

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No.2942 of 2021

Shah Rukh Jamal

*Vs.*

National Accountability Bureau, Islamabad, etc.

Petitioners by : Khawaja Haris Ahmed and Munawar Iqbal Duggal  
Advocates.

Respondents by : Rana Zain Tahir, Special Prosecutor NAB.  
Mr Umair Majeed Malik Advocate, for the  
Respondent.  
Mr Mustansar Hussain, AD/IO/NAB.

Date of Hearing : **27-09-2021.**

**ATHAR MINALLAH, C.J.-** Shah Rukh Jamal, son of Jamaluddin, Dr Muhammad Tayyab Khan, son of Abdul Jabbar Khan and Muhammad Haris Khan, son of Dr Muhammad Tayyab Khan [hereinafter referred to as the "**Petitioner no. 1, Petitioner no. 2 and Petitioner no. 3**" respectively and, collectively, as the "**Petitioners**"] have invoked the constitutional jurisdiction of this Court, vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"] assailing separate orders, dated 29.06.2021,

passed by the learned Accountability Court-III, Islamabad whereby the latter has dismissed their applications wherein they had prayed for the return of their vehicles which had been seized during the raid conducted by officials of the Bureau. The constitutional petitions i.e. W.P. No. 2942/2021, 2943/2021 and 2944/2021 filed by the petitioners will be decided through this consolidated judgment.

2. The National Accountability Bureau [hereinafter referred to as the "**Bureau**"] had initiated proceedings against Liaquat Ali Khan, son of Abdul Jabbar Khan [hereinafter referred to as the "**Respondent**"] regarding his alleged involvement in the fake bank accounts scam. During the course of investigations, the officials of the Bureau raided House no. 36-C, PECHS, Block-6, Karachi [hereinafter referred to as the "**Property**"] and pursuant thereto eight vehicles were taken into possession. The Bureau has acknowledged before us that the Property is jointly inhabited by the Respondent and other close relatives such as Petitioner no. 2 and Petitioner no. 3. Petitioner no. 2 and Petitioner no. 3 are related to the Respondent as his brother and nephew respectively. It has not been disputed that the Petitioners are engaged in managing/operating their own respective businesses. Out of the eight vehicles seized by the officials at the time of conducting the raid at the Property, five were not owned by nor registered in the name of the Respondent. The Petitioners claim that these five vehicles are not owned by the Respondent nor the latter has any direct or indirect concern with them. The Bureau filed Reference no. 06/2021, before the learned Accountability Court on 18.03.2021 wherein it was, inter

alia, stated that an inquiry was ordered by the competent authority against the Respondent for allegedly possessing assets beyond known sources of income. The five vehicles regarding which ownership has been claimed by the Petitioners have also been included in the list of assets allegedly owned by the Respondent. However, paragraph eleven of the Reference unambiguously shows that the Bureau itself acknowledges that it has yet to be ascertained whether or not the five vehicles are, directly or indirectly, owned by the Respondent and, thus, should be treated as his assets. The Petitioners had filed separate applications in order to get possession of the vehicles. The learned Accountability Court dismissed the applications through separate orders, dated 29.06.2021. The learned Accountability Court has, inter alia, observed that since the vehicles were in the nature of "case property" relating to the Reference filed against the Respondent, therefore, they could not be handed over to the Petitioners.

3. *Khawaja Haris Ahmed ASC* has appeared on behalf of the Petitioners and has contended that; the Property is jointly inhabited by the latter and the Respondent; the Petitioners are adults and engaged in their own businesses having no concern whatsoever with the Respondent; the officials of the Bureau were not empowered to seize or take into possession properties which did not belong to the Respondent; the illegal and unauthorized seizure of the vehicles was in violation of the fundamental rights guaranteed under Articles 23 and 24 of the Constitution; The learned Accountability Court has erred by refusing to take into consideration the documents whereby it

was established that the vehicles could not have been treated as case property; properties belonging to the Petitioners could not have been detained on the basis of mere presumptions and conjunctures; officials of the Bureau had acted in an arbitrary manner; the learned Accountability Bureau has misinterpreted the law and facts; moreover, jurisdictional error has been committed by presuming that the vehicles were part of the case property; the impugned orders have been passed without taking into consideration the crucial fact that the Bureau has acknowledged in the Reference filed against the Respondent that it was not certain regarding the ownership of the vehicles; there is nothing on record to even remotely connect the vehicles with the Respondent;

4. Rana Zain Tahir, Special Prosecutor of the Bureau, has appeared along with Mr Mustansar Hussain, Assistant Director/ Investigating Officer. They have stated that the vehicles were seized pursuant to the raid which was conducted during the course of investigations relating to the alleged offences committed by the Respondent; the latter failed to satisfy the officials that he had no concern with the vehicles; the vehicles were at the Property; the Petitioners also could not discharge the onus that the vehicles belonged to them; the competent authority had ordered seizure of the items including the five vehicles claimed by the Petitioners as belonging to them; the Bureau is empowered to seize any property connected with the offence; the impugned orders do not suffer from any legal infirmity requiring interference by this Court.

