IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Acquittal Appeal No.28 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE

Present:
Mr. Justice Omal Sial
Mr. Justice Syed Faiz ul Hassan Shah

Appellant	:	Chairman NAB through Mr. Syed Meeral Shah, Special Prosecutor, NAB.
Respondents	:	Waqar Ahmed & Sohail Nadeem through Mr. Nisar Ahmed Tarar, Advocate
Date of hearing	:	28.8.2025
Date of decision	:	08.9.2025

J U D G M E N T

Dr. Syed Fiaz ul Hassan Shah, J. The Appellant National Accountability Bureau **(NAB)** has filed this Appeal under section 32 of the of the National Accountability Ordinance, 1999 **(NAO)** against Order dated 31.5.2019 passed by the learned Accountability Court No.I, Sindh at Karachi **(trial Court)** in NAB Reference No.43/2013 on the application under section 265-K Criminal Procedure Code, 1898 **(Cr.P.C.)** thereby acquitted the Respondents No.1&2.

2. **Facts of the case—**arises from complaints lodged by investors **(Public at large)** of M/s. Capital One Equities Ltd. **(COEL)**, a brokerage house and corporate member of the Karachi Stock Exchange **(KSE)**, registered with the Securities and Exchange Commission of Pakistan **(SECP)**. Public

at large moved complaint with allegation of non-transfer of their shares and non-payment of funds against their investment amount. Consequently, SECP suspended COEL's registration on 26.06.2009 under Rule 8 of the Brokers Rules due to its continued non-compliance with directives. In response, SECP constituted an inquiry committee comprising officers from SECP, KSE, and Central Depository Company **(CDC)** to investigate COEL's operations during the period from 01.07.2008 to 30.06.2009.

3. Based on the inquiry report's findings, SECP lodged a complaint with the Chairman NAB. The case was transferred from the Court of the 3rd Additional Sessions Judge, South Karachi to Accountability Court No. I, Karachi, and registered as Reference No. 43/2013. The NAB Director General (Sindh) authorized an investigation into the matter through letter No. 3475/1/FCIIW/CO-B/T-2/NAB Sindh/2014/K-1243.

4. **Incorporation and Ownership of COEL—**it was initially incorporated as I. Puri Securities (Private) Limited on 07.03.1996 and converted to a public limited company on 22.11.2002, with a name change to Capital One Equities Limited on 26.05.2000. The initial subscribers and first directors were:

Subscriber/Director	**Shares**
Irfan Iqbal Puri	500
Naveen I. Puri (W/o Irfan)	500
Saad M. Ali	500
Asif A. Bhutto	500
Total	**2000**

5. Between 1998 and 2002, additional shares were issued, increasing the total to **13,281,655 shares**, with Irfan Iqbal Puri and Naveen I. Puri

becoming major shareholders. On 26.11.2002, Irfan Iqbal Puri transferred his shareholding to his wife, Naveen, who later transferred **13,000,000 shares** to **Asian Emerging Markets Investments Limited** on 16.05.2003, making it the 97.88% majority shareholder of COEL. Asian Emerging Markets Investments Limited, registered in the UK on 07.04.2003, was a wholly owned subsidiary of Arnfield Limited (BVI), ultimately controlled by Irfan Iqbal Puri, confirmed by BVI authorities in 2009. As per Form-A (2008), the shareholding was as follows:

Shareholder	Shares
Asian Emerging Markets Investments Ltd.	13,000,000
Naveen I. Puri	278,155
Others (7 individuals)	3,500
Total	**13,281,655**

6. **Pledge and Misuse of Investor Shares—**On 29.06.2009, SECP suspended COEL's trading rights. KSE subsequently forfeited its membership on 13.08.2009. A claims verification process followed, approving **284 claims totaling Rs.440 million.** The investigation revealed that client shares were un-authorized moved from CDC sub-accounts via two routes for pledging with banks/KSE. These shares were never returned, as banks exercised their pledge call options due to COEL's failure to repay loans, resulting in loss to investors. Some client transaction reports also did not match their CDC sub-account activity.

7. **Financial Misconduct and Liabilities—**Irfan Iqbal Puri (Accused No.1) had an outstanding liability of **Rs. 206,464,773** while Accused No.5, Shahzad Asif Khan, had a receivable of **Rs.168,933,942**, related to net trading losses and unauthorized payments. These accounts were operated by Muhammad Yasin (Accused No.2), in connivance with Irfan

Iqbal Puri. COEL had a **Rs. 500 million** running finance facility with Bank Al-Habib, secured by client shares—transferred without authority. Despite bank warnings on 08.05.2009 and 18.05.2009, COEL failed to respond, prompting the bank to invoke its pledge rights and sell the shares, recovering **Rs.204,134,412.93** on 12.06.2009.

