

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Eh.Cr.A.No.08-P/2017

**“Prosecutor General Accountability, National
Accountability Bureau, Islamabad
Vs
Naseem ur Rehman, Ex-MNA & two others”**

JUDGMENT

Date of hearing **09.05.2018.**

Petitioner(s) by: _____.

Respondent(s) by: _____.

IKRAMULLAH KHAN, J.- Before us, for consideration is the appeal filed by the Chairman, NAB against the impugned Judgment dated 09.09.2017, rendered by the learned Accountability Court-II, Peshawar, whereby the respondents were acquitted of the charges leveled against them, under the NAB Ordinance, 1999 by exercising jurisdiction conferred under Section 265-K Cr.P.C.

02. In essence, allegations against the present respondents are that they have established an industrial empire in a short period and acquired huge assets disproportionate to their known sources of income amounting to Rs.82.09,25,815/- in toto; that before 1985, total land holdings of accused

and their family were 377 kanal and 01 marla in District, Mardan and after 1985, land holdings of the respondents and their family increased to 8853 kanal and 09 marla; that the respondents in their income tax/wealth tax returns have never declared their bank accounts; that in first round of litigation, all the accused were acquitted by the learned Judge, Accountability Court under Section 265-K Cr.P.C. on different dates, against which Ehtisab Criminal Appeals were filed before this Court, which were dismissed on 17.02.2004. Appeals against the said Judgment were preferred before the Apex Court by the NAB and the same was remanded back for trial afresh. The learned Trial Court after hearing arguments, acquitted the accused vide impugned judgment dated 09.09.2017, hence, the instant appeal.

03. Learned counsel for the appellant contended that the impugned Judgment is against the law and facts on record; that the learned Trial Court has not appreciated the evidence on record, adduced by the prosecution, whereby prosecution had proved its case against the respondents beyond any

reasonable grounds; that the NAB Ordinance is a special law and frequent exercise of power envisaged under Section 265-K Cr.P.C. could not be exercised; that the respondents were under their legal obligation to discharge their burden in term of Section 14 of the NAB Ordinance to enter into the witness box and bring on record their sources of income to commensurate with the huge property illegally accumulated by the respondents but without discharging of this burden, placed upon every accused facing charges under NAB Ordinance, the learned Trial Court has acquitted the respondents for unexplained reasons.

04. On the other hand, the learned counsel for the respondents contended that the case against the respondents and other acquitted accused, was the result of malafide and political victimization; that the NAB has got no jurisdiction to either initiate any inquiry or investigation against any member of the public particularly a businessman, except those who had any nexus with the offences, prescribed under Section 9 of the NAB Ordinance, while special law could not be applied generally, in

order to substitute general law of the land; that all the respondents are businessmen, bonafide citizen of the land having no nexus whatsoever with the offences prescribed under Section 9 of the NAB and does not qualify the meaning of any person, used in the NAB Ordinance, otherwise, the NAB would exercise its power to investigate any person holding properties which would be against the preamble of the Ordinance itself; that the NAB has not proved its case against the respondents and no specific charge had framed against the respondents; that the Accountability Court could exercise jurisdiction conferred under Section 265-K Cr.P.C. at any stage of the trial when arrives to the conclusion that the Prosecution was not able to bring guilt home to the accused.

05. We have heard learned DPG on behalf of the State as well as learned counsel for the respondents in light of law and facts on record.

06. In order to elucidate the contention of the learned counsel for the respondents that the NAB could not be given unbridled power to substitute for general law of the land and

initiate inquiry and investigation under the NAB Ordinance against each and every person, despite the fact that such person has no even a remote nexus/link with any business of government or exchequer.

07. It would be expedient to reproduce the preamble of the NAB Ordinance, which reads as: -

"An Ordinance to provide for the setting up of a 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;

Whereas it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commission and for matters connected and ancillary or incidental thereto;

And Whereas there is an emergent need for the recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to Banks, Financial Institutions, Governmental agencies and other Agencies;

And Whereas there is a grave and urgent need for the recovery of state money and other assets from those persons who have

misappropriated or removed such money or assets through corruption, corrupt practices and misuse of power or authority;

And Whereas there is an urgent need to educate the society about the causes and effects of corruption and corrupt practices and to implement policies and procedures for the prevention of corruption in the society; and

And Whereas there is an increased international awareness that nations should co-operate in combating corruption and seek, obtain or give mutual legal assistance in matters concerning corruption and for matters connected, ancillary or incidental thereto;

And Whereas it is necessary that a National Accountability Bureau be set up so as to achieve the above aims;

And Whereas the National Assembly and the Senate stand suspended in pursuance of the Proclamation of the Fourteenth day of October, 1999 and the Provisional Constitution Order No.1 of 1999, as amended;

And Whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, Therefore, in pursuance of the aforesaid Proclamation and Provisional Constitution Order as well as Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance”.