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

6. The admitted facts are that the competent authority had ordered an inquiry, followed by an investigation against the Respondent under the National Accountability Ordinance, 1999 [hereinafter referred to as the "**Ordinance of 1999**"]. No inquiry or investigations or any other proceedings were ordered nor are pending against the Petitioners. The Petitioners and the Respondent are close relatives and they share the Property. The Petitioners are related to the Respondent as the latter's brother and nephew respectively and they are engaged in managing and operating their own respective businesses. The Bureau has not collected any material during the course of investigation nor has anything been brought on record to, directly or indirectly, connect the Respondent with the businesses of the Petitioners or the five vehicles claimed by them. This is obvious from the Reference which has been filed against the Respondent. When the raid was conducted, eight vehicles were parked in the Property out of which five were not registered in the name of the Respondent nor has any material been collected to indicate that they were indirectly owned or in any manner controlled by the latter. In response to our repeated queries, the Investigating Officer could not show any material in support of the Bureau's stance that, to the extent of the five vehicles, they could be connected to the Respondent or treated as "case property" with reference to the "Reference". As already noted above the Bureau, in paragraph eleven

of Reference no. 06/2021, which has been filed against the Respondent, has unequivocally conceded that the status of the five vehicles and their nexus with the Respondent was yet to be ascertained. In a nutshell, the Bureau had purportedly seized/detained the five vehicles merely on the basis of suspicion because, when the raid was conducted, they were found parked at the Property. The Bureau has taken the stance that it is empowered to seize or detain any movable or immovable property in exercise of powers conferred under the Code of Criminal Procedure, 1898 [hereinafter referred to as the "**Cr.P.C.**"] read with section 17 of the Ordinance of 1999. The questions, therefore, that have arisen for our consideration are; the extent of jurisdiction and powers vested in the Bureau to deprive a person from the use or enjoyment of property; whether, in the presence of specific powers vested under the Ordinance of 1999, resort could be lawfully made to the provisions of the Cr.P.C; whether the statutory safeguards prescribed under the Ordinance of 1999 regarding dealing with case property can be ignored or rendered redundant by resorting to the provisions of the Cr.P.C and, lastly, whether the provisions of sections 12, 13 and 23 of the Ordinance of 1999 are not in conflict with those of the Cr. P.C. In order to answer and adjudicate the questions raised on behalf of the parties, it would be beneficial to briefly survey the provisions of the Ordinance of 1999.

7. The Ordinance of 1999 was promulgated with the explicit object to provide for the setting up of the National Accountability Bureau so as to eradicate corruption and corrupt practices and hold

accountable all those persons accused of such practices and matters ancillary thereto. Clause (a) of section 5 defines the expression 'accused' and it includes a person in respect of whom there are reasonable grounds to believe that he is or has been involved in the commission of any offence triable under the Ordinance of 1999 or is the subject of an investigation or inquiry by the Bureau. The expression "assets" has been defined in clause (c) as meaning any property owned, controlled by or belonging to any accused, whether directly or indirectly, or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan, for which the latter cannot reasonably account for, or for which proof of payment of full and lawful consideration cannot be given. The expression "associates" has been defined in clause 5(d). Clause (da) of section 5 defines the expression "benamidar" as meaning any person who ostensibly holds or is in possession or custody of any property of an accused on his behalf and for the benefit and enjoyment of the accused. The expression "freezing" has been described in clause 5(l) and the definition is inclusive. Section 9 describes the various offences triable under the Ordinance of 1999. Since clauses (iv) and (v) of section 9(a) are relevant for the adjudication of the petitions in hand, therefore, they are reproduced as follows:

**(iv)** if he by corrupt, dishonest, or illegal means, obtains or, seeks to obtain for himself, or for his spouse or dependents or any other person, any

property, valuable things, or pecuniary advantage; or

**(v)** if he or any of his dependents or benamidars owns, possesses, or has acquired right or title in any assets or holds irrevocable power of attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income];

