

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Original Application No.02 of 2008

Applicant : Securities & Exchange Commission of Pakistan through M/s. Khalid Mahmood Siddiqui & Ghulam Rasool Korai, Advocates

Respondents : **1. Adnan Faisal**
2. Sanan Faisal (Acquitted by this court vide order dated 27.10.2011)
through Mr. Muhammad Masood Khan & Munir Ahmed, Advocates

For State:
Mr. Gul Faraz Khattak, Assistant Attorney General

Date of hearing : 13.03.2025

Date of order : 22.03.2025

J U D G M E N T

AMJAD ALI SAHITO, J -- Through this Crl. Misc. Original Application, complainant/Securities & Exchange Commission of Pakistan prayed for the following relief:

“It is therefore, humbly prayed that this Hon’ble Court may be pleased to register the complaint and after trial, punish the accused persons/respondents under Section 282-K/282-M(2) of the Companies Ordinance, 1984 read with Section 34/109 PPC and other enabling provisions of law.”

2. The pertinent facts necessary for the adjudication of the instant Criminal Miscellaneous Application are that the Securities and Exchange Commission of Pakistan (**hereinafter referred to as “the Complainant”**) instituted the present Criminal Original Complaint under Sections 282-K and 282-M of the Companies Ordinance, 1984 against Accused No. I, Adnan Faisal, and co-accused Sanan Faisal.

3. The primary allegation against accused Adnan Faisal is that, in his capacity as an officer of a Non-Banking Finance

Company (NBFC), he unlawfully utilized confidential information by disclosing the same to his brother, co-accused Sanan Faisal, for personal gain.

4. During the pendency of the said complaint, an application under Section 265-K of the Code of Criminal Procedure, 1898, was filed by co-accused Sanan Faisal. After hearing the parties, this Court, vide order dated 27.10.2011, allowed the application and acquitted the said co-accused. The Complainant, being dissatisfied with the said order, preferred HCA No. 15/2012 before this Court, which was dismissed vide order dated 02.08.2018. As no further appeal was preferred by the Complainant, the said order has attained finality. Consequently, the instant Criminal Miscellaneous Application remains pending solely against accused Adnan Faisal.

5. This Court proceeded to frame the charge against accused Adnan Faisal, to which he pleaded not guilty and claimed trial. In support of its case, the prosecution examined a total of five (05) witnesses and thereafter closed its evidence.

6. The statement of the accused was recorded under Section 342 of the Code of Criminal Procedure, 1898, wherein he categorically denied the allegations leveled against him and professed his innocence. The accused opted not to testify on oath under Section 340(2) Cr.P.C. However, in his defense, he produced certain documents and examined two defense witnesses: DW-1, Sanan Faisal Kundi (his brother), and DW-2, Abdul Hakeem Khan (his father).

7. Learned counsel for the complainant submitted that the Securities and Exchange Commission of Pakistan (SECP), being the regulatory authority for Non-Banking Finance Companies (NBFCs), filed the instant Criminal Original Complaint under Sections 282-K and 282-M of the Companies Ordinance, 1984, on 04.12.2008 through its duly authorized officer, who qualifies as a public servant. It was further contended that while the accused has, to an extent, admitted the commission of the act, he has asserted that the alleged offence falls within the ambit of "Insider Trading" as

defined under Section 15-A of the Securities and Exchange Ordinance, 1969. However, such assertion is misplaced and legally untenable.

8. Learned counsel argued that Section 15-C of the Securities and Exchange Ordinance, 1969, defines an "Insider" as a person having a nexus with the "Issuer." In the present case, the accused has been charged in his capacity as an officer of an NBFC engaged in the business of purchase and sale of shares and has not acted as an issuer of securities. Therefore, he does not fall within the definition of "Insider" under the said Ordinance. It was further submitted that the accused filed an application under Section 488 of the Companies Ordinance, 1984, seeking exemption from liability on the grounds of alleged negligence, default, breach of duty, or breach of trust. However, a plain reading of the complaint, along with the statements of prosecution witnesses and their cross-examination, demonstrates that the prosecution has successfully established the culpability of the accused, who is liable to be awarded the maximum punishment as provided under Section 282-K of the Companies Ordinance, 1984, now incorporated under the Companies Act, 2017.

