

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Accountability Acquittal Appeal No. 27 of 2021

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Appellant: National Accountability Bureau
Through Mr. R.D. Kalhoro, Special
Prosecutor NAB.

Respondent: Arif Raza Kazmi.

1. For orders on office objection & reply of Advocate.
2. For orders on M.A. No. 10676/2021.
3. For hearing of Main case.

Date of hearing: 25.08.2022.

Date of Order: 25.08.2022.

ORDER

Muhammad Junaid Ghaffar, J: Through this Criminal Accountability Acquittal Appeal, the Appellant (NAB) has impugned Order dated 06.04.2021 passed by the Judge Accountability Court No.1 Sindh at Karachi in Reference No. 07 of 2015, whereby, the respondent has been acquitted under Section 265-K Cr.P.C.

2. At the very outset Learned Special Prosecutor NAB has been confronted by us that as to how this Acquittal Appeal has been filed inasmuch as the impugned order of the learned Trial Court, whereby, the Application Under Section 265-K Cr.P.C of the Respondent has been allowed is based on an Order dated 16.04.2019 passed by a learned Division Bench of this Court in C.P No. D-8882 of 2018, in the case of co-accused namely Mohsin Asghar Kidwai, whereby, the learned Division Bench has been pleased to allow the application under Section 265-K Cr.P.C., by quashing of proceedings against the said co-accused as apparently the case of the present Respondent is identical to that of the co-accused in the said Petition and the Prosecutor NAB has not been able to satisfactorily respond.

3. We have heard the learned Special Prosecutor NAB and perused the record. As per the Reference the brief facts are that the Securities & Exchange Commission of Pakistan (SECP) and Karachi Stock Exchange (KSE) received complaints/claims of

investors regarding non-payment of their outstanding dues and alleged un-authorized transfer of shares by M/s Prudential Securities Ltd (PSL) and their pledge with Banks and other financial institutions. On this, PSL was advised by SECP to resolve the complaints/claims and on its failure, SECP issued show cause notice and ordered inquiry against PSL in 2009 and in June, 2011 SECP filed Complaint No.293 of 2011 in Court which came on the file of learned III-Additional Sessions Judge, Karachi South. However, in August, 2011 the Chairman, SECP also made complaint to NAB regarding fraud, embezzlement and cheating the public at large against PSL. It appears that the NAB, took the matter in its' hands after its application under Section 16A(a) of the National Accountability Ordinance, 1999 filed before the trial Court, was allowed vide Order dated 17.2.2015. Thereafter, investigation was conducted by NAB during which it revealed that the Chairman, Directors and Sponsors of PSL had been authorized as signatories of PSL for operating bank accounts and empowered to operate company's participant account No.01917 maintained with CDC who also pledged shares with KSE for exposure margins used for their own benefits and that of few selected ones. The KSE got the claims verified through reputed chartered accountants firms and total 402 claims with a value of Rs.124.45 million were approved out of which amount of Rs.49.45 million of the claimants still lay outstanding against PSL. On the above investigation NAB filed supplementary reference No.07 of 2015 against the applicant and other accused for allegedly committing offence of 'cheating public at large' and 'criminal breach of trust' to the tune of Rs.124.45 million.

4. It appears that in the same Reference another co-accused, namely, Moid Asghar Kidwai had also filed an application under Section 265-K Cr.P.C., which was dismissed by the trial Court vide Order dated 19.07.2018 and being aggrieved, the co-accused namely, Moid Asghar Kidwai approached this Court by way of C.P No.D-8882 of 2018 and a learned Division Bench of this Court vide Order dated 16.04.2019 was pleased to set-aside the impugned order by allowing the Application under Section 265-K Cr.P.C. We may observe that no assistance has been provided to us as to whether the said order of the learned Division Bench was assailed

any further or not. Be that as it may, we would like to refer to the relevant finding of learned Division Bench which is as follows:-

“10. Perusal of the file shows that three prosecution witnesses have been examined till filing of the petition. PW-I Muhammad Tanvir Alam, Additional Director of SECP, complainant of the case, on 18.12.2017 during his cross examination to learned counsel for the petitioner has stated that:-