8. Section 12 of the Ordinance of 1999 empowers the Chairman of the Bureau or the Court trying an accused for any offence specified under the Ordinance of 1999, to order the freezing of the latter's property or part thereof, whether it is in his possession or in the possession of any relative, associate or person on his behalf. The power is discretionary in nature and it can either be exercised by the Chairman or the Court trying any offence under the Ordinance of 1999. The power of the Court has a nexus with the trial against an accused while the Chairman of the Bureau is empowered to order freezing of a property at any time. The legislature has circumscribed the power by prescribing certain mandatory statutory safeguards. The required standard prescribed for justifying interference with the right to property is for the Chairman or the Court, as the case may be, to satisfy the test of having 'reasonable grounds for believing' that the accused has committed an offence under the Ordinance of



1999. The power under section 12 can only be exercised in respect of a property of the accused, whether it is in his possession or in the possession of a relative, associate or any other person on 'his' behalf. Sub section (b) of section 12 describes the power regarding a debt or a movable property. It vests a discretion in the competent authority to exercise the power in one of the four distinct modes explicitly mentioned therein and seizer or detention of the property is one of them. The other options that could be employed are; appointment of a receiver, prohibiting its delivery to the accused or to any person on his behalf and, lastly, any other method the competent authority may deem fit. Seizer or detention is the most intrusive mode of depriving a person to deal with his or her property. Clause (c) of section 12 is regarding freezing of an immovable property. The first proviso restricts the validity of an order of freezing passed by the Chairman to fifteen days unless confirmed by the Court where the reference shall be sent. The second proviso specifies the time when the order becomes effective. Clause (d) describes the powers to deal with livestock or perishable items. Clause (f) provides that the order of freezing shall remain operative till the final disposal of the case by an Accountability Court while, in the event of the acquittal of an accused, it remains valid for a period of ten days after receipt of a certified copy of the order.

9. Section 13 of the Ordinance of 1999 provides a statutory remedy which can be availed by an accused or any 'other aggrieved person' by filing a claim or objections before an Accountability Court against a freezing order passed under section 12. The Accountability

Court has the exclusive jurisdiction to entertain and adjudicate upon any claim or objection. Section 13 (c) declares a High Court to be the forum of appeal against an order of dismissal passed by the Accountability Court.

10. The next relevant provision for adjudication of the petitions in hand is section 23. It starts with a non-obstante clause and prohibits the transfer, by any means whatsoever or to create a charge on a property owned by an accused when an inquiry, investigation or any other proceedings are pending either before the Bureau or an Accountability Court. This prohibition extends to the property directly or indirectly owned by an accused. The legislature has further expressly declared that transfer of any right, title or interest or creation of a charge relating to such a property shall be void. Clause (b) of section 23 has made contravention of sub section (a) an offence punishable with rigorous imprisonment for a term which may extend to three years and, in addition, a fine not exceeding the value of the property involved could also be imposed. The proviso explains that the transfer of any right, title or creation of a charge shall not be void if it has been made with the approval of an Accountability Court and subject to such terms and conditions as it may deem fit. Section 17 provides that, unless there is anything inconsistent with the provisions of the Ordinance of 1999, the provisions of the Cr.P.C. shall mutatis mutandis apply to the proceedings under the Ordinance of 1999.

11. A combined reading of the above surveyed provisions clearly shows that the Ordinance of 1999 is a complete and self-contained special statute. The scheme of the Ordinance of 1999 expressly contains power to deal with the property of an accused. Section 17 provides that the provisions of the Cr.P.C will apply unless they are inconsistent with the provisions of the Ordinance of 1999. The above discussed provisions empower the Bureau to interfere with the property rights of an accused. The nature of the offences under the Ordinance of 1999 are distinct and so is the status of 'case property' relating thereto. A case property in the context of the offences under the Ordinance of 1999 can be dealt with in one of the modes described under section 12 *ibid*. The expression 'asset' has been defined under section 5 (c). As a corollary, the powers under section 12 can only be exercised in relation to assets of the accused and if it has nexus with the alleged offence for which the requisite standard is to have reasonable grounds to believe that it is so. In order to exercise the power under section 12, one of the most crucial factors for satisfaction is the required standard i.e having reasonable grounds to believe that the accused has committed an offence. It is implicit in the language used by the legislature that the property regarding which power can be lawfully exercised must have a nexus with one of the offences described under section 9. The required standard that must be met in order to justify interference under section 12 i.e having reasonable grounds to believe, is of significance and, therefore, its scope needs further elaboration.

