

PLJ 2025 Cr.C. 628 (DB)
[Balochistan High Court, Quetta]

Present: MUHAMMAD EJAZ SWATI AND MUHAMMAD AAMIR NAWAZ RANA, JJ.

ASHFAQ KHALID etc.--Appellants

versus

STATE through D.G. NAB, QUETTA etc.--Respondents

Crl. Eht. A. Nos. 24, 25 & 28 of 2021, decided on 17.5.2025.

National Accountability Bureau Ordinance, 1999 (XVIII of 1999)--

----Ss. 10(a)(iii)(iv), 17(d) & 32--Conviction and sentence--Four references--Appellants challenged impugned judgment on grounds that, regarding allegations leveled against them, four references were finalized by NAB authorities--Out of those four references, three were sent to trial court while one was withheld--Trial court, after completing trial in three references, convicted and sentenced appellants--However, in appeal, High Court directed that sentences awarded in three references be served concurrently--That fact was also observed by Chairman NAB, who noted that appellants had already been convicted in three references, and further prosecution would amount to double jeopardy--Consequently, NAB filed an application for closure of reference before trial court--However, trial court refused to close fourth reference in its order and directed that trial be proceeded--Appellants also filed an application under Section 265-K, Cr.P.C, which was not decided by trial court--High Court had considered plea of appellants/convicts and reviewed available record--Section 17(d) of NAB Ordinance, which is relevant, is reproduced as follows:

“Notwithstanding anything in Section 234 of Code, a person accused of multiple offences of same kind, committed over a span of years, may be charged with and tried for all such offences in a single trial.”

Allegations in both earlier three references and instant reference relate to corruption and misuse of authority by appellants during same period, therefore, Section 17(d) of NAB Ordinance applies--This section permits an accused person to be charged with and tried for multiple offences of same kind, committed over a span of years, in a single trial--However, trial court, without considering that provision, proceeded with matter and convicted appellants, which is unsustainable in eyes of law and amounts to double jeopardy--Appeal allowed. [Pp. 633 & 634] A, B, C & D

Mr. Sajjad Mehmood Butt, Advocate for Appellant (in Crl. Eht. A. No. 24 of 2021).

Mr. Ameer Zaman Jogizai, Deputy Prosecutor General NAB along with *Mr. Asad Khan Khatak*, Special Prosecutor NAB for State (in Crl. Eht. A. No. 24 of 2021).

Mr. Sultan Khalid, Advocate for Appellant (in Crl. Eht. A. No. 25 of 2021).

Mr. Ameer Zaman Jogizai, Deputy Prosecutor General NAB along with *Mr. Asad Khan Khatak*, Special Prosecutor NAB for State (in Crl. Eht. A. No. 25 of 2021).

Mr. Ameer Zaman Jogizai, Deputy Prosecutor General NAB along with *Mr. Asad Khan Khatak*, Special Prosecutor NAB for Appellant (in Crl. Eht. A. No. 28 of 2021).

Mr. Sajjad Mehmood Butt, Advocate for Respondent No. 1 (in Crl. Eht. A. No. 28 of 2021).

Mr. Sultan Khalid, Advocate for Respondent No. 2 (in Crl. Eht. A. No. 28 of 2021).

Date of hearing: 5.3.2025.

JUDGMENT

Muhammad Aamir Nawaz Rana, J.--Through this common judgment we intend to dispose of the Criminal Ehtesab Appeal No. 24 of 2021, Criminal Ehtesab Appeal No. 25 of 2021 and Criminal Ehtesab Appeal No. 28 of 2021, arising out of the same judgment dated 31.05.202

(impugned judgment), passed by the Accountability Court-I, Balochistan Quetta (trial court), whereby the appellants in Criminal Ehtesab Appeal No. 24 of 2021 & Criminal Ehtesab Appeal No. 25 of 2021 were convicted and sentenced as under:

“On the account of above circumstances, I am taking very lenient view against the accused persons on the basis of humanitarian ground, therefore both of them are convicted under clause (iii) & (iv) of sub section (a) under section 9 punishable under section 10 of NAO,1999, as under:

a. *The accused person Ishfaq Khalid son of B.D. Kernali is convicted and sentenced to the period of one year R.I. with a fine of Rs.1,94,70,710/-, in default thereof, he has to further undergo for 4 months S.I.*

b. *The accused person Pervaiz Zaki son of Zakiullah is convicted and sentenced to the period of eight months R.I. with a fine of Rs.50,00,000/-, in default thereof, he has to further undergo for a period of 3 months S.I.*

