

2016 P Cr. L J 305**[Sindh]****Before Ahmed Ali M. Shaikh and Muhammad Iqbal Kalhoro, JJ****MUHAMMAD ASLAM---Petitioner****Versus****SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN through Chairman and others---Respondents**

Constitutional Petition No. D-4970 of 2013, decided on 15th April, 2015.

(a) National Accountability Ordinance (XVIII of 1999)---

----Ss. 9 & 10---Criminal Procedure Code (V of 1898), Ss. 249-A, 265-K & 561-A---Constitution of Pakistan, Art. 199---Constitutional petition---Corruption and corrupt practices---Power of Magistrate or court to acquit accused at any stage---Inherent powers of High Court---Reference by National Accountability Bureau was filed against accused and others on basis of enquiry report prepared by Securities and Exchange Commission of Pakistan---Accused, a surgeon, along with others, during investigation, was alleged to have indulged in fraud of huge amount of money belonging to investors and certain amount of money was alleged to have been deposited into Bank account of accused with regard to same fraud---Accused sought quashment of said reference and safeguard against any coercive action including placing his name on Exit Control List---High Court, under its inherent jurisdiction, could quash proceedings in exceptional cases without waiting for trial court to invoke powers either under S. 249-A or 265-K of Cr.P.C. if facts of case so justified---Serious intricate questions of facts had been proposed by prosecution for trial which needed to be thoroughly enquired by trial court by giving proper opportunity to prosecution---Release of accused, without such exercise, could amount to pre judge his guilt, which, under no law, could be rationalized---Investigation conducted by National Accountability Bureau had found material showing the involvement of accused in the case---Trial court had taken cognizance of the offence on reference which had been submitted on basis of said investigation---Accused could seek remedy of his premature acquittal in terms of S. 249-A or 265-K, Cr.P.C. to avoid rigors of trial--- High Court, while acting under Constitutional jurisdiction conferred under Art. 199 of Constitution, could not indulge in any exercise to thrash out disputed and complicated questions of facts--- Constitutional petition was dismissed in circumstances.

Mirag Khan v. Gul Ahmed and 3 others 2000 SCMR 122 ref.

Muhammad Shabbir v. The State of Islamic Republic of Pakistan 2005 SCMR 834 distinguished.

Director General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others 2011 SCMR 1813 and Dr. Sher Afgan Khan Niazi v. Ali S. Habib

and others PLD 2013 SC 401 rel.

(b) Constitution of Pakistan---

----Art. 199--- Constitutional petition--- Disputed and complicated questions of facts, determination of---Permissibility---High Court, while acting under Constitutional jurisdiction conferred under Art. 199 of the Constitution, can not indulge in any exercise to thrash out disputed and complicated questions of facts.

Emadul Hassan for Petitioner.

Muhammad Siddique Soomro for Respondent No. 7.

Samiuddin, Law Officer for Respondent No.8.

Suleman Huda for Respondent No.9.

Fayyaz Ahmed for Respondent No.13.

Syed Muhammad Kazim for Respondent No.14.

Muhammad Khalid Hayat for Respondent No.15.

Ainuddin Khan, DAG and Muhammad Altaf, ADPG for NAB.

Date of hearing: 15th April, 2015.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J.---The petitioner has precisely sought suspension (quashing) of NAB Reference No. 05/2012 pending against him in the Accountability Court No. IV Sindh, Karachi and a safeguard against any coercive action including placing his name on Exit Control List. The reason that has led him to invoke jurisdiction of this Court under Article 199 of the Constitution is his conviction that the said reference is illegal and void. The facts behind his belief are stated briefly here.

2. The petitioner is a professional Surgeon working abroad since 1990. Based on the findings of an enquiry report dated 17.01.2010 prepared by the Securities Market Division of SECP, a Complaint No.314/2010 was filed in the Court of 3rd Additional Sessions Judge Karachi, South by Securities and Exchange Commission of Pakistan (SECP) against Eastern Capital Limited (ECL) and others making the petitioner as an accused therein on the charges that an amount of Rs.74,76,644/- was deposited in his bank account No.00740101016991-9 at MCB Clifton Branch, Karachi. The said account was opened on 13.01.2004 and on the same day the petitioner gave authority letter/mandate to his brother to operate the same. The alleged deposit in the said account was made on 15.7.2009, when the petitioner was not in Pakistan. The subject amount was deposited by the ECL and M/s. J.S. Bank through a cheque No. 0865749 that was not even signed by the petitioner. Neither the amount was subsequently withdrawn by the petitioner nor is he recipient or beneficiary of the same. He is also not concerned with the

ECL in any way working as an officer, holding shares or acting as a director. On an application under section 16-A (a) of National Accountability Ordinance, 1999, learned Sessions Court concerned transferred the complainant to Accountability Court, where it was numbered as NAB Reference No.05/2012. Because of pendency of said reference, the petitioner apprehends that his name would be placed on ECL jeopardizing his reputation and career.

3. Respondents No.2 (NAB), 6 (Karachi Stock Exchange) and 14 (M/s First Women Bank Limited) objected to the petition through their para-wise comments and prayed for dismissal of instant petition.

4. Mr. Emadul Hassan advocate for the petitioner contended that there was no iota of evidence justifying alleged charges against the petitioner and he being a renowned Surgeon working abroad had nothing to do with alleged amount deposited in his bank account that was being operated by his brother Munir Ladha. That the petitioner was facing hardship for no fault of his in contesting the charges in the Accountability Court concerned as he did not live in Pakistan. Those ongoing proceedings against the petitioner in the Accountability Court were nothing but abuse of process of law. That even if the petitioner went through the rigor of entire trial, he would not be convicted as no confidence inspiring material establishing his nexus with the whole scam had been collected during supplementary investigation carried out by the NAB authorities. He lastly relied upon the cases of Miraj Khan v. Gul Ahmed and 3 others (2000 SCMR 122) and Muhammad Shabbir v. The State of Islamic Republic of Pakistan (2005 SCMR 834) to vouch for his arguments.

