

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : W.P. NO.3883-2017**

**Mian Muhammad Nawaz Sharif**

**Vs.**

**State through Chairman, National Accountability Bureau,  
Islamabad & Another**

**CASE NO. : W.P. NO.3884-2017**

**Mian Muhammad Nawaz Sharif**

**Vs.**

**State through Chairman, National Accountability Bureau,  
Islamabad & Another**

**CASE NO. : W.P. NO.3885-2017**

**Mian Muhammad Nawaz Sharif**

**Vs.**

**State through Chairman, National Accountability Bureau,  
Islamabad & Another**

**Petitioner by : M/s Azam Nazir Tarar, Mr. Amjad Hussain,  
Mr. Khawar Ikram Bhatti, Mr. Saad Hashmi  
& Raja Khurram Shahzad, Advocates**

**Respondent by : M/s Sardar Muzaffar Ahmad Khan, Mr. M.  
Afzal Qureshi, Mr. M. Asghar Awan & Mr.  
Irfan Ahmad Boota, Advocates**

**Date of hearing : 23.11.2017**

**AAMER FAROOQ J.** This judgment shall decide instant petition as well as W.P. Nos.3884/2017 & 3885/2017, as common questions of law and facts are involved.

2. The petitioner is facing trial in three References (References Nos.18/2017, 19/2017 & 20/2017) filed by National Accountability Bureau on the directions of the Hon'ble Supreme Court of Pakistan vide judgment dated 28.07.2017 in case titled 'Imran Ahmad Khan Niazi etc. Vs. Mian Muhammad Nawaz Sharif, Prime Minister of

W.P. Nos.3883-2017 etc.

Pakistan etc. (CP No.29-2016, CP No.30-2016 & Constitution Petition No.03-2017).

3. During course of trial, charges were framed in the above mentioned References separately, however, the petitioner filed applications before respondent No.2 for consolidation of charges. The referred applications, filed by the petitioner in three References, were dismissed by respondent No.2 vide the impugned order dated 08.11.2017.

4. It is pertinent to observe that earlier, respondent No.2 dismissed applications filed by the petitioner, which orders were assailed before this Court in three petitions under Article 199 of the Constitution i.e. W.P. No.3663/2017, 3664/2017 & 3665/2017 and the same were allowed vide judgment dated 02.11.2017 and the matter was remanded back to respondent No.2 for decision afresh in light of section 17(d) of National Accountability Ordinance, 1999 (the Ordinance) and the relevant law.

5. Learned counsels for the petitioner, *inter alia*, contended that under section 17(d) of the Ordinance, a person, accused of more offences than one, of the same kind, committed during the space of any number of years, may be charged with and tried in one trial; that the offence in question, for which the petitioner has been charged with, is Section 9(a)(v) of the Ordinance on the basis that during his stint as the Chief Minister of Punjab and the Prime Minister of Pakistan, he acquired assets in the name of his Benamidars/co-accused, which are beyond his known sources of income. It was further contended that respondent No.2 dismissed

applications filed by the petitioner without taking into consideration the requirements of Section 17(d) of the Ordinance and the relevant law, despite a clear direction by this Court vide judgment dated 02.11.2017 in the afore-noted writ petitions. Learned counsels, in support of contention that consolidation of charges is permissible under the law, placed reliance on cases reported as 'Noorshad Vs. Chairman, National Accountability Bureau and 5-others' (2017 P Cr.LJ 1258), 'Ramesh M. Udeshi V. The State' (2002 PCr.LJ 1712), 'State through Deputy Prosecutor General, Camp Office, Karachi Vs. Ramesh Udeshi, Ex-Secretary, Board of Revenue (Land Utilization), Sindh and others' (PLD 2003 Supreme Court 891) & 'Tariq Shahbaz and another Vs. National Accountability Bureau through Chairman and 4-others' (2008 YLR 2688). Reliance was also placed on the decision of Accountability Court No.III, Sindh in case titled 'Anwar-ul-Haq Abbasi etc. Muhammad Irshad Parachi etc., whereby vide judgment dated 15.06.2015, joinder of charges was allowed. Learned counsels further contended that in References Nos.18-2017 & 19-2017, charge is one under section 9(a)(v) of the Ordinance, whereas in Reference No.20-2017, charges are under section 9(a)(iv) of the Ordinance as well therefore charges in References Nos.18/2017 & 19/2017 should be tried together. It was further contended that in Reference No.20-2017, charge under section 9(a)(iv) of the Ordinance has been added, which is not made out in facts and circumstances of the case; that if any penal provision is incorporated in a statute, it should be interpreted, so as to favour the accused rather than state. Reliance

