From: The Assistant Registrar, Supreme Court of Pakistan, Branch Registry, Peshawar.

To: The Registrar, Peshawar High Court, Peshawar.

SUBJECT: CRIMINAL APPEAL NOS.21-P TO 23-P OF 2013 OUT OF CRIMINAL PETITION NOS.38-P TO 40-P OF 2012
Mrs. Shagufta Shaheen
Haris Qayum
Abdul Qayum Khan

VERSUS
The State through Director General NAB, K.P. Peshawar & another

On appeal from the Judgment/Order of the Peshawar High Court, Peshawar dated 22.03.2012 passed in Eh.CR.A.Nos.11,12 to 13 of 2006 with Cr.M.Nos. 16,17 & 18/2006.

Dear Sir,

In continuation of this Court’s letter of even number dated 19.06.2013, and in accordance with the provisions contained in Order X, Rule 9 of the Supreme Court Rules, 1980, a certified copy of the detailed Judgment of this Court dated 29.04.2019 dismissing the above cited Criminal Appeals in the terms stated therein, is enclosed herewith for further necessary action.

I am also directed to invite your attention to the directions of the Court contained in the concluding paragraph of the enclosed Detailed Judgment for immediate and necessary action.

The original record of the High Court received under the cover of your letter No.9712/Jntl: dated 25.06.2013 is returned herewith.

Please acknowledge the receipt of this letter along with enclosure.

Encl: Detail Judgment, original Records.

**Ishfaq**

Ishfaq

Supreme Court of Pakistan
Branch Registry, Peshawar.
IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeals No.21-P, 22-P & 23-P of 2013.
(On appeal from the judgment of Peshawar High Court, Peshawar, dated 22.03.2012 passed in Cr.A.Nos.11, 12 & 13 with Cr.M.Nos.16, 17 & 18 of 2006)

Mrs. Shagufta Shaheen (in Cr.A.21-P/13)
Harris Qayyum (in Cr.A.22-P/13)
Abdul Qayyum Khan (in Cr.A.23-P/13)

...Appellants

versus

The State thr. D.G., NAB, KPK & another (in all cases)

...Respondents

For the appellants: Mr. Abdul Sattar Khan, ASC
(in all cases)

For the NAB/State: Syed Azcem Dar, Addl. PGA
(in all cases)

Date of hearing: 29.04.2019

JUDGMENT

Syed Mansoor Ali Shah, J.- Through this consolidated judgment, the titled appeals are decided as they raise common question of law and facts.

2. Brief facts of the case are the Chairman, National Accountability Bureau (NAB), during investigation into the matter of the appellants on the charge of corruption and corrupt practices passed an order for freezing the properties of the appellants on 14.10.2003 ("Order") under section 12 of National Accountability Ordinance, 1999 ("Ordinance"). The prosecution filed an application for confirmation of the Order before the Accountability Court ("Court") on 29.10.2003 (on the 15th day of the Order) while the appellants filed objections before the Court.
against the order of the Chairman, NAB, under section 13 of the Ordinance. Due to one reason or the other, the matters (i.e., application for confirmation and the objections) could not come up for hearing and were finally taken up by the Court on 20.09.2006, when the Court dismissed the objections filed by the appellants and confirmed the Order of freezing of the property of the appellants, passed by Chairman, NAB. The appeals filed by the appellants before the High Court against the order of the Court were dismissed vide impugned judgment dated 22.03.2012. Hence, these appeals by leave of the Court granted on 17.06.2013.

3. The primary question raised in the objections filed by the appellants before the Court and now before us is that Order of the Chairman, NAB, for freezing of the properties of the appellants, could not have been confirmed by the Court after a period of 15 days, as provided under the first proviso to section 12(c)[iv] of the Ordinance.

4. We have heard the learned counsel for the parties and have examined the record. Relevant portions of Sections 12 and 13 of the Ordinance provide as follows:

"12. Power to freeze property:

(a) The Chairman NAB or the Court trying an accused for any offence as specified under this Ordinance, may, at any time, if there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf.

(b) ......

1Also reported as Mrs. Shagufta Shabeen v. State and another (2012 P.Cr.LJ 1317).

ATTESTED

Supreme Court of Pakistan

Judge
If the property ordered to be frozen is immovable, the freezing shall, in the case of land paying revenue, be made through the Collector of the district in which the land is situated, and in all other cases-

(i) by taking possession; or
(ii) by appointment of receiver; or
(iii) by prohibiting the payment of rent or delivery of property to the accused or to any other person on his behalf; or
(iv) by all or any of such methods as the Chairman NAB or the Court may deem fit:

Provided that any order of seizure, freezing, attachment or any prohibitory order mentioned above by the Chairman NAB, shall remain in force for a period not exceeding fifteen days unless confirmed by the Court, where the Reference under this Ordinance shall be sent by the Chairman NAB:

Provided further that notwithstanding anything to the contrary contained herein, that the order of Chairman NAB or the Court shall be effective from the time of passing thereof or proclamation thereof in a newspaper, widely circulated and dispatch at the last known address of the accused either by registered post A.D. or courier service or electronic media as the Court may deem proper having regard to the facts and circumstances of the case.

