

**WRIT PETITION NO.26735 OF 2010.**

BINYAMIN KHALIL, ETC.

CHAIRMAN, NATIONAL ACCOUNTABILITY  
BUREAU, ETC.

**23:12:2010.      Mr. A.K. Dogar, Advocate for the petitioners.**

Binyamin Khalil and Nusrat Sharif petitioners No.1 and 2 are facing trial alongwith others before the Judge Accountability Court No.III, Lahore under reference No.14 of 2007 titled as The State vs. Muhammad Akram Sheikh, etc. and are respectively arrayed as accused No.12 and 11 in the reference.

2. Briefly stating the facts of the case are that M/s Classic Knitwear (Pvt) Lahore availed of a financial facility of Rs.32.522/- million with mark up at 22% for setting up a knitwear garments project in village Bhikki district Sheikhpura from PAK Libya Holding Co. (Pvt) Ltd Karachi. The accused No.1 to 7 of the reference were the directors of the said Classic Knitwear (Pvt) Lahore, whereas, the accused No.8 to 13 are the incoming directors and had executed personal guarantees and demand promissory notes for their liability to pay the finance facility along with mark up. The PLHA issued a statutory thirty days notice dated 08.08.2001 to all accused persons for payment of the default amount and on the failure of the accused the matter was referred to the Governor State Bank of Pakistan. Paragraph No.4 of the reference No.14 of 2007 reads as follows:-

"4. That PLHC issued a statutory 30 days notice dated 08.08.2001 to all accused. The accused failed to pay the amount and thus PLHC referred the matter to the Governor State Bank of Pakistan. The Governor issued seven days statutory notice dated 09.01.2002 to pay back Rs.72.990/- million but they fail to do so and thereafter considered all the facts of the case, the Governor State Bank of Pakistan was satisfied that accused have committed the offence of wilful default and hence he referred the matter to NAB under section 31-D NAO 1999 vide letter dated 31.01.2004. The Chairman NAB authorized investigation on 06.01.2005. The I.O has submitted his investigation report."

Paragraph No.7 of the reference is important and narrates the following facts:-

"7. That the evidence collected during the investigation establishes that the accused did not pay and continued not to pay or return or repay the amount due from them to the PLHC as per their agreement containing the obligation to pay/return or repay according to the documents executed by them. The accused have thereby committed the offence of wilful default as defined in clause (viii) of section 9(a), read with section 5(r), of NAO 1999, punishable under section 10(a) of National Accountability Ordinance 1999 and Schedule thereto."

3. The petitioners moved an application under section 265-K of Cr.P.C for their acquittal on the grounds that no notice under section 31-D of the National Accountability Ordinance, 1999 has been issued against them, which is a mandatory

requirement and that the State Bank of Pakistan has also not initiated any proceedings against the petitioners, therefore, they are not wilful defaulters. This application is pending before the Judge Accountability No.III and the arguments are not being addressed by the petitioners on different dates. It is also important to note that the other co-accused moved applications under section 265-K of Cr.P.C, which are also still pending before the Judge Accountability Court No.III, Lahore. A certified copy of the order sheet has been placed on the record by the petitioners along with copy of the application moved by them under section 265-K of Cr.P.C from pages No.29 to 63 of the instant writ petition.

4. The petitioners have now instituted the instant writ petition seeking their acquittal from the reference by invoking the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

5. It is contended by the learned counsel for the petitioners that the mandatory notice under section 5 read with clause (r) of the National Accountability Ordinance, 1999 has not been issued against the petitioners nor the State Bank of Pakistan had made any reference against the petitioners, therefore, the very conducting of the trial against the petitioners is illegal and without lawful authority and that notwithstanding the pendency of the application under section 265-K of Cr.P.C., the petitioners can seek indulgence of this Court by invoking the provisions of Article 199 of the Constitution of Islamic Republic of

Pakistan, 1973 for their acquittal from the reference, in question. Reliance has been placed upon the judgments reported as Miraj Khan vs. Gul Ahmed and 3 others (2000 SCMR 122) and Muhammad Khalid Mukthar vs. The State through Deputy Director, F.I.A. (C.B.A.), Lahore (PLD 1997 Supreme Court 275) to contend that the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is co-extensive with the powers of the trial court vested in it for acquitting the accused under section 265-K of Cr.P.C and there is no bar for the petitioners to institute the instant writ petition praying for their acquittal.