was placed on case reported as 'Waris Ali & 5-others Vs. The State' (2017 SCMR 1572).

6. In response to the query of the Court regarding the maintainability of the petitions, especially when under section 32 of the Ordinance, there is no remedy of appeal or revision against an interlocutory order, learned counsels placed reliance on case reported as 'Khan Asfandiyar Wali and others Vs. Federation of Pakistan through Cabinet Division, Islamabad and others' (PLD 2001 Supreme Court 607) to contend that the petition under Article 199 of the Constitution is maintainable. Reliance was also placed on cases reported as 'Nagina Silk Mill, Lyallpur Vs. The Income Tax Officer, A-Ward Lyallpur and Another (PLD 1963 Supreme Court 322) & 'Government of West Pakistan and Another Vs. Begum Agha Abdul Karim Sorish Kashmiri (PLD 1969 Supreme Court 14). It was further contended that separate trial shall prejudice case of the petitioner inasmuch there are common witnesses and since the cross-examination is to take place separately, the petitioner shall disclose his defence to the witnesses and when they appear in the subsequent References, they will cover up the shortcomings.

7. During the course of arguments, it was brought to attention of the Court that petitioner had filed a petition under Article 184(3) of the Constitution of Islamabad Republic of Pakistan, 1973 before the Hon'ble Supreme Court of Pakistan for trial under one Reference, wherein the Office had raised objections, against which, appeal was dismissed by the Hon'ble Supreme Court of Pakistan vide order dated 16.11.2017 in CM Appeal No.198-2017.

8. Learned counsels for National Accountability Bureau, *inter alia*, contended that separate charges have been framed and trial is to take place on the principles of parity as provided in Sections 222 & 233 Cr.P.C.; that section 17(d) of the Ordinance is not mandatory; that in any case, the petitioner had disclosed his defence on 05.04.2016 as soon as he made a statement regarding the acquisition of the assets on the floor of the Parliament. It was further contended that since the years, in which the assets have been acquired, are separate therefore charges are distinct requiring separate trial. It was further contended that under the law, it is prerogative of the prosecution to decide, whether to proceed with one trial or have separate trials. Moreover, it was contended that under section 17 (c) of the Ordinance, the Accountability Court can follow the procedure, which it deems appropriate.

9. The facts, leading to filing of instant petition as well as W.P. Nos.3884/2017 & 3885/2017, have been mentioned with brevity hereinabove therefore, need not be reproduced.

10. The petitioner is aggrieved of dismissal of his applications under section 17(d) of the Ordinance for joinder of charges in three References and insertion of Section 9(a)(iv) of the Ordinance in Reference No.20/2017.

11. The above mentioned References were filed against the petitioner and others on the directions of the Hon'ble Supreme Court of Pakistan vide judgment dated 28.07.2017 in case titled 'Imran Ahmad Khan Niazi etc. Vs. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan etc. (CP No.29-2016, CP No.30-2016 &

Constitution Petition No.03-2017). The august Apex Court, in the referred judgment, directed as follows: -

*“The National Accountability Bureau (NAB) shall within six weeks from the date of this judgment prepare and file before the Accountability Court, Rawalpindi/Islamabad, the following References, on the basis of the material collected and referred to by the Joint Investigating Team (JIT) in its report and such other material as may be available with the Federal Investigation Agency (FIA) and NAB having any nexus with assets mentioned below or which may subsequently become available including material that may come before it pursuant to the Mutual Legal Assistance requests sent by the JIT to different jurisdictions:-*

