

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-2342 of 2019

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi.

Petitioners: Sultan Qamar Siddiqui and others through  
Mr. Khawaja Shams-ul-Islam, Advocate.

Respondents State: Mr. Khalid Mehmood Awan, Special Prosecutor  
NAB.  
Mr. Mukesh Kumar Khatri, Assistant Attorney  
General.

Date of hearing: 17.12.2019

Date of announcement: 24.12.2019

### J U D G M E N T

**Mohammad Karim Khan Agha, J.-** Petitioner No.1 Sultan Qamar Siddiqui is facing a Reference filed by the National Accountability Bureau (NAB) before the Accountability Court in Karachi and is currently confined in Central Prison, Karachi.

2. Petitioner No.2 Hira Siddiqui is the wife of Petitioner No.1 who wishes to use bank accounts which are in the joint names of her and her husband at Standard Chartered Bank and other banks. Hence the Petitioner No.1 has challenged the order dated 13.02.2019 passed by the Accountability Court No.1 Karachi (the impugned order) whereby it has been held that in effect u/s.23 of the NAO his wife cannot have access to his bank accounts even if they are in petitioners No.1 and Petitioner No.2's joint names as these accounts contain corruption money keeping in view that Petitioner No.1 is facing a reference for having assets beyond his known sources of income.

3. Learned counsel for the petitioners has pointed to a legal notice dated 23.01.2017 which he sent to the Manager, Standard Chartered Bank, 72/S, Allama Iqbal Road, Block-2, PECHS, Karachi whereby he had sought access to the Petitioner's account and asked for a copy of any letter

or order by which the aforesaid bank was not allowing his client access to the bank accounts.

4. By letter dated 28.01.2019 the aforesaid bank replied to learned counsel for the petitioners which in effect stated that the bank after receiving a letter from the NAB directing it to freeze the account under Section 23 of NAO it has done so. The learned counsel for the petitioners has contended that any freezing order over bank accounts of either Petitioner 1 and 2 should be set aside and as such the impugned order should be set aside and the petitioner should be allowed to use her and her husbands bank accounts especially as it has not even been proven that the money in any of the frozen bank accounts contains money which are from the proceeds of corruption. In support of his contentions he has placed reliance on **Ehsan Ullah Sirazi V Director General (Karachi) NAB** (PLD 2018 Sindh 696), **Muhammad Akram and 10 others V Federation of Pakistan & others** (PLD 2001 Karachi 48), **Rauf B. Kadri and others V Federation of Pakistan & others** (PLD 2001 Karachi 240), **Chaudhry Muhammad Akram Warraich V. Chairman, NAB Islamabad** (2010 YLR 2766), **Shuja Khan Baluch V. Capital Development Authority, Islamabad** (PLD 2011 Islamabad 25), **The State V. Babar Ali Kharal** (PLD 2008 Lahore 347), **Syed Fateh Agha V Accountability Court & 2 others** (2015 YLR 2235), **Ghulam Basit V The State** (2013 P Cr. L J 1797), **Dr. Muhammad Azam Kasi V The State DPG NAB** (2012 P Cr. L J 1950), **Sultan Qamar Siddiqui V. National Accountability Bureau** (2018 P Cr. L J 1145), **Dr. Joseph Willson V Federation of Pakistan** (2017 P Cr. L J 1569) and **Muhammad Fakhar Javed Khokhar V National Accountability Bureau** (2018 P Cr. L J 477).

5. On the other hand Special prosecutor NAB has fully supported the impugned order and stated that since the monies in the bank account have been acquired from the proceeds of corruption they cannot be used by his wife. In support of his contentions he has placed reliance on **Chaudhry Muhammad Akram Warraich and another V. Chairman, NAB Islamabad & others** (2010 YLR 2766).

6. We have heard the arguments of learned counsel for the parties, considered the record and the relevant law.



7. At the outset we do not find the authorities cited by the petitioner to be of much assistance as they mainly concern freezing orders under S.12 NAO as opposed to cautions under S.23 NAO which the case in hand revolves around.

