

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1632/2018

Dan Gunnar Bjarne Anderson

Versus

Federation of Pakistan
through Secretary, Ministry of Interior & 3 others

Petitioner by : Hafiz Arfat Ahmed Chaudhry, Advocate.
Ms Kashifa Niaz Awan, Advocate.

Respondents by : Syed Muhammad Tayyab, Dy. Attorney General.
Barrister Rizwan, Special Prosecutor, NAB.
Mr Azmatullah, Assistant Director/I.O., NAB.

Date of Hearing : 22-04-2019.

ATHAR MINALLAH, C.J.- Through this consolidated judgment we will decide the instant petition and W.P. No. 4154/2018 titled '*Dan Gunnar Bjarne Anderson v. National Accountability Bureau, etc.*'. Both these petitions have been filed by Dan Gunnar Bjarne Anderson who is a citizen of the Kingdom of Sweden (*hereinafter referred to as the 'petitioner'*).

2. The facts, in brief, are that the petitioner had incorporated a private limited company in March, 2012, namely M/s Unaico Pakistan (Pvt) Ltd (*hereinafter referred to as the 'Company'*). The petitioner was one of its Directors and he owned and held 99% of the shares of the Company. The petitioner, through the Company, induced

members of the general public to invest in a scheme and such an activity was not covered under the objects for which the Company had been incorporated and explicitly stated in the Memorandum. Proceedings were initiated by the Securities and Exchange Commission of Pakistan (*hereinafter referred to as the '**Commission**'*) and the petitioner sought voluntary winding up of the Company. The request for voluntary winding up of the Company was turned down by the Commission and instead the latter filed a petition before this Court in August 2012. In the meanwhile the National Accountability Bureau (*hereinafter referred to as the '**Bureau**'*) also initiated an inquiry under the National Accountability Ordinance, 1999 (*hereinafter referred to as the '**Ordinance**'*). In December 2012, during the course of the proceedings before the Bureau, the petitioner and the other Director, namely, Atif Kamran, offered voluntary return under section 25(a) of the Ordinance of 1999. It appears from the record that the petitioner and other officials had refused to give access to the Investigating Officer regarding the documents and record of the Company and instead filed an affidavit through one of the officials of the Company disclosing therein the liability or gain stated to have been made while executing the scheme. Consequently, the offer made by the petitioner and the other Director was placed before the competent authority. The latter approved the offer made by the petitioner regarding voluntary return of the stated gains which amounted to Rs.98.012 million. The Bureau informed the petitioner vide letter, dated 30-01-2013, that pursuant to acceptance of the offer of voluntary return, he had been discharged to the extent of the liability for which the voluntary return had been offered. The name of

the petitioner was removed from the Exit Control List on the recommendation of the Bureau. Later the Bureau received more than 2,000 claims from members of the general public and, therefore, an inquiry under the Ordinance of 1999 was approved. The petitioner came to Pakistan on 25-03-2018. When he was leaving the next day, he was informed at the Airport that his name was on the Exit Control List. His passport was detained by the officials of the Federal Investigation Agency. The petitioner filed a constitutional petition which was allowed and his ad-interim bail was confirmed. Through the instant petition the petitioner is seeking removal of his name from the Exit Control List, whereas the inquiry proceedings under the Ordinance of 1999 have been challenged in the connected petition.

3. The learned counsel for the petitioner has contended that; after acceptance of the voluntary return, fresh proceedings could not have been initiated; the voluntary return was accepted by the competent authority and the amount of liability determined by the Bureau was paid pursuant thereto; fresh proceedings initiated against the petitioner were in violation of section 25(a) of the Ordinance of 1999; the fresh inquiry was initiated on the basis of fake claims because the amount paid pursuant to the acceptance of the voluntary return was not distributed amongst the claimants; most of the amount paid by way of voluntary return was misappropriated by the Bureau and as a result the claimants could not be compensated; after the discharge of the petitioner, the Bureau was no more vested with power and jurisdiction to proceed in the same matter by initiating fresh proceedings; the discharge from the liability has attained finality

