

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Justice Mrs. Kausar Sultana Hussain.

Criminal Appeal No.44 of 2010

Appellant:	Arif Kamal S/o. Syed Iqtidar Hussain through Ms. Humaira Nadeem Rana, Advocate
Amicus-Curiae appointed by the Court:	Mr. Ijaz Ahmed, Advocate a/w Mr. Waqar Ahmed, Advocate.
For Respondent:	State Life Insurance Corporation of Pakistan through Mr. Mukesh Kumar Khatri, Advocate.
For State:	Mr. Gul Faraz Khattak, Assistant Attorney General

Criminal Appeals No.64 to 68 of 2010

Appellant:	Dr. Shafqat Qamar S/o. Muneer Ahmed through Mrs. Rana Khan, Advocate
Amicus-Curiae appointed by the Court:	Mr. Ijaz Ahmed, Advocate a/w Mr. Waqar Ahmed, Advocate.
For respondent:	State Life Insurance Corporation of Pakistan through Mr. Mukesh Kumar Khatri, Advocate.
For State:	Mr. Gul Faraz Khattak, Assistant Attorney General.
Date of hearing:	12.11.2021, 19.11.2021 and 26.11.2021.
Date of announcement:	03.12.2021.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Arif Kamal S/o. Syed Iqtidar Hussain in Criminal Appeal No.44 of 2010 has assailed the judgment dated 22.01.2010 passed by the Special Court (Offences in Banks) Sindh at Karachi in Special Case No.03 of 2000, FIR No.1/2000 u/s. 420/468/471/477-A/34 PPC r/w section 5(2) PCA-II, 1947 registered at FIA ZCC Karachi and appellant Dr. Shafqat Qamar S/o. Muneer Ahmed in Criminal Appeals No.64 to 68 of 2010 has assailed the judgment dated 22.01.2010 passed by the Special

Court (Offences in Banks) Sindh at Karachi in Special Cases No.03, 05, 06, 11 and 12 of 2000, FIR No.1/2000 u/s. 420/468/471/477-A/34 PPC r/w section 5(2) PCA-II, 1947 registered at FIA ZCC Karachi. Both the appellants were convicted and sentenced for the offence punishable u/s 420 PPC one year (1 year) R.I each, and to pay fine of Rs.50000/- (Rupees fifty thousand), and in default of payment of fine they have to further undergo S.I for three months each, for offence punishable 468 PPC for seven years (7 years) R.I each and to pay fine of Rs.50000/- (Rupees Fifty thousand), and in default of payment of fine they have to further undergo S.I for twenty one months each, for the offence punishable u/s 471 PPC for one year (1 year) R.I each, and to pay fine of RS.50000/- (Rupees fifty thousand), and in default of payment of fine they have to further undergo S.I for three months each and for the offence punishable u/s 477-A PPC for five years R.I each.

2. The brief facts of all these appeals are that the appellant Dr. Shafqat Qamar who was an employee of State Life Insurance Corporation of Pakistan (SLIC) prepared and approved fake and bogus insurance claims in one case in collusion and connivance with appellant Arif Kamal (private person-non banker) and in other cases in collusion and connivance with absconding co-accused Amjad Ali (private person-non banker) which cheques in respect of such fake and bogus forged claims were paid into bank accounts and withdrawn by a bogus beneficiary which caused loss to SLIC and hence SLIC lodged an FIR 1/2000 u/s 420/468/471-A PPC R/w S.5(2) PCA II 1947.

3. After completion of the usual investigation challon was submitted and charge was framed against the appellants to which they claimed to be innocent and denied the allegations and claimed to be tried.

4. The prosecution in order to prove its case examined 04 witnesses and exhibited various documents and other items. The statements of accused were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed these appeals against conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 22.01.2010 passed by

the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. At the very outset learned counsel for the appellants submitted that the learned Special Court (Offences in Banks) Karachi (the Special Court) had no jurisdiction to try the appellants for the offences for which they had been charged and convicted under the Offences in Respect of Banks (Special Courts) Ordinance 1984 (the Ordinance) which offences should have been tried by the Insurance Tribunal established under Section 121 of the Insurance Ordinance 2000 and as such the Judgments should be set-aside and the appellants acquitted of the charge. In support of her contention she has relied on the cases of an unreported judgment of **Mohammad Hashim vs. The Presiding Officer (Special Banking Court), Karachi (Offences in Banks) and others** passed by the High Court of Sindh at Karachi in (Criminal Appeal No.228 of 2006 & C.P. No. D-229 of 2006), **Sikandar Ali vs. The State** (1989 PCr.LJ 613), **Mushtaq Hussan Shah vs. The State** (1986 Law Notes (Lahore) (91) and **Shafique Anwar Qureshi vs. The State** (PLD 1985 Jour. 66).