*a) Reference against Mian Muhammad Nawaz Sharif, (respondents No. 1), Maryam Nawaz Sharif (Maryam Safdar), (Respondent No. 6), Hussain Nawaz Sharif (Respondent No. 7), Hassan Nawaz Sharif (Respondent No. 8) and Capt. (Retd). Muhammad Safdar (Respondent No. 9) relating to the Avenfield properties (Flats No. 16, 16-A, 17 and 17-A Avenfield House, Park Lane, London, United Kingdom). In preparing and filing this Reference, the NAB shall also consider the material already collected during the course of investigations conducted earlier, as indicated in the detailed judgments;*

*b) Reference against respondents No. 1, 7 and 8 regarding Azizia Steel Company and Hill Metal Establishment, as indicated in the main judgment;*

*c) Reference against respondents No. 1, 7 and 8 regarding the Companies mentioned in paragraph 9 of the judgment unanimously rendered by Mr. Justice Ejaz Afzal Khan, Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan; Const. Ps. No. 29-30/2016 & 03/2017. 23*

*d) Reference against respondent No. 10 for possessing assets and funds beyond his known sources of income, as discussed in paragraph 9 of the judgment unanimous rendered by Mr. Justice Ejaz Afzal Khan, Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan;*

*e) NAB shall also include in the proceedings all other persons including Sheikh Saeed, Musa Ghani, Kashif Masood Qazi, Javaid Kiyani and Saeed Ahmed, who have any direct or indirect nexus or connection with the actions of respondents No. 1, 6, 7, 8 and 10 leading to acquisition of assets and funds beyond their known sources of income;*

*f) NAB may file supplementary Reference(s) if and when any other asset, which is not prima facie reasonably accounted for, is discovered”*

12. Under section 17(a) of the Ordinance, the Code of Criminal Procedure, 1898 is to apply *mutatis mutandis* to the proceedings under the Ordinance, however, under section 17(c) *ibid*, notwithstanding sections 17 (a) & 17 (b) of the Ordinance, the Court may, for the reasons to be recorded, dispense with any provision of the Code and follow such procedure as it may deem fit in the circumstances of the case. Moreover, under section 17(d) of the Ordinance, notwithstanding anything in section 234 of the Code, a person, accused of more than one offences of the same kind, during the space of any number of years from the first to the last of such offences, may be charged and tried at one trial for any number of such offences. Section 222 of the Criminal Procedure Code provides that a charge shall contain such particulars, as to the time and place of the alleged offence, and the person, if anything is against whom or the thing, if any, in respect of which, it was committed and other particulars which are reasonably sufficient to give the accused notice of the matter, with which, he is charged; section 233 of the Code provides that for every distinct offence, for which any person is accused, there shall be a separate charge and every such charge shall be tried separately except in cases mentioned in Sections 234, 235 & 239 of the Code. Under section 17(d) *ibid*, Section 234 Cr.P.C. has been excluded, as the referred Section starts with non-obstante clause. For the ease of convenience, Section 17(d) of the Ordinance is reproduced below: -

*“(d) Notwithstanding anything in section 234 of the Code, a person accused of more offences than one of the same kind committed during the space of any number of years, from the first to the last of such offences, may be charged with and tried at one trial for any number of such offences”.*

The bare reading of the above provision shows that the same is directory in nature and the usage of words ‘**may**’ by the legislature, gives an impression that it is for the convenience of Trial Court (NAB) and if the Court comes to a conclusion that a person is accused of more than one offence, of same kind, committed during the space of any number of years, it means the time limitation for all offences, is immaterial. In this behalf, it is needless to mention that, the entire discussion regarding single trial, revolves around the offence U/S 9-A of NAO, 1999 i.e. ‘corruption and corrupt practices’.