and has become a past and closed transaction; the due amount had been determined by the Bureau as contemplated under section 25(a) of the Ordinance of 1999; the discharge is not confined to the amount of liability for which the offer of voluntary return has been accepted but extends to all other liabilities relating to the same matter; the claimants are not genuine because, as per the assertions of the Bureau, complaints were received even in 2017; it does not appeal to a prudent mind that a reasonable person would remain silent for more than seven years; once an offer for voluntary return has been made by an accused, then it becomes an obligation of the Bureau to determine the liability; the determination made by the Bureau becomes final after the offer has been accepted; the Bureau had published a public notification in various daily newspapers and had also set a deadline for receiving claims; after the lapse of the deadline, the voluntary return was accepted; even if there were other claimants, the already concluded proceedings cannot be reopened; the Bureau is violating its own SOPs; the name of the petitioner has been put on the Exit Control List in violation of the relevant law; the petitioner is a foreign national and his fundamental rights are being violated; since the filing of these petitions the Bureau has not made any progress in the pending inquiry, which shows that no case is made out; reliance has been placed on the cases of '*Muhammad Sharif v. National Accountability Bureau and others*' [2017 SCMR 1666], '*Syed Abid Hussain Shah and 9 others v. Chief Secretary, N.-W.F.P., Peshawar and 7 others*' [2013 PCr L J 974], '*Mubarak Ali v. The State*' [PLD 2005 Lahore 168], '*Sh. Khalid Mehmood and 3 others v. The State and 2 others*' [2006 PCr LJ 1115], '*Miraj Khan v. Gul*

Ahmed and 3 others’ [2000 SCMR 122], *Faisal Iqbal and 2 others v. The State and another*’ [2016 PCrLJ 1144], *Tabish Gauhar v. The State*’ [2016 PCrLJ 1398], *Rimsha Masih v. Station House Officer, Police Station Ramna and others*’ [PLD 2013 Islamabad 1], *Sheikh Muhammad Tahir v. The State and 2 others*’ [2012 PCrLJ 1075], *Syed Alamdar Hussain Shah v. Abdul Baseer Qureshi and 2 others*’ [PLD 1978 SC 121], *Ismail A. Rehman v. Muhammad Sadiq and 3 others*’ [PLD 1990 Karachi 286], *The Federal Government through Secretary Interior, Government of Pakistan v. Ms Ayyan Ali and others*’ [2017 SCMR 1179], *Syed Abid Hussain Shah and 9 others v. Chief Secretary, N.-W.F.P., Peshawar and 7 others*’ [2013 PCrLJ 974], *Imran Amjad Khan v. Islamic Investment Bank Limited (IIBL) through Official Liquidator and 4 others*’ [2018 CLD 218], *Wajid Shams-ul-Hassan v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad*’ [PLD 1997 Lahore 617], *Rana Ijaz Ahmed Khan v. Government of Pakistan and others*’ [2000 MLD 551], *Malik Mushtaq Awan v. Government of Pakistan and others*’ [PLD 1999 Lahore 372], *Sikandar Hayat Khan and 4 others v. Government of Pakistan through Federal Secretary, Ministry of Interior, Islamabad and 5 others*’ [PLD 2003 Peshawar 102], *Syed Sami Ullah Al Qadri v. Federation of Pakistan, through Secretary Ministry of Interior and 6 others*’ [2009 CLC 1314], *Rafique v. Federation of Pakistan and 2 others*’ [2018 MLD 579], *Javed Khan v. Pakistan through Secretary Interior and 6 others*’ [2017 YLR 2109].

4. The learned Special Prosecutor of the Bureau has argued that; section 25(a) of the Ordinance of 1999 is being misinterpreted;

the proceedings initiated by the Bureau do not amount to double jeopardy; it is implicit in the unambiguous language used by the legislature in section 25(a) that the accused has to voluntarily come forward and make an honest and full disclosure of the assets or gains; since voluntary return is offered and considered before the stage of investigations, therefore, this determination is solely based on the offer and declaration made by an accused; the petitioner had submitted a false affidavit by not disclosing the entire liability; the proceedings initiated afresh were based on several claims received from members of the general public; the petitioner is a foreign national and if he is allowed to leave the country before the completion of the inquiry, then the Bureau would not be able to conclude its proceedings.