9. Conversely, learned counsel for accused Adnan Faisal (Accused No.1) argued that the prosecution has failed to establish, beyond reasonable doubt, that the accused, in his capacity as an officer of an NBFC, misused his position to derive direct or indirect benefits, thereby contravening Section 282-K of the Companies Ordinance, 1984. It was further submitted that at the relevant time i.e., during the years 2006–2007, when the accused joined NAFA the governing special legislation dealing with the offence of insider trading was the Securities and Exchange Ordinance, 1969.

10. Learned counsel emphasized that Section 15-A of the said Ordinance governs insider trading and confers powers upon SECP to take cognizance of such offences. Moreover, as per Section 24 of the Ordinance, the only penalty prescribed is that of a fine, which may be imposed following the issuance

of a Show Cause Notice. No such proceedings under the said Ordinance were ever initiated against the accused. It is a well-established principle of law that the provisions of a special law override those of a general nature. It was also argued that co-accused (Accused No.2) was acquitted pursuant to an application filed under Section 265-K, Cr.P.C., which order was upheld by this Court in HCA proceedings and has since attained finality. It was contended that the case of the present accused stands on identical footing, and he is, therefore, similarly entitled to the benefit of acquittal. In conclusion, learned counsel prayed that, in view of the foregoing, the accused is entitled to be acquitted of the charges.

11. I have heard the learned counsel for the respective parties and have perused the record available before the Court.

12. The Securities and Exchange Commission of Pakistan (hereinafter referred to as **“the Complainant”**) instituted the instant criminal complaint against Accused No. 1 and Accused No. 2 under Sections 282-K and 282-M of the Companies Ordinance, 1984, alleging violations of the said statutory provisions. Accused No. 1, Adnan Faisal, was employed as the Head of Equity Research at M/s National Fullerton Asset Management Limited (NAFA) from 08.02.2007 to 10.12.2007. By virtue of the nature of his official duties, he had access to confidential and price-sensitive information relating to the trading of securities. It is alleged that he misused such information to obtain personal gains.

13. Specifically, Accused No. 1 was aware that NAFA intended to acquire a substantial quantity of shares in a particular listed company, which would likely lead to a rise in the market value of those shares. With such advance knowledge, Accused No. 1 orchestrated the purchase of the said shares through his brother, Sanan Faisal (Accused No. 2, who was subsequently acquitted), and later sold them for profit. It is alleged that Accused No. 1 intentionally and knowingly obtained direct and indirect benefits for himself

and for his brother, thereby violating the aforementioned provisions of law.

14. It is an admitted position that Accused No. 2, Sanan Faisal, who was alleged to be the primary beneficiary of the impugned transactions, was acquitted by this Court under Section 265-K of the Code of Criminal Procedure, 1898, vide order dated 27.10.2011. The Complainant, being dissatisfied with the said order, filed an appeal, which was also dismissed by this Court vide order dated 02.08.2018. No further challenge was preferred by the Complainant before the Hon'ble Supreme Court of Pakistan. As such, the aforementioned orders have attained finality.

15. Upon query by this Court to the learned counsel for the Complainant as to whether any direct evidence exists on record connecting the accused to the commission of the alleged offence, the learned counsel conceded that the prosecution's case rests solely on documentary and circumstantial evidence. It is a well-settled principle of criminal jurisprudence that direct evidence plays a central and decisive role in establishing guilt and proving charges beyond reasonable doubt. Where direct evidence is found to be insufficient, contradictory, or inconsistent, such evidence cannot sustain a criminal conviction.

