

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D - 3194 of 2023

Present:

**Justice Zafar Ahmed Rajput,
Justice Amjad Ali Bohio.**

Petitioner : Mst. Shafaq Sarfraz, through
Mr. Ahmed Ali Ghumro, advocate

Respondents : National Accountability Bureau & others,
through Syed Dilshad Hussain Shah,
Special Prosecutor, NAB

Date of hearing : 31.10.2023
Date of order : 31.10.2023

ORDER

Zafar Ahmed Rajput, J.- Through instant Constitution Petition, the petitioner seeks following relief:

- i. Declare that learned NAB Court No. II, Karachi passed two different orders dated 6-6-2023, whereby three co-accused have been acquitted under section 265-K, Cr.P.C. and further NAB Reference No.10/2020 has been returned to the respondent No.1 for other accused in compliance of the Second Amendment, Act, 2022 as the amount involve in reference is 240 million whereas the petitioner has not been given benefit of the acquittal on the similar set of allegations on that three co-accused have been acquitted therefore, act of learned trial Court is discriminatory which is not permissible in law.
- ii. Declare that the petitioner is entitled to acquittal from the charges as the same relief given to three co-accused that they have paid liability amount mentioned in order dated 6-6-2023 whereas the petitioner has also paid liability amount Rs.2,00,00,000/- (Two Crore) to the respondent No.1 but the petitioner has not been acquitted by the trial Court which is illegal and unlawful.
- iii. Declare that learned trial Court has not acted in accordance with law giving discriminatory treatment to the petitioner as on same set of allegations three co-accused have been acquitted but petitioner has not been given benefit of rule of consistency on same set of allegations, therefore petitioner is entitled for same relief given to three co-accused by the learned trial Court.

2. Learned counsel for the petitioner contends that the petitioner after completing all the pre-requisites under the relevant laws and regulations purchased 24-0 acres land in Na-Class No. 54, Deh Jam Chakro, Tapo Manghopir, Taluka Orangi, District West, Karachi, from one Rasool Bux s/o Muhammad Rahim through conveyance deed registered with Sub-Registrar Gadap Town and such entry in record of rights was mutated in her favour by the Revenue Authority. He further contends that, on 18.10.2016, upon receipt of a complaint against the officials of Revenue Department regarding insertion of fake, fabricated and pre-dated entry No.36 dated 02.10.1933 in Village Form-VII-B for 40-0 acres of the Government land in the name of Allah Dino s/o Gul Muhammad and further 24 acres of land out of 40-0 acres transferred in the name of said Rasool Bux vide entry No.350, dated 12.08.1996, purporting the owner on the basis of gift deed, the NAB Authority filed Reference No.10/2020 (*"the Reference"*) before the Administrative Judge, Accountability Courts Sindh at Karachi against said Rasool Bux, revenue officials, petitioner and others, wherein co-accused, namely, Irfan Wahid, Muhammad Waqas Nasir Dervaish and Mst. Saima Korai filed applications for their acquittal under section 265-K, Cr.P.C. and the learned Accountability Court No. II, Karachi (*"the Trial Court"*) after hearing the learned counsel appearing for the said co-accused and Special Prosecutor, NAB acquitted the said co-accused of the charge by allowing their applications vide order dated 06.06.2023 and, vide a separate order passed on the same date, the learned Presiding Officer directed to return the Reference to the respondent No.1/National Accountability Bureau for other co-accused in compliance of the National Accountability Bureau (Amendment) Act, 2022 and National Accountability Bureau (Second Amendment) Act, 2022. Learned counsel contends that the case of petitioner was on same footings as that of the case of said co-accused who were acquitted of the charge under section 265-K, Cr.P.C. by the Trial Court; therefore, such benefit should have been extended to the petitioner also. He further contends that at the time of hearing of the

applications of the said co-accused, the counsel for the petitioner was present before the Trial Court and he adopted the arguments of learned counsel appearing on behalf of the said co-accused and sought acquittal of the petitioner of the charge but the Trial Court did not record his contentions. He also contends that on rule of consistency the petitioner was also entitled to the same relief given to the said co-accused by the Trial Court.

3. On the other hand, learned Special Prosecutor, NAB maintains that no application under section 265-K, Cr.P.C. was filed by the petitioner before the Trial Court for her acquittal; hence, no question of giving hearing to learned counsel for the petitioner at the time of hearing of 265-K, Cr.P.C. application of the co-accused arises. He further maintains that as per his information the petitioner attempted to file an application under section 265-K, Cr.P.C. before the Trial Court when the Reference was already returned to respondent No.1. He also contends that now after the judgment of the Hon'ble Supreme Court of Pakistan, dated 15.09.2023 passed in C.P. No.21 of 2022, the Reference was returned to the Trial Court; as such, in case the applicant wishes to seek her acquittal under section 265-K, Cr.P.C. she should first approach to the Trial Court with proper application; however, this petition being not maintainable in law is liable to be dismissed.

4. Heard. Record perused.

5. It is an admitted position that after passing the impugned order, the Reference was returned to respondent No.1 by the Trial Court in view of judgment passed by the Hon'ble Supreme Court of Pakistan in C.P. No.21 of 2022. It is also an admitted position that the petitioner did not file any application under section 265-K, Cr.P.C. for her premature acquittal before the Trial Court in the Reference. So far contention of learned counsel for the petitioner that while passing order on the application of co-accused under section 265-K, Cr.P.C., the petitioner should have also been given benefit by

acquitting her of the charge considering the fact that he was facing same set of allegations is concerned, we are of the view that no doubt under section 265-K, Cr.P.C. the Trial Court is empowered to acquit the accused at any stage of the case, if, after hearing the prosecutor and the accused and for reasons to be recorded, if it considers that there is no probability of the accused being convicted of any offence. However, the hearing of the prosecutor and the accused as well is pre-condition to the order of acquittal under section 265-K, Cr.P.C. The impugned order does not reflect the presence of the counsel for the petitioner before the Trial Court and his hearing for acquittal of the petitioner. Merely presence of the counsel of the accused and the prosecutor before the Court at the time of hearing of such application filed by the co-accused does not amount the compliance of such pre-condition.

6. The perusal of the record suggests the fact that instead of filing any proper application under section 265-K, Cr.P.C. before the Trial Court, the petitioner has approached directly to this Court for her premature acquittal. It goes without saying that if after taking of cognizance of a case by the Trial Court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigors of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction. The reliance in this regard may be placed on the case of Directorate-General, Anti-Corruption Establishment and others v. Muhammad Akram Khan and others (P L D 2013 Supreme Court 401)

7. For the foregoing facts and reasons, this petition being devoid of any merit is dismissed accordingly.

Judge

Judge

Nadir/P.A