5. The learned counsel for the petitioner and the learned Special Prosecutor of the Bureau have been heard and the record perused with their able assistance.

6. The admitted position is that the petitioner is a foreign national and that he had incorporated a juridical person in Pakistan. The juridical person was used for inducing members of the general public to make investments in a scheme alleged to be a sham scheme. The Company was not authorized to engage in such a business venture in view of the objects mentioned in its Memorandum. The members of the general public who had acted upon the representations made to them by the petitioner had invested their hard earned savings in the scheme and were thus defrauded. The

petitioner, by making the offer of voluntary return amounting to Rs.98.012 million, had in fact admitted his guilt in relation to the offence of cheating the public at large. The voluntary return was accepted by the competent authority and thereafter the petitioner was informed that he had been discharged to the extent of the amount which was disclosed by him as gains made from the commission of the offence. After the discharge of the petitioner, the Bureau has received numerous complaints/claims from members of the general public who alleged that they were also victims of the sham scheme. It is the case of the Bureau that the claims received after the discharge of the petitioner were not part of the disclosure made at the time of making the offer for voluntary return.

7. The question that has arisen for our consideration from the arguments advanced on behalf of the petitioner essentially relates to the interpretation of section 25(a) of the Ordinance of 1999 i.e whether, after the acceptance of the offer of voluntary return, followed by the discharge of the accused, to what extent was the latter relieved from the liability. Whether the matter can be reopened or are fresh proceedings barred if more complaints/claims are received. What would be the status of a concluded voluntary return under section 25(a) of the Ordinance of 1999 if the offer was not based on complete and full disclosure of the assets or gains acquired or made in the course or as a consequence of the offence alleged to have been committed? In a nutshell, can an inquiry be ordered if it appears that the accused had not made complete and full disclosure? In order to answer these questions relating to the validity of

proceedings initiated after a voluntary return has been acted upon under section 25(a), it would be beneficial to examine the relevant provisions of the Ordinance of 1999.

8. The Ordinance of 1999 was published in the official gazette on 16-11-1999 and the object and purpose of its enactment has been described in the preamble as to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions and for matters connected and ancillary or incidental thereto. There are other objects as well which have also been described in the preamble. Section 3 provides that the provisions of the Ordinance of 1999 will have an overriding effect over anything contained in any other law. Section 5 defines various expressions. The Bureau has been established under clause (a) of section 6 while clause (b) thereof describes the qualifications for appointing a person against the post of Chairman and the manner of making such an appointment. Section 9 defines the offence of corruption and corrupt practices. Clause (ix) of section 9(a) describes the offence of cheating members of the public at large. Clause (c) of section 18 provides that where the Chairman or an officer authorized by the latter is of the opinion that it is, or may be, necessary and appropriate to initiate proceedings against any person, then in such an eventuality he shall refer the matter for inquiry or investigation. Clause (d) further provides that responsibility for inquiry into an investigation of an offence alleged to have been committed under the Ordinance of 1999 shall rest on the

Bureau to the exclusion of any other agency or authority. Clause (e) of section 18 describes the powers of the Chairman, members and officers of the Bureau in relation to an inquiry or investigation. Clause (f) provides that the inquiry or investigation under the Ordinance of 1999 shall be completed expeditiously. Section 25 deals with extraordinary opportunities offered to an accused by way of voluntary return and plea bargain. Clause (a) of section 25 starts with a non-obstante clause and provides that, notwithstanding anything contained in section 15 or in any other law for the time being enforced, a holder of public office may voluntarily come forward and offer to return the amount or gains acquired or made in the course or as the consequence of an offence under the Ordinance 1999. If such an offer is made then the Chairman of the Bureau, in his discretion, may accept such an offer followed by determination of the amount due from such person and its deposit with the Bureau and thereafter the accused is discharged from all the liability in respect of the matter or transaction in issue. Such an opportunity can only be availed at the stage of inquiry and not thereafter. Moreover, a subjudice matter before any Court of law is excluded. Once investigations are authorized then an accused is no more entitled to make an offer for voluntary return. In such an eventuality the accused may make an offer for plea bargain under clause (b) of section 25.