16. Although circumstantial evidence is generally considered to be of a weaker nature compared to direct evidence, this alone does not constitute a valid basis for acquittal. The administration of justice in such circumstances calls for heightened scrutiny, care, and caution by the courts while evaluating the evidentiary record. In this regard, the guiding principle for reliance upon circumstantial evidence, and the standard required to sustain a conviction based thereon, has been reaffirmed by the Hon'ble Supreme Court of Pakistan in the case titled ***Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274)***, wherein it was held as follows:

“31. As discussed earlier, the entire case of the prosecution is based on circumstantial evidence. The principal of law, consistently laid down by this Court is that different pieces of such evidence has to make on chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment.”

17. In the present case, the complaint was initially filed by Mr. Muhammad Noman Akhtar, an officer duly authorized by the Securities and Exchange Commission of Pakistan (SECP). During the pendency of proceedings, Mr. Noman Akhtar was transferred to the National Accountability Bureau (NAB) for a certain period. Consequently, Mr. Qaiser Iqbal was authorized by the competent authority at SECP to represent the Commission before this Court and to tender evidence on its behalf. It is pertinent to note that at the time of filing the complaint, Mr. Muhammad Noman Akhtar had submitted a verification affidavit, affirming under oath that he was duly authorized by the SECP to institute the complaint and that the contents of the complaint were true and correct to the best of his knowledge and belief.

18. In support of the prosecution’s case, Mr. Qaiser Iqbal, who was neither the original complainant nor cited as a witness in the list of prosecution witnesses, appeared before the Court as PW-1 pursuant to subsequent authorization by SECP. His statement was recorded, and he produced documentary evidence exhibited as Exh: C/1 to C/16. His testimony largely reiterated the facts as narrated in the original complaint. However, during cross-examination, the witness admitted that *“I do not know whether, at the time of the appointment of Mr. Adnan Faisal, any declaration was obtained by NAFA, the employer of the accused... I do not know whether any complaint was ever lodged by NAFA with*

SECP against Mr. Adnan Faisal... It is a fact that the inspection team did not share the facts and figures with Adnan Faisal and Sanan Faisal prior to the filing of the complaint by SECP... It is not within my knowledge, nor can I point to any document on record, that NAFA ever initiated proceedings against the accused in respect of the alleged misuse of official authority.”

19. To further substantiate the version of the prosecution, PW-2 Mr. Muhammad Aslam Memon, Senior Manager, Risk and Compliance at Al-Falah Securities, was examined. He produced documentary evidence marked as Exh: C/18 to C/29. In his deposition, he stated that an account in the name of accused Sanan Faisal was opened on 08.02.2007. The account reflected an investment of Rs. 795,000/- and Rs. 1,500,000/-, aggregating to Rs. 2,295,000/-. Between 19.06.2007 and 01.11.2007, Al-Falah Securities returned the entire principal investment of Rs. 2,295,000/- along with a profit amounting to Rs. 5,270,524/-, resulting in a total payout of Rs. 7,565,524/- to Sanan Faisal. During cross-examination, the witness admitted that *“It is correct that a complete breakup/history of the transactions made by Sanan Faisal is not exhibited in the documents produced by me. I am not in a position to specify the dates of transactions leading to the last transaction... It is correct to suggest that all transactions, as referred, were made by Sanan Faisal and there is nothing on record to indicate that any other person appropriated the investment or the profits.”*

20. Muhammad Ibrahim Salman, Assistant Manager Trading, Pakistan Stock Exchange (PSX), appeared as PW-3. In his deposition, he supported the version advanced by the complainant and stated that, according to the PSX record, from March 2007 to October 2007, NAFA purchased a substantial quantity of the selected shares. Furthermore, it was revealed that Sanan Faisal had also purchased the same selected shares through Al-Falah Securities, as evidenced by Exhibit C/32. During cross-examination, the witness

candidly admitted that *“It is a fact that I personally do not know the facts of the case”*.

