

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

High Court Appeal No.15 of 2012

Securities & Exchange Commission of Pakistan  
Versus  
Adnan Faisal and Another

For the Appellant : Mr. Khalid Mehmood  
Siddiqui, Advocate

For the Respondent No. 2 : Mr. Asghar Kundi,  
Advocate and  
Mr. Munir Ahmed, Advocate.

Date of Hearing : 09.05.2018

## **JUDGMENT**

**Agha Faisal, J** : The crux of this matter is the determination whether a High Court Appeal, filed under section 10(2) of the Companies Ordinance 1984 (“**Ordinance**”) read with section 15 of the Code of Civil Procedure (Amendment) Ordinance 1980 (“**CPCAO**”), is maintainable against the order of acquittal dated 15.12.2011 (“**Impugned Order**”) passed by the learned Single Judge of this Court, in exercise of original criminal jurisdiction under the Companies Ordinance 1984, while allowing an application filed under section 265-K Criminal Procedure Code (“**CrPC**”) read with section 561-A CrPC.

2. The facts giving rise to the present appeal are that a complaint was filed by the Securities & Exchange Commission of Pakistan, being the appellant herein, against the respondents, under sections 282-K / 285-M (2) of the Ordinance read with sections 34 / 109 of the Pakistan Penal Code. Thereafter, the learned Single Judge, after hearing the parties and taking into account the objections of respondents, took cognizance of the matter and initiated the appropriate proceedings. The respondent No. 2 filed an application under section 265-K read with section 561-A CrPC seeking his acquittal in the said proceedings. The learned Single Judge was pleased to render the Impugned Order and in doing so allowed the acquittal application.

3. The present appeal came up for hearing and the primary question, which required determination by this Court, was whether a High Court Appeal was maintainable against the Impugned Order.

4. Mr. Khalid Mahmood Siddiqui, learned counsel for the appellant, argued that the present appeal is duly maintainable and that it should be declared as such by this Court and then subsequently proceeded with on its merits.

5. Per learned counsel, the jurisdiction of a learned Single Judge of this Court to conduct a trial in respect of the offences stipulated in the Ordinance was definitely prescribed in a judgment dated 13.04.2010 passed by the Division Bench of this Court in the case of *Adnan Faisal vs. Securities & Exchange Commission of Pakistan* in High Court Appeal No. 30 of 2010 ("**Adnan Faisal**"), the operative constituent whereof is as follows:

“We have heard both the learned counsel for the parties and perused the records and the case laws. We are of the opinion that penalties as to fine and/or imprisonment could be imposed by the court on a guilty person within the ambit of Section 282-K, 281-M(2) of the Companies Ordinance, therefore, the procedure to be adopted by the court should not be of summary nature as provided under Civil Procedure Code but in such instances procedure as provided in Criminal Procedure Code should be followed. Since in the normal course the Company Judge as appointed by the Hon'ble Chief Justice, within the meaning of Section 8 read with Section 7 of the Companies Ordinance, exclusively deals with matters of civil jurisdiction under the Companies Ordinance in a summary manner, therefore, the matters relating to criminal offences within the meaning of the Companies Ordinance more particularly matters which would result in imposition fines and / or imprisonment should be decided by the bench sitting on the Appellate Side of the High Court which is competent to try such offences. Our view as to the powers conferred through Section 7 and Section 476 are distinct from each other is further fortified as Section 476 of the Companies Ordinance deals with “Punishment and adjudication of fine or penalty” and sub-Section 4 of Section 476 of the Companies Ordinance provides that *“where imprisonment or imprisonment in addition to fine as provided for any contravention and / or in complying with any provisions of Ordinance, it shall be adjudged by a Court not inferior to that of the Court of Sessions.”*

It was for the aforesaid reasons and law that vide our short order dated 13.04.2010 we had disposed of this appeal by directing that Criminal Original Misc. No.02/2008 be fixed before AS-II of the High Court of Sindh at Karachi, on 04.05.2010.”

6. It was next contended that section 15 of the CPCA0 permitted for a High Court Appeal before the Division Bench of this Court against the order of learned Single Judge of this Court. Learned Counsel placed reliance upon *Adnan Faisal*, and submitted that the same was a judgment in an appeal filed under section 15 of the CPCA0, between the same parties as in the present appeal, and it was disposed of vide the said judgment. It was argued that the appeal was disposed of, on merit, and not dismissed for maintainability, hence, the same was lucid authority in augmentation of the appellant's contentions.

7. It was thus submitted that the present appeal was maintainable and may be proceeded with, allowed and the Impugned Order be set aside.