9. A combined reading of the provisions of Ordinance of 1999, particularly the above referred provisions, shows that there are two distinct extraordinary statutory opportunities available to an accused to avoid being sentenced under the Ordinance of 1999. The

proceedings contemplated under the Ordinance of 1999 can be divided into three stages i.e inquiry, investigation and then trial after filling of the reference. At the first stage of the proceedings, when an inquiry is pending and investigations have not been authorized, the accused can offer voluntary return under clause (a) of section 25 of the Ordinance of 1999. The essential ingredients for the completion of the process of voluntary return are, firstly, the offer has to be made before investigation has been authorized, or in other words it has to be made at the initial stage of the proceedings, secondly, the accused must come forward voluntarily, thirdly, the voluntary offer must be for the return of assets or gains acquired or made in the course or as a consequence of any offence alleged to have been committed under the Ordinance of 1999. If these requirements are met by the accused then the Chairman in his discretion may accept such offer after determination of the amount due from such an accused. The accused, in such an eventuality, is discharged 'from all his or her liability in respect of the matter or transaction in issue.'

10. It is an established rule of interpretation that in order to discover the legislative intent, the language used in the statute has to be carefully examined. The words have to be understood in the natural and ordinary sense. The provisions being interpreted cannot be given a meaning outside the scheme and context of the statute. A particular provision of a statute cannot be interpreted by ignoring the object and purpose for which the legislation has been enacted. The context is as important as the meaning of the words employed by the legislature. It is also a well entrenched rule of interpretation that a

penal statute has to be construed strictly. The paramount object and purpose for enacting the Ordinance of 1999 was to detect, investigate and prosecute persons involved in corruption and corrupt practices. By no stretch of the imagination can a provision of the Ordinance of 1999 be construed as facilitating or encouraging persons in getting away with the consequences of being involved in the offence of corruption and corrupt practices or to bargain and be let off in a manner that is not proportional to the actual commission of the offence. As noted above, voluntary return is indeed an extraordinary opportunity offered by the legislature to an accused for avoiding the shame and embarrassment of undergoing a sentence. Unlike plea bargaining, acceptance of voluntary return does not lead to conviction but rather the maker is 'discharged'. Strictly construing the provisions of clause (a) of section 25 of the Ordinance of 1999 and examining the words used in the section in the context of the purpose and object of the enactment, it can only be concluded that the voluntary offer must be based on a full and complete disclosure of the entire assets and gains acquired or made in the course or as a consequence of the commission of an offence under the Ordinance of 1999. This is implicit in the scheme and language of section 25 (a). Voluntary return is definitely not a facility or tool for letting off an accused for less than what might have been gained or acquired in the course or as a consequence of the commission of an offence. The discharge thus extends to the entire liability in respect 'of the matter in issue'. The matter in issue is what an accused has been alleged to have committed and not what he or she discloses by way of an offer for voluntary return. As an illustration, if the proceedings are pending by

