

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.D- 2782 of 2015

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Date: Order with signature of Judge

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13.05.2024

Syed Dilshad Hussain Shah, Special Prosecutor NAB

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Through this Constitution petition, the National Accountability Bureau (“NAB”) has assailed the order, dated 05.01.2005, whereby the Administrative Judge, Accountability Courts Sindh, Karachi dismissed an application filed by the Chairman, NAB under Section 9(c) of the National Accountability Ordinance, 1999 (“*the Ordinance*”) seeking approval for closure of investigation against the accused/ Respondent Nos.2 to 18.

2. Learned Special Prosecutor, NAB contends that the investigation against the Respondents No.2 to 18, who are employees of Food Department, Government of Sindh, was initiated under the provisions of the Ordinance on the basis of authorization letter dated 27.11.2008 issued by the Director General, NAB Sindh regarding allegation of misappropriation/ embezzlement of wheat amounting to Rs.74.879 Million. However, during investigation no evidence could come on record, prima facie, connecting the Respondents No.2 to 18 for alleged personal gain, therefore, the case was recommended for closure. He further contends that the Anti-Corruption Establishment, Sindh has already lodged an FIR bearing No.03 of 2011 for the alleged offence and after investigation *Challan* has been submitted before the Court of Anti-Corruption (Provincial) Sindh. However, since the alleged offence does not fall within purview of Section 9 of the Ordinance, the Chairman NAB competently filed aforementioned application for closing of investigation by the NAB against the Respondents No.2 to 18, which was rejected by the Administrative Judge, Accountability Courts Sindh vide impugned order.

3. We have heard the learned Special Prosecutor NAB and have perused the record.

4. As observed in the case of *Syed Khursheed Ahmed Shah vs. National Accountability Bureau [NAB] & others* reported as *SBLR 2014 Sindh 821*, the very object of the Ordinance as stated in the preamble, is to provide for effective measures for detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse/abuse of powers misappropriation of property, kick-backs, commissions and for matters connected and ancillary or incidental thereto. The offence of corruption and corrupt practices is constituted where evidence is brought on record that a person in a position as a holder of public office during such period misused his office for private gains and acquired wealth illegally. Further, the perusal of Section 9(c) of the Ordinance reflects that after completing the investigation of an offence against a holder of public office or any other person, if the Chairman NAB is satisfied that no prima facie case is made out against him, and the case may be closed, he shall refer the matter to the Court for approval and for the release of the accused, if in custody. Similarly Section 18(a) (*ibid*) reflects that Court shall not take cognizance of any offence under this Ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorized by him. A harmonious interpretation of both these Sections reflects that the Chairman NAB has been authorized under the NAB Ordinance to close an inquiry or investigation if he is satisfied to that effect.

5. In the matter in hand, it appears from the perusal of the application made by the Chairman NAB under Section 9(c) of the Ordinance, that reasonable justification was available with the Chairman NAB to make such application, as during investigation it revealed that Anti-Corruption Establishment Karachi had already registered FIR No.03/2011 and the case

was pending adjudication before the Special Judge Anti-Corruption (P) Court, Karachi wherein the Challan was filed. It may be observed that such closure of the investigation by NAB does not grant any benefit to the accused persons or prejudice the proceedings before the Anti-Corruption Court.

6. In view of above facts and circumstances of this case and following the dicta laid down in the of *Syed Khursheed Ahmed Shah (supra)*, we are of the view that the order impugned through this petition does not sustain under the law; hence, the same is set aside by allowing this petition. However this order shall not have any influence on the proceedings, if any, pending before the Special Judge Anticorruption (Provincial) Court, Karachi.

Judge

Abdul Wahab/PA

Judge