7. On the other hand learned Assistant Attorney General and learned counsel on behalf of SLIC have submitted that the Special Court had full jurisdiction to try all the offences against the appellants under the Ordinance as such offences fell squarely within the ambit of the Ordinance as banks were involved in the fraud and that in particular the Insurance Tribunal had no jurisdiction to try such offences and that they fully supported the findings in the impugned judgments and that the appeals should be dismissed. In support of their contentions they placed reliance on the cases of **The State vs. Ghulam Rabbani, etc.** (NLR 1986 Criminal 265), **A. Habib Ahmed vs. M.K.G. Scott Christian and 5 others** (PLD 1992 Supreme Court 353), **Karachi College Teachers Co-operative Housing Society vs. Judicial Magistrate XVI East Karachi and another** (2011 YLR 1825), **National Bank of Pakistan vs. Nazir Ahmed alias Kashif Nadeem** (1995 SCMR 669), **Allied Bank Limited through Authroised Officer vs. Sikandar Ali and 4 others** (PLD 2013 Sindh 374) and **Amjid Ali and another vs. The State and another** (2013 YLR 548).

8. Since this matter involved issues concerning jurisdiction, we had appointed Mr. Ijaz Ahmed, Advocate as Amicus-Curiae in order to assist us in this matter. He made various submissions on the point of jurisdiction and

ultimately came to the conclusion that the Special Court did not have the jurisdiction to try the offences so charged based on the particular facts and circumstances of the instant case. In support of his contentions he placed reliance on **A. Habib Ahmed vs. M.K.G. Scott Christian** (PLD 1992 Supreme Court 353), **Allied Bank Limited vs. Sikandar Ali and 5 others** (2013 CLD 1339), **Al Arfan Electronics Trading LLC vs. The State and 7 others** (2012 YLR 353), **Nasir Ali Jatt vs. The State** (2011 YLR 255), **Ch. Muhammad Asif vs. The State** (2004 P Cr. LJ 464), **Sikandar Ali vs. The State** (1989 P Cr. LJ 613), **Mushtaq Hussain Shah vs. The State** (1986 P Cr. LJ 567), **Ghulam Mustafa vs. Presiding Officer, Special Court (Offences Against Banks), Rawalpindi** (2003 MLD 841) and **Karachi College Teachers Co-operative Housing Society vs. Judicial Magistrate XVI East Karachi and another** (2011 YLR 1825).

9. We have heard the parties, the learned amicus curiae and perused the record and considered the relevant laws including the case law cited at the bar.

10. Since the main issue in these appeals is whether or not the Special Court had the jurisdiction to try the offences for which the appellants were charged under the Ordinance we intend to address this issue first as it is a common thread which runs through and impacts all of the impugned judgments.

11. Although learned counsel for the appellants has argued before us that these matter should have been decided by the Insurance Tribunal established under the Insurance Ordinance 2000 and that the Special Court had no jurisdiction to hear and decide these matters we do not consider that the issue before us is whether or not the matter should have been tried before the Insurance Tribunal established under the Insurance Ordinance 2000 or another court/Tribunal established under any particular law but quite simply whether the court which tried and convicted the appellants had jurisdiction to try and decide the cases for the offences so charged. Namely the Special Court established under the Ordinance and if we find that the Special Court did not have the jurisdiction to hear the matter what are the legal consequences. On the other hand if we find that the Special Court did have the jurisdiction to hear and decide these matters then we will hear each appeal separately and decide the same on merits.

12. As is well known every criminal case is based on its own particular facts and circumstances and in this respect the facts and circumstances of this

particular case are **crucial** to see if the offences so charged fall within the ambit of the Ordinance and are therefore triable by the Special Court.