08. To summarize and specifically construe the intention of the law maker, for which the NAB Ordinance was duly promulgated, reads as: -

- i. **Eradication of corruption and corrupt practices.**
- ii. **Misuse of power or authority.**
- iii. **Misappropriation of property, taking of kickback, commission.**
- iv. **Recovery of amounts from defaulter of Bank and other financial institution and all matters ancillary or accidental thereto.**

09. While by virtue of Section 4, the NAB Ordinance was extended to the whole of Pakistan and shall also apply to all citizens of Pakistan and persons who are or have been in service of Pakistan wherever they may be.

10. Both the preamble and the provisions contained in Section 4 of the NAB Ordinance, no doubt apply not only to persons in service of Pakistan or have been in service of Pakistan but also all citizens of Pakistan, subject to involvement of them in any matter either mentioned in the preamble of the Ordinance or matter connected, ancillary or incidental thereto, or have any nexus with the offences prescribed

under Section 9 of the NAB Ordinance, which reads as: -

"9. Corruption and corrupt practices:

(a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices-

(i) if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Pakistan Penal Code (Act XLV of 1860) for doing or for-bearing to do any official act, or for showing or for-bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person; or

(ii) if he accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or from any person whom he knows to be interested in or related to the person so concerned; or

(iii) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or wilfully allows any other person so to do; or

(iv) if he by corrupt dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse and/or dependents or any other person, any property, valuable thing, 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].

(vi) [If he] misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempt render to do so, [or willfully fails to exercise his authority to prevent grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority].

(vii) if he issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or [attempts to grant] any [undue] concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar, [or any other person] or

(viii) If he commits an offence of willful default; or

(ix) if he commits the offence of cheating as defined in Section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and thereby dishonestly induces members of the public-at-large to deliver any property including money or valuable security to any person; or

(x) if he commits the offence of criminal breach of trust as defined in Section 405 of the Pakistan Penal Code, 1860 (Act XLV of 1860), with regard to any property including money or valuable security entrusted to him by members of the public-at-large;

(xi) if he, in his capacity as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust as provided in Section 409 of the Pakistan Penal Code, 1860 (Act SLV of 1860) in respect of property entrusted to him or over which he has dominion, and

(xii) if he aids, assists, abets attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clauses (i) to (xi).]

(b) All offences under this Order shall be non-bailable and notwithstanding anything contained in Ss. (426,491) 497, 498 and 561-A or any other provision of the Code, or any other law for the time being in force no Court, shall have jurisdiction to grant bail to any person accused of any offence under this Order.

(c) If after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused, if in custody.]

(d) Omitted by Ord.CXXXIII of 2002 dated 23.11.2002".

11. In order to further explain not only the applicability of the provisions of the NAB Ordinance insofar as "all citizen" mentioned in Section 4 of the NAB Ordinance are concerned but also the jurisdiction of the NAB, prescribed under Section 22 of the NAB Ordinance, which reads as: -

"22. Jurisdiction. (a) The Chairman NAB may inquire into and investigate any suspected offence which appears to him on reasonable grounds to involve an offence under this Ordinance, and has been referred to him, or of his own accord.

(b) The Chairman NAB may, if he thinks fit, conduct any such investigation in conjunction with any other agency or any other person who is in the opinion of the Chairman NAB, a proper or person to be concerned, in it".

12. All the above mentioned provisions of law if read and construe conjunctively, definitely and in unequivocal terms, describe that any person or any citizen of Pakistan who is

involved in any offence, described under Section 9 of the Ordinance having nexus with corruption or corrupt practices or cheating of public at large or an offence of criminal breach of trust as defined under Section 405 PPC with regard to any money or valuable security entrusted to him by public at large, the NAB has the jurisdiction to inquire into and investigate against such accused but if any citizen, person having no nexus with corruption or corrupt practices specifically defined under Section 9 of the NAB Ordinance, the jurisdiction of the NAB could not be extended generally to each and every persons having holding or accumulated properties, privately through any legal business.

13. This legal preposition has already been exclusively interpreted and explained by the Apex Court in his Judgment reported as (PLD 2013 Supreme Court 594) wherein it is held, insofar as the accountability of general public is concerned, that: -

"If we were to accept the contention that the National Accountability Ordinance, 1999, and particularly section 9(a) thereof, is applicable only to holder of a public office and a person aiding and abetting or conspiring with holder of a

public office then the provisions of sections 9(a)(xi) and 9(a)(xii) reproduced above would be rendered partially or wholly redundant. It is trite that redundancy cannot or ought not to be attributed to the legislature.

