ORDER SHEET

IN THE HIGH COURTOF SINDH, KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Cr. Acct. Appeal No.45 of 2002
(The State thr: Chairman, NAB, Muhammad Anwar Tariq ***vs.*** Allah Dino)

Cr. Acct. Appeal No.11 of 2005
(Saleem Raza ***vs.*** The State)

Cr. Acct. Appeal No.01 of 2006
(Pervaiz Ahmed Dahri ***vs.*** The State)

Cr. Acct. Appeal No.12 of 2011
(Abdul Latif Brohi ***vs.*** The NAB)

Cr. Acct. Appeal No.13 of 2011
(Muhammad Nawaz ***vs.*** The State)

Cr. Acct. Acq. Appeal No.09 of 2012
(The State through NAB ***vs.*** Hafeezullah Kalwar & others)

Cr. Acct. Appeal No.17 of 2012
(Khan Shah Nawaz Khan ***vs.*** The State)

Cr. Acct. Acq. Appeal No.20 of 2012
(The State/NAB ***vs.*** Khan Shah Nawaz & another)

Cr. Acct. Appeal No.06 of 2013
(Major (R) Muhammad Rasheed Khan ***vs.*** The State)

Cr. Acct. Appeal No.08 of 2014
(Perviaz Qasim ***vs.*** The State through Chairman, NAB)

Cr. Acct. Appeal No.08 of 2016
(Muhammad Khurram ***vs.*** The State)

Cr. Acct. J. Appeal No.01 of 2017
(Abdul Ghaffar ***vs.*** The State)

Cr. Acct. J. Appeal No.27 of 2017
(Muhammad Farhan Arif ***vs.*** The State)

Cr. Acct. Appeal No.36 of 2018
(Nizamuddin Shahani & anther ***vs.*** The State)

Cr. Acct. Appeal No.58 of 2018
(The State through Chairman, NAB ***vs.*** Nizamuddin Shahani & anther)

Cr. Acct. Acq. Appeal No.59 of 2018
(The State through Chairman, NAB ***vs.*** Dileep Kumar & others)

Cr. Acct. Appeal No.07 of 2019
(Syed Manzoor Abbass ***vs.*** The State through NAB)

Cr. Misc. Appl. No.367 of 2018
(Syed Manzar Abbas ***vs.*** The NAB & others)

Cr. Acct. Appeal No.11 of 2019
(Aga Muhammad Zarar & others ***vs.*** The State)

Cr. Acct. Appeal No.12 of 2019
(Chaudhary Muhammad Ashraf ***vs.*** The State)

Cr. Acct. Appeal No.09 of 2019
(Ashiq Ali Sheikh ***vs.*** The State through Chairman, NAB)

Cr. Acct. Appeal No.10 of 2019
(Karamuddin Panhyar ***vs.*** The State through Chairman, NAB)

Cr. Acct. Appeal No.13 of 2019
(Gada Hussain ***vs.*** The State through DG, NAB)

Cr. Acct. Appeal No.14 of 2019
(Jahangir Khan Marri ***vs.*** The State through DG, NAB & others)

Cr. Acct. Appeal No.23 of 2019
(The Chairman, NAB ***vs.*** Karamuddin Panhyar & others)

Cr. Acct. Appeal No.14 of 2022
(NAB through its Chairman ***vs.*** Shafiq Ahmed Soomro)

Cr. Acct. Acq. Appeal No.15 of 2022
(The NAB through its Chairman ***vs.*** Abdul Latif)

1.For orders on MA No.12667/2026 [in Cr. Acctt. A. No.11/2005]
2.For orders on MA No. 5275/2026 [in Cr. Acctt. A. No.1/2006]
3.For orders on MA No.7657/2026 [in Cr. Acctt. A. No.08/2016]
4.For orders on MA No.5618/2026 [in Cr. Acctt. A.No.08/2014]
5.For orders on MA No.1572/2023 [in Cr. Acctt. A. No.12/2011]
6.For orders on MA No.2378/2023 [in Cr. Acctt. A. No.13/2011]
7.For orders on MA No.6368/2025 [in Cr. Acctt. A. No. 13/2019]
8. For orders on MA No.5578/2023 [in Cr. Acctt. A. No.36/2018]

Date of hearings : 03.03.2026, 06.03.202615.09.202608.10.2026 & 15.10.2026.
Date of order : 18.11.2026.