5. Mr. Muhammad Altaf ADPG for NAB in his arguments did not agree with the contentions raised by the learned defense counsel and strongly suggested that sufficient evidence was found against the petitioner during the investigation conducted by the NAB and in this regard he referred to para 13 of the reference and para 22 of supplementary investigation report to support his point. He next contended that disputed questions of facts were involved that could not be sorted out by this Court while exercising powers under the Constitution.

6. We heard the counsel and with their assistance were able to scrutinize the material available on record. It goes without saying that this court under inherent jurisdiction can quash the proceedings in exceptional cases without waiting for trial Court to invoke powers under section 249-A or 265-K, Cr.P.C., if the facts of the case so justify and that is precisely the dicta laid down by the Apex Court in Miraj Khan's case (supra). We very humbly and respectfully agree to such proposition knowing very well its binding nature under Article 189 of the Constitution. However, we are mindful of the fact that an issue being dealt with here does not relate to any controversy regarding powers of this Court under section 561-A, Cr.P.C. to quash the proceedings in the cases, where on evident facts on record no offence appears to have been made out. The question agitated here by the petitioner is that there is no iota of evidence showing his connection with the offence and in view of such undeniable fact he does not stand a chance to be convicted. Before evaluating supposed innocence of the petitioner, we must mention here the cases of Director General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others (2011 SCMR 1813) and Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others (PLD 2013 SC 401), where Honorable Supreme Court has taken

respectively the succeeding views that "The law is quite settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and that of the accused persons challaned therein is to be determined by the trial court itself." and "it is generally accepted that the inherent jurisdiction should not normally be invoked where another remedy is available. Inherent powers are preserved to meet a lacuna in the Criminal Procedure Code in extraordinary cases and are not intended for vesting the High Courts with powers to make any order which they are pleased to consider to be in the interests of justice. These powers are as much controlled by principles and precedents as are its express statutory powers." The facts of the Muhammad Shabbir's case (supra) are quite distinguishable in that the charges against the accused were that he had obtained undue favour from the then Chief Minister in getting the unauthorized floors of his building regularized on the basis of past precedents. The unauthorized construction did not come within the definition of an offence of corruption or corrupt practices under Ehtesab Ordinance, 1996 was held by the Honorable Supreme Court. The worthy view has been given by the Apex Court in the appeal preferred against the judgment passed by the then Ehtesab Bench of this Court sentencing the accused. Therefore for deciding the subject question, it is not relevant in any manner.

7. Concerning the case of the petitioner, the material collected by the prosecution (that is referred to only for tentative assessment) is that while scrutinizing ledger account of the petitioner maintained by the Eastern Capital Limited, it transpired that a payment of Rs.7,476,644/- was made to him on 15.07.2009 through a cheque number 0865749 dated 14.07.2009 drawn at JS Bank that was jointly signed by Munir Ladha and Izhar Muhammad on behalf of ECL. On the same day it was credited in petitioner's account No. 6991-9 of MCB Clifton Branch Karachi. The Bank Statement of that account further revealed that the opening balance was nil that was followed by a debit balance of Rs.464,225/- on 15.07.2009 and then an amount of Rs.7,467,644/- was withdrawn followed by several withdrawals through eight cheques for amount of Rs.304,400/-. All those cheques were signed by Munir Ladha who was duly authorized by the petitioner to maintain his account. The facts found during investigation also revealed that the accused Nos.1 to 9 (the petitioner is at serial No. 9) were directors/sponsors/beneficiaries of the broker house who indulged in fraud of millions of rupees, cheated public at large through unauthorized pledging shares and obtaining several financial facilities from various banks against the shares of investors. Those shares were eventually sold by the respective banks for recovery of their dues which caused huge loss to the investors. Total amount so cheated by the accused is calculated to be Rs.580.717 million.

8. As is apparent from the above facts and circumstances that serious intricate questions of facts have been proposed by the prosecution for trial which need to be thoroughly enquired by the trial court by giving a proper opportunity to the prosecution to prove them. Without such an exercise and in the peculiar context of present case any bid to thwart making such an attempt by invoking constitutional jurisdiction and releasing the petitioner prematurely could amount to pre judge his guilt which under no law can be rationalized. Investigation conducted by the NAB Authorities have found material showing involvement of the petitioner and on the basis of thereof requisite reference has been submitted in the Court concerned which has taken cognizance of the offence. Even after that, if the petitioner is of the view that he is innocent and has been implicated without any cogent evidence against him and there is no probability of his conviction or

the charge against him is groundless, he can seek remedy of his premature acquittal in terms of sections 249-A/265-K, Cr.P.C. and avoid the rigors of a trial. We while acting under the constitutional jurisdiction conferred upon us under Article 199 cannot however indulge any such exercise to thresh out disputed and complicated questions of facts. For these reasons we did not find any merit in the instant petition and dismissed it vide our short order dated 15.4.2015.

9. The observations maintained herewith are tentative in nature and shall not be read to cause any hindrance in the way of the petitioner to seek his remedy as discussed above. Before parting company with this order, we deem it appropriate to remind trial Court to proceed with the trial expeditiously in terms of NAO, 1999.

SL/M-97/Sindh Petition dismissed.

;