21. Sajjad Anwar, Chief Investment Officer, NBP Fund Management, was examined as PW-4. He submitted a written statement, which was treated as his examination-in-chief. In cross-examination, he acknowledged that *“It is correct to suggest that I did not observe any communication whether classified or unclassified through which privileged information was allegedly shared by Adnan Faisal with his brother Sanan Faisal.”* He voluntarily added: *“When SECP initiated its inquiry/action, I became aware of this issue in my capacity as the head of the department.”*

22. The prosecution also examined Mr. Nadeem-ul-Haq Khan as PW-5. He produced bank account details reflecting that, as per the record, Accused No. 1 transferred Rs. 2,300,000/- from his account maintained at UBL, Nursery Branch, Karachi. Additionally, two further transactions amounting to Rs. 800,000/- and Rs. 1,500,000/-, respectively, were made and credited into the account of Sanan Faisal at MCB, DHA Branch, Lahore. Subsequently, Sanan Faisal returned the amounts received to Adnan Faisal via cheque. Other similar transactions were also conducted between both brothers. During cross-examination, the witness admitted that *“The account statement produced by me pertains to a dormant account.”*

23. Thereafter, the prosecution closed its side through a formal statement dated 08.04.2021, which was exhibited as Exh: C/45.

24. The statement of Accused No. 1 was recorded under Section 342 of the Code of Criminal Procedure, 1898, wherein he categorically denied all allegations leveled by the prosecution and professed his innocence. The accused also opted to record his statement on oath under Section 340(2) Cr.P.C. In his defense, he examined three defense witnesses:

- DW-1: Sanan Faisal (his brother)
- DW-2: Abdul Hakeem Khan (his father)
- DW-3: Zeeshan Saeed

25. The instant complaint was filed by the Securities and Exchange Commission of Pakistan under Sections 282-K and 282-M of the Companies Ordinance, 1984. For the sake of clarity and proper appreciation, the relevant statutory provisions are reproduced hereinbelow:

“282K. Penalty for making false statement, etc. -

(1) Notwithstanding anything contained in any other provision of this Ordinance, if any person, being the chairman, director, chief executive, by whatever name or called, or a person not being a professional advisor in accordance with whose directions or instructions the directors are accustomed to act;] or official liquidator or any officer of a NBFC or a notified entity] in any document, prospectus report, return, accounts, information or explanation required to be . furnished in pursuance of this Ordinance or the rules or regulations] made thereunder, willfully makes a statement which is false in material particular knowing it to be false, or affairs willfully omits to make material statement, mismanages the NBFC [or a notified entity) or misuses his position or direct or indirect benefit or himself or any of his family members, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which shall be not less than one hundred thousand rupees, and shall be ordered by the Court trying the offence, to deliver up or refund within a time to be fixed by the Court any property acquired or gained by him in his own name or in the name of his family members by so mismanaging the affairs of the NBFC 2[or a notified entity] or misusing his position or, in . default, to suffer imprisonment for a term which may extend to three years. (Emphasis Highlighted).

(2) Any officer, director or chief executive of a NBFC 2[or the notified entity who is either directly or indirectly owned, controlled or managed by the Federal Government or a Provincial Government who extends, or adds in extending, a loan, advance, or any financial facility to a borrower or customer on) the verbal instruction of a holder of a public officer without reducing the terms of the instructions into writing and drawing them to the attention of his

superior officer, or the board of directors, shall be guilty of an , offence punishable with imprisonment of either description which may extend to one year, or with fine, or with both, in addition to such other action which may be taken against him in accordance with law.

