

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

**Civil Appeal No. 23/2016 in
CPLA. No. 29/2015.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Prince Saleem Khan s/o Mir Ghazanfar Ali Khan, Member of Chamber of Commerce Gilgit-Baltistan.

Petitioner.

Versus

1. National Bank of Pakistan through President NBP Head Office I.I Chandrigar Road Karachi.
2. National Bank of Pakistan, Gilgit through its Manager.
3. National Accountability Bureau through D.G Nab Headquarter Islamabad.
4. D.D NAB Gilgit.
5. FIA Islamabad through D.G FIA.
6. FIA Gilgit through D.D FIA Gilgit.

Respondents.

REVIEW PETITION UNDER SECTION 114 READ WITH ORDER XLVII RULE 1 CPC AGAINST THE IMPUGNED JUDGMENT/ORDER DATED 27.05.2013 PASSED BY THE HON'BLE DIVISION BENCH OF CHIEF COURT GILGIT-BALTISTAN, WHEREBY THIS AUGUST COURT HAS DISMISSED THE CIVIL MISC. NO. 08/2012.

PRESENT:-

1. Mr. Amjad Hussain Advocate for the petitioner.
2. Mr. Muhammad Abbas , Additional Prosecutor General NAB, Gilgit-Baltistan
3. Mr. Muhammad Hussain Shehzad Advocate.

DATE OF HEARING: - 19.04.2016.

DATE OF ANNOUNCEMENT OF JUDGMENT: - 03.05.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ.... This petition was directed against the impugned judgment/order dated 25.11.2014 in Review Petition No.77/2013, passed by the learned Chief Court Gilgit-Baltistan, which upon hearing was dismissed being meritless.

2. Briefly the facts of the case are that the petitioner belongs to District Hunza of Gilgit-Baltistan and he was also the Vice Chairman of Pak-China Sost Port Company (Pvt) Ltd and member of Board of Trustees of Silk Route Dry Port Trust. A loan was sanctioned amounting to Rs. 50 millions to the aforementioned Trust through National Bank of Pakistan Sost Branch. The Bank later on alleged that the petitioner had got sanctioned the above referred loan on the basis of fraud and forgery. Consequently, the Bank proceeded against the petitioner and 08 others by filing a Civil Suit in the Banking Court/Chief Court for recovery of Rs. 58544918/- alongwith costs, expenses and cost of funds from the date of default until realization of entire amount by the way sale of the mortgaged property hypothecated goods and other assets of the defendants. The FIA and NAB authorities initiated inquiries against the petitioner for his involvement in obtaining loan from bank fraudulently. The NAB authorities issued notice under Section 19 of the NAB Ordinance against the petitioner. On the receipt of such notice the petitioner filed Writ Petition No. 82/2009 in the learned Chief Court/Banking Court praying therein to restrain the NAB authorities for such inquiries/investigations. The said petition was disposed of on the assurance of the Special Prosecutor NAB at Gilgit that no violation of the Section 31-D of NAB Ordinance 1999 would be committed. Subsequently, the Civil Misc. No. 08/2012 was filed by the petitioner praying therein that the proceedings against the petitioner were in violation of the directives of this Court in Writ

Petition No. 82/2009 filed on 15.11.2010. The NAB authorities submitted that the investigation against the petitioner has been initiated on the basis of the allegations of fraud which does not attract the provisions of Section 31-D of the NAB ordinance. Upon hearing, the Division Bench of the learned Chief Court pleased to hold that the NAB authorities cannot be restrained from the inquiries/ investigations for the allegations leveled against the petitioner which may cover the pre-requisites provided for action and consequently the Misc Appeal was dismissed. Whereafter the petitioner filed Civil Review No. 77/2013 praying therein to set aside the impugned order dated 27.05.2013 to meet the ends of justice. The learned Chief Court upon hearing dismissed the same being meritless, hence, this Petition for Leave to Appeal.

3. The NAB authorities initiated inquiries vide Notice dated 08.01.2012 and sought information under Section 19 of the NAB Ordinance 1999 against the petitioner which is reproduced as under:-

“Quote”

Government of Pakistan
 National Accountability Bureau
 RMC Boys Hostel No. 3 Rawal Road
 Rawalpindi
 PH# 051-9280841 Fax # 051-9281132
 No.6 (24)/FCIW/NAB(R)/2010
 08 Jan, 2012.

ORDER TO REQUIRE AT INVESTIGATION.

To;

Prince Saleem Khan s/o Mir Ghazanfar Ali khan,
 R/o of Hunza House
 House No. 82, Margala Road
 Sector F.6/2
 Islamabad.

Subject:- Investigation against Mr. Muhammad Arif SVP/RBC (Retired) NBP, Gilgit and others.

1. Whereas the presence of the aforesaid person is necessary for the purpose of inquiry into the offence reported to have been committed under National Accountability Ordinance, 1999, therefore, you are hereby directed to appear before Mr. Asad Mehmood Assistant Director /IO, FCIW NAB Rawalpindi at 1000 hours on 23rd January 2012 alongwith relevant record.
2. This notice is issued under Section 19 of NAO 1999, which provided that anyone who fails to provide information/record requisitioned or knowingly provides false information/record or refuses to answer the questions shall be liable for prosecution under NAO 1999.