"It is correct that the inquiry was conducted under the provisions of SECP Ordinance, 1969 and not under the NAB Ordinance. I have gone through the contents of the whole Inquiry Report. It is correct that no signatures of Moid Asghar Kidwai were available on attached documents on SECP inquiry report/with NAB inquiry report, Form 29, Bank Account Opening Form and Board of Resolution. It is correct that there was no single share of (accused) Moid Asghar Kidwai in PSL. It is correct that accused Moid Asghar Kidwai resigned on 10.09.2008 it is correct that as report 9 meetings were convened by the board of directors during the period 2008-2009. It is correct that as per report the accused Moid Asghar Kidwai had had not attend any meeting held during the above said report. I do not know that under Section 188(b) of the Companies Ordinance if the company's Director fails to attend three consecutive meetings of board of directors he would stand disqualified. It is correct that I have not given the details of benefits acquired by accused Moid Asghar Kidwai by stated misappropriation of shares. It is correct that accused never operated any account of PSL. I do not know if the accused neither authorized anyone to operate account on his behalf. I do not know if accused had ever authorized anyone to transfer or pledge shares of PSL. It is correct that no notice/show cause was served to accused Moid Asghar Kidwai to attend the inquiry. Voluntarily says that the notice was served upon PSL. It is incorrect that his name has been included in the inquiry malafidely. It is correct that there is no allegation against accused Moid Asghar Kidwai. Again says that the complaints were against company."

11. During course of hearing the learned Special Prosecutor, I.O, and the Case Officer conceded that there is nothing on record to show that petitioner was authorized signatory on behalf of the brokerage house for opening bank accounts. empowered to operate company's participant account maintained with CDC or he was instrumental in deceitful transfer of clients' shares from their accounts and pledging the same with the Bank for obtaining financial facility or he was guarantor or obtained illegal gains.

12. Consequently, we are clear in our mind that the prosecution has failed to collect any iota of evidence to justify indictment of the petitioner, therefore, the criminal proceedings that commenced in the year 2011 upon filing of private complaint by the SECP, which later yielded in filing of Reference No.07 of 2015 pending adjudication before the Accountability Court No.1, Karachi, are bound to fail.

For the foregoing reasons, we convert this petition into criminal miscellaneous application, allow it and quash the proceedings culminating from the aforesaid Reference to the extent of petitioner Moid Asghar Kidwai. Office is directed to treat this matter as criminal misc. application and assign number accordingly”

5. Insofar as the present Respondent is concerned, his case appears on the same footing as apparently the period in respect of which some enquiry was conducted was from 01.07.2008 to 30.06.2009, whereas, the Respondent was appointed as a Nominee Director in the Company in question in September, 2008 i.e. after about first three months of the said period and he resigned in March, 2009. It is the case of the Respondent that he never attended even a single meeting and P.W-02 Mohammad Asif Paryani deposed before the Court that Respondent had not attended any Board Meeting since being Nominated as a Director. The Respondent also relied upon the Minutes of the Meeting dated 20.03.2009, wherein, due to his constant absence in such meeting, he was sought to be replaced and such fact has not been controverted by the Special Prosecutor NAB before the Trial Court. It has further come on record that no documents of any sort was produced; shown or even alleged by the prosecution to have been signed by the present Respondent in respect of transfer of shares; nor he had authorized any other person for such purposes. It is a matter of record that the Respondent, being an employee of First Prudential Modaraba, holding 18.45% shares in PSL (under investigation and against whom the Reference was filed), was nominated by the said Modaraba as it is Nominee Director and had only one share of Rs.10/-; hence he had no role in any alleged misdoing of the Company in question.

6. On a threadbare examination of the impugned order as well as the order of the learned Division Bench, it appears that the Appellant has failed to make out a case against the present Respondent and there isn't any material on record which could have ultimately resulted in the conviction of the Respondent. Moreover, we do not see any material difference in the role of the present Respondent and that of the co-accused, who has already been acquitted by this Court by way of the order referred hereinabove.

7. In view of hereinabove facts and circumstances, it appears that no case for indulgence is made out. Accordingly, this Accountability Acquittal Appeal merits no consideration; hence is hereby dismissed in *limine*.

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