JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2149 of 2022
Abdul Waheed
Versus
The State, etc.

Date of Hearing	:	05.07.2022.
Petitioner by	:	Muhammad Rustam Malik, Advocate.
Respondent by	:	Mr. Ali Husssain Bhatti, Advocate
State by	:	Mian Zain Qureshi, Advocate Mr. Inayat, ASI.

ARBAB MUHAMMAD TAHIR, J. The instant writ petition is arising out of order dated 11.03.2022 passed by the Judicial Magistrate Section 30, Islamabad-West, whereby the application for appropriate orders was dismissed.

2. The learned counsel argued that the petitioner has been dragged in false and frivolous litigation as the cases were registered at different police stations and are pending before the different court at Islamabad, despite the fact that the complainants had already joined the proceedings in NAB Reference No. 14/2016 entailing common subject matter which is pending before the learned Judge NAB Court at Peshawar.

3. Learned counsel further asserted that the petitioner was being prosecuted simultaneously for the same offence before the Judicial Magistrate and before the NAB Court in the Reference ibid, therefore, invoked the jurisdiction of this Court by filing Writ Petition No. 4529/2019 with the plea that he cannot be vexed twice for the same offence under the principle of double jeopardy.

4. The Hon'ble Division Bench of this Court after hearing the arguments, disposed of the writ petition vide order dated 24.09.2020 in following terms:-

> "….The Grievance of the petitioner is that he is facing double jeopardy inasmuch as the cases which are subject matter before respondents No. 2 to 4, are also part of Reference No. 14 of 2016 filed by the National Accountability Bureau, pending before Accountability Court No. 1, Peshawar.
> …. In view of the above position, it is apt that petitioner files appropriate applications for stay/ Holding the proceedings in abeyance before respondents No. 2 to 4, who after examining the contents of Reference as well as the cases pending against the petitioner, would decide the same and in case, there is overlapping, an appropriate order shall be passed to that extent……"

5. Pursuant to the direction *ibid*, the petitioner filed an application before the learned Judicial Magistrate, Islamabad, seized with the criminal case, for holding in abeyance the proceedings till the decision/outcome of the NAB Reference No. 14/2016 pending before the Judge Accountability Court, Peshawar. The learned Judicial Magistrate turned down the request vide order dated 16.10.2021 in following terms:-

> "NAB Reference annexed with the petition further reveals that complainant & accused of this case joined the NAB Reference pending adjudication in the learned Special Accountability Court, Peshawar. It is also clear that on the same facts of the allegation of, this Court has taken cognizance,
> When the facts and circumstances of this case taken together, the contention of learned counsel for the petiotner/accused, it is evident that present petiotner/accused would be prosecuted on two forums at the same time on the same allegations. Article 13 of the Constitution of the Islamic Republic of Pakistan provides that no person shall be prosecuted for the same offence more than once, this very article enshrine fundamental rights of the accused persons against double jeopardy which has been codified in the form of section 403 Cr.P.C it is also well settled law that special law shall prevail over general law. There is also apprehension of conflicting orders and judgments. In sequel of my above discussion proceedings in this case are stayed and being hold in abeyance till the final decision of the NAB Reference pending adjudication in the Court of competent jurisdiction…."

6. The petitioner also filed a similar application in case emanating from FIR No. 231/2014 on the same grounds but the same was dismissed by the learned Judicial Magistrate-West,

Islamabad, vide order dated 11.03.2022, impugned through the instant writ petition.

7. The petition was initially taken up on 08.06.2022 and notices were ordered to be issued to the respondents. The parties were given due audience.

8. The learned counsel for the respondent argued that since the respondent is not a party in the proceedings before the Accountability Court, Peshawar in the NAB Reference, the ground for double jeopardy cannot be agitated to the extent of respondent, as neither he was called upon by the NAB authorities during the inquiry or investigation nor had been part of the NAB Reference. Learned counsel further asserted that the respondent has lodged FIR No. 213/2014 in the wake of transactions, inter-se him and the petitioner, wherein certain amounts were outstanding towards the petitioner and that the latter issued cheques which stood dishonoured by the concerned bank on presentation, the subject matter of the referred FIR.

8. Arguments heard, record perused.

9. Perusal of the record reveals that the petitioner had filed Writ Petition No. 4529/2019 before this Court which was disposed of by observing that:-

> "As the NAB Reference No. 14/2016 is pending adjudication before the learned Accountability Court, Peshawar and it is settled proposition of law that no one should be vexed twice for similar cause, hence proceedings in the instant case are hereby stopped under Section 249-A Cr.P.C till the decision of NAB reference No. 14/2016. Accused is released on existing surety. The parties are at liberty to approach for resumption of the instant case after decision of above mentioned NAB Reference."

10. In wake of such orders, the petitioner filed application before the Judicial Magistrate, wherein proceedings were carried out against the petitioner.

11. The record further reveals that the claim of the respondent is not part of the NAB Reference No. 14/2016 pending before the learned Judge Accountability Court, Peshawar. This was the sole ground for pleading double jeopardy before the learned Judicial Magistrate and before this Court as well.

12. The record is further indicative of the fact that the respondent was neither called by the NAB Authorities during inquiry/ investigation nor his claim is part of the NAB Reference and this very fact was admitted by the learned counsel for the petitioner, as such, no ground is made out for double jeopardy in the instant matter, whereas in rest of the matters the claim of the complainant in the FIR was recorded by the NAB Authorities, wherein the petitioner (as per statement of the learned counsel for the petitioner) has entered into plea bargain with the permission of the learned Accountability Court, Peshawar and has made payments to many of the effectees of the scam.

13. In the instant matter the respondent is reluctant to join the proceedings before the NAB Court, Peshawar and wants to proceed with the FIR. As such, the petitioner cannot be compelled to join the proceedings before NAB Court and to abate the proceedings before the learned Judicial Magistrate-West, Islamabad,

14. In view of above, instant writ petition is dismissed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on ___09.2022.

JUDGE

//Kamran//