6. We have considered the arguments of the learned counsel for the petitioners and have perused the record placed with the instant writ petition with his able assistance.

7. Admittedly the petitioners have moved an application under section 265-K of Cr.P.C. The perusal of the order sheet of the learned Judge, Accountability Court No.III, Lahore discloses that there are a number of accused persons facing the trial and few of them have also separately moved applications under section 265-K of Cr.P.C. All these applications under section 265-K of Cr.P.C are pending. The order sheet of the learned Judge, Accountability Court No.III, Lahore further reflects that the adjournments on the application under section 265-K of Cr.P.C are either being sought by the accused persons or the case is adjourned on account of absence of some of the

accused on the relevant dates. There are no compelling circumstances for the petitioners to directly institute the instant writ petition seeking their acquittal when their application under section 265-K of Cr.P.C on the same grounds, which are being raised in the instant writ petition is pending before the learned Judge, Accountability Court No.III, Lahore.

8. The case-law relied upon by the learned counsel for the petitioners does not support the arguments of the learned counsel for the petitioners.

9. The judgment reported as Miraj Khan vs. Gul Ahmed and 3 others (2000 SCMR 122) pertains to quashment of a criminal case, which was undertaken by the High Court on the grounds that the matter relating to registration of a case under sections, 406, 419,420 of PPC related to a civil dispute between the parties and the FIR was quashed. The Honourable Supreme Court of Pakistan refused to grant leave against the judgment of the High Court in the matter.

10. In the judgment reported as Muhammad Khalid Mukhtar vs. The State through Deputy Director, F.I.A. (C.B.A.), Lahore (PLD 1997 Supreme Court 275), a huge amount of Rs.80,00,000/- was drawn by the accused involved in the said case from a Bank and a criminal case was registered against the accused persons. A petition for quashment of the FIR was instituted before the Lahore High Court by one of the accused Muhammad Khalid Mukhtar, which petition was dismissed on the grounds

that F.I.A., the Investigating Agency had collected oral as well as documentary evidence proving the involvement of the petitioner of the said case, therefore, the FIR was not quashed by the High Court and the Honourable Supreme Court of Pakistan declined to grant leave to appeal in the matter.

11. There is no cavil with the point about the availability of the powers vested in this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 of passing appropriate orders for the enforcement of the rights of the citizens, but, the availability of this power under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 does not necessarily create an occasion for the exercise of such a power in all cases. The petitioners are facing the criminal charges under section 9(a) read with Section 5(r) of the National Accountability Ordinance, 1999 punishable under section 10(a) of the National Accountability Ordinance, 1999 and Schedule thereunder. The petitioners had invoked the provisions of Section 265-K of Cr.P.C by moving an application before the learned Judge, Accountability Court, which application along with the applications of other co-accused are still *sub-judice*.

12. We in exercise of our jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 are not persuaded to directly entertain the instant writ petition of the petitioners for passing a judgment on the point on which the NAB Court is still in cognizance of. The petitioners have an adequate and

efficacious remedy, which they have availed of through moving of application before the learned Judge, Accountability Court by invoking the provisions of Section 265-K of Cr.P.C. The instant writ petition is, therefore, liable to be dismissed *in limine*, which is accordingly **DISMISSED**.

*(Hafiz Abdul Rehman Ansari)*  
JUDGE.

*(Nasir Saeed Sheikh)*  
JUDGE.

APPROVED FOR REPROTING

**\*M.AYOUB\***