

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO. 4878 OF 2021

*(On appeal against the judgment dated 26.07.2021
passed by the High Court of Sindh, Karachi in C.P. No.
D-3045/2021)*

Asim Murtaza Khan

... Petitioner

VERSUS

The State through Chairman NAB, Islamabad

... Respondent

For the Petitioner: Mr. Abdul Shakoor Paracha, ASC
Mr. Haseeb Shakoor Paracha, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondents: N.R.

Date of Hearing: 06.09.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the judgment dated 26.07.2021 passed by the learned High Court of Sindh whereby the Constitution Petition filed by the petitioner was dismissed and the order of the learned Trial Court dated 22.04.2021 was affirmed.

2. Briefly stated the facts of the matter are that the petitioner was Managing Director of Pakistan Petroleum Limited. On account of the alleged misappropriation, corruption and fraud in the acquisition of shares of a company namely Moravske Naftove Doly (MND) by the Pakistan Petroleum Limited, on the complaints of Chairman, Pakistan Petroleum Limited and Chairman, Securities and Exchange Commission of Pakistan a Reference was filed by NAB before the learned Accountability Court Sindh, which is still pending adjudication. In the said Reference, the prosecution has

produced Munir Hassan Ali as PW-1 for his evidence and for production of certain documentary evidence as mentioned in the seizure memo dated 16.06.2020. However, while recording the deposition of the said witness the petitioner objected that the said witness does not hold a proper authorization from the Board of Directors of Pakistan Petroleum Limited and the same may be produced. In this regard, he filed an application under Section 94 Cr.P.C. before the Trial Court but the same stood dismissed vide order dated 22.04.2021. Being aggrieved by the dismissal of his application, he filed Constitution Petition before the learned High Court of Sindh, Karachi, which also met the same fate. Hence, this petition.

3. *The crux of the arguments advanced by learned counsel for the petitioner is that as Munir Hassan Ali (PW-1), who was supposed to produce certain documents during trial, was not properly authorized by the Pakistan Petroleum Limited, therefore, the said documents should not be exhibited and are inadmissible in evidence. He further contended that the objection was raised at the first instance and the learned Trial Court ought to have first recorded the objections raised by the petitioner and then proceeded with the trial. In support of the contentions, learned counsel relied upon Hayatullah Vs. State (2018 SCMR 2092).*

4. *We have heard learned counsel for the petitioner at some length and have perused the available record.*

So far as the argument of learned counsel for the petitioner that as Munir Hassan Ali (PW-1) was not properly authorized by the Board of Directors of Pakistan Petroleum Limited, therefore, the documents produced by him are inadmissible in evidence is concerned, the learned High Court has very ably dealt with this issue and held that as it is a criminal case, the production of evidence is to be considered on the touchstone of respective law pertaining to the collection and production of evidence in a criminal case for which Section 94 of Cr.P.C. is relevant. The High Court has rightly held that there is no need for the investigators to seek any authorization for production and seizure of record even from a court if the collection and seizure is needed from a company other than a banking company and admittedly Pakistan Petroleum Limited is not

a banking company. So far as the presumption as to documents produced as record of evidence, the learned High Court while relying on Article 91 of the Qanoon-e-Shahadat Order, 1984, rightly observed as follows:-

"9. It is noteworthy that the above provision of law has also two-fold application. One pertains to the production of a document by a witness before a court while the other speaks about receiving such evidence by an officer authorized by law i.e. the investigating officer. If such document pertains to be a record or a memorandum of the evidence, and the same fulfill the other requirements of the aforementioned statutory provision, the presumption of genuineness will be attached to it as such the same may be considered as admissible evidence. Nevertheless, such presumption is a rebuttable presumption, as such, after production and exhibiting such document, its veracity is to be judged by weighing all the aspects including objection, relevancy and other factors. During the investigation, the investigators are duty-bound to collect every material including documentary evidence (either primary or secondary) and for their production, in court the prosecutor must consider the factors attached to its admissibility.

5. It is admitted position that the trial is still pending adjudication, therefore, we do not want to comment upon the merits of the case lest it may prejudice the case of either side. In the interest of justice, we deem it appropriate to direct that the disputed question regarding authorization and admissibility of evidence may be decided by the learned Trial Court. The learned Trial Court is directed to hear the objections of the petitioner and the other side and decide the same in accordance with law. The learned Trial Court is further directed to proceed with the trial expeditiously. So far as the case law relied upon by the learned counsel for the petitioner is concerned, the same is to the effect that inadmissible evidence should not come on the record and if any party tenders such evidence during the trial, the other party should immediately raise objection to the admissibility of such evidence and the court should decide the same before proceeding further. However, as stated above, the same is not the case here because in the instant

case the disputed questions are yet to be decided by the learned Trial Court. With these observations, this petition stands disposed of. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
6th of September, 2021
Approved For Reporting
Khurram