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# THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE AMIR HANI MUSLIM**

**MR. JUSTICE MUSHIR ALAM**

**C.A.No. 82-K of 2015**

(Against the impugned judgment passed by  
High Court of Sindh at Karachi in C.P.No D-  
3184 of 2011 on 15.05.2013)

The State through Chairman NAB.....Appellant

Versus

Hanif Hyder and another.....Respondents

For the Appellant : Mr. Waqas Qadeer Dar P.G NAB.  
Col (R) Sirajul Nadeem DG NAB.  
Mr. Najam Din Junejo Deputy  
Director NAB.  
Mr. Noor Muhammad Dayo, Special  
Prosecutor NAB.  
Syed Amjad Ali Shah, DPG NAB.

For Respondents : 1, 2, 4 & 5 in person.

On Court Notice : Mr. Zamir Ghumro A.G. Sindh  
Syed Israr Ali Addl. Direct FIA.  
Mr. Asim Khan Director (S)FIA  
Mr. Ghulam Qadir Thebo Chairman,  
ACE Sindh.

Date of hearing : 2nd September 2016

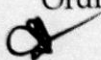
**ORDER**

**AMIR HANI MUSLIM, J.**-We have heard the Prosecutor  
General NAB on merits. He says that he does not press this Appeal and  
requests for its withdrawal. The above Appeal is accordingly **dismissed as  
withdrawn.**



2. During the hearing of these proceedings, we have noticed that the NAB in exercise of powers under Section 9 of the NAB Ordinance has started taking cognizance of the petty matters and therefore, notice was issued to the D.G. NAB to submit report in regard to the enquiries and or investigations, which the NAB has undertaken in respect of the amounts involved less than 100 Million and References, if any, filed which involved amount less than 100 million. A list has been provided. It is evident from this list that prima facie the enquiries and investigations undertaken by the NAB are not of mega scandals and apparently petty matters have been enquired into on the complaints. This is not the wisdom behind legislation of NAB Ordinance. The NAB Ordinance was primarily legislated to counter mega scandals and book the persons who are involved in mega scandals of corruption and corrupt practices.

3. We have also noticed that the provisions of Section 25(a) of the NAB Ordinance empowers the NAB to accept the offer of an accused person of Voluntary Return of the assets or gains acquired by him. Once an accused who alleges to have plundered colossal sums of money, deposits a portion of such amount determined by Chairman NAB voluntarily, that too, in installments, stands discharged from all his liability in respect of the matter or transaction in issue and goes back to join his job. This frequent exercise of powers of "Voluntary Return" by the Chairman NAB has in fact multiplied corruption on the one side and defeated the object of the NAB Ordinance on the other side. The NAB Ordinance was introduced to



eliminate the corruption of large magnitude. Provisions of Section 25(a) were not meant to allow corrupt "public servants" who mint money through corruption or corrupt practices to get a clean chit from the NAB authorities by paying portion of such alleged amount in terms of Section 25 (a) of the NAB Ordinance. What is more shocking for us is that no departmental proceedings are initiated against any of such accused, who entered into Voluntary Return. The option of Voluntary Return by a public servant and or a civil servant falls within the ambit of "misconduct" and needs to be departmentally proceeded against once he admits that he had earned money by corruption. After admitting this fact, he cannot hold any public office either in Federal or in Provincial Government or in any state owned organization.

4. This Court further needs to examine the vires of Section 25(a) authorizing the Chairman NAB to accept the offer of Voluntary Return from a person of the amount illegally earned by him at the touchstone of the Constitution of Pakistan. This provision prima facie is in conflict with the provisions of the Constitution, where such power can only be exercised by a judicial forum as after payment of Voluntary Return, the person goes scot-free without any stigma on his career and can contest the elections and or can continue in public office, as the section does not provide any disqualification, as against the disqualification provided under Section 25(b) of the NAB Ordinance. In addition to the aforesaid reasons there is no yardstick provided in NAB Ordinance and the rules framed thereunder determining the amount of Voluntary Return.

5. We, therefore, direct the office to place this order before the Honourable Chief Justice of Pakistan, for passing appropriate orders to treat this matter as a Suo Moto petition under Article 184 (3) of the Constitution, as prima facie, the aforesaid issues raise question of public importance having far reaching effect and have direct bearing on the fundamental rights of citizens of Pakistan in order to lay down the principles regarding cognizance of NAB in corruption matters under Section 9 of the NAB Ordinance and to further examine whether the NAB can extend its jurisdiction to take cognizance of the cases which fall within the domain of the Anti-Corruption Authorities and or the FIA.. The office shall also obtain orders regarding its hearing at the Principal Seat. The NAB, Federal Government, Provincial Government and statutory authorities shall furnish the following details:

- (i) The list of the cases in which NAB authorities are conducting enquiries and investigations and or references pending in the NAB Courts, involving an amount of less than Rs.100 Million;
- (ii) The list of the persons, civil servants and or public servants, to be provided by relevant departments of the Governments and or State owned organizations, who entered into Voluntary Return.
- (iii) The action which the Federal/Provincial Governments and or statutory organizations have taken against their employees after their offer of Voluntary Return was accepted by NAB in terms of Section 25(a) of the NAB Ordinance.

6. If the Hon'ble Chief Justice of Pakistan approves the recommendations of the Bench, notices be issued to the Attorney General for Pakistan, the Advocate Generals and the Prosecutor Generals of all the



Provinces, under Section 27-A of the CPC and to the Chairman NAB, D.Gs  
NAB and the Prosecutor General NAB on the aforesaid issues.

**Sd/= Amir Hani Muslim, J**  
**Sd/= Mushir Alam, J**

Karachi the,  
2<sup>nd</sup> September, 2016.  
Approved for reporting.

Wasim /

  
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