M/s. Farooq H. Naek, Taimor Ali, Muhammad Ammar and Ali Hamza, advocates for appellant in Cr. Acctt. Appeal No.1/2026.
Raj Ali Wahid, advocate for appellant in Cr. Acctt. Appeal No.7/2019.
Mr. Irshad Jatoi & Mr. Hunain Raza advocates for appellant in Cr. Acctt. Appeal No.8/2014 and 13/2011.
M/s. Muhammad Haseeb Jamali and Muzamil Hussain Jalbani, advocates for appellant in Cr. Acctt. Appeal Nos. 36 and 58/2018.
Mr. Zulfiqar Ali Langah, advocate for appellant in Cr. Acctt. Appeal No.11/2019, Cr. Acctt. Appeal No.17 and 20/2012.
Mr. Ovais Ali Shah, advocate for appellant in Cr. Acctt. Appeal No.12/2011.
M/s. Umair Bachani and Sameer Channa, advocates for appellant in Cr. Acctt. Appeal No.10/2019.
Syed Aly Maqbool Rizvi and Abdul Qadir Leghari, advocates in Cr. Acq. Appeal No.6/2013.
Mr. Ghulam Sarwar Chandio, advocate for appellant in

Cr. Acctt. Appeal No.14/2019.
Mr. abdul Khursheed Khan, advocate for appellant
in Cr. Acctt. Acq. No.15/2022.
Mr. Jamshed Abbasi, advocate in Cr. Acctt. Appeal No.12/2019
M/s. Muhammad Shafi and Zain Shafi, advocate for respondent No. 2 in
Cr. Acctt. Acq. Appeal No.9/2012.
Mr. Ameet Kumar, advocate in Cr. Acctt. No.09/2019.
Mr. Mitharam, advocate for respondents in Cr. Acctt. Appeal No.9/2012.
Mr. Amjad Islam, advocate.
Mr. Muhammad Nawaz, advocate
Mr. Shah Imroz Khan, advocate.
Mr. Shahnawaz Baloch, advocate.
Appellants are present on bail.
M/s. Syed Khurram Kamal, Syed Manzoor Ali, Saeeda Khursheed,
Sadaf and Hina Ashraf, Special Prosecutors NAB.

O R D E R

Muhammad Iqbal Kalhoro, J :- All the listed applications have been filed pursuant to an amendment in section 4 (6) (a) in NAB Ordinance, 1999, (**the Ordinance**) introduced through National Accountability (Amendment) Act 2026 for return of these appeals to the appropriate Court, tribunal, forum, agency, authority or department, as the case may be for further proceedings. The ground taken is that post amendment this Court has no jurisdiction to proceed with the appeals and decide them.

2. It may be reminded that through the amendment, the legislature has inserted the word “appeals” after the word “trials” in subsection 4(6) (a) of the Ordinance. This provision basically paved the way for transferring all pending inquiries, investigation, trials, (appeals), and proceedings relating to matters not falling within the definition of offence u/s 5 (o) of the Ordinance to relevant agencies etc. as proposed. Section 5 (o) defines the offence, among others, as the offences of corruption and corrupt practices of the value not less than five hundred million rupees.

3. Interestingly, before such amendment, some of the appellants had filed identical applications for the same relief. The ground then taken was that even minus word ‘appeals’ in section 4 (6) (a) (now included), the scheme thereunder was still applicable to pending appeals as the word ‘proceedings’ appearing therein, being comprehensive, covered the pending appeals. This Court however did not agree with the said line of arguments and dismissed all the applications *vide* order dated 03.02.2026. It seems that it was noted, and consequently by the said amendment dated 05.03.2026, the legislature inserted the word “appeals” in the said provision to remove obscurity, if any, in this connection for good.

4. Two sets of arguments have been made by the counsels to persuade the Court to relent in this time. One, led by Mr. Farooq H. Naik Advocate, seeks transfer of these appeals to other division bench of this Court tasked with hearing regular criminal appeals et al. The other, spearheaded by Mr. Raj Wahid Advocate, demanded a motion to quash the appeals by pointing out to retroactive applicability of the amendment from commencement of the Ordinance, 1999, which itself is deemed to have taken effect from 1.1.1985 in terms of section 2.

