

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Acquittal Appeal No.07 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:

Mr. Justice Omal Sial  
Mr. Justice Syed Fiaz ul Hassan Shah

Appellant : Chairman NAB through Mr. Syed Meeral Shah,  
Special Prosecutor, NAB.

Respondent : Muhammad Salim through M/s. Shaukat Hayat  
and Khalid Hussain Dahar, Advocates

Date of hearing : 25.8.2025

Date of decision : 08.9.2025

## J U D G M E N T

**Dr.Syed Fiaz ul Hassan Shah, J.** This is an Appeal against Judgment dated 30.8.2023 passed by the Accountability Court No. II, Karachi (hereinafter referred to as the ("trial Court") in Reference No.20/2002.

1. **Background & Purpose of EOBI**—The Employees Old-Age Benefits Act, 1976 (Act No. XIV of 1976), was enacted to ensure social security for old-age employees of industrial, commercial, and other establishments. Under Section 4 of the Act, the Federal Government established the Employees Old-Age Benefits Institution (**EOBI**) in 1981 as a statutory body empowered to acquire, hold, and dispose of both movable and immovable property. The institution is managed by a

Chairman and a Board whose members are deemed to be public servants under Section 42 of the Act and fall within the definition of “holders of public office” under the NAB Ordinance, 1999.

**2. Investment Framework and Policy Change**—Under Section 14 of the Act and the **Employees Old-Age Benefits (Investment) Rules, 1979**, EOBI was authorized to invest funds not immediately required for operational expenses. Rule 3 allowed such investment in government securities, including **Federal Investment Bonds (FIBs)**. From 1984 onwards, EOBI engaged in Repo (Repurchase Option) transactions with banks and financial institutions, earning a net spread profit of 1.5%–2.5% per annum. However, on 3rd June 1996, the Ministry of Finance prohibited EOBI from entering Repo deals, later allowing such transactions only with Non-Banking Financial Institutions (NBFIs) from 30th July 1996.

**3. Allegations of Corruption and Fraud**—It was alleged that **Shaikh Barkatullah**, then Chairman EOBI, in collusion with Muhammad Tahir Siddiqi, General Manager (Finance) of Prudential Commercial Bank Ltd., and other co-accused, committed corruption and corrupt practices. They fraudulently deprived EOBI of FIBs valued at **Rs. 1.04 billion**, causing a total loss of **Rs. 1.618 billion** to the institution, while wrongfully gaining significant financial benefits.

**4. Modus Operandi of the Fraud**—From **June 1999**, FIBs worth Rs.01.04 billion were allegedly siphoned off under the guise of Repo agreements with three companies:

- Pakistan Industrial and Commercial Leasing Company Ltd. (PICL)
- Prudential Discount and Guarantee House Ltd. (PDGH)
- Prudential Securities Ltd. (PSL)

These companies served as conduits for the illegal acquisition of FIBs, which were later sold between 28 December 1999 to 23 February

2000, with proceeds funneled into Republic Securities Ltd. (RSL), a company controlled by accused Tahir Siddiqi.

- 5. Fictitious Repo Transactions to Cover Up the Fraud**—To conceal the illegal disposal of FIBs:
  - Two fake Repo deals were created with RSL and Inter-world Securities Ltd. (IWSL) on 3rd February 2000.
  - A third forged security-based Repo deal was allegedly created with Bank of Ceylon (BOC) on 26th September 2000, using a fake post-dated pay order for Rs.1.04 billion.
- 6. Diversion of Funds to Relatives and Associates**—Investigations revealed that funds were channeled into entities controlled by accused Tahir Siddiqi and his associates. Moreover, Mrs. Zahida Rehmat, her children, and other relatives of accused Barkatullah received illegal proceeds and encashed investment certificates, including SSCs, RICs, and DSCs. They admitted guilt and entered into plea bargain agreements under Section 25 of the NAB Ordinance, which were accepted by NAB on 8 August 2002.
- 7. Pardons and Prosecution Witnesses**—Four co-accused – Ahmed Waheed, Abid Aziz Merchant, Imtiaz Ali Bhojani, and Noman Ahmed Said – applied for pardon and agreed to disclose the full facts. They were granted pardon by NAB, recorded their statements before the Magistrate under Section 26(b) of the NAB Ordinance, and became prosecution witnesses.
- 8. Filing and Transfer of Reference**—Based on NAB’s investigation, Reference No. 16/2002 was filed before the Accountability Court in Attock on 28 February 2002. Upon application by accused Tahir Siddiqi, the Hon’ble Supreme Court transferred the matter to Karachi, where it was registered as Reference No. 20/2002.

