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

Eh. Crl. Appeal No.41-P/2018

Iftikhar Hussain son of Gulab Hussain,
Ex-ALM Pabbi No.1 Sub-Division District,
Nowshera.

Petitioner (s)

VERSUS

National Accountability Bureau,
through its Chairman NAB Headquarters,
Islamabad and others.

Respondent (s)

For Petitioner (s) :- Mr. Abdur Rahim Jadoon, Advocate.
For Respondents :- Mr. Hashmat Jehangir, ADPG.
Date of hearing: **13.10.2020**

JUDGMENT

ROOH-UL-AMIN KHAN, J:-Instant appeal under section 32 of the National Accountability Ordinance (NAO) 1999, filed by Iftikhar Hussain, the appellant, is directed against the judgment/order dated 06.11.2014, passed by the learned Judge Accountability Court No.1, Peshawar, whereby Plea Bargain's request of the appellant was approved, and he was convicted under section 10 of the NAO, 1999.

2. Facts in brief forming the background of the instant appeal are that the National Accountability Bureau (NAB) was inquiring and investigating into a case of illegal and unauthorized purchase of Transformers for PK.12, PK-13 and PK-14 by the Officers/Officials of Public Health Engineering Department Nowshera.

Allegation against the appellant was that he being a contractor supplied sub-standard Transformers of different KVs under exorbitant rates and thereby caused huge loss to the National Exchequer. The appellant was arrested and on 16.10.2014, he filed an application for plea bargain in the Court of learned Administrative Judge Accountability Court No.1, Peshawar, which was allowed, consequently, the appellant was released after having arranged a total payment of Rs.10,125000/- to the Public Exchequer vide impugned order dated 06.11.2014.

3. Against the order/judgment dated 06.11.2014, the appellant filed Writ Petition No.473-P/2015, before this Court, which along with other writ petitions of co-accused, was dismissed through a consolidated judgment dated 03.10.2017, being not maintainable on the ground that the appellant under section 32 of the NAO, 1999 has an alternative and efficacious remedy to file appeal against the impugned order. Being discontented, the appellant filed Civil Petition No.4815 of 2017 before the Hon'ble Supreme Court against the aforesaid order which along with CP No.4428 of 2017, was dismissed through a consolidated order dated 08.01.2018, with the observation that the appellant, if so advised, may file appeal before this Court, hence, this appeal.

4. Arguments of learned counsel for the parties heard and record perused.

5. On legal premises, record depicts that the impugned order has been passed on 06.11.2014 by the Accountability Court No.1, Peshawar, whereby approving the request of plea bargain of the appellant he was convicted under section 10 and sentenced under section 15 of the NAO, 1999. The impugned order was appealable under section 32(a) of the NAO, 1999, which for the sake of convenience and ready reference is reproduced below:-

> **32. Appeal (and Revision):**
>
> **(a)** Any person convicted or the Prosecutor General Accountability, if so directed by the Chairman NAB, aggrieved by the final judgment and order of the court under this Ordinance may, within **ten days of the final judgment and order of the Court prefer an appeal** to the High Court of the Province where the Court is situated:
>
> Provided that no appeal shall lie against any interlocutory order of the Court.
>
> **(b)** All Appeals against the final judgment, filed before the High court will be heard by a Bench of not less than two judges constituted by the Chief Justice of High Court and shall be finally disposed of within thirty days of the filing of the appeal.

(c) No revision shall lie against any interlocutory order of the Court.

6. The appellant instead of filing appeal, filed WP No.473-P/2015, which was dismissed on the same ground that the appellant has an alternate and efficacious remedy under section 32 of NAO, 1999, to file appeal against the impugned order. Relevant part of the judgment is reproduced below:-

> "In view of the above, the impression and intention of the legislature is very clear as plea bargain amounts to confession, without contesting the allegation and as such confession amounts to conviction, therefore, the plea of deeming clause would not held the petitioner and under the special law ***he was supposed to have filed an appeal and not the writ petition.*** Moreover, the petitioner has not executed any affidavit that he is willing to face the charges, in case the plea bargain is reversed, because reversal of plea bargain in the charge against the accused still exists and to be tried on merits. **(Emphasis supplied).**

7. The appellant instead honouring and following the judgment (supra) of this Court, filed Civil Petition No.4815 of 2017, before the Hon'ble Supreme Court which was dismissed along with CP No.4428 of 2017 through a

consolidated order dated 08.01.2018, in the following manner:-

> "Learned ASC appearing on behalf of the petitioners, contended that once the High Court come to the conclusion that appeal was an adequate remedy in the circumstances of the case, it should not have discussed the merits of the case. Be all that as it may, since the writ petition has been dismissed by the High Court as being un-maintainable, we would not interfere with the impugned judgment. These petitions are thus, dismissed. However, the petitioners, if so advised, may file appeals before the High Court."