19. *Under section 15 of the Ordinance the convicts stand disqualified for the period of 10 years to be reckoned from the date of their release after serving sentences, for seeking or from being elected, choosen, appointed or nominated as Member or representative of any public body or any statutory or local authority or in service of Pakistan, or of any province.*

20. *The convicts shall not be allowed to apply or be granted or allowed any financial facilities in the form of any loan or advance, Minor other financial accommodation by any bank or financial institution owned or control by the Government for a period of 10 years from the date of this judgment.*

21. *The benefit of Section 382(B), Cr.P.C is extended in favour of accused persons. The convicts are on bail, they be taken into custody and be sent to Central Jail Quetta to serve their sentences.”*

Whereas the State through Deputy Prosecutor General NAB filed the Criminal Ehtesab Appeal No. 28 of 2021 against the impugned judgment for enhancement of the sentence awarded to the accused/ appellants.

2. The brief facts of the case as per prosecution version are that while holding public office as Senior Accounts Officer and Cashier in the Revenue Office WTR/PTCL Quetta during the years 1991 to 1999, the accused/appellants were grossly involved in misusing their positions and authority, thereby engaging in corruption and corrupt practices; during the course of investigation, it was revealed from the relevant record that PTCL Headquarters, Islamabad, had allocated an amount of Rs. 4,61,52,000/- from the year 1992 to 1999 for the salaries of daily wage staff. This amount was distributed by the Regional Office to each Revenue Office in Balochistan, where daily wage staff had been deputed; accused/appellant Ishfaq Khalid, being the Senior Accounts Officer PTCL/WTR Quetta, received an amount of Rs. 2,08,01,000/- for the salaries of daily wage staff during the years 1992 to 1999. This amount was transferred to the account of the Senior Accounts Officer (Account No. 005500-6, NBP, City Branch, Quetta). The accused/ appellant Ishfaq Khalid, in his capacity as Senior Revenue Officer, withdrew the said amount and, in connivance with accused/appellant Pervaiz Zaki, utilized the funds fraudulently. The amount was shown as payment for daily wage staff and was also entered in the salary cash register. Although the list of daily wage staff included 46 employees at the office of the Senior Revenue Officer (SRO), the monthly pay bills reflected amounts running into millions of rupees. However, no record was available to account for the excess payments allegedly made to the daily wage staff. According to the statements of 37 daily wage employees, no such staff was employed from 1991 to 1999, although some had subsequently left PTCL. The number of employees varied from 87 to 212 annually, whereas currently, 46 employees are working and 41 had left the service. The accused/appellants, in collusion with one another, embezzled a sum of Rs. 1,94,70,710/- in the form of monthly salary disbursements by committing fraud and tampering with official records, thereby committing the offence of corruption and corrupt practices as defined under Section 9(a) of the National Accountability Ordinance, 1999 (hereinafter referred to as “the Ordinance”), punishable under Section 10(a) of the Ordinance. Upon conclusion of the investigation, NAB authorities filed Reference No. 09 of 2010 under Section 18(g) of the Ordinance.

3. The trial court after submission of the reference against the appellants/accused, framed and read over the charge to them to which they did not plead guilty and claimed trial. The prosecution in order to substantiate the case against the accused persons produced thirty witnesses, including the Investigating Officer as PW-30.

- **PW-1 Asghar Jamil** produced the recovery memo (Ex-P/1-A) of pay bills for daily wage employees from 1997 to 1999, along with statements of excess payments from 1991 to 1999, and

a statement of payments to daily wage staff from July 1991 to June 1999, marked as Art-P/1 to Art-P/23.

- **PW-2 Tanvir Kamal**, the manager of National Bank Islamic Johar Town Lahore, produced bank account statements related to Account No. 005500-6, marked as Art-P/25 to Art-P/83.

- **PW-5 Azizullah**, an Assistant at NAB Balochistan, deposed that on 09.01.2008, Rafiq Kakar, the Manager of PTCL, handed over four registers and bills to the Investigating Officer, who took possession of them through recovery memo Ex-P/5-A. He produced the attendance registers and pay bills, marked as Art-P/86 to Art-P/89.

- **PW-28 Bahadur Khan** testified that on 29.10.2007, the Investigating Officer received eight cash books through the post, which were taken into possession under recovery memo Ex-P/28-A. He produced the cash books as Art-P/90 to Art-P/97.

- **PW-29 Muhammad Rafiq Kakar**, the former Manager of PTCL Revenue, was a marginal witness for recovery memo Ex-P/5-A.