(3) If any company which is not a NBFC or a notified entity, or a company which does not hold a licence under section 282C or the license granted to which has been cancelled, or which has not been registered under section 282C or its registration has been cancelled, any individual or association or body of individuals, transacts the business specified in section 282A, the chief executive, by whatever name called, of the company and every director, manager, and other officer of the company, and the individual and every member of the association or body of individuals, shall be deemed to be guilty of such contravention and shall be punishable with imprisonment of either description for a term which may extend to seven years and with fine the amount of which shall not exceed one million and shall be ordered by the Court trying the offence to pay the fine within a time to be fixed by the Court or in default to suffer further imprisonment for a term which may extend to five years.

Explanation. For the purposes of this section a director or chief executive or other officer shall be deemed to have acted knowingly if he departed from established NBFC business practices and procedures or circumvented the regulations or directions/ restrictions laid down by the Commission from time to time.

282L. Procedure for amalgamation of NBFCs.-

(1) Without prejudice to the provisions contained in Part IX of this Ordinance, NBFCs may be amalgamated with each other provided a scheme containing the terms of such amalgamation has been placed in draft before the share-holders of each of the NBFC concerned separately, and approved by a resolution passed by a majority in number representing two thirds in value of the shareholders of each of the said NBFCs, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the NBFC concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two

newspapers which circulate in the locality or localities where the registered offices of the NBFCs concerned are situated, one of such newspapers localities being in a language commonly understood in the locality or localities which the registered offices of the NBFCs concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme, of amalgamation at the meeting or has given notice in writing at or prior to that he to dissents the NBFC from the concerned scheme or of the amalgamation, presiding officer shall of be the entitled, meeting in meeting”.

26. In order to attract the provisions of Sections 282-K and 282-M of the Companies Ordinance, 1984, it was incumbent upon the Commission to first establish that Accused No.1 had misused his official position to derive direct or indirect benefits in his capacity as an officer of the NBFC. This fundamental element of the prosecution’s case was subjected to scrutiny during the evidentiary proceedings. However, the Commission failed to substantiate this core allegation that Accused No.1, Mr. Adnan Faisal, had misused his position as an officer of NAFA.

27. The complainant’s witness, Mr. Qaiser Iqbal (PW-1), appeared before the Court and produced documentary evidence marked as Exhibits C/1 to C/16. However, his deposition was limited to a reiteration of the assertions contained in the original criminal complaint and did not introduce any independent or corroborative material to substantiate the charge. During cross-examination, PW-1 conceded that in cases of violations committed by employees of NAFA, the entity itself was authorized to take disciplinary action. He further acknowledged that he had no knowledge of any complaint lodged by NAFA to SECP against Accused No.1. More significantly, he admitted his inability to refer to any document on record indicating that NAFA, at the relevant time, had initiated any proceedings against the accused for alleged misuse of official authority.

28. With respect to Exhibit C/11 which purportedly compared the share purchases made by NAFA with the trading activity of Accused No.2, Sanan Faisal PW-1 admitted that this comparative analysis had been prepared by the SECP's Inspection Team, of which he was a part. However, he expressed complete ignorance as to the source documents from which the figures in Exhibit C/11 were derived, and was thus unable to identify or refer to any supporting material. Furthermore, PW-1 admitted that the Commission had disclosed only a selective portion of Sanan Faisal's trading activity in its complaint. He acknowledged that during the same period, Sanan Faisal had also invested in or traded shares of other companies including Soneri Bank, Bank Islami, Pace, and Crescent Steel, none of which were referenced in Exhibit C/11. He further conceded that he could not ascertain the entirety of Sanan Faisal's trading activity and that, in some instances, transactions may have occurred where Sanan Faisal purchased shares while NAFA was simultaneously offloading shares on the market.

29. Crucially, PW-1 admitted during cross-examination that the figures presented in Exhibit C/11 were not supported by KATS (Karachi Automated Trading System) data from the Pakistan Stock Exchange for the relevant period. He also affirmed that, at the relevant time, SECP was of the opinion that the matter pertained to a case of insider trading.