13. The discussion made above leads us to an irresistible conclusion that the principle of ejusdem generis pressed by Mr. Wasim Sajjad does not apply to the words "any other person" appearing in section 9(a) of the National Accountability Ordinance, 1999 and that the words "A holder of a public office, or any other person," used in that section are disjunctive as they refer to different classes of persons. In the context of the scheme and scope of that Ordinance the words "any other person" are to be given their ordinary meanings and are simply to be accepted as referring to any other person, nothing more and nothing less. On the subject of interpretation of such words appearing in a statute we may usefully refer to the following passages of the judgment rendered by this Court in the case of Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483):

"A fundamental principle of constitutional construction has always been to give effect to the intent of the framers of the organic law and of the people adopting it. The pole star in the construction of a Constitution is the intention of its makers and adopters. When the language of the statute is not

only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Such language best declares, without more, the intention of the lawgivers, and is decisive of it. The rule of construction is "to intend the Legislature to have meant what they have actually expressed". It matters not, in such a case, what the consequences may be. Therefore if the meaning of the language used in a statute is unambiguous and is in accord with justice and convenience, the courts cannot busy themselves with supposed intentions, however admirable the same may be, because, in that event they would be travelling beyond their province and legislating for themselves. But if the context of the provision itself shows that the meaning intended was somewhat less than the words plainly seem to mean then the court must interpret that language in accordance with the indication of the intention of the legislature so plainly given. The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The essence of law lies in its spirit, not in its letter, for the letter is significant only as

being the external manifestation of the intention that underlies it. Nevertheless in all ordinary cases the courts must be content to accept the *littera legis* as the exclusive and conclusive evidence of the *sententia legis*. They must, in general, take it absolutely for granted that the Legislature has said what it meant, and meant what it has said. Its *scriptum est* is the first principle of interpretation. Judges are not at liberty to add to or take from or modify the letter of the law simply because they have reason to believe that the true *sententia legis* is not completely or correctly expressed by it. That is to say, in all ordinary cases grammatical interpretation is the sole form allowable. It is no doubt true that the felt necessities of the times must, in the last analysis, affect every judicial determination, for the law embodies the story of a nation's development through the centuries and it cannot be dealt with as if it contains only axioms and corollaries of a book of mathematics. A Judge cannot stand aloof on chill and distant heights. The great tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judge by. But at the same time, the Judge must remember that his primary function is to interpret the law and to record what the law is. He cannot allow his zeal, say, for social or agrarian reform, to overrun his true function. He does not run a race with the Legislature for social or agrarian reform. His task is a more limited task; his ambition a more limited ambition. Of course in this process of interpretation he

enjoys a large measure of latitude inherent in the very nature of judicial process. In the skeleton provided by the Legislature, he pours life and blood and creates an organism which is best suited to meet the needs of society and in this sense he makes and moulds the law in a creative effort. But he is tied by the basic structure provided by the Legislature which he cannot alter and to appeal to the spirit of the times or to the spirit of social or agrarian reforms or for the matter of that any other reform for the purpose of twisting the language of the Legislature is certainly a function which he must refuse to perform.

The words of a statute must, *prima facie*, be given their ordinary meaning. Court must not shrink from an interpretation which will reverse the previous law; for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then Court may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations the narrower of which

would fail to achieve the manifest purpose of the legislation, court should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result”.

14. So, no further construction would be appropriate and no finding could be given except the one held by the Hon’ble Supreme Court of Pakistan which shall be accepted however, on the basis of the above mentioned principle of law, the NAB has not invested with unbridled, general jurisdiction to inquire into and investigate against each and every person, accumulated properties on any pretext that such properties were not come of corruption and corrupt practices and shift burden in term of Section 14 of the NAB Ordinance to such person, who has no nexus with the matters enumerated in the preamble of the Ordinance or with the provisions contained in Section 9 of the NAB Ordinance.