5. The advocates in this regard even relied upon the case laws[1]. And, in order to further explain, they maintained, in all the offences where alleged embezzled amount is less than Rs.500 million, the NAB would be deemed to have no jurisdiction from the very inception. Since the charge against the appellants in such a situation would lose validity, this Court u/s 232 CrPC is competent to quash the conviction and acquit the appellants. The appeals would not be transferred to the regular division bench of this Court hearing ordinary criminal appeals and cases. Rather, the conviction would be quashed and the matters would be referred to the State for deciding what offence, if any, has been committed and which forum is relevant to deal with them accordingly.

6. Before diving into a lengthy discussion over the pros and cons of the opinions presented in the arguments. We would like to remind that in our earlier order, we had discussed the outcome of a prospect where 'appeal' is considered included in the word 'proceedings'. Our view was that it would render the provision with non obstante clause [section 4 (4) (f)] meaning-less, and create conflict and incongruity between the two provisions that cannot be the aim and object of the legislature. This was founded on our understanding that a provision with non obstante clause should trump the inconsistency, provided either in other provision of the same law or in some other law.

7. The same understanding is making it hard for us this time also to accede to proposed propositions on face value without examining their impact in law, and any incongruity yielded, as a result. Legislature's earlier choice to transfer pending inquires, investigations, trials when the offence involves an amount less than five hundred million was accepted by all and sundry and complied with. But earlier when some of the appellants tried to impress the Courts to accept that this alteration in law was equally

[1] 1992 MLD 607, 1992 MLD 692.

applicable to the pending appeals. The Courts refused to abide by. Not only had this Court rebuffed such a move[2], but the Peshawar High Court too declined to accept such proposition[3]. Among other reasons, the Peshawar High Court extrapolated a principle of interpretation -- every amendment shall be examined and applied in light of its object, purpose and more so its underlying intent. It further recalled vividly Clause (f) of subsection (4) of section 4 containing non obstante clause and reminded that it had expressly excluded matters already decided from the ambit of the said amendment.

8. Coming back to present applications, we may say, unlike pending inquiries, investigations or trials, the transfer of an appeal can lead to more questions than answers. This is even evident from the contra opinions of the advocates in arguments qua probable consequence of this amendment. It was clear to us that both sides were uncertain about mode of its implementation and result. One side insisted upon transfer of the appeals to a regular division bench, without however explaining the difference between this bench and the regular bench. If the reference was to the current assignment of roaster sitting whereby another division bench of this Court has been tasked with hearing all criminal appeals, except the NAB appeals et al. Then, roaster sitting changes after every ten weeks, and no bench is given such assignment permanently.

9. But even if it meant that after the amendment, these appeals have ceased to be the NAB appeals, and hence the bench hearing such appeals shall not hear them. Then, the question would be that if not the NAB appeals, then under what law(s) these appeals should be treated. And how such conversion, if agreed, could change the fact that appellants were charged for the offence under the Ordinance and convicted accordingly. At appellate stage, neither the nature of the charge can be altered by reframing it, nor can the conviction/sentence, already recorded, could be precast in some other law based on any subsequent amendment taking out a particular offence from the domain of the law under which the trial has been held.

10. But, be that as it may, let’s see powers of the Appellate Court in this context. Appeals related provisions are provided in Part VII Chapter XXXI of CrPC that starts from section 404 and culminates at section 431.

[2] The Order dated 03.02.2026 in this very appeal.
[3] Ehtasab Cr. Appeal No.09/2003

Section 423 CrPC describes powers of the appellate Court in disposing of appeal. In an appeal, against conviction, the appellate Court can reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to it. Further, the appellate Court can alter the finding, maintain the sentence, or with or without altering the finding reduce the sentence. The appellate court, with or without such reduction, and with or without altering the finding, can also alter the nature of the sentence; but its power to enhance the sentence is subject to provisions of section 106 (3) CrPC that essentially points out to power of revision of the Court. Meaning thereby, the appellate Court has the power to enhance the sentence but only when it is exercising its power of revision.