12. The expressions 'reasonable grounds for believing' and 'reasonable suspicion' are distinct. The august Supreme Court in the case titled "(Moulvi) Fazlul-Qader Choudhury v. Crown" [PLD 1952 Federal Court 19] has considered and interpreted the expression and has observed and held that it may be that a certain amount of suspicion is caused by the conduct of a person but the word "believe" is a much stronger word and, moreover, it would require that the belief must be a reasonable one. In the case titled "Ch. Abdul Malik v. The State" [PLD 1968 SC 349] the august Supreme Court has explained the expression as follows:

*"Reasonable grounds" is an expression which connotes that the grounds be such as would appeal to a reasonable man for connecting the accused with the crime with which he is charged, "grounds" being a word of higher import than "suspicion". However, strong a suspicion may be it would not take the place of reasonable grounds. Grounds will have to be tested by reason for their acceptance or rejection. The reasonableness of the grounds has to be shown by the prosecution by displaying its cards to the Court, as it may possess or is expecting to possess as demonstrating evidence available in the case both direct and circumstantial."*

13. The august Supreme Court in the case titled "Chaudhry Shujat Husain v. The State" [1995 SCMR 1249] has observed and held as follows:

*"The term 'reason to believe' can be classified at a higher pedestal than mere suspicion and allegation but not equivalent to proved evidence. Even the strongest suspicion cannot transform in 'reason to believe.' In Nisar Ahmad's case the criteria laid down seems to be that where some tangible evidence is available against the accused which, if left unrebutted, may lead to the inference of guilt."*

14. It is obvious from the above discussed precedent law that having 'reasonable grounds to believe' has reference to the required evidentiary threshold. It is a legal standard and it has to be met as a precondition before exercising the intrusive power under section 12 of the Ordinance of 1999. There must be 'reasonable grounds' which manifests existence of certain essential facts. It essentially refers to the existence of such facts and circumstances which would lead a reasonable prudent person to form a belief. In the context of section 12 such belief would be relatable to the property being, directly or indirectly, owned and controlled by an accused and the latter having committed one of the offences described under section 9 of the Ordinance of 1999. The requisite standard is higher than a reasonable suspicion but less than 'on balance of probabilities'. It is distinct from conjecture, speculation or suspicion. The required standard is far less than proving something beyond a reasonable doubt. It is a threshold required for a reasonable person to conclude and be satisfied on the basis of sufficient material to conclude deprivation of or interference with the right to own, hold or control a property. The conclusion may be subjective but it must be based on some reliable material or evidence. The formation cannot be based on mere suspicion even if it

may be reasonable. In a nutshell, forming an opinion on the basis of reasonable grounds to believe is distinct and a higher legal standard than 'reasonable suspicion'.

15. There is another distinctive factor of the scheme regarding the intrusive power provided under section 12. The power is subject to judicial scrutiny explicitly described under section 13. While the claim or objection is exclusively justiciable by the Accountability Court, a statutory right of appeal lies to a High Court. Moreover, even if no order has been passed under section 12, there is a statutory prohibition under section 23 to deal with a property connected with one of the offences described under section 9 of the Ordinance of 1999. The special scheme provided under sections 12, 13 and 23 of the Ordinance of 1999 to deal with a property owned or controlled by an accused and connected with the offence allegedly committed by the latter is distinct from the powers under the Cr.P.C.

16. The Cr.P.C falls within the category of laws that are procedural and general in nature. It was promulgated to consolidate and amend the law relating to criminal procedure. It, inter alia, contains general provisions which empower a police officer to detain, seize or take into possession any property suspected to be connected with the crime. Section 53 vests the power to seize offensive weapons in possession of a person while making the latter's arrest. The power to attach property under section 88 vests in a court and its exercise is in the context of an absconder. The power of a Magistrate under section 146 to attach property is relatable to

circumstances described under section 145. Section 516-A governs the custody and disposal of property seized or taken into possession by a police officer. A plain reading of the section shows that it is confined to property regarding which it appears that an offence has been committed or may have been used for the commission of an offence. It is, therefore, implicit in the aforementioned power that a police officer is empowered to seize/ detain any property regarding which it appears to the latter that an offence has been committed or has been used in commission of an offence. Section 523 prescribes the procedure for dealing with property seized under section 51. Section 550 empowers a police officer to seize property suspected to be stolen. The survey of powers vested under the Cr.P.C makes it obvious that the required standard and the manner to deal with a property of an accused or which is connected with an offence are distinct to those contemplated under the Ordinance of 1999. The required threshold under the Cr.P.C for depriving an accused of the right to deal with property connected with a crime is lower than having 'reasonable grounds to believe'.

