

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

CRIMINAL PETITION NO. 113 OF 2016

(On appeal against the judgment dated 15.12.2015 passed by the Lahore High Court, Lahore in Criminal Revision No. 644/2011)

Muhammad Hashim Babar		... Petitioner
	<u>VERSUS</u>	
The State and another		... Respondents

For the Petitioner:	Mr. Shah Khawar, ASC Syed Rifaqat Hussain Shah, AOR
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For the State:	Mr. Nasir Mehmood Mughal, Special Prosecutor, NAB
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Date of Hearing:	09.06.2016
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JUDGMENT

FAISAL ARAB, J.- The petitioner was an accused in Reference No. 19/1997 that was filed under Section 14(1) of the repealed Ehtesab Ordinance, 1997. After the promulgation of the National Accountability Bureau Ordinance in 1999, the Reference against the petitioner was renumbered as Accountability Reference No. 9/1999. The allegation against the petitioner was that he has acquired assets beyond his known sources of income. These assets included one half share in the house bearing No. 17 situated at College Road, F-7/3, Islamabad. He was tried and convicted vide judgment dated 17.11.2000. The punishment that was awarded to him was three years rigorous imprisonment, fine of Rs.2 million and in case of default in the payment of fine he was to undergo a further rigorous imprisonment for eighteen months. Apart from these punishments, his share in the house bearing No. 17, College Road, F-7/3, Islamabad

was confiscated in favour of the Federal Government. The petitioner challenged the decision of the Accountability Court in the High Court, which maintained the sentence as well as the confiscation of petitioner's share in the house vide judgment dated 3.2.2005, however, the fine was reduced from Rs.2 million to Rs.500,000/-. The petitioner challenged the decision of the High Court before this Court in Criminal Petition No. 216-L/2005, which was dismissed vide judgment dated 30.4.2010. The petitioner then exercised his right to file review. The Review Petition bearing No. 55/2010 was also dismissed vide order dated 20.9.2010. Thus the matter with regard to the sentence, the fine as well as confiscation of half share in the house attained finality in proceedings that reached upto this Court.

2. On 17.2.2011 the petitioner moved an application in Accountability Reference No. 9/1999 before the Accountability Court by taking the plea that as he has served out his sentence of imprisonment and also paid the fine, the property that was ordered to be confiscated may be ordered to be released and his title to the house be restored. Such a relief was sought inspite of the fact that the matter with regard to punishment had already attained finality in the earlier round of litigation. This application was dismissed by the Accountability Court vide order dated 18.5.2011 on the ground that there is nothing in the decision in the earlier round to suggest that upon payment of fine, the order of confiscation of his share in the house would stand withdrawn. Aggrieved by such decision, the petitioner filed Criminal Revision No. 644/2011 in the High Court, which too met the same fate vide order dated 15.12.2015. Hence this petition.

3. Learned counsel for the petitioner contended that once the petitioner served out his sentence and paid the fine, the property that was confiscated ought to have been released by the Accountability Court as confiscation would have been only justified had the petitioner failed to pay the fine.

4. When this Court put a question to the learned counsel for the petitioner that apart from the sentence of three years RI, and the payment of fine, the petitioner was also visited with confiscation of his half share in a house then how can he seek release of the confiscated property to which he replied that in law an accused can be visited with fine or confiscation of his property but not with both. It is too late in the day to seek reversal of any punishment that was awarded to the petitioner in the earlier proceedings and maintained upto to this Court. If at all there was any legal basis for such an argument, the same ought to have been agitated by the petitioner in the first round of litigation. Once the matter had attained finality and having failed to obtain decision for recall of the order of confiscation of the house in the proceedings that reached upto this Court, the matter came to rest forever. The petitioner thereafter cannot initiate another round of litigation to avoid a penalty which was awarded to him in the earlier round. This would amount to seeking nullification of the decision of this Court. This Court in the case of Abdul Majid Vs. Abbas Hussain Shah (1995 SCMR 429) went to the extent in holding that where an attempt is made in another round of litigation to nullify the decision that had already attained finality then it amounts to committing contempt of the court. It was held that not only the litigant is to be held in contempt but his

counsel as well who represented him in such proceedings. Even the judge of the Civil Court who entertained such proceedings in the second round was held in contempt along with the litigant and his counsel. However, in this case we have chosen to exercise restraint. We, however, warn the petitioner and his counsel not to indulge in such type of litigation in future as the same amounts to showing disrespect to the outcome of a legal proceeding that had attained finality. Learned counsel for the petitioner shall also convey our displeasure to the counsel who represented the petitioner before the Accountability Court and in Criminal Revision in the High Court in the second round, so that they may be careful in future and avoid any adverse impact on their professional career.

5. For what has been discussed above, this petition is dismissed and leave is refused.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
9th of June, 2016
Not Approved For Reporting
Khuram