13. In the instance case the main accused was an employee of an insurance company namely State Life Insurance Corporation (SLIC) who allegedly defrauded the insurance company by illegally authorizing claims to individuals/organizations which were then paid into bank accounts of individuals/ organizations and the same money was withdrawn by co-accused beneficiaries of the scam. None of the accused were bankers and there is no evidence on record that any person associated with any banking company played an illegal role in this fraud by for instance illegally opening bank accounts in the name of beneficiaries or knowingly allowing these bank accounts to be operated by illegal beneficiaries. The loss was caused to the insurance company and not to the banks or any of its customers.

14. Our starting point is the offences in Respect of Banks (Special Courts) Ordinance 1984. The Preamble to the Ordinance which usually sets out its object and purpose states as under;

"An ordinance

To provide for speedy trial of certain offences committed in respect of banks and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide for speedy trial of certain offences committed in respect of banks and for matters connected therewith or incidental thereto;.....

15. The preamble reveals that the primary purpose of the Ordinance was to deal with expeditious disposal of certain offences in respect of banks.

16. In the Ordinance Section 2 (a) defines "bank" as under;

(a) *"bank" has the same meaning as in the Banks (Nationalization) Act, 1974 (XIX of 1974), and includes -*

(i) *a Scheduled Bank as defined in the State Bank of Pakistan Act, 1956 (XXXIII of 1956);*

(ii) *the Pakistan Industrial Credit and Investment Corporation, the Investment corporation of Pakistan, the National Development Finance Corporation, the Bankers Equity Limited and the National Investment Trust;*

(iii) *a Government Savings Bank to which the Government Savings Banks Act, 1873 (V of 1873), applies; and*

- (iv) *such other company, institution or body as the Federal Government may, by notification in the official Gazette, declare to be a bank for the purposes of this Ordinance;*

17. A Special court as established under the Ordinance can try a "scheduled offence" which is defined at Section 2(d) of the Ordinance as under;

(d) "Scheduled offence" means an offence specified in the First Schedule and alleged to have been committed in respect, or in connection with the business, of a bank;

18. The First Schedule of the Ordinance is set out below for ease of reference;

- (a) Any offence punishable under any of the following sections of the Pakistan Penal Code (Act XLV of 1860), namely:-*

Sections 403, 406, 408, 409, 467, 468, 471, 472, 473, 475 and 477-A;

- (b) Any offence punishable under this Ordinance; and*

- (c) Any attempt or conspiracy to commit, or any abetment of, any of the aforesaid offences.*

19. What is plain after considering the above sections are that the offences so charged against the appellants prima facie can be proceeded with by the Special Court under the Ordinance. Sub-section © of the First Section is important based on the particular facts and circumstances of this case as it includes conspiracy to commit and abettors which may involve bankers who might not have been the master minds behind the scam but never the less facilitated it by playing specific roles to enable the scam with the relevant actus and mens rea.

20. What is equally plain however is that SLIC is **not** a banking company as it does not carry on the business of banking as per Section 5 (b) and (c) of the Banking Companies Ordinance 1962 (nor has it been notified by the Federal Government in the official Gazette as a bank for the purposes of this Ordinance) which sub sections are set out below for ease of reference;

- (b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;*

- (c) "banking company" means any company which transacts the business of banking in Pakistan and includes their branches and subsidiaries functioning outside Pakistan of banking companies incorporated in Pakistan;*

Explanation.— Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause."

21. SLIC is an insurance company which was established under Section 11 of the Life Insurance (Nationalization) Order 1972 to carry out **the business of life insurance** which is a separate, distinct and different business from the business of banking. Furthermore, banking companies and the business of banking are regulated by the State Bank of Pakistan and the Banking Companies Ordinance 1962 whilst the SLIC and other Life Insurance companies in Pakistan are regulated by the Securities and Exchange Commission of Pakistan keeping in view the Insurance Ordinance 2000. In respect of an insurance company and in particular SLIC not being a banking company reliance is placed on the case of **Shafique Anwar Quershi V State** (PLD 1985 Jour.66)

22. Since the complaint and the illegal acts have been carried out by persons not engaged in the business of banking *prima facie* the Ordinance does not apply to the appellants unless the offences so charged can be found to have been committed, "**in respect of or in connection with the business of a bank**" so as to bring the offences so charged within the definition of a scheduled offence.