8. **Authorization and Responsibility-** The following individuals were signatories for operating COEL's bank and CDC accounts:

Name	Designation
Muhammad Yasin (Accused No.2)	Director & CEO
Syed Husnain Iqbal Shah (Accused No.3)	Director, CFO & Secretary
Sohail Nadeem (Accused No.4)	Head of Settlement

9. From 24.07.2009, Waqar Ahmed (Accused No.6) became the sole authorized signatory for both the CDC and Bank Al-Habib accounts. Additionally, in January 2009, COEL obtained a Rs.50 million loan from KSE using guarantees from Accused No.2 (Muhammad Yasin) and its holding company through its director, Accused No.7 (Benjamin Hew Winch). Waqar Ahmed (Accused No.6)/Respondent No.1—was appointed Director and CEO on 14.07.2009. From 24.07.2009, he was solely authorized to operate the CDC and Bank Al-Habib accounts. He also contacted claimants and offered **50% settlements** of their claimed amounts, sometimes pressuring them to withdraw claims. Agreements bearing his signature confirmed these settlements, and payments were made from COEL's UBL account. Role of Accused Sohail Nadeem (Accused No.4)/ Respondent No.2—as Head of Settlement, he was responsible for supervising share settlement operations and managing exposure margins. He was also a signatory to COEL's CDC and bank

accounts and played an active role in transactions that contributed to investor losses.

10. We have heard the Special Prosecutor NAB and the learned Counsel for the Respondents and carefully examined the record.

11. In the present case, the previous management and Board of Directors of CEOL obtained a Running Finance facility of Rs.500 million from Bank Al Habib Limited by pledging share stock acquired on behalf of public at large without privy or their consent. SECP did not scrutinize the company's annual audit report to assess the legality of such pledging nor examine Form-A and Form-29 in relation to the alleged offence and permitted a change in the Board of Directors, of CEOL thereby involving the present Respondents. Additionally, SECP, despite being the regulatory authority, failed to., nor did SECP, the KSE, or the CDC consider the fact that the shares were not timely deposited into the CDC accounts of individual investors. Instead, they were purportedly retained in the sub-account of the CEOL through accused, in violation of Section 24 of the Central Depository Act, 1997. The NAB investigation, however, failed to examine these aspects, nor did it address the existence or absence of a No Objection Certificate (NOC) from the SECP for pledging these securities and whether the bank accepted securities in compliance with regulatory norms. The Special Prosecutor for Appellants failed to show us from record that out of 284 victims (Public at large) all have been compensated and what was the final outcome of suit filed by the investor/ victims before this Court in its original side with regard to recovery of their amount from CEOL.

12. Nonetheless, it is evident that the trial Court, at the time of framing ***charge***, relied upon the Investigation Report and material collected by NAB, which revealed that the claimants—representing the public at large—had not been fully compensated, and that the purported settlement covered only 50% of the invested amount. Neither NAB nor

the Respondents have demonstrated that the investors' consent was obtained freely, without undue influence, nor that the investors voluntarily relinquished or condoned the remaining portion of their principal investment in CEOL. We have further noted a recurring pattern in NAB references, wherein the valuation of claims is initially inflated, only to be substantially reduced—by 30% to 70%—at the stage of plea bargaining. Such inconsistencies raise legitimate concerns regarding investigative exaggeration or potential mala fide on the part of investigating officers or supervisory personnel. To address these risks, the legislature has already provided mechanisms for "re-investigation" or "further investigation," thereby empowering the Court with supervisory jurisdiction at every procedural stage—whether during inquiry, investigation, framing of charge, or discharge of the accused.

13. Accordingly, the trial Court must assess the presence of injustice, arbitrariness, or procedural unfairness while passing any order and must exercise its jurisdiction with utmost care, ensuring transparency and protecting the rights of both the citizens and the State. Where appropriate, the Court may appoint independent experts (auditor or evaluators), as NAB's findings are neither sacrosanct nor conclusive nor binding. Judicial independence mandates that the Court remain uninfluenced by investigative conclusions, which must always be tested against legal standards and subject to judicial determination. The collective legislative intent embedded within the framework of the NAO, 1999 and the broader principles of Criminal Procedure Code and criminal jurisprudence.

14. It is imperative to maintain a clear distinction between procedural and substantive law. Although both may coexist within a single statute such as the NAO, 1999, a vigilant approach is required to preserve their conceptual boundaries. Procedural law serves to ensure consistency, fairness, and discipline in the conduct of trials. Its disregard would

compromise the Court's ability to adjudicate in accordance with law and undermine the constitutional guarantee enshrined in Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973. The mere filing of a plea bargain application and submission of material before the Court does not bind the trial Court to NAB's recommendations. NAB, as an investigative and prosecutorial body, cannot usurp the role of adjudicator or administrator of public funds, which lawfully vest in the State through the State Bank of Pakistan. In matters involving public victims, Section 25 of the NAO, 1999 rightly subject plea bargains to judicial approval, which serves as the final safeguard against administrative overreach. This judicial oversight ensures that any final determination remains subject to appellate review and jurisprudential scrutiny.