30. Mr. Muhammad Aslam Memon, Manager Risk and Compliance at Al-Falah Securities, was examined as PW-2. It is pertinent to note that Sanan Faisal (Accused No.2), who maintained a trading account with Al-Falah Securities, was acquitted by this Court vide order dated 15.12.2011. During his testimony, PW-2 produced two cheques issued in favor of Al-Falah Securities marked as Exhibits C/1 to C/21, which were photocopies.

31. PW-2 confirmed that Sanan Faisal had independently opened a trading account and had invested a total sum of Rs.

2,295,000/- . Between 19.06.2007 and 01.11.2007, Al-Falah Securities returned to Sanan Faisal the entire principal amount along with a profit of Rs. 5,270,524/-, aggregating to Rs. 7,565,524/-. The witness did not attribute any unlawful or irregular conduct to either Sanan Faisal or Adnan Faisal.

32. During cross-examination, PW-2 admitted that he had neither produced nor referred to any detailed history or breakdown of the trading activity carried out by Sanan Faisal. He was unable to provide specific dates of individual transactions or establish a timeline from the first to the last transaction. He also acknowledged that both cheques submitted were photocopies and were issued by Sanan Faisal as part of his investment with Al-Falah Securities. The witness further stated that he was not the author of the summary presented and admitted that no objections regarding the legality of the transactions were raised by any party, including SECP, during the relevant period. PW-2 also affirmed that the trading activity conducted by Sanan Faisal constituted normal business activity and that all transactions were carried out solely by Sanan Faisal. He confirmed that there was no material on record suggesting that any third party had appropriated the said investments. Finally, he admitted that no complaint was ever received by Al-Falah Securities regarding the conduct of Sanan Faisal during the relevant period.

33. Prosecution Witness No. 3, Mr. Muhammad Ibrahim Salman Alman Siddiqui, serving as Assistant Manager in the Trading Department of the Pakistan Stock Exchange (PSX), was examined in relation to the trading activities under scrutiny. His testimony was confined to confirming that between March 2007 and October 2007, NAFA/employer of Accused No.1 acquired substantial volumes of selected shares, which led to an appreciation in their market prices as a result of such purchases. Notably, the witness further stated that prior to NAFA's purchases, Respondent No.2, Sanan Faisal, through Al-Falah Securities, had already

acquired the same selected shares, as evidenced in Exhibit C/32. He also testified that once the prices increased, Mr. Sanan Faisal sold the shares in question.

34. During cross-examination, the witness readily admitted that he did not possess personal knowledge of the underlying facts of the case. He acknowledged that the data contained in Exhibit C/32 was extracted from the PSX database and that the original data existed solely in digital format within the systems of the Pakistan Stock Exchange. Furthermore, he confirmed that at the relevant time, the Karachi Stock Exchange maintained its trading data via the Karachi Automated Trading System (KATS), which was available in physical form. However, he admitted that no KATS sheets for the relevant period had been produced or retrieved in support of the prosecution's case.

35. The witness also conceded that he was unaware whether NAFA, as employer of Accused No.1, had ever submitted any complaint against him to the SECP. When specifically questioned regarding the legality of transactions executed by Respondent No.2 during the relevant period, the witness was unable to dispute the absence of any legal restriction and simply responded that the query was beyond his scope of knowledge. Additionally, he admitted that no confirmation sheets substantiating the transactions executed by Respondent No.2 had been placed on record. He further conceded that he was not the author of either Exhibit C/32 or C/33, and that while Exhibit C/33 purported to reflect trading activity, it failed to account for the net sale entries for April 2007.

36. A plain reading of the cross-examination of PW-3 clearly reveals that no credible evidence was brought on record by this witness to establish any violation committed by Accused No.1 under Sections 282-K or 282-M of the Companies Ordinance, 1984.