23. In the case of **Mustaq Hussain Shah vs. The State** (1986 P.Cr.LJ 567) decided by the Lahore High Court in a case which was similar to the case in hand on facts but had not yet lead to a conviction where the members of the audit and accounts works department in Lahore through forgery inflated bills of a contractor and issued these in the name of a bogus firm which the banks encashed in the names of the said bogus firms opened by the bank it was held that the offences attracted did not fall within the jurisdiction of the Special Court despite the offences being scheduled offences because in essence the illegal activity did not relate to the business of banking in the following terms at para's 7, 8 and 14;

"7. I have given my serious thought to the points raised. As shown by subsection (1) of section 4 of the Ordinance, scheduled offences are exclusively triable by this Court while subsection (6) of the said section lays down by way of command of law that this Court shall not try an accused in respect of a non-scheduled offence, found during trial, to have been committed by the accused and shall try him only for such offence, if any, as is a scheduled one. A "scheduled offence" has been defined in section 2(d) of the Ordinance. It reads as under:-

⚡

"scheduled offence" means an offence specified in the First Schedule and alleged to have been committed in respect, or in connection with the business, of a bank."

In other words scheduled offence is an offence enumerated in First Schedule and committed either in respect of a bank or in connection, with the business of a bank. The offences of P.P.C. enumerated in First Schedule of the Ordinance are offences under sections 403, 406, 408, 409, 467, 471, 472, 473, 475 and 477-A and any attempt or conspiracy to commit or any abetment of any of the aforesaid offences. However, under mandatory conditions laid down in the latter part of section 2(d) of the Ordinance, the said offences or anyone of the said offences should be such as had been committed either in respect of the bank or in connection with the business of the bank. Now offences in respects of the bank and offences in connection with the business of the bank in my opinion mean such offences as hit the bank or its business financially or otherwise or are likely to hit either of them in that way. It is only when these conditions are satisfied that this Court gets the jurisdiction to try persons accused of such offences.

8. I have scanned these five cases in the light of the above definition of a scheduled offence. On the basis of the facts of these five cases, the accused were charged by the Special Judge (Central) for offence under section 467, P.P.C., regarding forgery of bills and offence under section 471, P.P.C. regarding their having submitted these bills knowing them to be forged and for offence under section 420, P.P.C. for having on the basis of said forged bills got issued said cheques favouring said bogus firms and having withdrawn the said amounts of cheques from the bank and having thus cheated the department. Offence under section 420, P.P.C. does not fall in the First Schedule and is not a scheduled offence and as such is not triable by this Court. The forgery committed in the bills submitted to the Director, Audit and Accounts Works Department which according to the prosecution had taken place either outside or inside the office of Director of Audit and Accounts Works Department, Lahore, was not meant to play fraud upon the bank but was made to defraud the officers of the said department. Submission of these forged bills and commission thereby of offence of use by the accused of the bills as genuine knowing them to be forged which also took place in the said office was designed to cheat the department and not the bank. The offence of forgery of bills which is punishable under section 467, P.P.C. and use of said forged bills as genuine knowing them to be forged which is punishable under section 471, P.P.C. were thus not offences committed in respect of a bank. These were not even offences in connection with the business of the bank as obviously there was no nexus, no bond or link between the offence of forgery of bills and use of these forged bills as genuine in the office of Director of Audit and Accounts Works, Lahore on the one hand and business of the bank on the other.

14. I have considered the observation of learned Special Judge (Central) to the effect that commission of offence of forgery outside and inside the office of Director Audit and Accounts Works formed part of the same transactions committed in furtherance of the common object of drawing money from the bank. In my opinion, however, the fact that forgery outside the bank was in furtherance of the object of drawing money from the bank was not conclusive to show that the offences committed in this case are triable by this Court. The said circumstance only qualifies for

a single trial for all the charges as laid down in section 236, Cr.P.C. or a joint trial of all the accused as laid down in clause (a) of section 239, Cr.P.C. but does not determine the question of venue of the trial of the accused charged with the said offences. This Court is a Special Court which cannot travel beyond the four corners of the statute which has created it. According to the said statute, this Court can try an accused person for scheduled offences only. Therefore, the crucial point in order to determine the jurisdictional question in issue in this case is whether the said offences are in respect of the bank or in connection with the business of the bank. It having been proved that the two offences under section 467 and 471, P.P.C., whether in relation to bills or in relation to the cheques committed in these cases were neither in respect of the bank nor in connection with the business of the bank, these were not scheduled offences as defined in section 2(d) of the Ordinance and were, therefore, not triable by this Court." (bold added)