13. The legislative intent is visible with the usage of word ‘**may**’ and under the principles of interpretation, it is settled that word used by legislature, would be read and understood in plain and ordinary meaning. Reliance is placed upon (2009 CLD 661) ‘Ameen Riaz Vs. Al-Zamin Leasing Modarba’. Similarly, when the plain language of a statute reflects no other interpretation then, the intention of the legislature conveyed to such language, is to be given full effect. Reliance is placed upon (PLD 2012 SC 501) ‘Ghulam Haider Vs. Murad’. However, the usage of word ‘**may**’ has to be seen in its natural meaning which is a permissive or enabling word and imports discretion. Ordinarily, the word ‘**may**’ is not to have a mandatory effect. The usage of word ‘**may**’ in section 17(d) of the Ordinance has to be seen with reference to an open ended



timeline in respect of the offence of corruption and corrupt practices allegedly committed by the accused, therefore, the legislative intent is clear that discretion has been extended to the Accountability Court for framing of charges keeping in view its convenience and objectivity for the purpose of clarity of offences which the accused faces so that he may not be confused while understanding the charge. The word '**may**' involves a *choice* whereas in comparison, the word '**shall**' refers an *order* and this is the customary usage of these terms of art when they appear in the statute, although the court cannot read the word '**may**' as carte blanche to use its discretion injudiciously under misconception that the word '**may**' gives the court unchecked, un-fettered and un-interfered discretion to exercise its own authority. In order to understand the true meaning and usage of word '**may**', we have gone through the case laws reported as (PLD 1996 SC 182) 'Muhammad Sadiq Vs. University of Sindh', (PLD 1999 Quetta 78) 'A. Karim Vs. Returning Officer' (PTD 1999 SC of India 3828) 'Commissioner of Income Tax Vs. SMT Pk Noor Jahan' & (1976 SCMR 82) 'Marker Employees Union Vs. Marker Alkaloids'. In view of above case laws, we are of the opinion that the word '**may**' is a discretionary and enabling word, unless the subject matter shows that the exercise of the power given by the provision using the word '**may**', was intended to be imperative by the person to whom the power is given. It is now well settled that the word '**may**', in isolation from the context in which it is used in a statute, would be

treated as permissive in nature and, thus, imports a discretionary power.

14. The above referred discussion, if seen with the nature of events on the basis of charge by the learned Trial Court keeping in view the position, office, status of accused from 1985 till 2017 in which he has allegedly accumulated assets and wealth beyond known income sources, which have been enlisted by the NAB authorities in References Nos.18, 19 & 20 of 2017, it is difficult to frame a joint charge at this stage, as it will amount to ambiguity, confusion while referring each and every property/assets to the accused for the purpose of getting the answer or the defence from the accused.

15. The comparison of Section 17(d) of the Ordinance and Section 234 Cr.P.C. shows that former has been made more open-ended, as there is no restriction in the same as to the time and number of offences, with which, a person may be charged and tried in one trial. The Ordinance does not define offences of the same kind, however, definition/explanation of the concept, is provided in subsection (2) of Section 234 Cr.P.C. and under the same, offences are of the same kind, when they are punishable with the same amount of punishment, under the same section of Pakistan Penal Code or any special or local law.

16. There is not much of reported case law on the interpretation of section 17(d) of the Ordinance, which is quite similar to section 234 Cr.P.C. therefore for the ease of convenience, in order to determine the import and scope of section 17(d) of the Ordinance,

reference may be made to the case law propounded on the subject and interpretation rendered to section 234 Cr.P.C. In case reported as ‘Anwar Hussain Talukdar and another Vs. Province of East Pakistan and others’ (PLD 1961 Dacca 155), it was observed as follows: -

*“19. It will thus be observed from the authorities relied upon by the learned Advocate that it is now well settled that writ of certiorari will issue not only when an inferior body or Tribunal acting in a judicial or at least a quasi judicial capacity has exercised a jurisdiction which it does not possess or acted in flagrant disregard of the principles of natural justice or acted mala fide or on matters collateral to the matter being enquired into, but also to correct such errors of law as may be said to be errors apparent on the face of the record. As pointed out in the cases referred to earlier it is not, however, always easy to determine what are errors of law apparent on the face of the record”*

