

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.485 of 2025

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Appellant : Pakistan Kuwait Investment Company (Pvt.) Ltd.
Through Mr. Mujahid Bhatti Advocate.

Respondents : Amtex (Pvt.) Ltd. and others.
Through M/s. Haris Rashid Khan & Muhammad Bilal Rashid Khan Advocates.

Date of hearing : 11.05.2026

Date of Judgment : 25.05.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This order shall dispose of instant Criminal Acquittal Appeal preferred by Pakistan Kuwait Investment Company (Private) Limited ("Appellant") under s. 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("FIO/Ordinance"), challenging the Order dated 19.05.2025 ("Impugned Order") passed by the learned Presiding Officer, Banking Court No. I, Karachi, in Criminal Complaint No. 14 of 2022, whereby the learned trial Court acquitted the Respondent/Accused No. 2, Khurram Iftikhar son of Iftikharuddin, Chief Executive Officer of Amtex (Pvt.) Limited, under Section 265-K of the Code of Criminal Procedure, 1898 ("Cr.P.C").

2. Before advertent to the merits of the case, it is imperative to address the conspicuous fact that the instant appeal is barred by limitation. Section 22(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 expressly provides that any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court "may, within thirty days of such judgment, decree, sentence or final order, prefer an appeal to the High Court." The Impugned Order is dated 19.05.2025; however, the instant appeal bears the date of 30.07.2025, a period of 72 days from the date of the Impugned Order, which is manifestly beyond the statutory period of thirty days prescribed under Section 22(1) of the Ordinance.

3. Peculiarly, the Memo of Appeal filed before this Court does not contain any application for condonation of delay, nor has any explanation

whatsoever been tendered by the Appellant to justify its failure to approach this Court within the time prescribed by law. This Court is not unmindful of the general principle that limitation statutes are to be applied strictly in criminal matters, more so where acquittal has been recorded. The Appellant, a financial institution of standing, was represented throughout the proceedings below by competent counsel, and there is nothing on the record to suggest any impediment, extraordinary circumstance, or sufficient cause that prevented the filing of the appeal within the stipulated period. The delay of 42 days over and above the statutory period of thirty days remains wholly unexplained.

4. The instant appeal is accordingly liable to be dismissed on the threshold ground of limitation alone. The statutory mandate under Section 22(1) of the FIO, 2001 is imperative, and no exception having been demonstrated by the Appellant, the appeal cannot be entertained. Nevertheless, for the sake of completeness and in order to afford a full adjudication of all questions, this Court proceeds to examine the merits of the appeal as well.

5. The Appellant, Pakistan Kuwait Investment Company (Private) Limited, is a financial institution as defined under Section 2(a) of the FIO, 2001, with its registered office at 4th Floor, Block-C, Finance & Trade Centre, Main Shahrah-e-Faisal, Karachi. The Respondent No.1 Amtex (Pvt.) Limited, a company having its place of business at 1-Km, Khurrianwala, Jaranwala Road, Faisalabad; Respondent No. 2 is Khurram Iftikhar son of Iftikharuddin, Chief Executive Officer and Managing Director of Respondent No. 1; and Respondent No. 3 is Muhammad Zubair Bhatti son of Hamid Ali (now deceased), formerly Manager Admin of Respondent No. 1.

6. The background of the case is that the Appellant had extended two lease finance facilities to Respondent No. 1: (i) a lease finance facility up to an aggregate limit of Rs. 100 million under a Lease Agreement dated 31.08.2004 (as amended), out of which Respondent No. 1 availed Rs. 76,807,111/- ("Lease Facility-I"), partially refinanced under LTF-EOP Scheme of the State Bank of Pakistan; and (ii) a further lease finance facility of up to Rs. 100 million under a Lease Agreement dated 08.05.2008, out of which Respondent No. 1 availed Rs. 60,440,000/- ("Lease Facility-II"). The Accused/Respondents defaulted on the aforesaid facilities and as of 30.09.2011, an amount of Rs. 97,903,568/- remained outstanding.

7. The Appellant filed a suit for recovery before the Honourable High Court of Sindh bearing No. B-111 of 2011 under Section 9 of the FIO, 2001. Subsequently, upon change in pecuniary jurisdiction, the suit was transferred to Banking Court No. I, Karachi and renumbered as Suit No. 179 of 2017. During the pendency of the suit, it came to the knowledge of the Appellant that Respondent No. 1 was intending to rent out its premises to a third party, namely Abwa Knowledge Village (Pvt.) Limited. The Appellant moved the Banking Court which, vide Order dated 21.09.2017, issued an attachment order through Banking Court No. I, Faisalabad in respect of the leased assets and machineries lying at the factory premises of Respondent No. 1.

