

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.  
Mr. Justice Adnan-ul-Karim Memon.

C.P.No.D- 2047 of 2015

Muhammad Iqbal Memon

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PETITIONER

v/s

Federation through Chairman,  
National Accountability Bureau,  
Islamabad and others.

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RESPONDENTS

1. For hearing of M.A 12286/17
2. For orders on M.A 9862/15/15
3. For hearing of main case
4. For orders on M.A 2136/19

Date of hearing: 27.02.2019

Date of order: 27.02.2019

Date of reasons: 01.03.2019

Mr. Riazat Ali Sahar, Advocate for petitioner.

Mr. Jangoo Khan, Special Prosecutor NAB along with Mir Osaf Ahmed  
Talpur, Investigating Officer of the case.

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**ORDER**

**MUHAMMAD IQBAL KALHORO,J:-**By means of this petition, the petitioner, who is posted as Chief Town Planner in HDA, is seeking quashing of the proceedings stemming from reference No.02 of 2015, pending against him and others before the learned Accountability Court, Hyderabad. His main ground in support of his case is that filing of the aforesaid reference is in gross violation of Article 13 r/w Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

2. Mr. Riazat Ali Sahar, Advocate, who is appearing for the petitioner has mainly reiterated the aforesaid ground in his arguments. However, while giving a brief of the facts he has submitted that already in respect of the same offence, which is based on the same facts as are articulated in the aforesaid reference, an F.I.R. bearing Crime No.GO-03/2013 registered at P.S ACE Hyderabad, is pending against the petitioner before the learned Special Judge, Anti-Corruption

Court (Provincial) Hyderabad and he is facing prosecution in the same case, and hence his prosecution on the same facts and in respect of the same offence before the Accountability Court, Hyderabad amounts to double jeopardy, which is against the scheme of Article 13 of the Constitution of Islamic Republic of Pakistan, 1973. He further submits that the petitioner is being dragged in two different cases against same offence simultaneously in two separate courts which is violative of the rights of the petitioner under the constitution ; that the petitioner cannot be tried in more than one trial for the same offence; and that the petitioner is constitutionally protected against two punishments in the same offence, as such, the reference pending in the Accountability Court being nullity in the eye of law may be quashed.

3. On the other hand learned Special Prosecutor NAB, who is in company of Investigating Officer of the case, has opposed this petition and has submitted that the reference is based on wholly different facts covering only a portion of the allegations which are subject matter of the case pending before the Special Judge, Anti-Corruption Court (Provincial), Hyderabad; and that Article 13 of the Constitution is not attracted because in neither case the prosecution has ended either in acquittal or conviction of the petitioner.

4. We have considered submissions of the parties and perused the material available on record. Since in this matter the legal issue as emphasized above is involved, we would not like to reproduce the facts in detail save cursorily to understand the background. An F.I.R. bearing Crime No.GO-03/2013 was registered at P.S ACE Hyderabad under sections 409, 420, 467, 468, 471, 477/A, 34 PPC, r/w section 5(2) Act-II, 1947, on 08.01.2013 on the basis of allegation which mainly involve issuing of a layout plan by Planning and Development Control (P&DC), HDA in respect of Pakistan Railway Employees Cooperative Housing Society Hyderabad (PRECHSH) without showing revenue survey numbers, failure of P&DC to revise it in the light of decision of this court, failure of revenue authorities to demarcate the land, identify its location and boundaries, carving out plots illegally and approving individual layout plans for buildings. Whereas, the facts in the aforesaid reference show that specific allegations against accused Matloob Ahmed Khan, Ex-Chairman, HRECHS, of tampering the revised layout plan, illegally inserting (carving out) 51 plots in Block-D, which was not part of the HRECHS, subleasing 35 plots out of 51 fraudulently, taking possession of about 04-02 acres belonging to Taluka Municipal Administration Hyderabad illegally with the active connivance of officials of HDA, etc. have been alleged in detail. After perusing the same we do not find any reason to disagree with the learned Special Prosecutor

NAB that the reference is based on more detailed facts leveling a wide range of allegations including but not limited to the accusations set out in the case pending before the learned Special Judge, Anti-Corruption Court (Provincial), Hyderabad.

5. As per record, on 16.09.2015 when this petition was taken up for the first time ad-interim order in favour of the petitioner was passed and learned Accountability Court, Hyderabad was directed to not announce the judgment but may proceed with the trial. However, subsequently, on 17.11.2016 the petitioner was able to seek another interim order whereby the proceedings before both the Courts viz. Accountability Court, Hyderabad as well as Anti-Corruption Court (Provincial) Hyderabad were stayed. So virtually no proceedings against the petitioner for having committed alleged offence are being held in any of the court of law.