11. From plain language employed in the aforesaid provision, it is clear that the appellate Court that includes this Court as well has all the powers necessary for deciding the appeals in a manner required by merits of the case. But, it goes without saying, exercise of such power to generate a required result entails conscious and focused application of mind by the Court over relevant merits. It is clearly alluded in the above provision that indeed it is merits that actually cause reversal, or reduction in sentence of the accused, or his acquittal or retrial, etc.

12. Besides, the appellate Court u/s 428 CrPC has the power to take additional evidence under certain circumstances and on cogent reasons (to be recorded in writing) when it thinks that such evidence is necessary for a just disposal of the appeal. All these powers are as explained regulated, and settled. Invocation thereof calls for hearing of the appeal on merits. Any thing short thereof for disposal of the appeal is not recognized in law.

13. Conspicuous by its absence in all such compositions is any rule conceding jurisdiction to the appellate Court to withdraw the appeal pending before it on its own from its file and transfer it to another appellate Court in any situation. On merits transfer of the case or appeal is done by the next higher forum on being approached. On administrative ground, this is possible only by the competent authority. Admittedly, none of the said options have attracted attention of the appellants to invoke after the amendment, and they instead have approached the very appellate Court for disposal of the appeals either by transfer or termination.

14. Nonetheless, an argument could be made that the appeals may be transferred as mandated by section 4 (6) (a) of the Ordinance, regardless of distinct framework provided in CrPC. Because, the NAB law is a special law and it shall have overriding effect on the structure in the general law on the subject. In order to see its merits, we have seen clause (b) of the same section. It says that provisions of clauses (a) to (f) of subsection (4) shall *mutatis mutandis* apply to the transfer of all matters under clause (a). When we see the said clauses, we find entire mode and relevant authority effecting transfer of inquiries, investigation, and trials, duly explained. Notably missing is any procedure provided for transfer of the appeal or identification of authority competent to do so.

15. According to the said procedure, all the pending inquiries and investigations are needed to be examined by the Chairman, NAB to make a decision, on his satisfaction, whether they shall be closed or referred to the relevant agency etc. for further probe. For the pending trial, the NAB Court has been earmarked to decide whether it shall try the case under the Ordinance, or, after examination with assistance of Bureau, refer the matter to the relevant Court, etc. For appeals, no framework in this connection has been identified. Whether it shall be the Chairman, NAB, or the Appellate Court, or the latter with the assistance of the former, will be competent to effect such transfer, and most materially, where. There is a deafening silence in this respect in law. Despite subjecting appeals to the transfer in the given amendment, the legislature has glaringly missed out to layout outlines to effect such transfer under.

16. Next, it seems that the basic criteria to trigger the transfer in this setting is the constitution of the offence under the Ordinance. If the offence involves the value less than five hundred million rupees in a given financial year, it will not be an offence under the Ordinance and will be liable for transfer when either it is pending investigation or trial. But, notably, this proposition –– the mode of which is defined in subclasses (a) to (e) –– has been made subject to a framework provided in subclasses (f) of subsection (4). It says that notwithstanding anything in the amendment(s), all final orders, decisions or judgments passed before them shall remain in force and operative unless reserved.

17. We may note that while writing for the Court to decide earlier applications on the same point, one of us (Muhammad Iqbal Kalhoro) had focused on the context laid down in sub-clause (f). Particularly, the

expression ‘unless reserved’ provided in it. Our view, expressed briefly herein, was that it seems to convey that the orders or judgments can only be upset by the next forums competent to hear appeals/revisions against such orders, judgments etc. Reversal of an order etc. occurs only by applicability of judicial mind to the relevant facts and law and finding it faulty on merits. This job can only be done by the next competent forum and not by the legislature. The legislature through an amendment could declare a judgment or an order as null, void or un-executable but cannot reverse it by substituting it for its own decision. Meaning thereby that all the final orders before such amendments shall remain in the field as if no amendment has come.