-Sd-

Imran Majeed
Asstt. Dir (Coord) FCIW.

"Unquote"

4. The learned counsel for the petitioner contends that a Civil Suit for recovery filed by the National Bank of Pakistan on the same subject which preclude the NAB to entertain the complaint of NBP and to investigate or conduct inquiry against the petitioner. He also contends that it is a case of double jeopardy as no one can be vexed twice for the same offence. He further contends that NAB authorities cannot initiate inquiry/investigation in absence of the approval from the Governor, State Bank of Pakistan as provided under Section 31-D of NAB Ordinance 1999).
5. He also submits that the impugned judgment/order dated 25.11.2014 as well as the judgment dated 27.05.2013 passed by the learned Chief Court are the result of misconception of law and misreading of the facts of the case, hence, the same are not tenable and required to be set aside to meet the ends of justice. The

said judgments of the Chief Court are contradictory to its own unreported judgment passed in a similar nature case i.e. Qalb Ali etc versus The State through NAB. While submitting so he supports his contentions by relying upon case laws reported as (2010 PCr.LJ, 13), (2005 PLD, Lahore 692), (PLD 2001 Karachi, 419), (PLD 2001 SC, 60) and (NCR 2003, Criminal 361).

6. On the other hand the learned Additional Deputy Prosecutor General for NAB at Gilgit and Mr. Muhammad Hussain Shehzad learned counsel appearing on behalf of respondent No. 02 M/s National Bank of Pakistan submit that the Review Petition No. 77/2013 was filed by the petitioner in the learned Gilgit-Baltistan Chief Court to defeat the investigation process initiated by the NAB authorities in order to unearth the truth and punish to the fraudsters. They submit that no fundamental right, if any, of the petitioner has been infringed by any authority including NAB. The process of inquiry/investigation cannot be prohibited/precluded by exercising the extraordinary jurisdiction of the Courts. They further submit that prime facie, the petitioner have committed offences under section 9 of NAB Ordinance 1999 which can only be determined after conducting inquiry/investigation. They further submit that the petitioner was Vice Chairman of Pak-China Sost Port Company Private Limited and being Member of Board of Trustees of Silk Rout Dry Port Trust has remain involved in getting unlawful loans and filing of a recovery suit by the National Bank of Pakistan does not exempt the petitioner from the

inquiry/investigation initiated by the NAB. The notice issued by the respondents has been issued under Section 9 of NAB Ordinance 1999, whereby any person involved can be investigated for the offences mentioned therein. The filing of recovery suit does not amount to double jeopardy. In case the authorities empowered under the law are of the opinion that any matter is required to be inquired or investigated they cannot be restrained on the excuse of filing of recovery suit. They contend that under Section 9 of NAB Ordinance, no exemption has been granted to any class of people. Accordingly Section 31-D of NAB Ordinance has been provided for the purpose of imprudent loans but never restrict the scope of Section 9 of the said Ordinance which is purely meant for the corruption and corrupt practice falling under that provision of law. Consequently, the petition being groundless was dismissed by the Chief Court. They further submit that Review Petition was not maintainable which was filed just to gain time and to frustrate the process of inquiries/investigations initiated by NAB. The learned Chief Court has rightly dismissed the same.

7. They finally submit that the impugned judgment/Order dated 25.11.2014 in Review Petition No. 77/2013 and the Order dated 27.05.2013 in Civil Misc No. 08/2012 passed by the learned Chief Court Gilgit-Baltistan are well reasoned and well founded, hence, no interference is warranted thereto. While submitting so they relied upon the case laws reported as (2009 SCMR 335) and (PLD 2009 Karachi 469).

8. We have heard the learned counsel for the respective parties at length, perused the record of the case file and gone through the impugned judgment/order dated 25.11.2014 in Review Petition. No. 77/2013 and the Order dated 27.05.2013 in Civil Misc No. 08/2012 passed by the learned Chief Court Gilgit-Baltistan as well as the case laws relied upon by the learned counsels for the respective parties.

9. We have also gone through the provisions of Sections 18 and 19 of the NAB Ordinance 1999 which are reproduced as under:-

“Section 18. Cognizance of offences:-

- (a).....
- (b) A reference under this Ordinance shall be initiated by the National Accountability Bureau on....
 - (i). a reference received from the appropriate government; or
 - (ii). Receipt of a complaint; or
 - (iii). its own record.
- (c).....

(d) The responsibility for inquiry into an investigation of an offence alleged to have been committed under this Ordinance shall rest on the NAB to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman (NAB) or by an officer of the NAB duly authorized by him.

(e). the Chairman NAB and such members, officers the learned Advocate-on-Record servants of the NAB shall have and exercise, for the purpose of an inquiry or investigation the power to arrest any person, and all the powers of an officer in-charge of Police Station under the Code, and for that purpose may cause the attendance of any person, and when and if the assistance of any agency, Police officer or any other official or agency shall render such assistance provided that no person shall be arrested without the permission of the Chairman (NAB) or any officer (of NAB) duly authorized by the Chairman NAB.

