

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[Judicial Department].**

Eh. CrI. Appeal No.24-P/2016  
(against the order dated 07.11.2016  
Of Accountability Court No.1, Peshawar).

Date of hearing:- 13.04.2017

Appellant (s):- Muhammad Israr Khan and Muhammad Javed Khan, by Mr. Sardar Ali Raza, Advocate.

Respondent (s):- Chairman National Accountability Bureau, Islamabad, etc by Mr. Zair Nawaz Khattak, Special Prosecutor for the NAB.

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** This appeal under section 13 (c ) of the National Accountability Ordinance, 1999, (NAO), filed by Muhammad Israr Khan and Muhammad Javed Khan, the appellants, calls in question the legality and propriety of judgment/order dated 07.11.2016, of learned Accountability Court-I, Peshawar, whereby order dated 26.10.2016 of the Director General (DG) National Accountability Bureau (NAB), has been confirmed Bank Accounts of the appellants, have been frozen.

2. Facts in brief forming the background of the instant appeal are that an inquiry qua corruption and corrupt practices in connection with procurement of various items/ equipments by the Officers/officials of Abdul Wali Khan's University Mardan and others, was initiated by the NAB, wherein accused Dr. Ihsan Ali, the Vice Chancellor of the University and co-accused

including the appellants were allegedly found involved in the commission of offence of corruption and corrupt practices, resultantly, DG NAB, Khyber Pakhtunkhwa by invoking the provisions of section 12 of the NAO read with section 34-A and Statutory Regulatory Order (SRO) dated 30.10.2015, froze the bank accounts of the appellants vide order dated 26.10.2016, which order was confirmed by the learned Accountability Court-I, Peshawar, vide impugned order, hence, this appeal.

3. Learned counsel for the appellants argued that under section 12 of the NA Ordinance, power to freeze property is vested with the Chairman NAB or the Court trying the accused for an offence under the Ordinance but in the case in hand, the impugned freezing order has been passed by DG NAB, who is lacking the power to do so, as well as learned Accountability Court has also erred to confirm it in absence of any reference before it against the appellants, which was an essential criteria as per mandate of section 12 of the NA Ordinance, hence, both the orders are not tenable in the eyes of law. Elaborating his view point, he contended that the language of section 12 NA Ordinance, is clear and unambiguous according to which the pendency of reference is sine qua non before the Accountability Court for confirming the freezing order because in absence of the reference, the Court would not be in a position to determine the reasonable grounds for

believing that the accused has committed the offence. He further contended that in the instant case neither the freezing order has been passed by the Chairman NAB nor was there any reference against the appellants before the Accountability Court. He next argued that restriction under section 12 NA Ordinance, cannot be imposed for unlimited period. Though, learned counsel admitted delegation of powers by the Chairman NAB under section 34-A to any officer of the NAB, however, submitted that there was nothing in black and white to prove delegation of such power by the Chairman NAB to DG NAB to freeze the bank accounts of the appellants. He submitted that the impugned orders being nullity in the eyes are liable to be set at naught.

4. Conversely, learned Special Public Prosecutor for the NAB contended that the Chairman NAB has delegated powers to the DG NAB vide SRO dated 30.10.2015, within the meaning of section 34-A of the ordinance, hence, the DG NAB, was competent to pass the freezing order. The learned Accountability Court having sufficient record of the matter, was competent to confirm the freezing Order. He while supporting the impugned order sought dismissal of the appeal.

5. We have considered the respective submissions of learned counsel for the parties and perused the record with their able assistance.

6. Undisputedly, both the appellants are accused in an inquiry initiated by the NAB in respect of corruption and corrupt practices in connection with procurement of various items/equipments by the Officers/officials of Abdul Wali Khan's University. No doubt, under section 12 of the NAO, it is the Chairman NAB possessing the power to freeze property, but at the same time under section 34A of the NAO, the Chairman NAB may delegate such or any of his power to and authorize performance of any of his function by an officer of the NAB as he may deem fit and proper. For the sake of convenience, we would like to reproduce section 34A of the NAO.

**“34A. Delegation of powers:** The Chairman NAB may, by an order in writing delegate any of his powers to and authorize performance of any of his functions by an Officer of the NAB as he may deem fit and proper, subject to such conditions, if any, as may be specified in the order, for carrying out the purposes of this Ordinance.”

7. It has been categorically mentioned in the second Paragraph of the impugned freezing order of DG NAB that, he while exercising of powers under section 12 of the NAO read with SRO dated 30.10.2015, hereby order the freezing of the bank accounts of the appellant. So through the aforesaid SRO, he was delegated with the powers

under section 12 by the Chairman NAB. Similarly, at the time of confirmation of the freezing order of the DG NAB, record was available before the Accountability Court as is evident from the impugned order relevant part of which read as, “The record made available with the replication prima facie justify the fact that the respondents/objections were partners in two firms namely REDCO Enterprises and Pakistan Traders, who participated in the bids for I.T. equipments and received payments in excess of the set criteria of the University.”

8. The learned counsel for appellant has put a lot of emphasis on the irremissible command of section 12 of the NA Ordinance, i.e. pendency of reference before the Accountability Court. We are not impressed by the arguments of worthy counsel for the appellants because the plain language of relevant portion of section 12 of the NA Ordinance, run as under:-

**“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)**.....

**(c)**.....

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. (emphasis supplied).

9. The above quoted phrase from section 12 can only be interpreted in visible/clear term that the freezing order passed by the Chairman, shall not remain enforce more than fifteen days, unless confirmed by the Accountability Court, where the reference under the NA Ordinance, shall be sent by the Chairman NAB.

10. In this view of the matter, the arguments of the learned counsel for the appellants are misconceived. The impugned orders being well reasoned and based on proper appreciation of law on the subject are not open to any interference by this Court in its appellate jurisdiction. Accordingly, this appeal stands dismissed.

**Announced:**  
**13.04.2017**  
*Siraj Afridi P.S.*

**JUDGE**

**JUDGE**