18. Further, reversal in law implies something already concluded / decided is undone by the next higher forum when it disagrees with the conclusion. It is replaced by a fresh ruling by the appellate forum. In legal terms, a reversal is when higher Court sets aside or overturns the decision of a lower court, usually because it finds an error in applying the law by the lower forum. So instead of sending it back just for more proceedings, the higher Court undo the lower court’s judgment by saying that the ruling was incorrect and replaces it with a new ruling. Therefore the expression “shall remain in enforce unless reversed” in clause (f) will not get adversely affected by any concept born out of some amendment in law effecting transfer of the pending causes for want of jurisdiction. For final orders, the question of jurisdiction would be irrelevant and inconsequential.

19. In the previous order, in the said context, we had dilated upon the purpose of an amendment in the law in the following words that the aim and object of amendment is to improve, update, or refine existing legislation to better serve the needs of society. The amendments clarify ambiguities or inconsistencies; address new issues or challenges; reform obsolete provisions; enhance effectiveness or efficiencies; align with changing societal values or technological advancements. An amendment helps fix what is not working well or what is outdated without having to rewrite the whole Statute. The object is to provide clearer, fairer, more effective rules, and better justice.

20. No doubt, above is the general purpose and may not relate to the context here but objectively it does not fit in the already concluded trials, in which the transaction, to the extent of the Court of first instance, is treated as past and closed. To the extent of pending enquiries or trials,

when yet the guilt or otherwise of an accused has not yet been determined either by the IO or by the Court, the transfer to the relevant forum is not likely to transgress any reality obtaining in the case. The witnesses or the documents can again be examined and reexamined, inferences can be modified and conclusion can be drawn and redrawn. The process is still going on, nothing has been shaped up or molded in steel that cannot be remodeled.

21. But the appeal is a distinct stage. It is essentially a review by a higher Court to check whether any legal error in law or facts has affected the outcome. The Appellate Court, in the course, looks at the record of the trial (already finalized), not new evidence, and decides if the law in the given situation was correctly applied. Finality of the trial by impugning judgment in it is not compromised. A review of the record by the appellate forum to see whether there is any illegality in the outcome does not admit any inconclusiveness of the trial itself. It is a step higher to seek a second opinion of a senior Court over the result already achieved from the trial. The fact that the appellate Court's opinion could differ with the one expressed by the trial Court does not imply that the finality attached with the process of trial is undermined, the moment the appeal is filed. The trial would stay concluded and judgment in it would remain the final opinion of the trial Court for good, unless, of course, in certain circumstances the case is remanded for a retrial by the Appellate Court. This finality of the trial attracts non obstante clause provided in sub-clause (f) in section 4(4).

22. This opinion even otherwise is deductible from this provision's own language when it says that all final orders, decisions or judgments passed *by the Court* shall remain in force and operative unless reversed. The Court has been defined in section 5 (i) of the Ordinance to mean *Accountability Court*. This would mean that all the final orders including the judgments of the Accountability Court are protected under sub-clause (f). Thus, all final opinions either settling down any concomitant issue in the case or deciding guilt or otherwise of the accused through final judgment are not liable to transfer like the pending enquires, etc. are, notwithstanding the amendments (through various Ordinances) enforcing the transfer to relevant forum.

23. In the said reflection, we had also examined scope of non obstante clause in our previous order on the point. We had referred in this regard

to decisions of the superior Courts[4], in which it is mainly held that the proper way to construe a non obstante clause is first to ascertain the meaning of the enacting part on a fair construction of its words. The meaning of the enacting part which is so ascertained is then to be taken as overriding anything inconsistent to that meaning in the provisions mentioned in the non obstante clause.

24. It may be said further that a non obstante clause is usually used in a provision to indicate that it should prevail despite anything to the contrary in the other provision. In case, there is any inconsistency between the non obstante clause and another provision one of the objects of such a clause is to indicate that it is the non obstante clause which would prevail over the other clauses. It helps Court resolve inconsistencies between two statutory provisions. It demonstrates the legislature's intention that a particular provision should prevail despite anything contrary in other provision. It does not, however, necessarily mean that there must be, or there is always repugnancy between the two provisions, in all the cases. The principle, underlying non obstante clause, is that it may be invoked only in the case of 'irreconcilable conflict'.