37. Prosecution Witness No. 4, Mr. Sajjad Anwar, an employee of former NAFA (the employer of Accused No.1), was examined and produced photocopies of comparative statements showing the shares acquired by NAFA between February 2007 and September 2007, marked as Exhibits C/35 to C/38. During cross-examination, PW-4 unequivocally admitted that he had never seen any classified or unclassified communication indicating that Accused No.1 had shared privileged or insider information with his brother, Respondent No.2. He also confirmed that the comparative statements in question had been submitted by the SECP itself, and that he had not reviewed the complete account statement of Mr. Sanan Faisal. Furthermore, the witness conceded that even if NAFA's Investment Committee had made decisions to invest in particular securities, external market factors could influence the outcome of such investments.

38. PW-4 also admitted that NAFA had never issued any formal warning or complaint against Accused No.1 in relation to misuse or abuse of his official authority. He specifically acknowledged that under Clause 10 of Exhibit C/36, which pertains to NAFA's Personal Account Dealing Policy, no complaint had been lodged against Accused No.1. The witness further admitted that he had never seen the KATS trading sheets corresponding to the trading activity of either Mr. Sanan Faisal or NAFA during the relevant period. Lastly, the witness admitted that following the resignation of Accused No.1 from NAFA on 05.12.2008, the company issued a formal acknowledgment in the form of appreciation letters, which are marked as Exhibit C/39.

39. Prosecution Witness No.5, Mr. Nadeem-ul-Haque Khan, appeared and testified that Accused No.1, Mr. Adnan Faisal, had transferred a total sum of Rs. 2,300,000/- from his account maintained at UBL Nursery Branch, PECHS. Specifically, he issued Cheque No. 4530113 dated 08.02.2007 for Rs. 800,000/-, and Cheque No. 4530117 dated 12.04.2007 for Rs. 1,500,000/-, which amounts were

subsequently credited to the account of Mr. Sanan Faisal at MCB Y-Block, Lahore Branch. The witness further deposed that these amounts were returned to Mr. Adnan Faisal in October 2007 through UBL Defence Lahore Branch, with the transaction taking place on 10.12.2010.

40. During cross-examination, the witness admitted that he had not identified any discrepancies in the relevant account statements. He further acknowledged that during his tenure at UBL, no complaint or objection was received in relation to the said account. The witness categorically admitted that he was unable to point out any irregularity or unlawful activity based on the statement of account produced during proceedings. Of particular significance is the admission by PW-5 that an amount of Rs. 3,471,351/- was deposited in cash, and that the statement of account did not indicate the name of the individual who made the deposit. He further confirmed that no notice, inquiry, or report regarding any alleged illegality or misconduct by Accused No.1 had been received by him, or came to his knowledge during the course of his employment.

41. On the basis of the above evidence, it is apparent that the Complainant, i.e., the Securities and Exchange Commission of Pakistan (SECP), has failed to establish any case whatsoever against Accused No.1 pertaining to misuse or abuse of his official authority, within the purview of Sections 282-K and 282-M of the Companies Ordinance, 1984. It is an admitted fact that Accused No.1 joined the employment of NAFA in the years 2006–2007. In light of the allegations forming the basis of the charge, it is evident that the gravamen of the matter revolves around allegations of insider trading on the part of accused No.2. At the relevant time, the applicable legal framework governing insider trading was the *Securities and Exchange Ordinance, 1969* (Ordinance No. XVII of 1969), particularly Section 15-A thereof, which specifically addresses the offence of insider trading and empowers SECP to take cognizance of such violations.

42. The said Ordinance constitutes a special law. In accordance with Section 24 of the Ordinance, the applicable penalty at the relevant time was limited to imposition of a fine. Moreover, the authority to initiate and pursue prosecution for such offences exclusively vested with the SECP, subject to issuance of a Show Cause Notice. It is pertinent to note that no proceedings/administrative or judicial were ever initiated against Accused No.1 under the provisions of this special law. It is a settled principle of statutory interpretation that where two parallel legal regimes exist in respect of the same subject matter, the special law prevails over the general law. Reliance is placed on the judgment of the Lahore High Court in *Shehzad Khan Khakwani v. Amir Hayat Hiraj and others* (2011 CLC 625).

