

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.130/2020

Mohammad Abdul Qadir

versus

The State & 2 others

Appellant by: Mr. Abdul Wahid Qureshi, Advocate.

Respondents by: Mr. Nasir Mehmood Mughal and Barrister Rizwan Ahmad, Special Prosecutors, NAB.
Benish Javaid, Deputy Director, NAB.

Date of Decision: 12.10.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through this criminal appeal, the appellant has called in question order of the learned Accountability Court-II, Islamabad, dated 18.06.2020, whereby order passed by the NAB authorities, Rawalpindi, dated 03.12.2018, freezing the immoveable properties of the appellant has partially been confirmed and objection petition filed by the appellant has been dismissed.

2. Succinctly, the Workers Welfare Fund, Islamabad (WWF) required some land near G.T. Road for construction of a Medical College and Hospital, which was provided by the appellant being the successful bidder @ Rs.3.7 Million per Kanal, however investigation in relation to transaction of land measuring 150 Kanal in favour of Workers Welfare Fund was authorized on 12.07.2018 against Mohammad Abdul Qadir (appellant) and other co-accused persons in terms of Section 9 of the NAO, 1999. In due course, D.G. NAB, Rawalpindi (Respondent No.3), vide order dated 03.12.2018, held that appellant in connivance with other co-accused persons caused loss to the National Exchequer to the tune of Rs.545 Million and acquired certain properties/bank accounts, per se, the said order, dated 03.12.2018, has been confirmed by the learned trial Court, vide order dated

18.01.2019. Feeling aggrieved thereby, appellant filed objection petition, which was dismissed by the learned trial Court vide impugned order dated 18.06.2020. Hence, instant criminal appeal.

3. Learned counsel for appellant contends that the learned trial Court while passing the impugned order dated 03.12.2018 has failed to appreciate that properties mentioned at Serial Nos.1 & 3 were already mortgaged but even then objection petition of appellant has been dismissed; that the appellant has acquired all the properties / bank accounts long before the alleged transaction in favour of WWF; that the freezing order together with its confirmation order are not tenable in the eyes of law as having been passed without appreciation of applicable provisions of law, therefore, same may kindly be set-aside and the properties / bank accounts so freezed by the learned trial Court be released.

4. Conversely, learned Special Prosecutors, NAB opposed the filing of instant criminal appeal and contended that the appellant has concealed and misstated the true facts about the land being sold to WWF, per se, appellant received payment for land measuring 151-Kanals and 04-Marlas, but he has handed over possession of only 112-Kanals and 08-Marlas of land to WWF and received the payment of entire land at exorbitant rate, caused a loss of more than 466 to the national ex-chequer; that the land in question is a *shamlat* land which was already subject to litigation since 2008 and was not cleared in terms of the requirements given by WWF, as such, the appellant could not give any plausible justification with regard to his malafide actions, rather tried to sabotage and hamper the process of investigation by concealing material information and avoiding appearance before the NAB authorities, which led to passing of the freezing order in terms of Section 12 of the NAO, 1999; that said freezing order followed by its confirmation order have been passed in accordance with law in order to safeguard the loss caused to the national exchequer.

5. Arguments heard, record perused.

6. Perusal of record reveals that an inquiry has been initiated against the appellant for his alleged act of corruption and corrupt practices with the claim of causing loss of Rs.466.2 Million to national ex-chequer as WWF purchased a land measuring 150-Kanals through a tender at exorbitant rate from the appellant despite the fact that said land was *shamlat deh*. During the investigation process the NAB authorities passed a freezing order in terms of Section 12 of the NAO, 1999, dated 03.12.2018 against the immovable properties and bank accounts of the appellant as well as of his companies namely M/s Noble Water (Pvt.) Ltd., M/s Matracon Pakistan (Pvt.) Ltd. and M/s Matracon Services (Pvt.) Ltd. The said order was confirmed by the Accountability Court vide order dated 18.01.2019, whereafter objection petition was filed by the appellant, however same was also dismissed vide impugned order dated 18.06.2020.

7. We have gone through the record and observed that NAB authorities have issued the order in terms of Section 12 of the NAO, 1999 to freeze the properties owned by the appellant in Pakistan, including the bank accounts, as the reasonable grounds for believing that appellant has committed such an offence are *prima facie* reflected from the record. After confirmation of the freezing order the mechanism provided in Section 23 of the NAO, 1999 comes into play, whereby the Court after considering the objections in terms of Section 13 of the NAO, 1999, passed the order dated 18.06.2020. The plain language of Section 13 gives an exclusive jurisdiction to entertain and adjudicate upon all claims or objections against the freezing of any property under Section 12 of the NAO, 1999.

8. In order to thrash out the entire case we have gone through the objections filed by the appellant based on his own calculation that his Plot No.24, Sector F-6, Islamabad is valuing Rs.1,202,323,779/- as per the assessment of consulting

engineers, in which appellant's share is to the tune of Rs.601,161,889.50, while the total loss tentatively assessed by the NAB authorities is about Rs.545 Million only, as such, the appellant is engaged in mega projects of public interest and due to freezing order in field, the appellant cannot operate the projects throughout the Pakistan. It has also been highlighted by the appellant that certain properties/bank accounts referred in the freezing order were purchased/opened prior to alleged transaction.

9. The concept of freezing order in terms of Section 12 read with Section 23 of the NAO, 1999 has been incorporated by the legislature to protect the loss caused to public exchequer as if an accused or his family members or relatives or associates were allowed to transfer the properties or operate the bank accounts, the loss to public exchequer will not be recovered at the time of conclusion of the case, which is the primary consideration behind the NAO, 1999.

10. It has been observed that Plot No.24, Sector F-6, Islamabad was allotted to appellant against an open auction process when his bid was accepted on 23.07.2011 while the allotment of said plot was given to appellant on 14.01.2016, which, *prima facie*, reflects that amount so paid by the appellant to the CDA against said plot was managed through the alleged transaction under investigation, therefore, any such property, which was *prima facie* part of the crime proceeds, shall not be released in any manner, per se, Section 10 of the NAO, 1999 provides punishment for corruption and corrupt practices in terms of rigorous imprisonment for a term which may extend to 14 years along with fine and forfeiture of assets/properties having been acquired through embezzled amount. Hence, at this stage, calculation could not be made to segregate or exclude any of the appellant's property from the freezing order, however in the interest of justice if the appellant undertakes to deposit cash amount of Rs.466.2 Million with the NAB authorities, at any subsequent stage and before passing of

the final judgment of the Accountability Court, the learned Accountability Court shall reconsider the freezing order in accordance with law.

11. In view of above position, the appellant has failed to make out any justiciable case in his favour, therefore, instant criminal appeal is **DISMISSED** as no illegality has been pointed out by the appellant in the impugned orders, which otherwise have been passed in accordance with law.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.