this Court in **Sharjeel Inam Memon vs National Accountability Bureau (2018 P.Cr.L.J.)** has observed as follows:

63. In our view when Article 10(A) was added to the Constitution by the 18th Amendment, after lengthy debate and detailed consideration of a cross party committee of Parliament, it was not meant to be just a paper right or illusionary right but a meaningful right for the accused in all criminal cases especially as it is a fundamental right under the Constitution and we fully endorse the findings and sentiments expressed in Brady's case (Supra) and Charles S. Turner case (Supra).

64. Thus, we expect the NAB investigators as assisted by NAB legal officers to consider any material which they uncover during the course of an inquiry/investigation or before a determination is made whether or not to file a reference whether that material tends to exonerate the accused from the proposed charge and as such justifies the exclusion of the accused from the reference. If it does and the reference is not filed against the said

accused then that material may lose its relevance. However if a reference is filed against an accused the NAB prosecutors at the time of handing over all the material supporting the reference under section 265-C, Cr.P.C. should also without request hand over to the accused/counsel for the accused any material which has come to their attention during the course of inquiry/investigation which lead to the filing of the reference or is otherwise in their possession which tends to exonerate the accused even to the slightest extent. The Chairman NAB shall take note of this paragraph.

10. In view of the foregoing, we direct that copies of the documents listed at serial numbers 2 to 15 of para 11 of the petition, which are in possession of the investigation officer of the case be provided to the petitioner within one week of the date of this order. Petition stands disposed of in above terms.

JUDGE

CHIEF JUSTICE