8. The attached machineries, consisting of twelve (12) categories of machines including Single Needle Director Drive Straight Lock Machines (12 in number, Make: Brother), Eyelet Button Hole Machines, Back Pocket Sewing Machines, Mach Coner Auto Cone Winders, Industrial Washing Machines, Dryers, and one Used Benninger Continuous Bleaching Plant, among others, were attached in the presence of Muhammad Zubair Bhatti (Accused/Respondent No. 3), the Manager Admin of Respondent No. 1. In compliance with the Court's order, the said attached assets/machineries were handed over into the superdari (custody) of Respondent No. 3, Muhammad Zubair Bhatti, under the direction of the learned Banking Court No. I, Faisalabad.

9. The learned Banking Court No. I, Karachi pronounced Judgment dated 01.07.2019 and Decree dated 06.07.2019 in favour of the Appellant in Suit No. 179 of 2017. The Appellant thereafter filed Execution Application No. 38 of 2020. In compliance of the Order dated 10.07.2020 directing the filing of a valuation report, the Appellant appointed Engineering Pakistan International (Pvt.) Limited as valuator. The Valuation Report dated 09.09.2020 disclosed that the majority of the attached assets/machineries had been removed from the factory premises in sheer violation of the Court's attachment order. Of the twelve (12) Single Needle Director Drive Straight Lock Machines originally attached, only one (01) was found on site; of thirty (30) Single Needle Computerized Machines (Make: Siruba), only one remained; and a large number of other attached machines were found to be entirely missing (not available), whereas the Benninger Continuous Bleaching Plant was found in a dilapidated scrap condition.

10. On the basis of the aforesaid valuation report and the removal of attached assets in contravention of Court orders, the Appellant filed

Criminal Complaint No. 14 of 2022 before the Banking Court No. I, Karachi under Sections 20(1)(a), (b) and (d) of the FIO, 2001, against the Respondents. The complaint was initially taken up as Criminal Complaint No. 05/2021 before Banking Court No. V, Karachi, wherein the learned Presiding Officer, after recording the statement of the attorney of the Complainant under Section 200 Cr.P.C., admitted the complaint vide Order dated 24.02.2021, finding prima facie case made out. Bailable Warrants of Rs. 1,000,000/- each were issued against all accused persons. Respondent No. 2 appeared before the Court on 27.07.2021 and obtained bail. The complaint was thereafter transferred to Banking Court No. I, Karachi on the direction of the Honourable High Court vide Order dated 09.09.2022, and renumbered as Criminal Complaint No. 14 of 2022.

11. During the pendency of the complaint, it came on record that Respondent No. 3, Muhammad Zubair Bhatti, the Manager Admin of Respondent No. 1 to whom the superdari of the attached machineries had been entrusted by the Banking Court, Faisalabad, died on 27.04.2021. The learned trial Court accordingly ordered abatement of the proceedings against Respondent No. 3. Respondent No. 2 then filed an application under Section 265-K Cr.P.C. on 23.12.2024, seeking his acquittal. The learned trial Court allowed the said application vide the Impugned Order dated 19.05.2025 and acquitted Respondent No. 2 (Khurram Iftikhar) on the ground that in the absence of Respondent No. 3, who was the person in actual custody of the attached machines, no independent incriminating material was available against Respondent No. 2 to sustain criminal proceedings against him.

12. The learned counsel for the Appellant argued that the Impugned Order is based on misreading and non-consideration of the documentary evidence on record; that the trial Court allowed the Section 265-K application prematurely before recording any evidence; that copies of the record had been supplied to Respondent No. 2 on 27.07.2021 and evidence was yet to be recorded; that under Section 20(5) of the FIO, 2001, where an offence is committed by a body corporate, its chief executive and any officer involved are deemed guilty and are liable to prosecution; that Respondent No. 2, as the CEO of Respondent No. 1, is directly liable for the criminal acts of removal of the attached/leased assets; that Respondent No. 3 was an employee of Respondent No. 1 acting under the directions of Respondent No. 2, and thus any criminal act committed within the company's premises by its employee falls under the supervisory responsibility of the CEO; that the Explanation to Section

20(1) of the FIO, 2001 creates a presumption of dishonesty against a customer who has not deposited the sale proceeds of attached property with the financial institution; that the Appellant had discharged its initial burden and the onus had shifted to the Respondent to disprove dishonesty; and that the application under Section 265-K Cr.P.C. was filed with mala fide intent after delaying the proceedings for over four years.