8. Mr. Asghar Kundi opened the case for the respondent and submitted that the instant appeal was not maintainable as section 15 of the CPCA0 was inapplicable to the present controversy. Learned counsel submitted that the provisions of law invoked by the appellant for instituting the present proceedings were unwarranted, as the said provisions did not pertain to the criminal proceedings.

9. It was argued that the appropriate provision for an appeal in terms herein was section 411-A CrPC and since the appellant had not filed the present appeal under the correct provision of the law therefore the appeal was liable to be dismissed forthwith. In order to amplify his submissions, learned counsel for the respondent placed reliance upon the following judgments:

I. *Abdul Rahim Khan vs. The State reported as 1991 MLD 2448 (“Abdul Rahim”)*

II. *Brothers Steel Mills Ltd. and others vs. Mian Ilyas Miraj and 14 others reported as PLD 1996 Supreme Court 543 (“Brother Steel”)*

10. This Court heard the arguments of the respective learned counsel upon the question of maintainability and reviewed the record available on file in respect thereof.

11. It may be prudent to initiate this discussion upon maintainability with reference to the general law dealing with appeals from acquittal. The appropriate provision is section 417 CrPC, which reads as follows:

417. Appeal in case of acquittal. (1) Subject to the provision of subsection (4), the Provincial Government may, in any case, direct the

Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court

(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.'

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).

(Underline added for emphasis)

12. It may be noted from a bare perusal of the said provision that that it precludes the possibility of an appeal from an order of acquittal passed by a High Court itself.

13. The appellant's reliance upon section 15 of the CPCA0 is *prima facie* misconceived as a review of the said provision demonstrates that the permissibility of an appeal in terms thereof is restricted to that which arises from an interlocutory order made by a learned Single Judge of the High Court in the exercise of its original civil jurisdiction. It may be pertinent to reproduce the content of section 15 CPCA0 to illuminate the aforesaid:

**“15. Appeal to High Court in certain cases.—** Notwithstanding anything contained in section 3 of the Law Reforms Ordinance, 1972 (XII of 1972), an appeal shall lie to a Bench of two or more Judges of a High Court from an interlocutory order made by a Single Judge of that Court in the exercise of its original civil jurisdiction.”

(Underline added for emphasis)

14. The present appeal assails an order of the learned Single Bench of this Court rendered in exercise of its original criminal jurisdiction. Notwithstanding the foregoing, it may also be prudent to record that the Impugned Order is a final order and not an interlocutory order in any event.

15. It is next to be considered whether the provisions of section 411-A CrPC are applicable to assail an order of acquittal rendered by a learned Single Bench of a High Court, as was contended by the learned counsel for the respondent. It is relevant to reproduce the cited provision of law herein below:

411-A. Appeal from sentence of High Court. (1) Except in cases in which an appeal lies to the Supreme Court under Article 185 of the Constitution any person convicted on a trial held by a High Court .in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, appeal to the High Court:(a) against the conviction on any ground of appeal which involves a matter of law only: (b) with the leave of the Appellate Court, or upon the certificate of the Judge who tried the case that it is a fit case for appeal, against the conviction on any ground o\ appeal which involves a matter of fact only, or a matter of mixed law and fact, or any other ground which appears to the appellate Court to be a sufficient ground o) appeal; and (c) with the leave of Appellate Court, against the sentence passed unless the sentence is one fixed by law.

(2) Notwithstanding anything contained in section 417, the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal Jurisdiction, and such appeal may, notwithstanding anything contained in section 418, or section 423, sub-section (2) or in the Letters Patent of any High Court, but subject to the restrictions imposed by clause (b) and clause (c) of sub-section (1) of this section on an appeal against a conviction, lie on a matter of fact as well as a matter of law.

(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of the High Court composed of not less than two judges, being judges other than the judge or judge by whom the original trial was held and if the constitution of such a Division Court is impracticable, the High Court shall take action with a view to the transfer of the appeal under section 527 to another High Court.

(4) Subject to such rules as may from time to time be made by the Supreme Court in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to the Supreme Court from any order made on appeal under sub-section (1) by a Divisional Court of the High Court in respect of which order the High Court declares that the matter is a fit one for such appeal.

(Underline added for emphasis)

16. It is apparent that the aforesaid provision *inter alia* permits for an appeal against an order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction and in terms contemplated therein, the same may be filed before a Division Bench of the High Court composed of not less than two Judges.

17. A pioneering elaboration of the august Supreme Court upon the scope of 411-A CrPC is the judgment in the case of *Syed Ali Nawaz Gardezi vs. Lt. Col. Muhammad Yusuf Khan reported as PLD 1962 Supreme Court 465*, wherein it was maintained as follows:

“Even if the Governor General’s Order simply created the High Courts and did not say that they would have the jurisdiction possessed by their predecessors, the High Courts would still have all the jurisdiction which the law confers on a High Court. Section 411-A of the Criminal Procedure Code is one of the provisions which confers jurisdiction on every High Court and had the Governor-General’s Orders simply created the High Courts without referring to the powers which they would possess the High Courts would have the jurisdiction conferred by section 411-A.

