

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Cr. Appeal No. 02/2016

In

Cr. PLA No. 08/ 2012.

The State through National Accountability Bureau **Petitioner.**

Versus

Pervaiz Iqbal son of Abdul Raza, former GM NATCL, Jutial Gilgit.

Respondent.

PRESENT:-

1. The Additional Prosecutor General NAB alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Manzoor Ahmed Advocate for the respondent.

DATE OF HEARING: - 15.06.2017.

DATE OF DETAIL JUDGMENT:-30.01.2018

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Cr. Appeal has arisen out of the impugned order dated 12.06.2012 passed by the learned Chief Court whereby the Cr. Appeal No. 28/2010 filed by the petitioner was dismissed. The petitioner being aggrieved filed this petition for leave to appeal.

2. Briefly, the facts of the instant proceedings are that the respondent was charged under Section 9(a) read with Section 10 of the National Accountability Ordinance, 1999 on the basis of complaint lodged by the Board of Directors of NATCL in the year 1996 before the learned Anti-Corruption Cell, Ministry of Interior Islamabad against the corruption and corrupt practices in NATCL

registered under Co-operative Societies Act, 1925. The complaint was transmitted to FIA Crimes Circle Rawalpindi for and submission of report. The Federal Investigating Agency (FIA) conducted the investigation of the case. The IO recorded statement of 26 witnesses under Section 161 Cr. PC besides documentary evidence. Meanwhile, the remaining investigation of the case was entrusted to the then Deputy Director FIA Crime Circle Gilgit who also recorded statement of remaining PWS under Section 161 Cr. PC.

3. After completion of the investigation, challan of the case against responder Pervaiz Iqbal was submitted in the learned Trial Court i.e. National Accountability Court.

4. The accused pleaded not guilty and claimed for trial. The prosecution in order to prove its case against the accused produced and examined as many as 26 prosecution witnesses.

5. The learned Trial Court after appraising the evidence, hearing the learned counsels for the respective parties and upon proven guilty convicted/sentenced the accused 14 years R-I and with fine of Rs. 27, 32,09,052/- vide judgment dated 25.10.2010. The respondent/accused feeling aggrieved by and dissatisfied with the said judgment filed Cr. Appeal No. 28/2010, before the learned Chief Court whereby the learned Chief Court vide its judgment dated 29.08.2002 reduced/modified the imprisonment of the respondent from 14 to 04 years while the fine was also been reduced to Rs. 500,000/-. At that time no appellate forum in Gilgit-

Baltistan was available in the Northern Areas. Consequently, the respondent filed an appeal before the learned Lahore High Court, Rawalpindi bench against the judgment of the learned Trial Court. The learned Lahore High Court upon hearing dismissed the appeal of the respondent for want of jurisdiction. The respondent challenged the order of the learned Lahore High Court, Rawalpindi bench before the Hon'ble Supreme of Pakistan. The Apex Court of Pakistan upon hearing issued direction to the Federal Government of Pakistan to establish an appellate forum to the citizens of Northern Areas vide its order/judgment dated 16.12.2008. After Establishment of Northern Areas Court of Appeal, both the petitioner and respondent preferred appeals before the said forum. Upon hearing, the appeal of the petitioner was dismissed being barred by time and appeal preferred by the respondent was remanded back to the Trial Court for hearing afresh. Consequently, learned Trial Court acquitted the respondent from the charges vide judgment dated 20.10.2010. The operative part of the said judgment is hereby reproduced as under:-

“Quote”.

The upshot of what has been discussed above is that proper procedure was not adopted during inquiry/investigation of the case. As such, the reference is defective and not in accordance with relevant provisions of NAB Ordinance, 1999 hence, not maintainable. Consequently, the accused is hereby acquitted. File after completion be consigned to record.

“Unquote.”

6. The petitioner being aggrieved filed appeal before the learned Chief Court who upon hearing dismissed vide its judgment/order dated 12.06.2012 hence, this petition for leave to appeal.