13. The learned counsel for the Respondents, on the other hand, supported the Impugned Order and submitted that the attached machineries were handed over in superdari to Respondent No. 3 by the Banking Court, Faisalabad, and not to Respondent No. 2; that Respondent No. 2 had no physical possession of or control over the said assets; that the complaint itself acknowledges that the assets were in the custody of Respondent No. 3; that Respondent No. 3 has now expired and criminal proceedings against a deceased person cannot be initiated or maintained in law; that criminal liability is personal and cannot be vicariously transferred from a deceased person to a living accused; that no independent role has been attributed to Respondent No.2 in the commission of the alleged offence; that the learned Banking Court correctly found no incriminating material on record against Respondent No. 2; that the Section 265-K Cr.P.C. application can be moved at any stage, including before the recording of evidence, as it is the duty of the Court to protect a person from facing a baseless trial; that the application is maintained against the entire foundation of the complaint which had collapsed upon the death of Respondent No. 3; and that furthermore, the entire foundation of the appeal against Respondent Nos. 1 and 2 had collapsed once the Appellant sought withdrawal of the appeal against Respondent No. 3, who was the principal accused in the matter. Reliance was placed on 2002 P.Cr.L.J 1317¹, 2008 MLD 728², 2009 P.Cr.L.J 374³, PLD 2003 Quetta 11⁴, and 2006 CLD 568⁵.

14. I have heard the learned counsel for the parties at length and have carefully perused the record, including the Impugned Order, the Memo of Appeal, the criminal complaint, and all accompanying documents.

15. On the Question of Limitation, as noted above, section 22(1) of the FIO, 2001 mandates the filing of an appeal against any final order of the Banking Court within thirty days of the passing of such order. The

¹ Shaikh Muhammad Amjad v. The State.

² Manzoor Akbar Turk v. Raja Ashiq Hussain and 6 others.

³ Asif Mahmood v. The State and another.

⁴ Amanullah v. The State.

⁵ Aamir Khurshid Mirza v. The State and another.

Impugned Order is dated 19.05.2025. The instant appeal was presented before the Registry of this Court on 30.07.2025, making it 72 days after the impugned order, a delay of 42 days beyond the statutory limitation period. The law in this regard is not merely directory; it is mandatory and goes to the root of the jurisdiction of this Court to entertain such an appeal. No application for condonation of delay has been filed. No explanation, however feeble, has been offered. No affidavit traversing the facts of delay has been placed on record. The silence of the Appellant in this regard is deafening. The statutory time limit prescribed under the FIO, 2001, a special statute with overriding effect by virtue of Section 4 thereof, cannot be overlooked or condoned in the absence of any cause being shown. On this score alone, the appeal is not entertainable and is liable to be dismissed as time-barred.

16. Without prejudice to the foregoing finding on limitation, this Court has also examined the merits of the Impugned Order. The undisputed factual matrix, as borne out from the record, is that the attached machineries were physically handed over into the superdari of Muhammad Zubair Bhatti (Respondent No. 3), Manager Admin, by the Banking Court, Faisalabad. The possession, custody, and safekeeping of the attached machines, twelve categories totaling several dozens of machines, was therefore, as per the express direction of the Court, vested in the person of Respondent No. 3. The allegation in the criminal complaint, stripped to its essence, is that the machines were removed or sold from the factory premises. The question of who removed the machines is a question of fact; but the undeniable starting point is that the machines were in the lawful custody of Respondent No. 3 under a court order.

17. Respondent No. 3 died on 27.04.2021. Criminal liability in our jurisprudence is personal; it attaches to a living individual and cannot be transmitted to another. The criminal proceedings against Respondent No. 3 stood automatically extinguished upon his death. The learned trial Court rightly held that criminal liability against a deceased person cannot be initiated or continued, and accordingly ordered abatement. There is no quarrel with this proposition of law.

18. The Appellant's primary argument rests on Section 20(5) of the FIO, 2001, which provides that where an offence under the Ordinance is committed by a company or body corporate, the chief executive and any director or officer involved "shall be deemed to be guilty of the offence." However, this provision cannot be applied mechanically or in a vacuum. The deemed liability of a chief executive or director under Section 20(5) is

not absolute; it is conditional upon the existence of an underlying offence actually committed by the company or body corporate. The provision does not eliminate the requirement of criminal intent, mens rea, or actual participation in, or facilitation of, the offence. A "deemed guilt" provision in a special statute must be construed strictly, as it is in derogation of the fundamental principle that an accused is presumed innocent until proven guilty. Where the entire substratum of the offence rested upon the possession and alleged misappropriation of the machines by the deceased Respondent No. 3, and where no independent act, omission, instruction, or connivance on the part of Respondent No. 2 has been established even at the prima facie level from the complaint or its supporting documents, the invocation of Section 20(5) as a standalone ground of liability is legally untenable.

