

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Umar Ata Bandial, HCJ
Mrs. Justice Ayesha A. Malik
Mr. Justice Athar Minallah

Criminal Petition No.806 of 2022

&

Criminal Petition No.689 of 2022

(Against the order dated 28.4.2022 of the Islamabad High Court, Islamabad passed in Criminal Appeals Nos.50/2020, 51/2020, 30/2020 & CrI. Appeal No.31 of 2020)

Col. (Rtd.) Subh Sadiq Malik
Robina Farooq

... (in CrI.P.806/2022)
... (in CrI.P.689/2022)

Petitioners

Versus

The State through Chairman, NAB,
Islamabad

... Respondent (*in both cases*)

For the petitioner(s):

Raja Inaam Ameen Minhas, ASC
(*in CrI.P.689/2022*)

Mr. Muhammad Amjad Iqbal Qureshi, ASC
(*in CrI.P.806/2022*)

For NAB:

Mr. Sattar Muhammad Awan, DPG, NAB

Date of hearing:

17.11.2022

ORDER

Athar Minallah, J.- Col. Subh Sadiq Malik (**'petitioner No.1'**)

and Robina Farooq (**'petitioner No.2'**) (collectively they shall be referred to as

(**'the petitioners'**) have sought leave because they are aggrieved due the

strictures recorded by the High Court in the impugned judgment dated

28.04.2022. The petitioners were working in the National Accountability

Bureau ("**Bureau**") as Director General and Assistant Director respectively.

Pursuant to receiving a complaint, the competent authority of the Bureau had

authorized an inquiry which was conducted by petitioner no. 2 as the

investigating officer under the supervision of respondent no.1. The inquiry

was later converted into an investigation by the competent authority. The

trial before the Accountability Court concluded in handing down convictions and sentences against the accused under the National Accountability Ordinance, 1999 (**'Ordinance of 1999'**) vide judgment dated 28.01.2020. The convictions and sentences were challenged before the High Court which were upheld vide the impugned judgment. The High Court has, in the judgment, recorded observations regarding the shortcomings and flaws while conducting the proceedings at the stages of investigation and inquiry. Paragraphs 43 and 51 of the impugned judgment contain the strictures against the petitioners which are reproduced as follows:-

"43.....Such issues clearly establishes the criminal misconduct of Investigating Officer, who is considered to be part and parcel of the dirty plan played by the NAB authorities to accommodate their loved ones i.e. Habib Metropolitan Bank, Pak Suzuki Motors Company Karachi and one Ashir Aleem, through which the properties of the appellants were transferred and sold. All these tactics played by Investigating Officer with the help of D.G. NAB are considered to be hampering the investigation, who has deliberately maneuvered and managed the inquiry and investigation, mislead and defeat the processes of NAB for personal interest and to accommodate the few, which itself falls within the mandate of Section 31 of NAO, 1999. In such scenario, this Court recommends that the case of PW-127 Rubina Farooq Investigating Officer as well as of all those officials who remained part and parcel of this reference/inquiry/investigation, including the then D.G. NAB Col. (R) Subah Sadiq be inquired by the Chairman, under the law, through a committee duly constituted in the scheme of NAO, 1999 separately for the alleged misconduct of Investigating Officer and shall proceed accordingly, including but not limited to criminal prosecution.".....

"51. Before parting with the judgment, it is quite astonishing and condemnable to note that the NAB authorities as well as the Investigating Officer of the case

instead of securing the amounts of affectees from accused persons themselves starting looting the amounts of general public from the accused persons while they were in custody of NAB and invented different methods to extort the properties of accused persons by selling them and instead of disbursing the recovered amounts to the affectees, the NAB authorities have managed delivery of huge amounts recovered from the appellants to those persons who had no relationship with the scam. Such like conduct on the part of the NAB authorities and Investigating Officer is highly condemnable and amounts to corruption and corrupt practices. If the NAB and their Investigating Officers would play in such a manner that they devised methods of extorting amounts of general public looted by the accused for their benefits, there would be no difference between the accused and NAB, both are included in corruption and both are looters and in such situation the accused and the NAB as well as the Investigation Officer of the case have same role and should be treated likewise. The role of the Investigating Officer and Ex-D.G. NAB in this case is disgracing, who have not only themselves played a dirty role, rather have put the reputation of NAB department at stake. Such like black sheep should be taken to task, even by the NAB in order to save the dignity and reputation of the department. Accordingly, the Chairman NAB and other authorities of NAB are directed to initiate inquiry against PW-127 Rubina Farooq (Investigating Officer) and Ex-D.G. NAB, Col. (Retd.) Subah Sadiq for their alleged misconduct prima facie seen in the record and referred in paras-39, 40 and 41 of this judgment, in terms powers conferred under Section 31 of NAO, 1999 and submit the report after conclusion of the inquiry, accordingly, of all the actions taken in this regard."

2. The petitioners were not arrayed as parties to the appeal before the High Court, nor were they put to notice before recording the aforementioned observations. The High Court may have been justified in highlighting the flaws and shortcomings, or even grave neglect in the investigations carried out by the

Bureau, but the strong observations against the petitioners ought to have been avoided because of the profound consequences relating to their right to a fair trial in case of initiation of departmental proceedings or under section 31 of the Ordinance of 1999. This Court has emphasized the implications of recording strictures by the High Court against judicial officers in its judgments regarding their ability, competence, integrity and behavior. It has been held that the High Court must 'not let go of judicial precaution and propriety and refrain from making a personal remark.' The legal reasoning of the judgment of the High Court must manifest moderation, temperance and sobriety while highlighting the error or mistake. It has been observed by this Court that judicial strictures were not reformatory in nature, rather a stigma with no formal legal recourse to undo it.¹ There is no reason why the principles laid down by this Court regarding the recording of strictures by the High Court against judicial officers should also apply in the case of an investigating officer or a person exercising supervisory functions. Strictures recorded by a High Court against an employed person who is subject to disciplinary proceedings are likely to prejudice the latter's right to a fair trial. The strictures recorded by the High Court in the case in hand are in the nature of condemning the petitioners unheard since they were not served with any notice nor did they have an opportunity to put up a defense. The High Court had highlighted the shortcomings and grave flaws relating to the manner in which the investigations had been conducted. Judicial precaution and propriety required restraint to have been shown by the High Court in recording of observations regarding the conduct, behavior and integrity of the petitioners. The decision whether to proceed against the petitioners should have been left to the competent authority of the Bureau because there was no reason to presume that the latter, after taking into consideration the observations made by the High Court regarding the investigations, would not have acted in accordance with

¹ *Ms. Nusrat Yasmin v. Registrar, Peshawar High Court and others (PLD 2019 SC 719)*

law. The strictures recorded by the High Court against the petitioners, therefore, infringed their right to a fair trial and are thus not sustainable.

3. The delay of one day in filing the petitions is condoned since the reasons mentioned in the applications have been found to constitute sufficient cause. The petitions are converted into appeals and allowed to the extent of expunging the strictures recorded against the petitioners in the impugned judgment.

Chief Justice

Judge

Judge

Islamabad the,.

17th November, 2022

'NOT APPROVED FOR REPORTING'

M. Azhar Malik