

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
JUDICIAL DEPARTMENT

**Eh.Cr.A.No.12-P/2017**

**“Haji Muhammad Arif Khattak & two others  
Vs. Chairman//Director General, NAB”**

**JUDGMENT**

Date of hearing **08.05.2018.**

Petitioner(s) by: \_\_\_\_\_.

Respondent(s) by: \_\_\_\_\_.

**IKRAMULLAH KHAN, J.-** This appeal is directed against the order of the learned Accountability Court-III, Peshawar dated 28.10.2017 whereby the Objection Petition filed by the appellants was disposed of subject to furnishing of bank guarantees equal to the amount of loss allegedly caused by the appellants.

**02.** Brief facts of the appeal in hand are that the appellants in connivance with the officers/officials of Working Folks Grammar Schools, Khyber Pakhtunkhwa managed to get transport contracts for the year, 2012-13 and 2013-14 for pick and drop facility of the students of the said schools on highly exorbitant rates through mock bidding process and in sheer violation of the PPRA

rules. Resultantly, the NAB took cognizance of the matter and an inquiry against the appellants was authorized on the allegations of corruption and corrupt practices by the appellants. The NAB authorities froze the bank accounts of the appellants, confirmed by the learned Administrative Judge, Accountability Court, Peshawar vide order dated 08.02.2017. Feeling aggrieved from the above, the appellants filed Writ Petition before this Court, which was disposed of on 20.09.2017 with the following directions: -

**"Learned ADPG representing the NAB informed the Court that the petitioners have impugned the freezing order dated 08.02.2017 before the learned trial Court through Objection Petition and the same is still pending. Thus, by availing alternate remedy, the petitioners are supposed to pursue the same before the learned trial Court, who is directed to dispose it of within thirty (30) working days.  
2. The Writ Petition stands disposed of".**

**03.** In compliance of order of this Court dated 20.09.2017, the learned Trial Court vide impugned order dated 28.10.2017 disposed of the objection petition filed by the appellants by allowing defreezing bank accounts of the appellants subject to

furnishing of authenticated bank guarantees equal to the amount of the loss. Hence, the instant appeal.

**04.** The record reveals that the Reference against the appellants was placed before the learned Trial Court on 09.04.2016, wherein appellants were charged on 01.06.2016. The worthy Chairman, NAB had freezed the Bank accounts of appellants on 25.01.2017 where, the record of the case was already submitted before the learned Trial Court, while the learned Administrative Judge had confirmed the preliminary freezing order rendered by NAB on 08.02.2017 without taking cognizance of the case.

**05.** The provisions contained in Section 12(a) of the NAB Ordinance empower the Chairman NAB or the Court trying an accused for any offence under the NAB Ordinance for reasonable grounds to freeze any movable or immovable property of an accused or any relative, associate or person on his behalf but if the freezing order is made by the Chairman NAB the same is subjected to two conditions as mentioned in first proviso

thereto Section 12 of the NAB Ordinance,  
which reads as: -

**"12. Power to freeze property.—(a) The chairman NAB or the Court trying an accused for any offence as specified under this Ordinance, may at any time, if there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf:**

**(b) If the property ordered to be frozen under sub-section (a) is a debt or other moveable property, the freezing may be made, --**

**(i) by seizure; or**

**(ii) by appointment of receiver; or**

**(iii) by prohibiting the delivery of such property to the accused or to anyone on his behalf; or**

**(iv) by all or any such or other methods as the Court or the Chairman NAB as the case may be, deem fit;**

**(c) If the property ordered to be frozen is immovable, the freezing shall, in the case of land paying revenue, be made through the Collector of the district in which the land is situated, and in all other cases, --**

**(i) by taking possession; or**

**(ii) by appointment of receiver; or**

**(iii) by prohibiting the payment of rent or delivery of property to the accused or to any other person on his behalf; or**

**(iv) by all or any such methods as the Chairman NAB or the Court may deem fit:**

**Provided that any Order of seizure, freezing, attachment or any prohibitory order mentioned above by the Chairman NAB, shall remain in force for a period not exceeding fifteen days unless confirmed by the Court,**

where the Reference under this Order shall be sent by Chairman NAB.

Provided further that notwithstanding anything to the contrary contained therein the Order of Chairman NAB or the Court shall be effective from the time of passing thereof or proclamation thereof in a Newspaper, widely of the accused either by registered post A.D. or courier service or electronic media as the Court may deem proper having regard to the facts and circumstances of the case.

(d) If the property ordered to be frozen consists of livestock or is of a perishable nature, the Chairman, NAB, or the Court may, if it deems proper and expedient, order the immediate sale thereof and the proceeds of the sale may be deposited with the Chairman NAB or the Court, or as either may direct as appropriate.

(e) The powers, duties, and liabilities of a Receiver, if any, appointed under this section shall be the same as those of a Receiver appointed under Order XL of the Code of Civil Procedure, 1908 (Act V of 1908).

