

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-620 of 2020

Present:

Justice Zafar Ahmed Rajput.
Justice Mrs. Rashida Asad

Petitioner : Abdul Rasheed s/o Saleh Muhammad, through Mr. Muhammad Rehman Ghous, Advocate

Respondents : Deputy Director/ I.O., NAB Regional Office, Karachi & National Accountability Bureau, through its Chairman, through Mr. Manzoor Alam, Special Prosecutor NAB along with Hammad Kamal, Deputy Director/ I.O. NAB, Karachi.

Date of hearing : **16.04.2024**

Date of Order : **21.08.2024**

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant petition, the petitioner, Abdul Rasheed, seeks direction to the Assistant Registrar (Criminal Branch) of this Court to return his original documents from the R&P sent by the learned Trial Court after keeping attested/certified copies on the record. The petitioner has also filed an application bearing M.A. No. 12386 of 2021, seeking return of his seized documents, wherein he has mentioned the details thereof as under:-

1. *Original File of Indenture of sub lease of Flat No.1002, 14th floor, 1450 Sq Yards, Block-3, BMCHS, Alamgir Road Karachi.*
2. *Original file of Motor Cycle UD-70CC Bearing Registration No.KJU-8127 in the name of Abdul Rasheed.*
3. *Original file of Belta Vehicle No. AXS-967.*
4. *Cheque Book of Bank Al Habib Account No.1103-0981-002955-01-4.*
5. *Cheque Book of Summit Bank Bahadurabad Branch Account No. 1-2-23- 20311-714-112128.*
6. *Cheque Book of Summit Bank in the name of Shazia Abdul Rasheed*

2. Learned counsel for the petitioner has contended that during investigation, on 26.05.2017, the respondent No.1 seized the subject documents from the house

of the petitioner, which were provided by his wife, namely, Shazia Abdul Rasheed under search and seizure memo, which were exhibited during evidence in Reference No. 18/2017 (“**the Reference**”) by the prosecution before the Trial Court i.e. Accountability Court No. IV, Sindh Karachi, as under:-

“Original indenture of sub-lease of Flat No.1002 in between Muhammad Shabbir and Mrs. Shazia Rasheed W/o accused Abdul Rasheed at Exh:33/6 (49 leaves), original registration file of unique motorcycle at Exh:33/7 (24 leaves), original registration file of vehicle No.AXH-967 including number plates at Exh:33/8 (39 leaves),original cheque Book of A/c 1103-0981-002955-01-4 of Bank Al-Habib at Exh:33/9 (13 leaves), original cheque Book of Summit Bank at Exh:33/10 (94 leaves), original cheque Book of Summit Bank in the name of Shazia Abdul Rasheed at Exh:33/11 (51 leaves).”

He has further contended that the NAB filed the Reference against the petitioner and other four accused persons; during pendency whereof, the petitioner filed an application to the NAB seeking plea bargain, whereby he offered to deposit an amount of Rs.22,340,180.00, which was accepted by the Director General NAB Karachi, whereafter an application for acceptance of the plea bargain was filed by the Special Prosecutor, NAB and the same was accepted by the Trial Court and in result thereof, the petitioner was convicted under Section 25(b) of the National Accountability Ordinance, 1999 (“**the Ordinance**”) vide order dated 09.07.2019 to the following effect:-

“ Since the accused has cleared his liabilities, which has also been accepted by the DG NAB, therefore, the application in hand is approved accordingly and applicant accused is convicted for an offence U/s 25(b) of National Accountability Ordinance 1999. He shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of 10 years to be reckoned from the date, he has discharged his liabilities relating to this matter, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or any province as provided U/s 15 of National Accountability Ordinance. 1999.”

He has also contended that other four co-accused persons, namely, Muhammad Shahid, Muhammad Sabir, Shahid Shamim and Shamim Akhtar were convicted of the charge by the Trial Court, vide Judgment dated 02.12.2019 (“**Judgment**”); however, the Trial Court passed an order under Section 517, Cr.P.C. in respect of

eight seized documents/articles including the subject documents of the petitioner and his wife on account of conviction of four accused persons by observing that the subject documents cannot be disposed of/returned to the petitioner till final adjudication of the Reference in appeal. He has added that the petitioner was convicted under Section 25(b) of the Ordinance and his subject documents are not related to the cases of other four convicted accused persons; hence, the same are to be returned to the petitioner.

