

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Amin-ud-Din Khan  
Justice Jamal Khan Mandokhail  
Justice Athar Minallah  
Justice Syed Hasan Azhar Rizvi

**Intra Court Appeals No. 2 and 3 of 2023**  
**In**  
**Constitution Petition No. 21 of 2022**

Islamic Republic of Pakistan through Secretary Ministry of Law and  
Justice, Govt. of Pakistan, Islamabad.  
*(in ICA No. 2/2023)*

Zuhair Ahmed Siddiqui.  
*(in ICA No. 3/2023)*

... Petitioners

**Versus**

Imran Ahmed Khan Niazi and others.  
*(in both cases)*

... Respondents

For the Petitioner:  
*(in ICA No. 2/23)*

Mr. Saad Mumtaz Hashmi, ASC.

For the Petitioner:  
*(in ICA No. 3/23)*

Mr. Farooq H. Naek, Sr. ASC.

For the Federation:

Mr. Mansoor Usman Awan,  
Attorney-General for Pakistan.

For the Respondent:

Not represented.

Dates of Hearing:

31.10.2023.

**ORDER**

1. Mr. Saad Mumtaz Hashmi, learned ASC for the appellant in Intra Court Appeal No. 02/2023, at the outset states that this Court, comprising of the Full Court, had sustained the Supreme Court (Practice and Procedure) Act, 2023 (**'the Act'**), enacted on 21 April 2023, and held it to be in accordance with the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**). The Act provides a mechanism for the constitution of benches in its section 2, which may be considered to be a procedural matter, however, its section 4 stipulates that, *'where interpretation of the constitutional provisions is involved'* a bench of this Court comprising of not less than five judges must hear the case. However, learned counsel submits, that a three-member Bench of this

Court *vide* judgment dated 15 September 2023 decided the Constitution Petition No. 21/2022, wherein the amendments made to the National Accountability Bureau Ordinance, 1999 (**'NAB Ordinance'**) were challenged, and the majority held that most provisions thereof were unconstitutional, which only a bench of not less than five judges of this Court could have done. The contention of the learned Mr. Saad Hashmi is supported by the learned Attorney-General for Pakistan and learned senior counsel Mr. Farooq H. Naek.

2. Mr. Naek states that he too has assailed the majority judgment in Intra Court Appeal No. 03/2023 on behalf of a private person who was an accused. He states that as a matter of abundant caution he has also filed an application for impleadment, if objection to the non-maintainability of the appeal was taken, which he apprehended since the appellant in Constitution Petition No. 21/2022. However, he does not now press the application seeking impleadment, since the appeal was numbered/registered, without objection. Therefore, the said application is dismissed as not pressed. He further states that on behalf of Basharat Mirza and Abdul Jabbar he has filed separate review petitions, but the same have not been numbered as yet, which he also does not press. Therefore, the said review petitions to be treated as withdrawn.

3. Amendments to the NAB Ordinance were made, as under:

- (1) National Accountability Bureau (Amendment) Act, 2022 enacted on 22 June 2022;
- (2) National Accountability Bureau (2<sup>nd</sup> Amendment) Act, 2022, enacted on 12 August 2022; and
- (3) National Accountability Bureau (Amendment) Act, 2023, enacted on 29 May 2023.

Hereinafter respectively referred to as '**1<sup>st</sup> Amendment**', '**2<sup>nd</sup> Amendment**' and '**3<sup>rd</sup> Amendment**' and collectively as '**the Amendments**'.

4. It is submitted that though the 3<sup>rd</sup> Amendment was in the field when the said Constitution Petition No. 21/2022 was being heard; six hearings took place after its promulgation, yet the impugned judgment did not attend to it, and that even if the impugned judgment is sustained the question of how trials will proceed when proceedings before other (non Accountability) Courts had taken place, and reference is also made to sections 231 and 350 of the Code of Criminal Procedure, 1898 and section 35 of the NAB Ordinance, and it is stated that the 3<sup>rd</sup> Amendment had attended to matters as mentioned in these

provisions, but the impugned judgment does not address the 3<sup>rd</sup> Amendment, which has created an anomalous situation.

5. Criminal Misc. Applications No. 9264 and 9266 of 2023: Notice. Till the next date of hearing the Accountability courts may proceed with trials but shall not announce final judgment.

6. On 11 October 2023 this Court had announced the order in Constitution Petition No. 6/2023 etc., however, detailed reasons have not been given as yet. Therefore, it would be appropriate to fix these appeals after the release of the detailed reasons in the said cases. However, to save time let notices be issued to the respondents. Since the interpretation of the Constitution, Federal laws and as trials which the Amendments had referred to courts in the provinces and to the ordinary courts in the Islamabad Capital Territory, which has been reversed by the impugned judgment, notices to the Attorney-General for Pakistan and the Advocate-Generals of all the provinces and the Islamabad Capital Territory be also issued under Order XXVII-A of the Code of Civil Procedure, 1908. Copy of the order passed to accompany the notices. The incarcerated respondent be served through the concerned Jail Superintendent and be provided copies of the appeals, and if he wants to be represented the Jail Superintendent should do the needful.

Chief Justice

Judge

Judge

Judge

Judge

Islamabad:  
31.10.2023  
(M. Tauseef)