way of an inquiry into an allegation of an accused having cheated the public at large, then in order to avail a binding acceptance of offer of voluntary return, the latter inevitably has to make a complete and full disclosure of the entire gains made in the course or consequence of the particular offence for which the inquiry is pending. An offer made otherwise would be contrary to the legislative intent and thus, even if such offer has been accepted and acted upon, it would be a nullity. The voluntary return contemplated under clause (a) of section 25, conceptually, is in the nature of a contract backed by the statute. It has all the ingredients of a contract i.e offer, acceptance and consideration. Suppression of material facts, intentional misrepresentation of facts, information provided or disclosures made with the intent to deceive the other person, depending on the facts and circumstances, may render a contract void. On the same analogy, a person against whom an inquiry is pending and who is accused of committing an offence under the Ordinance of 1999 by suppressing material facts and failing to make an honest and full disclosure of the entire assets and gains while making an offer for voluntary return, obviously does so with the intent of deceiving the Chairman. This tantamounts to fraud and it is settled law that fraud vitiates the most solemn acts and any instrument, deed, judgment or decree obtained through fraud is a nullity in the eyes of the law. Reliance is placed on the cases of '*Zulaikha Bib through LRs and others v. Mst. Roshan Jan and others*' [2011 SCMR 986], '*Rehmatullah and others v. Saleh Khan and others*' [2007 SCMR 729], '*Muhammad Zafarullah through L.Rs. and others v. Muhammad Arif through L.Rs. and others*' [2007 SCMR 589], '*Lal Din and another v. Muhammad Ibrahim*' [1993 SCMR 710].

11. We, therefore, hold and declare that for a voluntary return to be valid and binding under section 25(a) of the Ordinance of 1999 it inevitably has to be based on a full and complete disclosure of all the assets and entire gains made in the course of or in consequence of the commission of the offence for which the accused has been proceeded against, otherwise the acceptance or consequent discharge will be a nullity in law. However, the Chairman, before proceeding in such an eventuality, will satisfy himself that the concluded voluntary return was based on intentional misrepresentation of material facts or failure to make a full and complete disclosure with the intent to deceive. There is no force in the argument raised by the learned counsel for the petitioner that, since the Chairman had accepted the offer after determination, therefore, the voluntary return would continue to be valid and further proceedings would be barred. The determination for the purposes of section 25(a) is essentially dependent on the disclosure made by the accused through his offer. The option of voluntary return can only be exercised at the initial stage of the inquiry and, therefore, for making a determination the Chairman cannot resort to authorizing investigation. The Chairman is thus dependent on the disclosures made through the offer and this factor further highlights the importance of making a full and complete disclosure of all the assets or gains made in the course or in consequence of the commission of the offence.

12. In the case in hand, the petitioner, who is a foreign national and who had incorporated a juridical person, was alleged to have induced members of the general public to invest in a sham

scheme and thus he was alleged to have committed the offence of cheating the public at large. While the inquiry was pending the petitioner made a voluntary offer to return the gains. It was, therefore, akin to an admission to the commission of the offence. He was required to make a full and complete disclosure of the entire gains made during the course or in consequence of the commission of the offence. After his discharge, the Bureau has received a large number of claims from members of the public. This, prima facie, indicates that at the time of making the offer the petitioner had not made a full and complete disclosure of all the assets or gains acquired or made during the course or in consequence of the offence for which the option was exercised under section 25(a) of the Ordinance of 1999. The Bureau is, therefore, empowered to inquire whether, at the time of making the offer under section 25(a) of the Ordinance of 1999, the petitioner had made a full and complete disclosure of all the assets and gains acquired or made in the course of the commission or in consequence of the offence of cheating the public at large. In the event that it is satisfied that the petitioner had failed in fulfilling his statutory obligation at the time of making an offer which had led to his discharge, then the Bureau would be at liberty to proceed under the Ordinance of 1999 and the earlier concluded voluntary return will not be an impediment in prosecuting the petitioner.

13. We are mindful of the fact that the petitioner is a foreign national and, therefore, the inquiry or investigation, as the case may be, cannot be kept pending for an uncertain period. Moreover, as a foreign national the petitioner may also want to return to his country

at the earliest. It would, therefore, be just and proper to direct the Bureau to complete the inquiry or investigation, as the case may be, expeditiously, preferably within ninety (90) days from the date of receiving a certified copy of this order. In the meanwhile if there are compelling reasons for the petitioner to travel abroad, then it will be open for him to approach the Chairman of the Bureau for seeking permission.

14. The petitions, therefore, are disposed of in the above terms.

(AAMER FAROOQ)
JUDGE

(CHIEF JUSTICE)

Announced in the open Court on _____

JUDGE

JUDGE

Approved for reporting.

Lugman Khan/*