8. In view of the above backdrop, the appellant has filed the instant appeal. The impugned order has been passed on 06.11.2014. Under Section 32 of the NAO, 1999, the appellant was bound to file appeal within ten days, but he did not. This Court while dismissing his writ petition, in unequivocal words ruled that writ petition is not competent because the impugned order is appealable, but the appellant despite that resorted to Hon'ble Supreme Court, where his Civil Petition was dismissed vide order 08.01.2018, in the above quoted terms. The appellant, after decision of the august supreme Court has filed, the instant appeal 15.09.2018 i.e. after a period of more than eight months, which is hopelessly time barred. Even if the

period spent in between filing of writ petition and civil Petition before this Court and august apex court, respectively, is excluded, the appeal is barred by eight months. No application for condonation of delay has been filed by the appellant. In case titled, "**Gen.(R) Parvez Musharraf vs Nadeem Ahmed (Advocate) and another) (PLD 2014 Supreme Court 585),** it has been held by the Hon'ble Supreme Court that:-

> "Principle of audi alteram partem or that nobody should be condemned unheard was a principle of natural justice, however, facts of each case had to be considered before delay could be condoned and such principle could not be made an inflexible rule to give license to someone who knowing fully well that a lis was pending against him or that a judgment had been passed against him refused to appear and when the judgment was passed failed to challenge the same in time."

Similarly, in a recent case **CA No.1522 of 2013, titled, "Haji Wajdad Vs Provincial Government through Secretary Board of Revenue Government of Balochistan Quetta etc"** decided on 15.09.2020, following the ratio of judgment (supra) has held as under:-

> "It has by now been settled that, limitation would run even against void affecting rights of any person. And no one can seek condonation of delay by challenging solely

> on the said basis. The aggrieved person who files a belated claim against an alleged void order would have to first plead his knowledge thereof, and then prove the same by cogent and reliable evidence, so as to legally justify his such claim to be within the period of limitation from the date of his knowledge".

9. On merit, the appellant had submitted application for plea bargain on 16.10.2014 i.e. at the very next date of his arrest, which is duly signed by him and his counsel. The application was referred to the Director General NAB Khyber Pakhtunkhwa having the delegated powers to accept the same or otherwise. On 31.10.2014, statement of Syed Daud Ali Shah, Junior Investigation Officer, NAB was recorded wherein he exhibited the application of the petitioner for approval of plea bargain as Exh.PB.6. Statement of the appellant was also recorded on the same day wherein he voluntarily and without any objection recorded his statement in the Court. Besides, the entire amount of plea bargain i.e. Rs.95,15000/- was deposited by the petitioner through Cheque dated 29.10.2014 in favour of Chairman NAB, Islamabad. The appellant was having fifteen days time during which period he has not retracted from his plea. During entire proceedings the petitioner remained present before the trial Court but he never objected over the same. All these circumstances are sufficient to prove that his plea bargain was based on his

free consent. An iota of material is not available on file to remotely show any pressure, coercion or duress on the appellant to make plea bargain.

10. The argument of learned counsel for the appellant that the plea bargain has been made during inquiry, therefore, has no legal authenticity is misconceived. Record depicts that initially inquiry was authorized in the matter which was later on converted into investigation. The appellant was arrested during investigation and on the next date of his arrest, he requested for plea bargain.

11. The amount embezzled by the appellant was the public property. Due to supply and installation of sub-standard Electric Transformers, the appellant has not only caused huge loss to the Government exchequer, but has also caused inconvenience to the general public. Despite his willful plea bargain he kept indulge the respondents NAB in frivolous litigation from the year 2014 till date. After getting liberty through plea bargain, the appellant entangled the respondents in the litigation up to the Hon'ble Supreme Court so as to quench his thirst of revenge by using the courts as a tool. In this view of the matter, the conduct of the appellant by no stretch of imagination can be encouraged or countenanced. We have noted that increase in frivolous and uncalled for litigations has risen to an alarming and unmanageable degree. Racks of the Courts have become insufficient for adjusting and

regulating the files of such like litigations. Here, it would not be out of the context to say that Judicial System is grievously affected by the habitual and wonted litigants by frivolous and uncalled for litigations. It has become an established practice to entangle the opposite party in false litigations to make it suffer despite knowing the fact that the matter brought before the court will bore no fruit. Though, sections 35 and 35-A of the Code of Civil Procedure, empower the court to impose cost and special cost upon a party involved in frivolous litigation, however, in the prevailing circumstances, it does not adequately cater the nagging situation. For curbing false, frivolous and vexatious litigations by a party, proper legislation is need of the day. Such like, false, frivolous and luxurious litigations, are not only wasting time of the courts, but also burdened the rival party i.e. private respondents and Provincial or Federal Governments with heavy expenses. Case in hand is one of the instance, wherein the petitioner being involve in a case of corruption, at the very outset agreed and submitted application to the competent court of law for allowing him to deposit a portion of amount earned through corruption. He was allowed by the Court, consequently, he on deposit of agreed amount, availed the benefit of release, however, after sometime, by taking a summersault, he filed a writ petition before this court, which was dismissed on merit as well as being not

maintainable. He then agitated the same grievance before the august Supreme Court by filing civil petition, which was also dismissed. The appellant once again brought the same grievance before this Court through instant appeal, filed with a delay of more than eight months, that too, without any application or request for condonation of delay. We are clear in our view that the appellant desperately kept the respondents engaged to the hilt since 2014 in a totally frivolous and dishonest litigation in various Courts. He has wasted the judicial time of various courts for the last almost six years.

12. On consideration of totality of the facts and circumstances as discussed above, we could not find any substance in the hopelessly time barred appeal, which is hereby dismissed with costs which we quantified as rupees one million, to be paid/deposited by the appellant in the Government exchequer. Needless to say that we are imposing the cost to follow the fundamental principle that wrong doer should not be allowed to get benefit out of frivolous litigation

Announced:
13.10.2020.
M.Siraj Afridi PS

JUDGE

JUDGE

DB of Hon'ble Mr. Justice Rooh ul Amin Khan; and
Hon'ble Mr. Justice S.M. Attique Shah.