24. In the later case of **Sikander Ali V The State** (1989 P.Cr.LJ 613) where the appellant had already been convicted as in this case forged a document to enable a person to get a job with the NBP a Division Bench of this court cited the case of **Mustaq Shah** (supra) with approval and held that based on the particular facts and circumstances of that case the Special Court had no jurisdiction and set aside the conviction of the appellants but left it open to the prosecution if so advised to try the appellant under the ordinary law before the appropriate forum in the following terms at para's 6 to 11;

"6. Jurisdiction means 'the power of a Court to hear and determine a cause to adjudicate or exercise any judicial power in relation to it'. As observed in **Muhammad Yaqub Ali v. The State** reported in PLD 1985 Lah. 48, the offences in respect of Banks (Special Courts) Ordinance, 1984, was promulgated to provide for speedy trial of certain offences in respect of Banks and for matters connected therewith or incidental thereto. Section 4 of the above Ordinance confers exclusive jurisdiction on Special Courts to try scheduled offences. The 'scheduled offence' as defined by section 2(d) of the said Ordinance means an offence specified in the First Schedule and alleged to have been committed in respect of, or in connection with the business, of a bank. The expression 'in connection with' was examined in **Mushtaq Hussain Shah v. The State**, reported in 1986 P.Cr.LJ 567 and it was observed:-

"I am of the view that the said interpretation of the word 'connection' applies equally well to the said word as used in section 2(d) of the Ordinance and accordingly hold that the word 'connection' in the expression 'in connection with' in the said definition of scheduled offence envisages a link which is direct cause and effect and not remote."

7. According to section 5(b) of the Banking Companies Ordinance, 1962, banking means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and with drawable by cheque, draft, order or otherwise. Section 7 of the Banking Companies Ordinance, 1962, further provides that in

addition to a business of banking, a banking company may engage in any one or more of the different kinds of business specified therein.

8. With this legal position in view, it is now to be seen whether the act of forging an order of A.D.C. to Prime Minister of Pakistan for getting employment in a bank, is an offence committed in respect of or in connection with the business of a bank. A plain reading of section 3(d) of the Offences in Respect of Banks (Special Courts) Ordinance, 1984, makes it clear that the said offence of forgery was not in connection with the business of the two banks. The forged orders again did not affect the business of banks in any manner. The emphasis is upon an offence committed in respect of or in connection with the business of a bank.

9. The preamble of the said Ordinance would indicate that it was an Ordinance to provide speedy trial of certain offences committed in respect of banks and for matters connected therewith or incidental thereto. What is incidental in any given case depends upon the main legislation and the circumstances of the particular case.

10. The Special Court constituted for the trial of certain offences committed in respect of or in connection with the business of a bank, is competent to try such offences only. A Special Court cannot assume jurisdiction in disregard to the provisions of section 3(d) of the Offences in Respect of Banks (Special Courts) Ordinance, 1984. The omission to raise objection, acquiescence or even consent cannot invest a Court with jurisdiction which it has not.

11. Since the learned Presiding Officer had no jurisdiction to try both the cases, the entire proceedings before him were void ab initio. Consequently both the appeals are allowed and the appellant is acquitted. He is in custody and shall be released forthwith, if not required in any other case. It is, however, open to the prosecution to try the appellant under the ordinary law before the competent criminal Court, if so advised. (bold added)

25. In the case of **A.Habib Ahmed V M.K.G.Scott Christian** (PLD 1992 SC 353) the Supreme Court seemed to have widened the definition of scheduled offence in the following terms at P.363;

"The definition of scheduled offence as contained in section 2 (d) of the Ordinance does include a rider to be to the offences which are mentioned in the schedule and which undoubtedly are alleged in this case. The rider is that those offences should have been alleged to have been committed "in respect of or in connection with the business of bank". It needs to be emphasized that the expression "business of a bank" used in the definition would have to be given extended meaning on account of the use of two such further open ended expressions which connote very wide meaning for the words "business" and the "Bank". These are "in respect of" or "in connection with". The scrutiny of the meanings of these words and expressions in the classical sources together with the modern usages and scope of Banking business, leave absolutely no doubt that there will be left out of their ambit only extremely rare cases. They somehow or the other, are linked with the modern extended banking practices in trade business, industry and

finance, domestic and other; besides the earlier known scope of their operation. Take, for example, the word "Business" as separate from the word "Bank". Again take all that goes with the modern banking business and all that is included in the banking procedures. Not only this, banking activities both with regard to the depositors dealings as well as dealings in trading and other enterprises are their business. There is no need to dilate upon the scope of the expressions "in respect of" and "in connection with" any further.