9. **Plea Bargain and Remand for Fresh Trial**—Accused Muhammad Salim, along with nine other accused, submitted a joint plea bargain application under Section 25(b) of NAO, 1999, which was accepted. On 16 September 2003, they were convicted under Section 15 of NAO and disqualified for 10 years. However, Appellant challenged this conviction before this Court in Cr. Accountability Appeal No. 16/2003 and this Court, vide judgment dated 16 December 2015, set aside the conviction only against Muhammad Salim and remanded the case for de novo trial.
10. **De Novo Trial and Defense Plea**—In the fresh trial, the prosecution examined **23 witnesses**, including the Investigating Officer. An application under Sections 540 and 90 Cr.P.C. for additional documents and witnesses was **dismissed** on 12 March 2022. In his statement under Section 342 Cr.P.C., Appellant denied all allegations. After recording the evidence and after hearing the parties, the trial Court has passed the impugned judgment, on following points of determination:

POINTS

- 1) Whether accused Muhammad Salim, Deputy Director General (Investment), EOBI in active connivance and collusion with other co-accused persons misused his authority through dishonest, fraudulent and deceitful means depriving EOBI of FIBs having face value of rupees 1040 million, thereby causing loss to EOBI to the tune of Rs.1,618,842,672/- (Rupees one billion six hundred eighteen million eight hundred forty two thousand six hundred and seventy two only)?
- 2) Whether accused Muhammad Salim being Deputy Director General (Investment), EOBI had the power or authority to issue confirmation letters to Prudential Securities Limited, Inter-world Securities Ltd. and Bank of Ceylon verifying execution of Repo deals with EOBI, without approval of the Chairman EOBI, accused Shaikh Barkatullah?
- 3) What offence, if any, the accused has committed?

11. We have heard the learned Special Prosecutor for Appellant and the Counsel of Respondent Muhammad Salim and perused the record.
12. The learned Counsel for the Appellant has firstly urged the ground that the respondent, Mohammad Salim, had voluntarily filed an application for plea bargaining and was subsequently released from custody. It is contended that this establishes a prima facie case against him and renders the impugned judgment erroneous in law and on facts. However, this contention has already been adjudicated upon in the earlier round of litigation, wherein this Court set aside the appellant's conviction and remanded the matter for fresh adjudication. In view of the detailed consideration accorded to this ground in the previous judgment, it cannot be re-agitated in the present appeal. The principle of constructive res judicata applies, as reiterated in ***Farooq Ahmad v. State (2020 SCMR 901)***, wherein the Supreme Court held that issues conclusively decided in earlier proceedings cannot be reopened unless fresh cause arises.
13. The second ground urged by the appellant, NAB, is that the respondent, Mohammad Salim, failed to safeguard the interests of EOBI by allegedly colluding with the then Chairman and DG Finance—both convicted persons—through favorable notings and by signing Financial Investigation Briefs (FIBs) as a witness. The learned counsel for NAB contends that the trial court committed a grave illegality by disregarding this aspect and further submitted that this conduct was admitted by the respondent in his statement under Section 342 Cr.P.C. before the trial court yet the trial Court has not considered these aspects and failed to determine it. However, it is settled law that a statement under Section 342 Cr.P.C. cannot be treated as a confession unless it satisfies the safeguards of voluntariness and specificity that too must be backed by corroborative evidence. In ***Mukhtar Ahmad***

**v. State (PLJ 1991 Cr.C. Lah. 11)**, it was held that such statements must be corroborated by independent evidence and cannot form the sole basis of conviction. The learned Counsel has failed to demonstrate any direct, substantive evidence or corroborative evidence against the Respondent. Hence this argument has no legal sanctity.

**14.** The evidentiary record as set forth by the NAB prosecution, PW-10 Tahir Mehmood recorded his statement under Section 164 Cr.P.C. before the 10th Judicial Magistrate, Karachi South, and fully implicated S.Barkatullah and Mohammad Tahir Siddiqui—both of whom have already entered into plea bargains duly approved by the trial court. Nothing has stated against the Respondent. In **Ghulam Abbas v. State (PLD 1958 Lah. 559)**, the Full Bench emphasized that statements under Section 164 Cr.P.C. must be recorded in strict compliance with procedural safeguards, and any omission renders the statement inadmissible. However, PW-10 did not depose anything against the respondent, Mohammad Salim. Similarly, PW-11 Mohammad Musharraf Khan, in his statement under Section 161 Cr.P.C. before the investigating officer, made allegations against the convicts but did not implicate the respondent. The same is true for PW-12 Syed Mazar Mujtaba. Moreover, in **Abdul Khaliq v. State (1996 SCMR 1553)**, the Supreme Court ruled that delayed or vague statements under Section 161 Cr. P.C. diminish probative value unless adequately explained.