The order of freezing mentioned in sub-sections ‘a’ to ‘e’ shall remain operative until the final disposal of the case by the Court, and in the event of the acquittal or release of the accused, shall continue to remain operative for a period of ten days after receipt of certified copy of the order of acquittal or release by NAB, whereafter it shall be subject to an order by the court in which an appeal, if any, is filed.

13. Claim or objection against freezing:

(a) Notwithstanding the provisions of any law for the time being in force, the Court shall have exclusive jurisdiction to entertain and adjudicate upon all claims or objections against the freezing of any property under section 12 above. Such claims or objections shall be made before the Court within 14 days from the date of the order freezing such property.

(b) The Court may for sufficient cause extend the time for filing such claims or objections for a period not exceeding additional 14 days.
(c) The accused or any other aggrieved party, whose claim or objection against freezing of property has been dismissed by the Court, may, within ten days file an appeal against such order before the High Court.º [emphasis supplied]

The above provisions show that Chairman, NAB at anytime during investigation and the Court during the pendency of the trial before it can pass an order regarding freezing of property of the accused; These powers are distinct and independent of each other. While one is available to the Chairman, NAB during the period of investigation; the other is available to the Court during the pendency of the trial. The two powers, therefore, can hardly be exercised simultaneously.²

5. Once Chairman, NAB has passed an Order under section 12 of the Ordinance, it has a lifespan of 15 days, unless confirmed by the Court. Prosecution has to move the Court for the confirmation of the Order. If the prosecution fails to do so within 15 days of the Order,³ any subsequent application for confirmation is not maintainable for the reason that there is no Order in the field to confirm. In case the application for confirmation has been filed within 15 days of the Order of the Chairman, NAB, it shall continue to subsist till the Court adjudicates upon the matter, otherwise the purpose of confirmation falls to the ground. There is no timeframe under the statue for the Court to decide the application for confirmation, except the general urgency expressed in the preamble and the expeditiousness underlined in conducting the trials under section 16 and carrying out the investigation under section 18 of the Ordinance. It is indisputable that the Court must decide the

²as explained in the two provisos to section 12(c)(iv) of the Ordinance.

º
applications/objections under sections 12 and 13 of the Ordinance at the earliest. Section 12(f) of the Ordinance provides that if the order of freezing has been passed it shall remain operative until the final disposal of the case by the Court. The application for confirmation of the Order passes for a "case" under section 12(f) and, therefore, Order shall remain operative till the application for confirmation is decided by the Court.

6. We reiterate that these applications and objections must be decided at the earliest as required by the scheme of the Ordinance, but any delay in adjudicating these matters does not affect the validity of the Order of the Chairman, NAB. Case law relied upon by the learned counsel for the appellants arises out of a different factual matrix and has no relevance to the present case.

7. In the instant case Chairman, NAB passed the order on 14.10.2003 and the prosecution filed an application for confirmation of Order on 29.10.2013 (on the 15th day), while the appellants also filed objections against the said Order. The matter was decided on 20.09.2006 when the objections of the appellants against the order of the Chairman were dismissed and the application for confirmation was allowed, with the permission to the appellants to file fresh objections against the confirmation order, if so advised. In the light of the above discussion we take no exception to the impugned judgment, except the fact that the objections of the appellants were not premature, as held by the High Court, as objections can be filed against the order of the Chairman, even though such an exercise may hurriedly come to

---


---

**ATTESTED**

[Signature]

*Supreme Court of Pakistan, Peshawar.*
an end after a lapse of 15 days but otherwise objections filed during this period are maintainable.

8. Before parting with the judgment it is noticed with concern that the matter of confirmation of the Order of freezing of properties was decided after a considerable period of time and Reference No. 04/2007 against the appellants filed in the year 2007 is still pending. Such inordinate delays are inconsistent with the spirit and theme of the Ordinance, which mandates that the cases must be decided swiftly. This urgency is repeatedly underlined in the preamble and sections 16 and 18 of the Ordinance. The Court, as a neutral arbiter, must not lose sight of the fact that long delays in deciding matters does not sit well with the right to fair trial and due process guaranteed as a fundamental right under Article 10A of the Constitution.

9. For the above reasons these appeals are dismissed. These are the reasons for our short order, reproduced hereunder for completion of record and convenience of the parties.

"For reasons to be recorded later, all these appeals are dismissed."

Sd/- Manzoor Ahmad Malik, J.
Sd/- Syed Mansoor Ali Shah, J.
Sd/- Qazi Muhammad Amin Ahmed, J.

Certified to be true copy

Approved for reporting.