8. The impugned order itself makes it clear that the bank accounts have not been frozen under Section 12 of NAO by either the Chairman, NAB or the Court and as such the petitioner No.1's application u/s 13 NAO for the refreezing of the accounts which lead to the impugned order is misconceived and was rightly dismissed. The impugned order makes it clear that the bank accounts of petitioners 1 and 2 have been cautioned by the NAB under Section 23 of NAO which is also an admitted position by the NAB and this is the reason why the banks are not allowing access to the bank accounts of the petitioners. For ease of reference Section 23 is set out below:-

**"23. Transfer of property void.** (a) Notwithstanding anything contained in any other law for the time being in force after the Chairman, NAB has initiated [an inquiry or] investigation into any offence under this Ordinance, alleged to have been committed by an accused person, such accused person or any relative or associate of such accused person or any other person on his behalf, shall not transfer by any means whatsoever, or create a charge on any property owned by him or in his possession, while the inquiry, investigation or proceedings are pending before the NAB or the Court and any transfer of any right, title or interest or creation of a charge on such property shall be void.

(b) Any person who transfers or creates a charge on property in contravention of sub-section (a), shall be punishable with rigorous, imprisonment for a term, which may extend to three years and shall also be liable to fine not exceeding the value of the property involved;

[Provided that such transfer of any right, title of interest or creation of a charge on such property shall not be void if made with the approval of the Court, subject to such terms and conditions as the Court may deem fit.].

9. In our view Section 23 of NAO is distinct from a freezing order under Section 12 of NAO. Section 23 of NAO is a self-executory provision whereby if, as in this case, any person seeks to withdraw money from a bank account and the institution transfers such money then the institution may be liable under the law. A caution under Section 23 of NAO does not prevent the bank from allowing the withdrawal of funds from the bank



accounts; it simply puts the bank on notice that if it does so it may be subject to liability and/or criminal responsibility. It is, therefore, left to the bank as to whether or not to comply with Section 23 of NAO and in the event that it does comply and does not allow the transfer of any funds from any bank accounts or withdrawal of funds from any bank accounts then it may open itself up to a civil liability from the petitioners. In this respect reliance is placed on **China International Water and Electric corporation V Federation of Pakistan** (2019 YLR 989) which held as under at Para's 16 and 17;

"16. In our view section 23 of the NAO is itself a self executing section which will automatically come into effect once NAB opens an inquiry or investigation into any offence under NAO which cautions that any property which is the subject matter of the inquiry cannot be transferred or a charge allowed to be created thereon and that in the event that any transfer of any right, title or interest or creation of a charge on such property takes place it shall be void and that any person who transfers the property or creates a charge on such property shall be subject to prosecution.

17. In our view the impugned letter simply puts the KPT on notice that section 23 of the NAO is applicable to the petitioner and the KPT. The impugned letter **cannot direct** the KPT to withhold the amount of loss caused to national exchequer from the running bill of the accused persons. What the impugned letter can do and in effect does is warn the KPT that if it transfers any property or creates any interest over the property or pays any monies allegedly owed by the petitioner to the national exchequer it **may** be subject to the legal consequences as set out in section 23 NAO. It is therefore up to the KPT whether or not it pays the monies allegedly owed to the petitioner by KPT. If it does so then the KPT runs the risk of being hit by section 23 if deemed applicable to the given situation whereas if it does not pay such monies it potentially opens itself up to any legal action which the petitioner, if any, deems appropriate to take against it. **If a freezing order had been in place the KPT would have had no option but to comply with the freezing order.** We consider it both sensible and prudent that NAB send out such caution letters to concerned parties so that they may be put on notice and determine their best course of action in such cases however NAB cannot make such directions as contained in the impugned letter."

10. Keeping in view the above discussion, the impugned order is modified to the above effect in terms of what is the legal position and potential consequences faced by a financial institution when a caution u/s 23 NAO is served on it. In the event that the banks refuse to allow the

wife of the Petitioner No.1, to withdraw funds from her/their joint bank accounts, if so advised, she may attempt to take action in accordance with law against such denial.

11. We would also like to point out before disposing of this petition that if for example any petitioner is facing particular hardship in say meeting their house hold expenses due to a lack of funds he/she may approach the accountability court and seek permission for allowing the petitioner to withdraw a particular monthly amount from a particular account which is reasonable to enable the house hold expenses to be met especially as at this stage it has not been proven beyond a reasonable doubt that the money in any such account which is subject to a caution has been acquired through corrupt practices.

12. The petition is disposed of in the above terms namely that the petition is dismissed subject to a slight variation in the impugned order in terms of clarifying the position vis a vis the legal consequences of a caution u/s 23 NAO.