In the light of what has been stated about the definition, in this case the allegations made against the accused undoubtedly involved the business of the bank more directly than by invoking aid from the expression "in respect of or "in connection with". With respect, the approach of the High Court to find loss, compensation and other similar elements connected with the complainant, accused or the bank, would amount to reading much more in the definition itself than is justified either by the language used therein 'or even by the intendment underlying the same. The intention being that all conceivable situations, linked with the business of the bank, would make the offences mentioned in the schedule as scheduled offences. Thus to take away all such cases from the ordinary Courts, for purpose of their trial before the Special Courts (Banks). That being so, there is no alternative but to hold that the offences alleged in this case against the accused were scheduled offences".

26. As noted earlier however in this judgment each criminal case must be decided on its own particular facts and circumstances and as such we consider it important to set out the facts of A.Habib's case (Supra) so that we can compare them with the facts of the appeals before us to see if there is any nexus which link the two cases so as to legally justify them to be tried under the Ordinance. In this respect by way of comparison with the present case the facts of A.Habib's case (Supra) are set out below for ease of reference;

"Petitioner (appellant) is a Director of the Boots Company (Pakistan) Limited, hereinafter referred to as 'Company', and maintains two accounts with Hongkong and Shanghai Banking Corporation, Shaheen Complex, M.R. Kayani Road, Karachi (hereinafter referred to as 'Bank'). For the purpose of availing of an overdraft facility, he pledged 2,98,600 shares of the Company with the Bank. On 28-1-1987, he received two letters from the Bank asking him to adjust the outstanding dues within ten days failing which the Bank would 'be constrained to start selling of the securities pledged'. According to petitioner (appellant) he went to see Bank's representative on the following day and explained certain temporary difficulties faced by him and the Bank considered his request for 30 days' extension sympathetically in view of the extensive dealings with him in the past, and agreed to take no action for the time being. He again went to the Bank on 31-1-1987 and made an offer that he was willing to authorise the Bank to collect dividend on the shares provided time for adjustment of the outstanding dues was extended. The Bank accepted his offer and he signed a letter of authority in this behalf which was prepared by the Bank. On or about 6-5-1987 the Company announced 30% dividend on the shares and petitioner's (appellant's) letter of authorization was forwarded for collection of the dividends by the Bank. According to petitioner

(appellant) however, he was greatly surprised to know on 18-5-1987 that the Manager of the Bank, respondent 1, had secretly and surreptitiously sold his shares at the rate of Rs.55 per share to respondents 3 and 4, who are stock-exchange, brokers, as against his purchase price of Rs.130 per share and Rs.92 per share on 6-5-1987; thus resulting in the wrongful loss of Rs.11,048,200 and a further loss of 30% dividend".(bold added).

27. Now when the facts of **A.Habib's case** (Supra) are compared with the instant case it is quite apparent that the facts and circumstances of the instant case are **completely different** from those of **A.Habib's case** (Supra). In **A.Habib's case** (Supra) virtually the entire illegality complained of was committed by an employee of a banking company and as such the Supreme Court held that the Ordinance was applicable.

28. With full respect and difference to the Hon'ble Supreme Court we find that the facts and circumstances of the appeals before us are however distinguishable from **A.Habib's case** (Supra). In the case before us the alleged illegality has been committed by an employee of an insurance company in league with private beneficiaries. **There is no allegation that either the bank or any of its employees were a part of the scam who for instance illegally opened bogus accounts in favour of illegal beneficiaries. No banker has been sent up to stand trial for committing any illegality in respect of this case and the bank officials appear to have acted in a bona fide manner. No loss has been caused to the bank and as such based on the particular facts and circumstances of this case we cannot see how the offences allegedly committed fall within the term " in respect of or in connection with the business of a bank".** The offences clearly relate to the business of an insurance company and its employees who allegedly committed the illegality through which the banks were an unwitting conduit performing their functions as they were obliged to do under the law and their own SOP's.