- **PW-8 Abdul Ali** deposed that he was appointed as Naib Qasid in 1995, during the tenure of Ishfaq Khalid as the SRO of PTCL and Pervaiz Zaki as cashier. He further stated that no other individuals were working in the section at that time.

- Other witnesses, including PW-3 Muhammad Arshad, PW-9 Tajammul Latif, PW-10 Arshad Mehmood, PW-11 Muhammad Ashraf, PW-12 Paras, PW-13 Nazeer Ahmed, PW-14 Shahid Nadeem, PW-15 Anwaar Ahmed, PW-16 Muhammad Amir Khan, PW-17 Sajjad Haider, PW-18 Muhammad Shafiq, PW-19 Muhammad Naveed, PW-20 Muhammad Younas, PW-22 Syed Manzoor Ali, PW-23 William Masih, PW-24 Ghulam Muhammad, PW-25 Rozi-ud-Din, PW-26 Dilawar Khan, and PW-27 Gul Wali Khan all narrated the same account as PW-8.

- **PW-30 Shah Jahan**, the Investigating Officer, detailed the manner in which the investigation was conducted. He produced the Final Investigation Report as Ex-P/30-A and the Reference as Ex-P/30-B. During cross-examination, he admitted that the same records were presented in previous References No. 05 of 2001, 09 of 2001, 17/2001, and 29/2001 before the trial court.

4. On completion of prosecution evidence, the accused persons/appellants were examined under Section 342 Cr.P.C, wherein they once again professed their innocence. The appellants did not opt to produce any witness in their defence nor record their statements on oath as envisaged under Section 340 (2) Cr.P.C, however the appellant Ishfaq Khalid produced documents as Ex.D/1 to Ex.D/34 in his defence. On completion of trial the appellants were convicted and sentenced in the above terms.

5. We have heard the learned counsel for the appellants, learned Deputy Prosecutor General NAB assisted by Special Prosecutor NAB and have perused the available record with their able assistance.

6. The appellants/convicts challenged the impugned judgment on the grounds that, regarding the allegations leveled against them, four references were finalized by the NAB authorities. Out of these four references, three were sent to the trial court while one was withheld. The trial court, after completing the trial in the three references, convicted and sentenced the appellants/convicts. However, in the appeal, this court directed that the sentences awarded in the three references be served concurrently.

7. The appellants/convicts contended that the NAB authorities filed the fourth reference after a delay of ten years, without offering any explanation. Had this reference been filed along with the other three, the appellants would have faced concurrent sentences. This fact was also observed by the Chairman NAB, who noted that the appellants had already been convicted in the three references, and further prosecution would amount to double jeopardy. Consequently, NAB filed an application for the closure of the reference before the trial court. However, the trial court refused to close the fourth reference in its order dated 23.07.2009 and directed that the trial be proceeded. The appellants/convicts also filed an application under Section 265-K, Cr.P.C, which was not decided by the trial court.

8. We have considered the plea of the appellants/convicts and reviewed the available record. Section 17(d) of the NAB Ordinance, which is relevant, is reproduced as follows:

“Notwithstanding anything in Section 234 of the Code, a person accused of multiple offences of the same kind, committed over a span of years, may be charged with and tried for all such offences in a single trial.”

9. There is no explanation on record for the delay in filing the instant reference from the year 2001 to 2010, when three references against the appellants were filed. The prosecution failed to justify this delay and instead filed an application for the closure of the reference. Since the allegations in both the earlier three references and the instant reference relate to corruption and misuse of authority by the appellants during the same period, therefore, Section 17(d) of the NAB Ordinance applies. This section permits an accused person to be charged with and tried for multiple offences of the same kind, committed over a span of years, in a single trial. However, the trial court, without considering this provision, proceeded with the matter and convicted the appellants, which is unsustainable in the eyes of the law and amounts to double jeopardy. Reliance in this regard is being placed on the case of *Noorshad v. Chairman National Accountability Bureau*.¹[1]

10. After due deliberations and considering the ratio decidendi of referred judgment, we are not persuaded to uphold the conviction and sentence awarded to the appellants, therefore, while hearing these appeals on 05.03.2025, the impugned judgment was set-aside and the appellants in Criminal Ehtesab Appeal No. 24 & 25 of 2021 were acquitted of the charge while allowing their appeals through short orders. Since the impugned judgment was set-aside, therefore the Criminal Ehtesab Appeal No. 28 of 2021 on having become infructuous stands dismissed.

The above are the reasons for short orders even dated 05.03.2025.

(A.A.K.) Appeal allowed

¹[1]. 2017 PCr.LJ 1258.