*“In our opinion, a misjoinder of charges is a defect in the mode of the trial, namely, in the procedure to be followed for the trial, and this does not render the trial itself without jurisdiction, for the trial Court must inevitably, whenever this question arises, decide whether the person accused can or cannot be tried jointly in view of the accusations levelled in that particular case. Thus it has furthermore the jurisdiction to decide rightly or wrongly. A mere non compliance, therefore, with the rules of procedure will not, in our opinion, amount to an illegal exercise of jurisdiction. In taking this view we find support also from another well considered and well reasoned decision of the Supreme Court of India in the case of Janardhan Reddy and others v. The State of Hyderabad and others (AIR1951SC217), where Fazal Ali, J. delivering the judgment of the Court clearly held that the question of misjoinder of charges was not a question relating to the jurisdiction of the Court. The point was expressly raised in that case, and his Lordship, after an exhaustive review of a large number of authorities, came to the conclusion that the question of misjoinder of charges was not a question of want of jurisdiction of the Court”*

Similarly, in case reported as ‘Ahmad Khan Vs. Commissioner, Rawalpindi Division and another’ (PLD 1965 (W.P.) Peshawar 65), it was observed as follows: -

*“It will be manifest from reading the language of the section that it has two parts and each part lays down a general rule. The first part lays down that for every distinct offence of which any person is accused there should be a separate charge, and the second part lays down that every such charge shall be tried separately, except the cases mentioned in sections 234, 235, 236 and 239. It will therefore be plain that criminal cases cannot, like civil suits, be consolidated, and tried together on the same evidence, except within the limits as to the joinder of charges laid down in the Criminal Procedure Code (see Emperor v. Chamask Lal (1941 Bom. 156) ). Again, sections 234 to 239 are merely permissive and not mandatory, i.e., it is for the prosecution to try the accused on different offences in one trial as provided by those sections, but in case the prosecution decides to split the charges and try him separately on those charges the accused cannot insist on joinder of charges”*

In case reported as ‘Zia-ul-Haq Vs. The State’ (1973 P Cr.LJ 457), it was observed as under: -

*“The general rule is that for every distinct offence for which any person is accused, there shall be a separate charge and every such charge shall be tried separately, under section 233, Cr. P. C. Some of the exceptions to this rule are contained in sections 234, 235, 236 and 239, Cr. P. C. Section 234 (1) pro vides that when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for any number of them not exceeding three. Even the limit of three charges, with regard to cases of criminal breach of trust or dishonest, misappropriation of money, has been done away with by subsection (2) of section 222 wherein it is provided that all items of criminal breach of trust and/or misappropriation within a period of one year could be the basis for one charge. Thus it was permissible to prosecute individual appellants for all items of misappropriation within a period of one year at of trial. The argument of the learned counsel has force in the real of possibility only. In other words, it is not mandatory but only permissible for the Court to combine several charges in one trial. The combination of several items and splitting up of all th charges into twelve (in the case of Mr. Khalilur Rehman's client and into three (in the case of Mr. Bajwa's client) is not against the main provision of law, i.e., section 233, Cr. P. C. Therefore, no illegality has been committed because, as pointed out above, this provision contains the rule while those in sections 234 (1) and 222 (2) contain only permissible exception. What is permissible is not always*

*mandatory and this is the case here with regard to the interaction of the provisions contained in sections 233 and "section 222 (2), Cr, P. C."*

In case reported as 'The State Vs. Mirza Azam Beg, P.C.S. and Another' (PLD 1964 (W.P.) Lahore 339), the Hon'ble Lahore High Court observed as follows: -

*"Section 234 Cr. P. C. is the first exception to the general rule of one trial for each distinct offence. The principle underlying this section is that the offences of the same kind in criminal Court within a space of short period, namely, twelve months from the first to the last of such offences, may be tried together. This section lays down three limitations. They are, (1) that the offences must be of the same kind, (2) that they must have been committed within the space of one year, and (3) that more than three offences should not be joined in the same trial. It is also important to observe here that the directions in regard to joinder of three charges stated under section 234 are not mandatory in the sense that it is not obligatory on the Magistrate not to try the offences separately, but it is entirely in the discretion of the, Magistrate whether or not to resort to section 234. The section is merely enabling section and does not in any way deprive the Court of ordering a separate trial. In other words, it is not obligatory on the Court to have joint trial of three offences committed within the period of 12 months. It is also important to notice that this section governs the case where there is only one accused. The case of several persons being accused of more offences than one of the same kind committed within the space of twelve months is dealt with in section 239 (c)".*