(f) The order of freezing mentioned in sub-sections "a" to "e" shall remain operative until the final disposal of the case by the Court, and in the event of the acquittal or release of the accused, shall continue to remain operative for a period of ten days after receipt of certified copy of the order of acquittal by NAB, whereafter it shall be subject to an order by the Court in which an appeal, if any, is filed".

**06.** The intention of the legislature is crystal clear that Chairman, NAB could exercise its power to freeze any property,

belonging to accused or his relative or associate or person on behalf of accused not exceeding 10 days at the stage where the reference had not already been send to the Court otherwise the last sentence in the proviso itself would have not been used as *"Where the Reference under this Order shall be sent by the Chairman, NAB"*.

**07.** The Provisions contained in Section 12(a) authorizes not only the Chairman, NAB but also the Court to freeze the property at any time but power of the Court is also made conditional to exercise such power only when trying the accused under the NAB Ordinance.

**08.** The word "anytime" used for exercise of power either by the Chairman or the Court in regard to freezing of property is subject to or to be read as at any time during investigation by the Chairman, NAB or at any time by the Court during course of trial.

**09.** The word "any time" does not empower the Court to freeze the property before commencement of trial and likewise once an accused sent for trial, then the

Chairman, NAB become functus officio, which is also very well clarified by the first proviso thereto Section 12 of the NAB Ordinance, reproduced hereinabove.

**10.** In case in hand, the respondent at the first instance had made a "caution order" alien to any provisions of the NAB Ordinance which was challenged by the appellants in Writ Petition No.3438-P/2016, however, during course of adjudication of the impugned order, the respondent made order of freezing of the Bank account of appellants and the writ petition on account of the freezing order dated 25.01.2017 was become infructuous and was disposed of with permission to the appellant to challenge the same before the learned Trial Court in terms of Section 13 of the NAB Ordinance.

**11.** The learned Trial Court had acceded to the contention of appellants insofar as the question of exercise of power under Section 12(a) by the Chairman, NAB was concerned and as such the Bank accounts were released but subject to furnishing bank

guarantee equal to the amount allegedly misappropriated by the appellants.

**12.** It is settled principle of law that freezing of any property by the Court for unlimited period is itself against the constitution and no any prolonged restriction could be imposed in order to deprive a person even the accused to use right over his property prior to holding him guilty and in order to decide such matter in regard to freezing of property, Section 13 of the NAB could be strictly construed, wherein Court is empower to adjudicate the issue of freezing separately, however, is case in hand, the learned Trial Court had not adopted the procedure, envisaged under Section 13 of the NAB Ordinance and without recording any evidence in this regard had decided the issue under consideration.

**13.** Once a Court arrives to the conclusion that any order/act under challenge is illegal or without jurisdiction then the Court shall annul the same in order to fulfill the requirement of law for the safe administration



of justice. There shall be no compromise over the rights of citizen as well as accused.

**14.** Courts are custodian of rights of both the state and citizen performing function as "Amin" and bound to return due rights of parties.

**15.** No any provisions of furnishing surety bonds were accommodated under the provisions of Section 13 of the Ordinance, therefore, placing condition for release of property is not justified.

**16.** As mentioned hereinabove, the Chairman, NAB could not exercise its power envisaged under Section 12(a) *ibid*, thereafter, sending the Reference before the Accountability Court, as such not only the first order dated 25.01.2017, rendered by the Chairman, NAB was not warranted by law but also the confirmation order dated 08.02.2017 rendered by the learned Administrative Judge, Accountability Court.

**17.** This Court in Khalid Aziz (PLD 2003 Peshawar 94) is explained and interpreted similar power as under discussion exercised by the Chairman, NAB under Section

26 of the Act *ibid*, wherein it is held that *"grant of pardon to the co-accused under Section 26 of the NAB Ordinance by the Chairman, NAB without approval of the Trial Court being illegal, without lawful authority and void ab initio"*.

**18.** While in case *Shuja Khan Baloch* (PLD 2011 Islamabad 25) the Hon'ble Islamabad High Court is held that *"the Chairman has the authority to pass any order in respect of property of the accused as long as the Court has not taken cognizance of the case, but the moment the Court takes cognizance of any matter under the National Accountability Ordinance, 1999, then Chairman NAB becomes functus officio and only the Accountability Court can pass any order regarding the property of the accused"*.

**19.** As discussed hereinabove, for the afore-stated reasons, this appeal is disposed of in terms that not only the impugned freezing order dated 25.01.2017, rendered by the Chairman, NAB but also the Judgment dated 08.02.2017 rendered by the learned Court below. However, learned Trial Court may

keeping in view the provisions of Section 12(a) of the NAB Ordinance and if he deems it appropriate may re-freeze the property of the appellants if reasonable grounds exists for such exercise of power under Section 12(a) of the NAB Ordinance.

**Announced.  
08.05.2018.**

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**J U D G E**

DB  
Hon'ble Mr. Justice Ikramullah Khan  
Hon'ble Mr. Justice Ishtiaq Ibrahim

Himayat