15. His lordship, in the above mentioned Judgment had further explained and had clarified the jurisdiction of the NAB authorities

in regard to any person, in the concluding para of the Judgment, which reads as:

"For what has been discussed above we hold and declare that the provisions of the National Accountability Ordinance, 1999 are applicable even to a person who is not holder of a public office and also to a person who has not aided, assisted, abetted, attempted or acted in conspiracy with holder of a public office and the words "any other person" appearing in section 9(a) of the said Ordinance are to be understood and applied accordingly. For removal of any doubt or ambiguity it is clarified that a stand alone private person can be proceeded against under the said Ordinance if the other conditions mentioned in that Ordinance in that respect are satisfied"

16. Now adverting to the facts of this case, the respondents were charged, inquired to and investigated by the NAB on the grounds that the accused during the period 1989-90 to 1996-97 (excluding the period from 15.02.1997 to 12.10.1999 i.e. two years and eight months) had accumulated / acquired properties, assets (well mentioned in the charge sheet), in his name and in the name of his spouse, dependents, benamidars and associates, which are grossly disproportionate to the known sources of income; that the accused also jointly

purchased / owned the vehicles (mentioned in the charge sheet), which are grossly disproportionate to the known sources of income of the accused; that the accused committed the offence of corruption and corrupt practices within the meaning of Section 9 of the National Accountability Ordinance, 1999 punishable under Section 10 of the said Ordinance.

17. In order to prove the principle charge against the respondents that they had collected their income deceitfully, fraudulently and dishonestly, whereby had caused a wrongful loss of Rs.2996 million to the Central Board of Revenue, Government of Pakistan, NAB examined as many as 63 witnesses, all of them, had categorically stated that respondents had paid their respective taxes.

18. The prosecution had not brought on record an iota evidence that respondents had ever involved in evasion of any taxes.

19. No doubt, a special procedure is available in cases of evasion of taxes but though if such evasion is construed to be an offence under Section 9 of the NAB Ordinance, then, the

NAB was required to prove such evasion of taxes through conceivable evidence.

20. It is settled principle of law that charge shall be specific in criminal cases in order to know the charges leveled against an accused in order to defend himself.

21. In case in hand, the respondents and their other family members are attached with various set of business since, 1952 while the primogenitor and elder brothers of respondents, who had busted their business had died before framing of charge in instant Reference while some of co-accused, being co-partner and co-sharer, in the business and properties under consideration were also acquitted.

22. It is not the purpose of the NAB law that each and every person, shall be held accountable to prove their sources of income and properties accumulated by them in past length of sphere of their lives if any such person is involved in corruption, corrupt practices, cheating, misappropriation of money, having nexus with the offences, prescribed under Section 9 of the NAB Ordinance or even enlarging the scope to cases of evasion of taxes

but the NAB Ordinance shall not be made a tool by any government or by the NAB itself to politically or otherwise victimize a businessman having no any remote nexus with any offence of corruption or corrupt practices, cheating public at large, or criminal breach of trust, in regard to money etc entrusted to him by public at large as envisaged under Section 9 of the NAB Ordinance.

23. In case of Muhammad Hashim Babar (2010 SCMR 1697), the Apex Court has held that mere possession of any pecuniary resources of property by itself is not an offence but failure to satisfactorily account for such possession of pecuniary resources or property makes the possession objectionable constitutes an offence but if accused cannot explain, presumption under Section 14(c) of National Accountability Ordinance, 1999 that accused is guilty of corruption and corrupt practice is required to be drawn. Likewise in (PLD 2011 Supreme Court 1144), the Apex Court is also held the same view that mere accumulation of wealth / properties is not an offence by itself.

24. Keeping in view the principle of law, enumerated by the Apex Court, in the above mentioned judgment, NAB could only exercise its jurisdiction in order to inquire and investigate offences against any person, citizen of Pakistan, if such person is involved and connected, having any nexus either with the offences, prescribed under Section 9 of the NAB Ordinance, or matters incidental thereto or ancillary thereof but could not harass, inquire and investigate against any person, who stood alone having no remote or direct or indirect nexus with the offences, described /prescribed under Section 9 of the NAB Ordinance, 1999 or incidental and ancillary thereto.

25. Insofar as the acquittal of appellants/respondents is concerned, not only the charge, framed against the respondents does not disclose any offence in view of Section 9 of the NAB Ordinance but also the evidence is shaky and no iota of evidence is brought on record that the respondents had involved in any offence of tax evasion, cheating, fraud, corruption or corrupt practices. No doubt, the respondents have had huge property but the same had not

concealed and well mentioned in income tax returns, which is confirmed by relevant prosecution witnesses themselves. Prosecution has also failed to prove that the concerned business of respondents were illegal. Article 18 of the Constitution of Islamic Republic of Pakistan, 1973 confers rights upon any citizen of Pakistan to enter upon any lawful profession or occupation and to conduct lawful trade or business, while the provisions enshrined therein Article 23 of the Constitution, 1973 every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

For what has been discussed above,
this appeal is dismissed.

Announced.
09.05.2018.

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J U D G E

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