.....

Appeals under section 411-A are of rare occurrence and it is to such a provision that reference would be needed and not to the Letters Patent which would *prima facie* be included when the power of Division Benches to hear appeals against judgments of Single Judges is abolished.”

18. The scope of 411-A CrPC was also deliberated upon by a Divisional Bench of the High Court of Balochistan at Quetta in the judgment in the case of *The State vs. Abdul Samad and another reported as PLD 1984 Quetta 72*, wherein it was held as follows:

“therefore, we do not see any substance in the contention that the present appeal is not competent. It is provided in section 411-A that except in cases in which an, appeal lies to the Supreme Court under Article 158 of the Constitution any person convicted on a trial held by the High Court in the exercise of its original criminal jurisdiction may appeal to the High Court against his conviction. The learned counsel for the respondent then contended that only convicted person has a right to appeal. This argument has also no force because subsection (2) of section 411-A specifically provides that an appeal may be presented to the High Court from any order of acquittal passed by the High Court in the exercise of its original jurisdiction.”

(Underline added for emphasis)

19. The aforesaid judgment could be read in support of the contention that the provisions of section 411-A are generally the appropriate sanction to be employed to assail any order of acquittal passed by a High Court.

20. However, specifically in the matter at hand it would appear that section 411-A CrPC would not be applicable as it is overridden by the unequivocal provisions of the Ordinance itself. The maxim *generalia specialibus non derogant* is an entrenched principle of law and instructs that specific provisions of a special law would displace the general law, which would be deemed to be inapplicable in the circumstances. Reliance is placed in regard hereof upon the recent pronouncement of the august Supreme Court in *Gulistan Textile Mills & Another v. Soneri Bank Limited & Another* reported as 2018 CLD 203.

21. The exclusive jurisdiction of the High Court to try offences under the Ordinance is demonstrated by section 282-M(2) thereof, which reads as follows:

282 M (2) No Court shall take cognizance of any offence punishable under section 282 K except on a complaint in writing made by an officer of the Commission generally or specially



authorized in writing in this behalf by the Commission and no Court other than the High Court shall try such offence.

(Underline added for emphasis)

22. This particular issue of jurisdiction, i.e. that the High Court is the court of appropriate jurisdiction to try offences arising out of the Ordinance, has also been provided clarity vide the pronouncement of a Division Bench of this Court in *Adnan Faisal*, as cited supra.

23. While *Adnan Faisal* illumines the appropriate forum for the adjudication of offences emanating from the Ordinance, the said pronouncement cannot be read to provide sanction for the maintainability of an Intra Court appeal, against the order of acquittal passed by a learned Single Judge of this High Court, under section 15 of the CPCA0.

24. Section 15 CPCA0 provides for an appeal against interlocutory orders passed by a Single Judge exercising the original civil jurisdiction. The Impugned Order is neither interlocutory nor exercised in original civil jurisdiction.

25. Learned counsel for the respondent had relied upon *Abdul Rahim* in support of his contentions. *Abdul Rahim* was a judgment of a learned Single Bench of this Court which was subsequently approved by a Divisional Bench of this Court in the judgment reported as *Gulzar Ahmed vs. The State 2003 CLD 981* (“**Gulzar Ahmed**”), in terms delineated herein below:

“for all matters of criminal nature arising under the 1984 Ordinance, the forum of trial is the one provided under section 476, which would mean that for offences entailing imprisonment or imprisonment in addition to fine, the Sessions Court under section 476(4) having the territorial jurisdiction shall be the Court competent to try the criminal offence.

In substance and conclusion we are of the view that the judgment of Qaiser Ahmed Hamidi, J. (as he then was) in Criminal Appeal No. 132 of 1989 dated 18-8-1991 reported as Abdul Rahim Khan v. The State 1991 MLD 2448 is the correct statement and pronouncement of law.”

26. The view taken in *Abdul Rahim*, as approved in *Gulzar Ahmed*, was that the appropriate forum for adjudication of criminal offences arising out of the Ordinance was the learned Sessions Court. *Gulzar Ahmed* had also taken the ratio of *Brother Steel* under advisement in the process of reaching its conclusion.

27. A Division Bench of this Court did revisit *Gulzar Ahmed* in the judgment rendered in *Adnan Faisal* and recorded the following in respect thereof:

“Learned counsel for the respondent has argued that the aforesaid case relied by the learned counsel for the appellant are not applicable as Part VIII-A of the Ordinance, which deals with the provisions relating to the Non\_banking Finance Companies as to Establishment of Regulations of Non\_Banking Finance Companies was introduced vide Ordinance CXXIII, published in Gazette of Pakistan dated 15.11.2002 which is subsequent to the dates of hearing the said cases and the Hon’ble Judges of this Court had no occasion to consider applicability of Section 282-K and 282-M(2) of the Companies Ordinance, while deciding the above cases”.