*11. Section 239 Cr. P. C. is the last of the exceptions to the rule laid down in section 233 and expressly mentioned as such in that section. This is the only section which deals with the joint trial of more than one person and the preceding five sections are intended to cover the case of one accused person but more than one charge. It will be manifest from reading the language of this section that it lays down the seven contingencies mentioned in clauses (a) to (g) in which persons may be charged and tried together. Clause (a) is to the effect that "persons accused of the same offence committed in the course of the same transaction can be tried together." Clause (b) is to the effect that "persons accused of an offence and persons accused of its abetment or attempt to commit it can be tried together." Clause (e) is to the effect*

*that persons accused of more than one offence of the same kind within the meaning of section 234 committed by them jointly within the period of twelve months can be tried together. This provision is analogous to that of section 234, which section it would be remembered deals with only one accused. Under clause (d) persons accused of different offences committed in the course of the same transaction can be tried together. This is analogous to section 235(1). Clause (e) deals with the joint trial. Clause (f) deals with the joint trial of receivers of property stolen through one theft. Finally, clause (g) deals with counterfeiters of coin”.*

Likewise, in case reported as ‘Ghulam Farooq alias Ghulam Qasim Vs. The State’ (2000 MLD 1504), the Division Bench of Hon’ble Baluchistan High Court observed that prosecution was to try an accused on different offences in one trial as provided in sections 234 & 239 Cr.P.C., but in case prosecution decided to split the charges and try the accused separately on those charges, the accused could not insist on joinder of charges. Similar observations can be found in case reported as ‘Nadir Shah Vs. The State’ (1980 SCMR 402), wherein it was observed by the august Apex Court that section 234 Cr.P.C. is enabling and is not to be unnecessarily followed in all cases. It was observed that trial court did not make use of section 234 Cr.P.C. but in case, during course of trial, if it is of the opinion that the combination of charges can be helpful to the accused in facilitating his defence, could alter the same and proceed accordingly before pronouncement of judgment however could not acquit the accused on so-called defence. It was further observed that errors, committed in stating either the defence or the particulars required to be stated in charges or omission in such behalf, are not material unless the accused was misled by such

errors or omission or failure of justice occasioned. In case reported as ‘Shahadat Khan and Another Vs. Home Secretary to the Government of West Pakistan and Others’ (PLD 1969 Supreme Court 158), it was observed as follows: -

*“Under the Code of Criminal Procedure the rule laid down in section 233 is that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in sections 234, 235, 236 and 239, Cr.P.C. These sections are the exceptions to the general rule. The general rule is clear enough. A joint trial is under these provisions, by no means compulsory. Nor can it be said that if several accused persons charged for committing the same offence in the course of the same transaction are tried separately then the trial will, irrespective of any question of prejudice, be illegal. The provisions of sections 234 to 239, Cr.P.C. are merely enabling provisions and do not make it incumbent upon the criminal Courts to hold a joint trial in every case”.*

The upshot of above case law is that joinder of charges as provided in section 234 Cr.P.C. is procedural as well as directory and not mandatory; the accused cannot insist for joinder of charges unless it can be shown that separate trials or charges shall prejudice his case to such an extent that the same amounts to illegality.