6. Irrespective of the fact that two cases filed against the petitioner are *prima facie* about dissimilar facts and filed under two distinct laws or/and the National Accountability Ordinance, 1999 (NAO, 1999) is a special law and has effect notwithstanding anything contained in other law for the time being in force u/s 3 of the NAO, 1999, and therefore the proceedings of the reference would not be liable to be quashed just because the prosecution in respect of same offence is pending before the Special Judge, Anti-Corruption Court (Provincial), Hyderabad, we have examined the issue in perspective of Article 13 of the Constitution, which provides protection against double punishment and self-incrimination and specifically bars that no person shall be prosecuted or punished for same offence more than once. Since main emphasis of the petitioner has been on the prosecution in two different courts in respect of same offence, we proceed to comprehend 'prosecution'. The word prosecution has been defined by the Honorable Supreme Court of Pakistan in the case of **Syed ALAMDAR HUSSAIN versus ABDUL BASEER QURESHI AND 2 OTHERS** (PLD 1978 Supreme Court 121) in the following terms:

*"The important word in Article 13 is "prosecution". According to Corpus Juris Secundum the term "prosecution" has different meanings when used in different relations and it is regarded as a word of limited or extended signification according to the intention of the law maker or the person using it. In its broadest sense the term would embrace all proceedings in the course of justice or even elsewhere for the protection or enforcement of a right or the punishment of a wrong, whether of a public or private character. In a more limited sense the term includes the .act of conducting or waging a proceeding in Court; the following up or carrying on of an action or suit already commenced until the remedy be attained; the institution and carrying on of a suit in a Court of law or equity to obtain some right or to redress and punish some wrong. It includes commencing, conducting and carrying a suit to a conclusion in a Court of justice. It is in this limited sense that the word "prosecution" appears, to have been used in Article 13 of the Constitution.*

*Significantly, the marginal heading indicates that this Article is a protection against double punishment, which tends to show that it is only where the prosecution has finally concluded and ended either in acquittal or conviction that a fresh prosecution for the same offence would be barred. Stroud's Judicial Dictionary explains the term "prosecution" amongst others in the following manner: -*

*"The "prosecution" of an action ends with the final judgment therein (Hume v. Druryff, L R 8 Ex. 214)."*

*The word "prosecute" is derived from a Latin word and signifies not only "to follow", but "to follow intensively" without intermission; thus, to follow or pursue with a view to reach, execute or accomplish.*

*According to the Webster's New International Dictionary (Second Edition) "prosecution" means, inter alia, "the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing them to final judgment on behalf of the State or Government as by indictment or information." And in the Oxford English Dictionary "prosecution" means "the following up, continuing, or carrying out of any action, scheme, or purpose, with a view to its accomplishment or attainment."*

Further, in the case of **MUHAMMAD NADEEM ANWAR versus SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN through Director NBFCs Deptt., Islamabad** (2014 SCMR 1376) the Honorable Supreme Court while dilating upon the concept of double jeopardy in the similar facts and circumstances has observed as under:

*"9. Bare reading of the afore-quoted provisions of law clearly shows that no person shall be vexed twice and prosecuted or punished the same offence but if he is guilty of offence under another enactment though by the same chain of facts, he could be tried, convicted and punished under that very offence committed by him. Reference may be made to a decision of this Court in the case of Adam v. Collector of Customs, Karachi (PLD 1969 SC 446) in which this Court has held as under:--*

*"Therefore, no question of double jeopardy arises when simultaneously or subsequently a trial is held to determine the guilt of the individual who has been concerned in the offence in respect of the goods which are the subject-matter of the adjudication proceedings. And since the proceedings for adjudication by the custom authorities and the criminal prosecution of the offender in the Court are not inter-dependent, they can proceed simultaneously and neither can remain under suspension for the sake of the other."*

This court in the case of **MANZOOR AHMED versus THE STATE** (PLD 2003 Karachi 97) dealing with the issue has observed as under:

*"12. Applying the foregoing principles of law to the facts of the present case it is quite clear that the rule of double jeopardy as per Article 13(a) of the Constitution would not be applicable thereto since admittedly the first prosecution of the appellant/accused under the Customs Act has still not reached any conclusion. It would also be seen that section 403(1) of the Cr. P.C. also contemplates a previous acquittal or conviction of an accused for an offence and prohibits a fresh trial for the same offence on the same facts for any other offence for which a different charge for the one framed against him might have been made under section 236 or for which he might have been convicted under section 237. Consequently, in our opinion, both the foregoing provisions of law contemplate that before the same can be pressed*

***into service the first trial of the accused must have been concluded which may either result in an acquittal or conviction which is not the case. For all the foregoing reasons, we are of the view that the second trial of the accused under the NAB Ordinance is neither violative of Article 13(a) of the Constitution nor in contravention of section 403(1), Cr.P.C.”***

The ratio of aforesaid judgments would clearly show that Article 13(a) of the Constitution or Section 403(1) Cr.P.C would come into service when previous prosecution has either ended in acquittal or conviction of the accused and only in that event a fresh trial for the same offence on the same facts against the same accused would be prohibited. The term prosecution mentioned in aforesaid Article connotes commencing, conducting and carrying a suit to a conclusion in a Court of justice. The scheme thereunder is meant to provide a protection against double punishment, which would tend to show that it is only where the prosecution has finally concluded and ended either in acquittal or conviction that a fresh prosecution for the same offence would be barred. In the present case learned defense counsel has not disputed that the prosecution pending before the learned Special Judge, Anti-Corruption Court (Provincial) Hyderabad has not ended either in acquittal or conviction of the petitioner. We, therefore, are minded that scheme of Article 13(a) of the Constitution, or the one contained section 403(1) Cr.P.C is not attracted in the present case and the proceedings in Reference No.02/2015 are not violative of any right of the petitioner under Article 10-A of the Constitution either.

We, therefore, find no merits in the instant petition and dismiss it accordingly alongwith pending applications. These are the reasons for our short which was announced on 27.02.2019 dismissing the above petition.

JUDGE

JUDGE