43. In accordance with this principle, the SECP has historically initiated and conducted proceedings against alleged instances of insider trading under the Securities and Exchange Ordinance, 1969, rather than under general corporate statutes. This practice is evident from multiple precedents wherein the Commission prosecuted individuals and entities under the said Ordinance and imposed penalties accordingly. Reliance is placed on the following case laws.

2016 CLD 1562) Aamir - Appellant v. Director/Head of Department (MSRD). **(2) (2011 CLD 1633)** Show Cause Notice issued to Muhammad Atif Malik. **(3) 2011 CLD 1504** Jawad Ahmed, Treasury Manager, Treet Corporation Limited - SCN No. MSW/SMD-SOUTH/2011/150 of 2011. **(4) (2011 CLD 1073)** Salman Ali Hussain - Appellant v. Director (SMD), Securities and Exchange Commission of Pakistan - Respondent

44. The Complainant, i.e., the Securities and Exchange Commission of Pakistan (SECP), through its internal memorandum dated 08.10.2008, acknowledged that at the relevant time, it had received legal advice from its own Law Division recommending initiation of proceedings against

Accused No.1 under the *Securities and Exchange Ordinance, 1969*, either on the grounds of alleged insider trading or under the applicable Non-Banking Finance Companies (NBFC) regulatory framework. However, it remains unclear why the Complainant ultimately chose to proceed against Accused No.1 under the provisions of the *Companies Ordinance, 1984*, in apparent deviation from the said legal advice.

45. Accused No.1, Adnan Faisal, in support of his defence, produced a Service Certificate issued by his employer, NAFA, dated 05.12.2008, which explicitly acknowledges his services and confirms that no complaint or adverse remarks were ever recorded against him during the course of his employment or at any time thereafter. Additionally, Accused No.1 produced his father, Mr. Abdul Hakeem Khan Kundi (DW-2), a Senior Advocate of the Superior Courts, as a defence witness. DW-2 deposed on oath that he had provided financial assistance to his son, Mr. Adnan Faisal, from time to time in the form of Rs. 3,000,000/- for the purpose of a partnership business prior to his employment with NAFA. Upon commencement of employment with NAFA, Adnan Faisal exited said business and received a return of capital between the year 2006 and March 2007. DW-2 further testified that he had also provided funds to his other son, Sanan Faisal, during the relevant period.

46. In view of the foregoing discussion and evidence on record, it is manifest that the Complainant (SECP) has failed to establish the guilt of Accused No.1 beyond reasonable doubt. It is a settled principle of criminal jurisprudence that in order to extend the benefit of doubt to an accused, it is not necessary that there be multiple doubts rather, even a single circumstance creating reasonable doubt with respect to the accused's guilt is sufficient to entitle him to acquittal. In this regard, reliance is placed on the authoritative pronouncement of the Hon'ble Supreme Court of Pakistan in the case of

Muhammad Mansha v. The State (2018 SCMR 772),
wherein it was held as follows:

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”

47. It is a well-established principle in the administration of criminal justice that no conviction can be sustained against an accused person unless the prosecution adduces evidence that is credible, trustworthy, and free from material discrepancies or contradictions. In the present case, the Prosecution, i.e., the Commission, has failed to discharge its burden of proof to establish that Accused No.1, Adnan Faisal, misused his official position as an officer of a Non-Banking Finance Company (NBFC), within the scope and meaning of Section 282-K and 282 (M) of the *Companies Ordinance, 1984*.

48. In view of the foregoing, the instant Criminal Original Miscellaneous Application stands **dismissed**. Consequently, Accused No.1, Adnan Faisal, is hereby **acquitted** of the charge.

JUDGE