25. When we had examined clause (f) sub-section (4) of section 4 with other provisions, we found an apparent inconsistency, even if the appeal was understood to be liable to transfer. We discovered that in such a case the intention of legislation to apply non obstante clause would be rendered irrelevant and meaningless. The time-tested principle that the provision with non obstante clause should prevail despite anything to the contrary in another provision would stand disturbed for good. And that such a paraphrasing would create a clear-cut conflict and insurmountable incompatibility between the two provisions. We therefore did not accept the argument even then, and are sceptic now that even if it is assumed that the appeal is liable to transfer as per new amendment, it would acutely be achievable in the light of what has been emphatically laid down in clause (f).

26. That opinion in our previous order was not questioned before any higher forum and thus has attained finality. Even otherwise, the earlier ruling on the same issue by the previous division bench is binding on us, and we have found no reason here to deny its prudence and substitute it for a different view. In addition, we may say that the legislature although

[4]2002 SCMR 356, 2013 SCMR 85, and 2017 SCMR 1218

inserted word ‘appeal’ in section 4 (6) (a) but omitted to make corresponding changes in section 4 (4) (a) to (f) that regulates former provision. Resultantly, the whole effort seemingly has fallen flat, is inconsequential and is non-executable in the given facts and circumstances.

27. Next is the question qua applicability of framework u/s 232 CrPC under the circumstances. The said section is in Chapter XIX of CrPC and deals with (nitty-gritty of) ‘the Charge’. It mainly speaks of a retrial to be ordered by the Appellate Court on finding material error in the charge sufficient to have misled the accused in his defense. It is no one’s case here before us. Not a single party raised a red flag about the charge, or any error in it materially misleading it to put up its defense in the trial.

28. Then, be that as it may, such retrial is dependent upon the opinion of the Appellate Court. Such opinion without examination of the entire material presented in the appeal is not possible. The Appellate Court is not at liberty to, nor can it form such opinion on a tentative assessment of the record. For one, it has to look incisively in the case to conclude whether there is any error in the charge, secondly if it is material, and thirdly whether it has misled the accused in understanding the case and, as a result, defending him accordingly. This whole design does not admit a change in law envisaging transfer of the case on jurisdiction-basis impacting adversely authenticity of the charge so as to conceive a room for the Appellate Court to order retrial. Nor shall such modification make the charge defective automatically.

29. However, there is a second part of this provision that authorizes the Court to quash the conviction if it is of the view that in the given facts of the case no valid charge could be preferred. This part was what was mostly urged in defense to say that since the amendment (raising the bar to five hundred million to make it an offence) has retroactive effect commencing from inception, no offence in these cases involving less than that amount would be deemed to have been committed under the Ordinance. Therefore, no valid charge can be framed and conviction already recorded under the *ibid* law is liable to be quashed.

30. Before dilating upon this aspect any further, and regardless of our opinion that the framework in clause (f) is attracted in these cases, we may explain that ‘no valid charge’ would essentially mean that there is no proper legal basis to accuse someone of a crime. Either the facts don’t

really fit in the legal definition of the offense, or required elements are missing. For example, if intent is required but the evidence only shows accident then the charge might not be valid. This could lead to dismissal of the charge before trial, or an acquittal if it goes to a verdict. As evident from the discussion in preceeding paras, it is not the scenario here. Not only the allegations *prima facie* stood the ground in the investigation but also qualified the test of the trial.

31. But, be that as it may, the next question in this context to ask would be how to form such opinion that the charge is invalid, even if it is so, as argued. Whether simply by looking at amendment, can the Court form such a view that no offence is made out in the given facts. Of course, no one would subscribe to it. Why because, without undertaking in-depth vetting of the entire material to understand that the facts in hand do not make out the alleged offence, or any offence for that matter. No opinion regarding validity or otherwise of the charge could be expressed. Therefore, it become settled that without such exhaustive review of the record, neither the invalidity in the charge could be alluded, nor could the facts be aligned with any such discovery.

32. Therefore, we do not find any merit in these applications on both the grounds and accordingly dismiss the same.

All the applications stand disposed of in above terms. Office to place a copy of this order in connected matters.

JUDGE

JUDGE

Announced by:

JUDGE

JUDGE

Rafiq/PA.