17. As observed above, the august Apex Court directed National Accountability Bureau to file three References against the petitioner and others which led to filing of References Nos.18, 19 & 20 of 2017. The petitioner assailed the judgment of the apex Court dated 28.07.2017 in Review Petitions (Civil Review Petitions Nos.297 to 299/2017 and CR Nos.303, 308, 309 to 312/2017), which was dismissed vide judgment dated 15.09.2017. Apparently, no ground was agitated before the august Apex Court for joinder of

References. However, a petition was filed subsequently under Article 184 (3) of the Constitution, with the following prayer: -

- “1. Declare that the final order of the Court dated 28.07.2017, to the extent that it directs filing of three references against the petitioner, is per incurium, being repugnant to the provisions of the Article, 4,9,10-A, 13 and 25 of the Constitution.*
- 2. Declare that an accused under section 9(a)(v) of NAO, 1999 shall be tried through a single reference, irrespective of the number of assets alleged to have been held by him on any such date that the reference is filed against him, strictly in accordance with law.*
- 3. Declare that multiple trials on a single charge would prejudice the petitioner’s Fundamental Right to be dealt with in accordance with law, fair trial and protection against double punishment, guaranteed under Articles, 4, 10-A and 13 of the Constitution.*
- 4. To suspend the proceedings before the Accountability Court No.1, Islamabad in Reference No.18-20/2017, which are repugnant to the provisions of NAO, 1999, Cr.P.C. and the Constitution, till the filing of a consolidated reference by NAB in respect of the alleged commission of the offence under section 9(a)(v) of NAO, 1999.”*

Office raised objections to filing of the referred Petition which was fixed before the Hon’ble Chief Justice of Pakistan in Chambers as CM Appeal No.198 of 2017. In the referred Appeal, the Hon’ble Supreme Court of Pakistan, vide order dated 16.11.2017, held as follows:

*“From the present petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) and particularly the prayer clause it is clear that the appellant/petition is aggrieved of the judgment of this Court dated 28.07.2017 passed in Constitution Petitions os.29 and 30 of 2016 and 3 of 2017 and the crux of his grievance is that the judgment to the extent of directing the NAB to file three references against the petitioner is per incuriam being repugnant to the provisions of Articles 4, 9, 10-A, 13 and 25 of the Constitution; the Court should have held that the petitioner be tried through a single reference; that the multiple trials on a single charge would prejudice the petitioner’s fundamental rights. It is an admitted fact that the petitioner has already availed the remedy of review*



*against the said judgment, and the judgment passed by this Court in the review petition dated 15.09.2017 does not show if the points which the petitioner has raised in the present petition were ever the grounds of attack in the review petition, which should have been so. Thus, the argument that despite having a remedy of review and even availing such remedy the petitioner has an independent remedy per the provisions of Article 184(3) of the Constitution to assail the same judgment on the rule of per incuriam, in light of the law laid down in the judgment reported as regarding pensionary benefits of the Judges of Superior Courts (PLD 2013 SC 829) is not tenable. In fact the points raised in the present petition should have been part of the review petition which were never agitated by the petitioner in those proceedings despite the petitioner had a clear chance to do so, thus the present case is distinguishable from the ratio of the judgment (supra), therefore, the office objections are sustained. The Civil Miscellaneous Appeal is accordingly dismissed”.*

18. The grounds agitated in the petition under Article 184(3) of the Constitution, to which Office Objections were raised and sustained and the reasons agitated before the learned Trial Court for joinder of charges, are quite similar. Since the request for joinder of References has already been turned down by the Hon’ble Supreme Court of Pakistan hence this Court cannot re-adjudicate the matter on the same question.

19. The cases, relied upon by learned counsels for the petitioner i.e. 2017 P.Cr.LJ 1258, 2002 P.Cr.LJ 1712 & 2008 YLD 2688 supra are distinguishable, as same were rendered in peculiar facts and circumstances. In this behalf, in case law reported as 2017 P.Cr.LJ 1258, the petitioner had been tried and convicted under two References and subsequently, another Reference was filed with respect to the offences of same kind; this was held to be not permissible and the application under section 265-K Cr.P.C. was allowed by the Hon’ble Peshawar High Court. The situation was

similar in case reported as 2008 YLR 2688. However, case reported as 2002 P.Cr.LJ 1712 was rendered prior to incorporation of section 17 (d) of the NAB Ordinance. Likewise, the judgment of the august Apex Court in case reported as ‘State through Deputy Prosecutor General, Camp Office, Karachi Vs. Ramesh Udeshi, Ex-Secretary, Board of Revenue (Land Utilization), Sindh and others’ (PLD 2003 Supreme Court 891), was based on section 234 Cr.P.C. and not section 17(d) *ibid*.