19. Furthermore, the Valuation Report of 09.09.2020 and the supporting complaint documents do not, independently or collectively, attribute any specific, identifiable, and direct criminal act to Respondent No. 2. The complaint is predicated predominantly on the conduct of Respondent No. 3. Even the complainant's own pleadings acknowledge that Respondent No. 3 was the person in whose superdari the machines were given and that it was Respondent No. 3 who was present at the time of attachment. No FIR was lodged by Respondents No. 1 or 2 against Respondent No. 3, which the Appellant has itself highlighted; however, that circumstance, at best, raises a suspicion, and it is settled law that suspicion, however strong, is not a substitute for evidence, nor can it found a criminal conviction. A conviction cannot be built on conjecture and surmise.

20. It is settled law, affirmed by the superior courts of Pakistan in numerous pronouncements, that the jurisdiction under Section 265-K Cr.P.C. may be exercised at any stage of the proceedings. The test to be applied is whether there is any probability of conviction of the accused upon consideration of the material on record. The section confers a wholesome power on the court to prevent a person from being subjected to a futile trial where the case on record, even if proved in its entirety, would not result in a conviction. The purpose of the provision is salutary: it saves the accused from the ordeal and stigma of a criminal trial where no reasonable prospect of conviction exists. The learned trial Court, after hearing both parties and perusing the record, arrived at the conclusion that no incriminating material was available against Respondent No. 2

sufficient to warrant framing of charge, much less conviction. This Court, upon its independent review of the record, concurs with this conclusion.

21. The fact that the complaint was admitted and bailable warrants were issued does not foreclose the exercise of power under Section 265-K Cr.P.C. Admission of a complaint is a preliminary, summary assessment; the Section 265-K power permits a more detailed and considered scrutiny of the record to assess whether proceeding further would serve the ends of justice. The argument that evidence had not yet been recorded and hence the application was premature is without merit. Section 265-K Cr.P.C. uses the expression "at any stage," which leaves no room for the argument that the power is only exercisable after the recording of evidence.

22. This Court also takes note of the fact that the Appellant itself filed an application (MA No. 4136 of 2026) before this Court seeking withdrawal of the instant appeal to the extent of Respondent No. 3. The Respondents have rightly objected that such partial withdrawal is legally untenable, since the entire prosecution case was structured around the alleged criminal acts of Respondent No. 3, and there exists no independent basis against Respondent Nos. 1 and 2. The filing of the withdrawal application against Respondent No. 3, while attempting to keep the appeal alive against Respondent Nos. 1 and 2, further underscores the hollow foundation upon which the present appeal rests.

23. In view of the foregoing, this Court finds that the instant Criminal Acquittal Appeal is barred by limitation, having been filed 72 days after the Impugned Order dated 19.05.2025, whereas the statutory period under Section 22(1) of the FIO, 2001 is 30 days. No explanation whatsoever has been furnished for the delay and no application for condonation has been filed; that on merits as well, the appeal carries no weight. The learned trial Court correctly appreciated the factual and legal position. The machines were in the superdari of the deceased Respondent No. 3. Upon his death, the substratum of the criminal proceedings against him stood extinguished. Criminal liability cannot be initiated against a dead person, nor can it be vicariously or automatically transmitted to Respondent Nos. 1 and 2 merely by invoking Section 20(5) of the FIO, 2001 in the absence of independent incriminating material; that no probability of conviction of Respondent No. 2 existed on the material before the trial Court, and the trial Court acted entirely within its jurisdiction and discretion in allowing the Section 265-K Cr.P.C. application; that the complaint of the Appellant does not disclose any independent criminal role attributed to Respondent No. 2

beyond his status as CEO of Respondent No. 1, a status which, standing alone and without more, is insufficient to attract criminal liability under the special provisions of the FIO, 2001.

24. Resultantly, the instant Criminal Acquittal Appeal No. 485 of 2025 is dismissed, both on the ground of limitation as well as on merits. The Impugned Order dated 19.05.2025 passed by the learned Banking Court No. I, Karachi is maintained and affirmed. The appeal against Respondent No. 3 is dismissed as not pressed, in terms of M.A. No. 4136 of 2026.

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