17. There is yet another distinguishing feature of the power relating to dealing with property under the Ordinance of 1999 i.e the discretion to adopt one of the modes prescribed under section 12(b) or (c), as the case may be. This exercise of discretion has to be reasonable and lawful on the touchstone of the principle of proportionality. The Bureau, in each case, will have to justify that the least intrusive mode has been adopted. It would not be reasonable to seize a property if the intended object could be achieved by resorting

to the least destructive mode. It is settled law that where express statutory power is conferred on a public functionary, it should not be pushed too far, for such conferment implies a restraint in operating that power, so as to exercise it justly and reasonably. Excessive use of lawful power is itself unlawful. Reliance is placed on "Independent Newspapers Corporation (Pvt.) Ltd. and another v. Chairman, Fourth Wage board and Implementation Tribunal for Newspaper Corporation (Pvt.) Ltd. and another" [1993 SCMR 1533] and "Pakistan Telecommunication Company Ltd. v. Directorate of Intelligence and Investigation, etc." [2018 PTD 946].

18. We are, therefore, of the opinion that the provisions of sections 12, 13 and 23 relating to dealing with 'case property' in the context of the offences described under the Ordinance of 1999 are inconsistent with those prescribed under the Cr. P.C. In such an eventuality the provisions of the Cr. P. C would not apply nor can the scheme under sections 12 and 13 be rendered redundant. It is settled law that when a special statute confers special powers and jurisdiction and provides a special form of procedure then they will prevail over the procedure or provisions of the Cr.P.C. Reliance is placed on the cases titled "Allied Bank of Pakistan Ltd. v. Khalid Farooq" [1991 SCMR 599] and "Shujat Hussain v. State" [1995 SCMR 1249]. Furthermore, it has been held by the august Supreme Court in the case titled '*State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others*' [2017 SCMR 999] that the provisions of a special law overrides the provisions of the general law to the extent of any conflict or inconsistency between



the two. Reliance is also placed on the judgment rendered in the case of '*Hafeez Ahmed and others v. Civil Judge, Lahore and others*' [PLD 2012 SC 400]. We, therefore, declare that case property relating to an offence under the Ordinance of 1999 can only be dealt with under sections 12 read with section 13 *ibid* and resort to the general powers contained under the Cr. P.C are inconsistent and thus inapplicable. We, therefore, hold and declare that 'case property' in the context of offences described under section 9 of the Ordinance of 1999 can only be dealt with under sections 12, 13 and 23 of the Ordinance of 1999. The Bureau is thus bereft of jurisdiction to resort to powers vested under the Cr.P.C.

19. In the petitions in hand, it is an admitted position of the Bureau that the five vehicles claimed by the Petitioners were neither registered in the name of the Respondent nor has any material been collected by the Bureau to indicate the latter's connection therewith. There is nothing on record to satisfy the required threshold of having 'reasonable grounds to believe' that the five vehicles are connected with the offences alleged to have been committed by the Respondent. The vehicles were taken into possession by the Bureau and detained/seized in disregard to the statutory requirements and safeguards provided under sections 12 and 13 of the Ordinance of 1999. The powers were exercised unlawfully and arbitrarily under the Cr. P. C on mere suspicion because the vehicles were found at the Property. The Petitioners are not accused of committing any offence under the Ordinance of 1999 nor are any proceedings pending against them there under. There is also nothing on record to show

benami ownership or control of the Respondent. The detention and seizure of the five vehicles was, therefore, without lawful authority and jurisdiction and an abuse of powers by officials of the Bureau. It was not a case of handing over temporary possession (superdari) because the vehicles could not have been treated as 'case property' in relation to the alleged offences committed by the Respondent. The powers exercised by the Bureau to the extent of the five vehicles claimed by the Petitioners were ultra vires the scheme of the Ordinance of 1999.

20. For the foregoing reasons, we **allow** the petitions and set aside the respective impugned orders, dated 29.06.2021. We, therefore, remand the matter to the learned Accountability Court for releasing the five vehicles described in the petitions in hand to their lawful owners at the earliest.

(CHIEF JUSTICE)

(AAMER FAROOQ)  
JUDGE

Announced in open Court, on 15-11-2021.

JUDGE

CHIEF JUSTICE