**15.** We have carefully considered the contention of the Appellant NAB that the Respondent, while serving in the capacity of Deputy Director General (DDG), failed to safeguard the financial interests of the Employees' Old-Age Benefits Institution (EOBI) by preparing favorable "official noting" and becoming witness to financial document of EOBI, which allegedly formed part of the commission of offence and the

judgment of acquittal appears to have overlooked this aspect. However, we have noticed that the Appellant NAB has neither implicated Mr. Haroon Siddiqui, Director General Investment/Financial Adviser who and convict Berkatullah, the then Chairman—both of whom were the final approval authorities in the transaction under scrutiny. The present criminal accountability appeal has been filed solely against the DDG/Respondent, without any incremental or fresh material establishing his culpability.

16. The NAO, 1999 borrows heavily from the PPC in both substance and structure. Where the Ordinance employs terminology derived from the PPC, its interpretation must be guided by the definitions, principles, and jurisprudence developed under the Penal Code. This interpretative approach ensures consistency, legal certainty, and adherence to constitutional guarantees of a fair trial. In ***State v. Zafar Abbas (2015 SCMR 736)***, the Supreme Court affirmed that the term “dishonesty” under the NAO must be interpreted in light of Section 24 of the PPC. Similarly, in ***Muhammad Riaz v. The State (2019 SCMR 728)***, it was held that “criminal intent” under the NAO must be construed using the PPC’s interpretative framework. Further, in ***State v. Misbah-ud-Din (PLD 2021 SC 409)***, the apex Court reiterated that *mens rea* under the NAO cannot be presumed and must be proven in accordance with principles derived from the PPC. Additionally, the NAO (Amendment) Act, 2022 introduced Section 4(d), which provides conditional immunity in cases where there is no evidence of personal benefit or dishonest intent. The protection under Section 4(d) is not absolute and ceases to apply where material is produced demonstrating that the accused derived personal or monetary benefit—either directly or indirectly—for personal use or for the benefit of others which is not lacking in the present appeal but the Appellant NAB has not levelled such allegations during investigation or during evidence.

17. The learned counsel for the Appellant has not been able to establish that the judgment under challenge suffers from any misreading or non-reading of evidence. In the present case, the Appellant NAB has failed to bring on record any material demonstrating that the Respondent derived personal benefit or acted with dishonest intent. The essential element of *mens rea*, which forms the cornerstone of criminal liability under the National Accountability Ordinance, 1999, remains unproven. The investigation report and prosecutorial decision placed on record by NAB do not reveal any evidence of criminal intent (*mens rea*) or a culpable act (*actus reus*) attributable to the Respondent. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Khalid Aziz v. NAB (2019 SCMR 1254)***, wherein it was categorically held that *mens rea* is a vital component of criminal liability under the NAO. Absent proof of dishonest intent, a prosecution under the Ordinance cannot be sustained. The Court further observed that once such intent is established, procedural defences collapse. In the absence of such culpable intent, and in light of the settled jurisprudence, the appeal against acquittal does not meet the legal threshold required for interference. Reliance is placed on the following authoritative pronouncements of the Hon'ble Supreme Court of Pakistan as held in ***Muhammad Zaman v. The State and others [2014 SCMR 749]***, ***Muhammad Rafique v. Muhabbat Khan and others [2008 SCMR 715]***, ***Jehangir v. Amin Ullah and others [2010 SCMR 491]***, ***Mst. Askar Jan and others v. Muhammad Daud and others [2010 SCMR 1604]***, ***Mst. Sughra Begum and another v. Qaiser Pervez and others [2015 SCMR 1142]***. These precedents collectively affirm that unless the acquittal is demonstrably flawed due to gross mis-appreciation of evidence or violation of settled legal principles, the presumption of innocence stands reinforced and must not be disturbed.



18. It is a settled principle of criminal jurisprudence that an appeal against acquittal is governed by a distinct and narrower framework than an appeal against conviction. Mere possibility of a different conclusion is insufficient to disturb an acquittal. The presumption of innocence is further strengthened upon acquittal, and the appellate court must exercise restraint and caution before reversing such a finding. Reliance is placed on the authoritative judgment of the Hon'ble Supreme Court in ***Inayatullah Butt v. Muhammad Javed and others* (PLD 2003 SC 562)**. The approach adopted by appellate courts in such cases is fundamentally different, owing to the presumption of *double innocence* that attaches to an acquitted individual. This presumption not only reinforces the initial finding of innocence but also imposes a heightened threshold for interference by the appellate forum. The scope of appellate review in cases of acquittal is therefore limited and circumscribed. Unless the findings of the trial court are shown to be perverse, manifestly illegal, or wholly unsupported by evidence, interference is not warranted.
19. Consequently, the Criminal Accountability Appeal is dismissed.

**JUDGE**

**JUDGE**

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