20. It is pertinent to observe that Section 17(d) was incorporated in the Ordinance in its present form in 2002 however the Hon’ble Supreme Court of Pakistan in case reported as (PLD 2003 Supreme Court 891), while considering the joinder of charges even of the offences of same kind, observed as follows: -

*“If same kind of offences are committed in separate transactions, the joinder of the charges in such cases would be in contravention of law but if the similar nature of offences are committed in the same transaction a joint charge would be framed. It is provided in section 233, Cr.P.C. that in case of distinct offences, separate charge should be framed and each charge should be tried separately except in the cases mentioned therein whereas under section 235, Cr.P.C. all the offences which are committed in the same transaction should be charged together”*

21. In case reported as 2002 P.Cr.LJ 1712, it was emphasized that the exceptions provided in Sections 234, 235, 236 & 239 Cr.P.C. exist so that a person is protected from jeopardy of double prosecution and facing trial again and again, for which, he could be prosecuted in one trial only and that an accused person is saved from the agony of the multiplicity of the proceedings. Petitioner is not facing the menace as envisaged in the judgments relied upon by

learned counsels for the petitioner inasmuch as, neither any of the References has culminated into conviction nor previously any such Reference was filed against the petitioner for offences of the same kind.

22. Though the applications filed before the Accountability Court have not been appended with these petitions yet from the impugned order and the contentions of the learned counsels for the petitioner, it is made out that the same was for joinder of charges i.e. conducting a joint trial in above mentioned three References. In this regard, sole reason advanced by learned counsels for the petitioner is that prejudice shall be caused to the petitioner in case of separate trials in three References, as the witnesses are common and the defence of the petitioner shall be disclosed to them. The apprehension of the petitioner, that the defence shall be disclosed to the witnesses, has been taken into account by respondent No.2. The learned trial court observed that the decision in three References shall be rendered simultaneously. Moreover, in order to overcome any prejudice, which the petitioner apprehends he may face regarding disclosure of defence, a request can be made to the learned trial court for cross-examination of joint witnesses i.e. witnesses which are common in three References on the same date or on the following day so that they have little or no chance for thinking and improving upon what is to be said. Even otherwise, as was observed by the august Apex Court in case reported as 1980 SCMR 402 supra that the learned trial court, during the course of trial, after recording evidence, if is of the opinion that one trial is

convenient, can alter the charges and pass and appropriate order in this behalf, however, joinder of charges cannot be claimed as of right.

23. It is pertinent to observe that this Court, while hearing a petition under Article 199 of the Constitution, is not sitting as a Court of Appeal and the scope, on the basis of which a challenge can be made, is very restricted. In this behalf, it is trite law that a petition under Article 199 of the Constitution, does not lie against an interlocutory order unless the same is patently illegal or suffers from jurisdictional defect. In NAB matters, the jurisdiction of this Court was held to be applicable in case reported as ‘Khan Asfandiyar Wali and others Vs. Federation of Pakistan through Cabinet Division, Islamabad and others’ (PLD 2001 Supreme Court 607), but it was observed that High Court shall exercise powers sparingly in rare and exceptional circumstances for valid reasons to be recorded in writing.

24. In view of the above position of law and facts, the petitioner has no vested right to claim joinder of charges or be tried together in one trial against three References numbered above hence the impugned order does not suffer from any illegality or jurisdictional defect, warranting interference by this Court under Article 199 of the Constitution. Similarly, no illegality was pointed out with respect to addition of offence under section 9(a)(iv) of the Ordinance in Reference No.20/2017.

W.P. Nos.3883-2017 etc.

25. For the above mentioned reasons, instant petition as well as W.P. Nos.3884/2017 & 3885/2017, are without merit and are accordingly dismissed.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

Announced in Open Court on **04.12.2017**.

**JUDGE**

Zawar

**JUDGE**

Uploaded By: Zulqarnain Shah