29. We find that if we were to adopt a different view in nearly every case where a bank was involved and where somewhere down the line an illegality had been committed even if the bank had no knowledge about it and had acted in good faith such cases would be heard before the Special Courts under the Ordinance which we do not consider to be the legislative intent behind the Ordinance keeping in view the preamble, the definition of bank and scheduled offence in the Ordinance which tends to suggest the Ordinance was primarily

promulgated to deal with illegalities committed by banks and its officials whilst dealing with its customers and their accounts during the business of banking. We consider such intent to be only where *prima facie* a bank or an employee of a bank has acted illegally through being directly involved, colluding or conniving or aiding and abetting or otherwise a financial scam with the requisite *mens rea* should a scheduled offence under the Ordinance be tried under the Ordinance which we also consider is the view/intention which has been taken by the Supreme Court in **A.Habib's case** (Supra). Even other wise as mentioned in **A.Habib's case** (Supra) based on the particular facts and circumstances of the instant case we find it to be one of those rare cases which would not fall within the ambit of the Ordinance and was not intended to do so.

30. By way of completeness we have also considered the recent Supreme Court case of **Amjad Ali V The State** (PLD 2017 SC 661) where one of the issues was whether an offence tried under the Anti Terrorism Act 1997 (ATA) and which lead to a conviction under the PPC only and not the ATA had any relevance in terms of jurisdiction when considered in the instant case. We find that it did **not** as under the ATA the Anti Terrorism Court (ATC) had **express jurisdiction** by virtue of the ATA to try the offences so charged even if the ATC found after the completion of the evidence that the offences did not fall within the definition of terrorism as provided in the ATA and as such could hear and decide such cases and hand down convictions under the PPC only. The relevant extract of the judgment at P.664 para's 6 and 7 is set out below for ease of reference;

"6. The last aspect of this case highlighted in the leave granting order is as to whether the courts below were justified in convicting and sentencing the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 or not. We note in that context that a mere firing at one's personal enemy in the backdrop of a private vendetta or design does not ipso facto bring the case within the purview of section 6 of the Anti-Terrorism Act, 1997 so as to brand the action as terrorism. There was no 'design' or 'object' contemplated by section 6 of the Anti-Terrorism act, 1997 involved in the case in hand. We further note that by virtue of item No.4(ii) of the Third Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism Court if use of firearms or explosives etc. in a mosque, imambargah, church, temple or any other place of worship is involved in the case. That entry in the Third Schedule only makes such a case triable by an Anti-Terrorism Court but such a case does not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under section 6 read with section 7 of the Anti-Terrorism Act, 1997. The case in hand had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 as it had separately

convicted and sentenced the appellants for the offences of murder, etc. committed as ordinary crimes.

7. For what has been discussed above this appeal is partly allowed and the appellants' convictions and sentences recorded and upheld by the courts below for the offence under section 7(a) of the Anti-terrorism Act, 1997 are set-aside but as regards the remaining convictions and sentences of the appellants the same are upheld and maintained and this appeal is dismissed to that extent".(bold added)

31. In the instant case there is no such express provision in the Ordinance which enables cases which do not primarily concern cases/offences where the bank or its employees have no criminality to try cases under the Ordinance. It is notable that under Section 4 (6) of the Ordinance that such cases/offences on their own particular facts and circumstances can be tried separately by the appropriate court with the relevant jurisdiction once the Special Court reaches the conclusion that such offences do not fall within the ambit of the Ordinance which we consider was the course which the Special Court should have adopted in the instant case.

32. **Under these circumstances we find in the instant cases that the Special Court under the Ordinance had no jurisdiction to hear and decide the cases before us and as such the impugned judgments are all set aside, all the appeals are allowed, the appellants are acquitted of the charge and the bail bonds of the appellants who are on bail stand discharged and they are free to go however we leave it open to the prosecution if so advised to try the appellants under the applicable law before the appropriate legal forum.**

33. Before parting with this judgment we would like to place on record our appreciation to all learned counsel for their valuable assistance and in particular Mr. Ijaz Ahmed learned amicus curiae advocate assisted by Mr. Waqar Ahmed advocate.

34. The appeals stand disposed of in the above terms.