10. The plain reading of Sub Section (e) of Section 18 of the ordinance insists that for purpose of an inquiry or investigation, the officer so inquiring /investigating shall have all the powers as are available with officer –in-charge of a police station under the code , which are so provided under Chapter XIV of the Criminal Procedure

Code. Needless to add here that Chapter XIV of the Cr. PC also includes the Section 160 to 164 Cr.PC which deal with power to require attendance, recording of statement. Since from the bare reading of Section 18(b) of the ordinance it becomes clear that an inquiry /investigation could be initiated only by the Chairman or an officer of the NAB, duly authorized by him, thus the officer, so authorized for conducting such an inquiry /investigation, shall enjoy all powers as are available to an officer-in-Charge of a police Station within meaning of the Chapter XIV of the Criminal Procedure Code.

Section 19. Power to call information... the Chairman NAB (an of the NAB duly authorized by him) may , during the course of inquiry or investigation of an offence under this ordinance or any rule or order made thereunder :-

(a). Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this ordinance or any rule or order made thereunder;

11. A bare reading of the said provisions reveals that if an inquiry or investigation is ordered in respect of offence punishable under the Ordinance by Chairman NAB then during the course of the said inquiry or investigation of such offence any officer duly authorized by Chairman is competent to call for information from any person for the purpose of Satisfying himself whether there has been any contravention of the provisions of the Ordinance or any rule or order made thereunder. Thus it is manifest that it empowers the authorized officer to examine any person acquainted with the facts and circumstance of the case. “Any Person” includes witnesses

or an accused even. We are in complete agreement and acknowledge the legal position that one cannot be compelled to answer a question which can expose him to criminal charges and that one cannot be forced to be a witness which is so evident from the section 161 of the Code and Article 13 (2) of the Constitution.

Both the said section and article are reproduced as under:-

Section. 161. Examination of witness by Police.... (1) any Police officer making an investigation under this chapter or any Police Officer not below the rank as the Provincial Government may, by general or special order, prescribe in this behalf, acting on the requisition. Of such officer many examine orally any person supposed to be acquainted with the facts and said circumstances of the case.

(2) such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Article 13 of the Constitution of Islamic Republic of Pakistan. No person....

(a).....

(b) Shall, when accused of an offence, be compelled to be a witness against himself.

However, the criminal administration of justice demands that version of the accused should also come on record during the course of the investigation, therefore, above referred Article and provision shall not justify the Investigating Officer for non-examination of the accused nor shall disentitle him (Investigating Officer) from asking a question which he feels necessary for proper interrogation. This is the object because of which the word "examination" has been used with deliberation under this chapter.

12. Keeping in view the above touchstone, let's examine whether call up notices impugned in this petition, prime facie serves its purpose or otherwise. Perusal of the said notice and reflects that matter (inquiry being conducted) a reference as to for what purposed the examination and production of documents or

necessary, is evident, therefore, call-up notices cannot said to be entirely illegal.

13. Without prejudice to the above, what would we like to make it clear that issuance of notice, even if found to be not within its purpose and object, yet a wrongly issued notice shall not , under any case, justify quashing the route (an investigation , initiated under Section 18 (c) of the Ordinance) or be taken as a sword to keep the prosecution out of its right to dig out truth for simple that an authorized officer (investigating Officer) was negligent of not issuing notice properly. A mere irregularity or even illegality on the part of the Investigating Officer in following procedure within meaning Chapter XIV of the Criminal Procedure Code, shall not cost an offence to go un-attended because an irregularity or illegality in procedure may be cured but not the impacts and effects of an offence if the same is let un-touched despite its being coming to light. The moment and offence is committed the effect thereof start but a procedural error , irregular and even illegality by Investigating Officer can well be judged by the competent Court toward the effects and consequences.

14. In view of the above discussions and the case laws relied upon by the learned Counsel for NAB and National Bank of Pakistan regional Office Gilgit-Baltistan and in our considered view the NAB authorities cannot be precluded to issue call-up notices or restrain to conduct an inquiry/investigation under NAB Ordinance 1999. The case laws preferred by the learned Counsel for the

petitioner is distinguishable whereas the case laws relied upon by the learned counsels for the respondents are applicable.

15. Consequently, we hold that the NAB authorities are lawfully authorized to conduct inquiry/investigate and interference into the authorities of the NAB would seriously prejudice to the prosecution towards its right in probing into an investigation /inquiry of an offence. The learned counsel for the petitioner could not point out any illegality and infirmity in the impugned judgments/order. The impugned judgment is well reasoned and well founded; therefore, no interference is warranted. Consequent thereto, we convert this petition into an appeal and the same is dismissed. The impugned judgment/Order dated 25.11.2014 in Civil Review No.77/2013 and the judgment dated 11.09.2012 in Civil Misc No. 08/2012 passed by the learned Chief Court Gilgit-Baltistan are maintained.

16. The appeal is dismissed.

Chief Judge.

Judge.

Whether the case is fit to be reported or Not?