7. The learned Additional Prosecutor General NAB submits that the embezzlement and corruption of the respondent as General Manager was disclosed in 1995 in an "Audit Report" conducted jointly by the then Assistant Director LB&RD and Assistant Director FIA. Subsequently the investigation was entrusted to the then Deputy Director FIA Gilgit who also recorded statement of remaining PWs under Section 161 Cr. PC and prepared report under Section 173 Cr. PC. He submits that after closing of investigation, the then Deputy Director FIA Gilgit submitted reference against the respondent in the learned Trial Court under NAB Ordinance, 1999 through Chairman NAB. Per learned counsel, the prosecution has successfully proved its case against the respondent beyond a shadow of doubt. The prosecution witnesses have supported prosecution version. He further submits that the FIA is competent to conduct inquiry/investigation of the case. The respondent basically belonged to a poor family but after assumption of charge of the post of General Manager NATCL, he accumulated moveable and immoveable properties in the name his family by means of corruption and corrupt practices. He submits that the respondent has failed to prove his innocence under Section 14 of NAB Ordinance 1999. He reiterates that the respondent has caused

loss of Rs. 17,36,02,579/- to NATCL and Government exchequer by embezzlement and misappropriation for which he is liable to be punished under Section 10 NAB ordinance, 1999. He submits that the learned Trial Court i.e. National Accountability Court has rightly convicted the respondent in accordance with law on the contrary sentences awarded to the respondent were wrongly modified by the learned Chief Court vide impugned order/judgment dated 12.06.2012. He prays that the impugned order may graciously be set aside by maintaining the judgment dated 25.10.2010 earlier passed by the learned Trial Court.

8. On the other hand, the learned counsel for the respondent supports the impugned order dated 12.06.2012 order passed by the learned Chief Court as well as the judgment dated 20.10.2010 passed by the learned Accountability Court Gilgit. He contends that the case against the respondent is based on the complaint lodged by one Haji Abdul Hakeem, Ex-Vice Chairman and Directors of NATCL against Mr. Mehmood Khan the then Chief Secretary Northern Areas now Gilgit-Baltistan, alleging malpractices and embezzlement on his part. He also contends that there was no allegation against the present respondent in the said complaint. Per learned counsel, the complaint against the then Chief Secretary Gilgit-Baltistan was forwarded to FIA for investigation and the inquiry of the case was conducted by Mr. Hajat Mir the then Assistant Director FIA Crime Circle Gilgit. During inquiry/investigation, the said Investigating Officer (IO) diverted the

investigation towards respondent with malafide intention. The IO has also held responsible the then Chief Secretary Gilgit-Baltistan, Mr. Naseer Ahmed the then Home Secretary Gilgit-Baltistan, Mr. Younus Khan, Ex-Section Officer KANA Division Islamabad and Mr. Hassan Mir the then Executive Engineer B&R Division NAPWD Gilgit. He contends that the other accused were neither arrested nor they have been discharged under Section 169 Cr.PC. Their names as an accused appeared in column No. 03 of the challan. He further contends that the respondent was made scapegoat and the reference submitted in the learned Trial Court was in utter violation of provisions of NAB Ordinance, 1999. He adds that under NAB Ordinance 1999, FIA is not competent to conduct inquiry/ investigation in NAB cases and the respondent can not be arrested without prior permission of Chairman NAB. The respondent was arrested by FIA without permission of competent authority as such reference against the respondent was not in accordance with law. He contends that the prosecution has relied upon audit report conducted in 1995 for the period of 1993-94 of NATCL but subsequently audit of NATCL was also conducted by Chartered Accountant for the period from 1990 to 1999 whereby no objectionable point was raised against the respondent namely Pervaiz Iqbal. In this regard, the entire inquiry and reference is silent and audit of the Chartered Accountant was not taken into consideration by Investigating Officer (I.O) during investigation of the case. He submits that the prosecution has failed to prove its

case against the accused/respondent beyond any reasonable doubt. The learned Chief Court has rightly dismissed the appeal of the petitioner while passing the impugned order dated 12.06.2012 in Criminal Appeal No. 28/2010. The learned counsel for the respondent submits that the said impugned judgment is well reasoned and well founded which may graciously be maintained.

9. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order dated 12.06.2012 passed by the learned Chief Court as well as the judgment dated 20.10.2010 passed by the learned Accountability Court. The learned Prosecutor NAB could not point out any infirmity and illegality in the impugned order passed by the learned Chief Court. In our considered view the impugned order is well reasoned and well founded & interference into it by this court is not warranted.

10. In view of the above discussions, this appeal was dismissed vide our short order dated 15.06.2017. Consequently, the impugned order dated 12.06.2012 in Criminal Appeal No. 28/2010 passed by the learned Chief Court was affirmed. These were the reasons of said short order.

11. The appeal is dismissed in above terms.

Chief Judge.

Judge.