3. Conversely, learned Special Prosecutor NAB while opposing this petition has maintained that the petition is itself not maintainable in law as against the order passed under Section 517, Cr.P.C., an appeal is provided under section 32 of the Ordinance. In support of his such contentions, he has relied upon the cases of *Iqtedar Hyder v. Bank of Punjab through Chairman and another* (**2001 MLD 1537**) and *Miss Mehwish Asif v. Vice Chancellor Shaheed Benazir Bhutto University and 2 others* (**2016 MLD 95**). He has further maintained that since Criminal Accountability Appeals No. 33 to 34 of 2019 preferred by four convicted accused persons are pending adjudication, in terms of Section 517, Cr.P.C. the subject seized articles cannot be returned to the petitioner till final adjudication of the said appeals. In support of his contentions, he has referred to the case of *Mst. Shaista Shamim v. The State* (**2007 YLR 37**).

4. Heard. Record perused.

5. It is an admitted position that during the trial of the Reference the petitioner had entered into a plea bargain with the NAB under Section 25(b) of the Ordinance, which was accepted by the trial Court and he was convicted as referred to above. Afterward, vide Judgment, four co-accused persons were convicted of the charge by the Trial Court, who preferred the said appeals, which are still pending adjudication before this Court. The Trial Court while

pronouncing the Judgment also passed order under Section 517, Cr.P.C. in respect of the properties as under:-

“The property viz; (i) original indenture of sub-lease of Flat No.1002 in between Muhammad Shabbir and Mrs. Shazia Rasheed, (ii) original registration file of unique motorcycle, (iii) original registration file of vehicle No.AXH-967 including number plates, (iv) original cheque book of A/c 1103-0981-0029255-01-1 of Bank Al-Habib, (v) original cheque book of Summit Bank, (vi) original cheque book of Summit Bank in the name of Shazia Abdul Rasheed, (vii) 10 original signed cheques of NIB Bank with stamp of Weqaya Enterprises and (viii) 2 original pages containing the names, CNIC numbers, login ID and password of registered firms of FBR recovered/seized from the house of convicted accused Abdul Rasheed have been exhibited by the prosecution at Ex.33/5, therefore due to award of conviction to present accused persons, the above said articles cannot be disposed of/ returned to the convicted accused Abdul Rasheed till final adjudication of the matter in appeal.”

6. It appears that out of said eight, subject six documents mentioned at serial No. (i) to (vi) are the articles of the petitioner and his wife and same are not related to any of the four accused persons convicted vide the subject judgment.

7. So far the contention of learned Special Prosecutor NAB with regard to maintainability of the instant petition is concerned, it may be observed that under section 32 of the Ordinance the provision of appeal has been provided to a person convicted and to the Prosecutor General Accountability, if so directed by the Chairman NAB aggrieved by the final judgment and order of the Court under the Ordinance within 30 days of the final judgment and order of the Court. However, in the instant case, order under Section 517, Cr.P.C. has been passed against four co-accused persons, who were convicted vide Judgment, while the petitioner was already convicted under Section 25(b) of the Ordinance and technically the Trial Court at that stage of the matter was not able to pass any order in terms of Section 517, Cr.P.C., which it passed vide Judgment; therefore, the petitioner was not required to file any appeal in terms of Section 32 of the Ordinance. Even otherwise, filing of constitutional petition at the place of appeal is a mere technical matter and this Court is quite competent to convert constitutional

petition into appeal and vice versa. As regards other contentions of learned Special Prosecutor NAB, it may be observed that the subject six documents are admittedly belong to the petitioner, which were seized from his house by the I.O. and the same are not claimed by any of four co-accused/ convicted persons. So far case of Mst. Shaista Shamim (supra) referred to by the learned Special Prosecutor NAB is concerned, the same is distinguishable from the case in hand for the reason that in the cited case certain properties belonging to the petitioner of the said case were confiscated and appeal was pending before the Court; hence, a Division Bench of this Court refused to exercise its jurisdiction under Article 199 of Constitution of Pakistan, 1973 for the grant of interim relief by suspending wholly or partially the operation of the said order of conviction, while in the instant case the trial Court has not passed any order for confiscation of the seized properties/articles belonging to the petitioner. It may be observed that the subject documents are the documents of movable/immovable properties and cheque books and no purpose shall be served if the same are kept on record as part of R&Ps, as admittedly the same are not owned or otherwise related to four co-accused/convicted persons. The most their availability as part of record would be required by the Court while dealing with the appeals of four co-accused persons for the purpose of examining the record, which purpose can be achieved by keeping on record photostat copies thereof.

8. In view of what has been discussed above, we allow this petition by directing the Assistant Registrar (Criminal Branch) of this Court to return the subject documents to the petitioner after keeping attested photostat copies thereof on record, after proper verification and identification as per rules.

Petition stands disposed of.

JUDGE

JUDGE