28. The judgment in *Adnan Faisal* is a departure from the principle enunciated by *Abdul Rahim*, as upheld in *Gulzar Ahmed*. The reasoning scribed in *Adnan Faisal* is validated by the record. *Abdul Rahim* was reportedly heard on 28<sup>th</sup> and 30<sup>th</sup> July 1991 and the judgment delivered on 18<sup>th</sup> August 1991. *Gulzar Ahmed* is reported to have been decided on 17<sup>th</sup> June 1998. On the other hand Part VIII-A of the Ordinance, comprising of Ss. 282A to 282M, was inserted in the Ordinance vide Ordinance 123 of 2002 with effect from 15<sup>th</sup> November 2011.

29. It is therefore clear that 282M of the Ordinance was not in existence when the judgments in *Abdul Rahim* and *Gulzar Ahmed* were delivered and hence with utmost respect this Court finds itself of the opinion that the said judgments are distinguishable herein.

30. This leads us to the core of this matter, which is the determination of whether the Impugned Order, rendered *intra vires* by a learned Single Judge of this High Court, could be challenged in appeal, either in the manner submitted by the respective learned counsel or otherwise.

31. This controversy may be addressed by resort to section 481 of the Ordinance, which is a specific provision in respect of an appeal against acquittal. It may be pertinent to reproduce the content of the said provision herein below:

481. Appeal against acquittal.- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Commission may, in any case arising out of this Ordinance, direct any company prosecutor appointed under section 480 or authorise any other person, either by name or by virtue of his office, to present an appeal from an order of acquittal passed by the officer, authority or registrar or any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

(Underline added for emphasis)

32. It is apparent that in respect of criminal proceedings arising out of the Ordinance it is this specific provision that is required to be applied and it is manifest from the notation therein that the same is required to be applied notwithstanding anything contained in the CrPC.

33. Therefore, it would follow that an appeal against acquittal in respect of the offences arising out of Ordinance would be governed by section 481 of the Ordinance and not by section 411-A CrPC.

34. The stated provision of the Ordinance provides for an appeal against an order of acquittal passed by any officer, authority, or Registrar or any Court other than a High Court. This exclusion is categorical, therefore, it precludes possibility of an appeal against an order of acquittal passed by a learned Single Judge of a High Court exercising original criminal jurisdiction under the Ordinance.

35. The Impugned Order was passed and the present appeal was instituted during the period that the Ordinance was in force, however, the Ordinance is no longer in the field, as the same stood repealed and superseded by the Companies Act, 2017 (“**Act**”).

36. It may also be pertinent to conduct an exercise with respect to the Act in order to determine whether there is any variation in the law with respect to appeals from acquittal orders passed by a learned Single Bench of a High Court, in exercise of criminal jurisdiction conferred by the prevailing company law.

37. The Act also contains a provision for adjudication of offences arising therefrom and the said provision is section 482 thereof, which is reproduced herein below:

482. Adjudication of offences involving imprisonment.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no court other than court of sessions or such other court as may be notified under section 37 of the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997), shall take cognizance of any offence punishable with imprisonment or imprisonment in addition to fine under this Act.

38. The Act also contains a provision, parallel to that contained in the Ordinance, dealing with the issue of an appeal against acquittal.

The said provision, being section 487 of the Act, reads as under:

487. Appeal against acquittal.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the

Commission may, in any case arising out of this Act, direct any officer of the Commission or authorise any other person, either by name or by virtue of his office, to present an appeal from an order of acquittal passed by the court other than a Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

(Underline added for emphasis)

39. The reference to the defined term “Court” is a reference to the High Court, in the manner defined in section 2(23) of the Act. It is clear that the Act precludes the possibility of any appeal arising out of acquittal order passed by a learned Single Judge of this Court exercising original criminal jurisdiction pursuant to the Act. Therefore, the law remains the same as was prescribed vide the Ordinance, with effect from 15<sup>th</sup> November 2011, being the date of insertion of Ss. 282A to 282M therein vide Ordinance 123 of 2002.

40. Therefore, the Impugned Order, being an acquittal order passed by a learned Single Judge of this Court exercising original criminal jurisdiction with respect to offences arising out of the Ordinance, could not have been assailed in appeal before the High Court under section 15 of the CPCAO.

41. In view of the reasoning contained herein, the instant High Court Appeal is hereby dismissed, with no order as to costs.

JUDGE

JUDGE