15. We are not persuaded by the contention advanced by the Special Prosecutor for NAB that any settlement of claims between the parties must necessarily be subject to NAB's approval. The NAO does not contemplate a scenario wherein, subsequent to the filing of a reference or framing of charge, a victim or investor who settles claims with the accused and thereafter refrains from supporting the prosecution case and it may compel the trial Court to invoke Section 265-K, Cr.P.C. or judgment of acquittal. Such an interpretation cannot be sustained as a valid ground of appeal. We refrain from rendering a conclusive legal determination on this issue, as the impugned order lacks findings on it or reference to critical particulars—namely, the details of any prior plea bargains, the identity and status of the original accused or convicts, their financial culpability, and the individual liabilities of the Respondents and any remaining accused with individual liabilities and figures (paid or unpaid) and absence of legal consideration of the evidence of PW-1 and material produced by him.

16. It is observed that the learned trial Court framed the ***charge*** against the respondents on 04.05.2018. Subsequently, on 13.10.2018, Respondents No.1 and 2 filed an application under Section 265-K, Cr. P.C. seeking acquittal. Within a brief span of approximately four months, the trial Court entertained the said application and, in the same breath, concluded that the charge was groundless and that there existed no probability or possibility of conviction upon completion of trial and recording of evidence. The object and purpose of Section 265-K, Cr.P.C. is now well settled: it is applicable where the charge is groundless or where there is no likelihood of conviction based on the available material. In ***Model Customs Collectorate, Islamabad v. Aamir Mumtaz Qureshi*** **(2022 SCMR 1861)**, the Supreme Court held that under section 249-A, a Magistrate can acquit an accused if the charge is groundless or there is no probability of conviction. Similarly, under section 265-K, during the trial, the court may acquit an accused when no probability of conviction exists. If there is even a remote possibility of conviction, the court must record evidence and decide the case based on the evidence presented. Applications under these sections can be filed and considered at any stage of the trial—before, during, or after recording prosecution evidence. However, if there is any slight chance of conviction, the court should record evidence rather than dismiss the case prematurely, ensuring the matter is decided on its merits after full appraisal of the evidence.

17. The impugned order fails to disclose any reasoning as to whether the acquittal was based on the groundlessness of the charge or the improbability of conviction. Firstly, the trial Court did not examine whether the material collected by the Investigating Officer, or the prosecutorial decision to proceed against the accused, if the Court was of the view that the charge was groundless, it ought to have discharged the accused without framing the charge. Secondly, after framing of the ***charge,*** if the acquittal was premised on the improbability of conviction

or insufficient evidence to justify a full trial, the Court was obligated to provide cogent and detailed reasons for allowing the application dated 13.10.2018.

18. We have observed that although the charge has been framed under section 265-D Cr. P.C., indicating that several accused were involved in offences arising out of the same transaction, thereby necessitating a joint trial. The original accused—comprising the previous management and Board of Directors—stand charged with misappropriating investors' funds and committing breach of trust by pledging investors' shares as collateral for unsecured loans without their consent. Subsequently, a second set of accused, including Respondent Nos. 1 and 2, assumed control as the new Board of Directors. The impugned Order is flawed and fails to deliver findings on the culpability of the original accused and does not assess whether, in the absence of the original accused, the evidence sufficient or insufficient to prosecute and try Respondent Nos. 1 and 2 under the strict requirements of section 239(d) Cr.P.C. Jurisprudence mandates that joint trial under section 239(d) applies where accused have committed offences in the same transaction, with continuity and proximate timing being essential factors which may or can vary over the periods.

19. Lastly, the impugned order suffers from another infirmity: it does not address any intervening developments or circumstances that emerged post-framing of charge, despite the prosecution having produced one material witness. The testimony of PW-1, Additional Director of the SECP—a statutory regulator—was averse to the original accused and was supported by documentary evidence, which was duly exhibited and accepted by the trial Court. The trial Court was bound to consider and discuss this material evidence while adjudicating the acquittal application, including its relevance to the present Respondents, if any. The impugned order, being silent on the deposition and documentary exhibits of PW-1 and about the connectivity of Respondents No.1&2 in

the light of PW-1 evidence or documents produced by him. This reflects non-application of judicial mind and a lack of reasoning, thereby rendering the acquittal order unsustainable in law.

20. Accordingly, the Criminal Accountability Appeal is allowed. The impugned order is set aside, and the matter is remanded to the learned trial Court with direction to pass a fresh reasoned order on the application under Section 265-K, Cr. P.C., strictly in light of the findings and observations recorded hereinabove.

21. Criminal Accountability Appeal No.28 of 2019 stands disposed of. Let the copy of the Judgment be forwarded to the Chairman, NAB & Chairman SECP for necessary information.

Judge

Judge

Asim/pa