

ORDERSHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Constitution Petition No. D-1156 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE

Justice Mrs. Rashida Asad.
Justice Mr. Khadim Hussain Soomro,

1. For orders on office objection.
2. For Orders on CMA No. 4803/2023 (Ex./A)
3. For hearing of main case.

28-09-2023.

M/s Mujeeb-ur-Rehman Soomro, Bahawaluddin Shaikh and Mir Ali Nawaz Jagirani, Special Prosecutors NAB.

Mr. Shabbir Ali Bozdar advocate files power on behalf of respondent No.3, taken on record.

ORDER
06-10-2023

KHADIM HUSSAIN SOOMRO, J. The petitioner being aggrieved and dissatisfied with the impugned order dated 14-03-2023 passed by learned Accountability Court-I, Sukkur, in Reference No. 08/2020 [Re. The State Vs. Anees-ur-Rehman Mahar & others] whereby the learned Accountability Court-I, Sukkur, returned the reference to Chairman NAB through D.G NAB, Sukkur, with direction to present it before the concerned Court/forum as provided under the law.

2. Briefly, the facts of the case are that during the ongoing investigation against Rahul Kumar & others, upon a source report, a

physical verification under the supervision of the learned Judicial Magistrate was conducted and a huge embezzlement/misappropriation of Government wheat stock by Flour Mills/PRC's was unearthed; therefore a direct investigation against Flour Mills/PRCs and officials of Food Department, District Ghotki was authorized by D.G NAB, Sukkur vide letter No.740089/IW-II/CO-A/NAB-Sukkur/2019/1747 dated 27.05.2019. After the upgradation of the investigation, Reference No. 08/2020 was filed before the Accountability Court-I, Sukkur. In the light of allegations pertaining to a huge shortage in wheat stock, physical verification of Government wheat stocked at different Flour Mills/PCR's were carried out in the presence of officials of the Food Department and learned Judicial Magistrate Ghotki. It has come on record that 25x Flour Mills/PCR's were visited, and 14x Flour Mills/PCR's wheat shortage was unearthed. The investigation report further manifested that after physical verification, it was established that accused No.1 to 3 (Officers/Officials of Food Department), in connivance with accused/Lessees of above referred 14x Flour Mills, have misappropriated government wheat stock. During the investigation, 14x lessees/owners of Flour Mills entered into a plea bargain, and one of the partners of M/s Chand Flour Mills, namely Sanaullah (50% partner), entered into a plea bargain, while another partner of M/s Chand Flour Mills, i.e. accused No.4 (50% partner) is liable for balance of 50% loss to National Exchequer. Investigation report further discloses that partners of M/s Chand Flour Mills, along with accused No. 1 to 3, are involved in

misappropriation of 14,647 bags (each of 100 kg) having the value of Rs. 47,805,615/- out of that, an amount of Rs. 23,902,807/- has been recovered from Sanaullah (50% partner of Chand Flour Mill) and remaining amount of Rs. 23,902,807/- has been embezzled by accused No.1 to 4. During the investigation, it was established that accused No.1 to 3, in active connivance and collusion with accused No.4, are involved in the misappropriation of Government wheat stock and thereby have committed a criminal breach of trust and misappropriation of Government wheat stock entrusted to them, which caused huge loss to Government exchequer.

3. The accused filed an application before learned Accountability Court-I Sukkur for the return of the reference, which has been allowed vide order dated 14-03-2023 with direction to return the reference to Chairman NAB through D.G NAB, Sukkur, hence liable to be set aside.

4. Learned Special Prosecutor NAB argued that the learned trial Judge has failed to appreciate that the amount of Plea Bargain is part of offence, as described in NAO, and as such, the learned trial Court has jurisdiction to proceed with the reference in accordance with the law; he contended that learned trial Judge has failed to appreciate the section 5(O) of NAO which prescribes that amount of offence must be Rs. 500 Million or above, and in the present case the amount of offence is above Rs. 500 Million, which also includes amount of Plea Bargain. Learned Prosecutor further argued that there is no provision under the NAB law which empowers the trial Court to

return or transfer the pending references to the Bureau on its own without consultation of the concerned authority; he added further that the recent amended Act, 2022 is silent regarding the return of reference to NAB by the Accountability Court, even nowhere expressly provided that the Accountability Court can return the reference to the NAB, instead, it has ample powers to decide the reference on merits and in accordance with the law, hence the impugned order passed by the learned trial Court is all along out of the way without adopting the proper procedure provided under the NAB law; therefore, the impugned order is liable to be set aside and trial Court/learned Accountability Court be directed to proceed with the case in accordance with law. The learned Special Prosecutor NAB has pointed out that after the recent amendment in NAB laws, the reference has been returned to the trial Court.

5. We have heard the learned counsels for the parties and perused the material available on the record. The Accountability Ordinance, 1999 (“NAB Ordinance”) by the National Accountability (Amendment) Act, 2022 (“First Amendment”) and the National Accountability (Second Amendment) Act, 2022 (“Second Amendment”) were called into question in Const.P.21/2022 and C.M.A.5029/2022, *Imran Ahmad Khan Niazi v. Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another*, whereby the Supreme Court of Pakistan declared the amendments as null and void and of no legal effect, with directions to the trial

courts to proceed with the matters in accordance with law. The relevant para of the judgment is reproduced as under:-

“49. On account of our above findings, all orders passed by the NAB and/or the Accountability Courts placing reliance on the above Sections are declared null and void and of no legal effect. Therefore, all inquiries, investigations and references which have been disposed of on the basis of the struck down Sections are restored to their positions prior to the enactment of the 2022 Amendments and shall be deemed to be pending before the relevant fora. The NAB and all Accountability Courts are directed to proceed with the restored proceedings in accordance with law. The NAB and/or all other fora shall forthwith return the record of all such matters to the relevant fora and in any event not later than seven days from today which shall be proceeded with in accordance with law from the same stage these were at when the same were disposed of/closed/returned.”

6. It is a matter of fact and record that in the wake of the Apex Court judgment, all the references have been returned to the respective trial courts. However, the counsel for the respondents informed that the respondents, after obtaining bail, have joined the trial; hence, the instant petition has become infructuous.

7. In view of the above, this petition has achieved its purpose; therefore, it has become infructuous. Accordingly the same is **disposed of** as being infructuous.

8. These are the reasons for our short order dated 28-09-2023.

J U D G E

J U D G E

Nasim/PA