THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:
Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

Criminal Petition No.966 of 2018 and Crl. M. A. No.1586 of 2018
(Against the judgment dated 04.06.2018 of the Peshawar High Court, Peshawar passed in Eh. Criminal Appeal No.11-P of 2015)

Sardar Hussain ...Petitioner/applicant

Versus

The State and another ...Respondents

For the petitioner/applicant: Mr. Kamran Murtaza, Sr. ASC along with petitioner/applicant

For NAB: Raja Muhammad Rizwan Ibrahim Satti, Special Prosecutor General, NAB

Date of hearing: 16.06.2025

JUDGMENT

Irfan Saadat Khan, J.- The petitioner Sardar Hussain (hereinafter referred to as '**S.H**') was convicted and sentenced alongside one namely Aleem Mehmood (hereinafter referred to as '**A.M**') for the offence of corruption as defined under section 9(a)(iii), (vi) and (xii) of the National Accountability Ordinance, 1999 ('**NAO, 1999**') in a case originating from a written complaint made by the then Chairman of the Pakistan Tobacco Board (PTB) upon the detection of embezzlement in PTB's accounts. The Chairman forwarded a complaint to the National Accountability Bureau (NAB), Khyber Pakhtunkhwa in respect of financial irregularities primarily concerning the embezzlement of approximately Rs. 7.7 million. The complaint was accompanied by documentary evidences including receipts and cashbook entries allegedly forged or manipulated by PTB employees including A.M (Cashier), Tahir Raza (Accountant) and the present petitioner, S.H (DDO and

DD (B & F)). During the investigation, chartered accountants were engaged to conduct an investigative audit of PTB's accounts from July 2004 to December 2008, i.e. the alleged period of embezzlement, which led to a total discovered amount of Rs. 90,97,346/-, allegedly embezzled by the cashier AH with the patronage of the petitioner, S.H.

2. Pursuant to the Final Investigation Report, NAB registered a reference (No. 11/2009) before the learned Accountability Court IV, Khyber Pakhtunkhwa, Peshawar (*Trial Court*). The allegation against A.M was that while holding the position of cashier and being entrusted with handling cash and maintaining the cashbook at PTB from July 2006 to November 2008, he fraudulently retained cash receipts instead of depositing them into PTB's bank account. A.M was additionally accused of tampering with 45 cheques by altering the amounts whereby he withdrew excessive sums from PTB's bank account. Lastly, A.M was alleged to have fabricated bank statements and cash receipts, deleted cheque counterfoils, omitted and manipulated entries in the cashbook to conceal misappropriated funds.

3. The allegation against the petitioner, S.H, was that while holding the positions of Internal Audit Officer, Deputy Secretary (Admin), Deputy Director (Budget & Finance) as well as customarily exercising the role of Drawing & Disbursing Officer (DDO), he failed to supervise or verify the cashbook and cash balances. It was alleged that the petitioner was not only negligent but also complicit in the crime since he; (i) signed cheques without verifying or closing the cashbook; (ii) permitted and facilitated the use of forged cheques and receipts; (iii) failed to conduct an internal audit from 2005 onwards; (iv) deliberately bypassed the accountant's verification process, removing institutional checks; (v) failed to perform his duty in accordance with the rules and regulations applicable to him as DDO and

DD(B & F) in PTB; (vi) misused his authority while performing his official duties; and (vii) since without his active connivance with A.M it was not possible that A.M would have misappropriated such huge amounts alone. The petitioner was also accused of suggesting to senior officers that Muhammad Tariq (Director R&D) be given authority to sign cheques in his absence, thus deflecting personal accountability while remaining present at the office thereby allowing a system where A.M operated without scrutiny.

4. Upon conclusion of the trial, the learned Accountability Court convicted and sentenced the petitioner alongside A.M through its judgment dated 03.09.2015 in the following terms:

> *"[....] the prosecution successfully proved its case beyond shadow of any doubt against both of Accused persons hence both the Accused are held guilty of committing offence of corruption and corrupt practices as defined u/s 9 (iii) (vi) & (xii) and punishable u/s 10 of NAO-1999 and schedule thereto, for embezzling the amount of Rs.90,97,346/- in connivance with each other.*
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> *Since Accused Sardar Hussain had a role of Supervisory nature, he also had got authoritative position over all the affairs of PTB accounts as evident from the record hence, he is convicted and sentenced to 03 Years R.I imprisonment, he is present in Court is taken into custody & sent to Jail to serve his sentence.*
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> [....]
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> *In addition to above both of Accused are also liable pay fine of Rs.90,97,346/- to be paid by them in equal proportion.*
>
> [....]
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> *Benefit of Section 382-B Cr. P.C 1898 is extended to the Accused"*

5. Aggrieved by the findings recorded by the Trial Court, A.M and the petitioner preferred the Ehtesab Criminal Appeals No. 11-P/2015 & 12-P/2015 respectively before the High Court of Peshawar (*High Court*). After

considering the matter at some length, the High Court disposed of the appeals in the following terms:

> *"1. The sentence of imprisonment awarded by the Trial Court is stand intact.*
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> *2. The sentence of fine of Rs.9097000/- is reduced to Rs.3586768/- to be paid in equal share by both the appellants and in case of default, the same shall be recovered in term of Section 33-E of the NAB Ordinance, 1999, as arrears of land revenue.*
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> *3. The appellants shall be taken into custody to be sent to prison to serve their sentence of imprisonment if not already served out and the benefit of Section 382-B Cr.P.C. already extended by the Trail Court shall stand intact."*

Aggrieved thereof, S.H has preferred the instant petition against the conviction and the sentence awarded to him by the Trial Court which was maintained by the High Court, albeit with a reduced fine.

6. Mr. Kamran Murtaza, Senior ASC, has entered appearance on behalf of the petitioner and has strenuously argued that S.H had no direct or active role in the alleged embezzlement of funds from the PTB. It was submitted that S.H neither forged any document nor falsified any entry in the cash book nor was he ever found in physical possession of any misappropriated amount. He contended that the embezzlement was claimed only against the co-accused A.M, who was entrusted with the duty of maintaining the cashbook and handling day-to-day cash transactions. The learned counsel emphasized that S.H had signed only a small number of cheques during the relevant period – none of which had been proved to be tampered by him – and that the bulk of the cheques, allegedly bearing forged or altered amounts, had been signed by the co-DDO, Muhammad Tariq. He argued that the petitioner could not be convicted solely on the basis that there had earlier been a practice of having cheques verified by the Accountants, which was no longer in vogue. The learned counsel also argued that the specific

duties assigned to the petitioner by virtue of his office did not include micro-level scrutiny of cash receipts or daily accounting entries. He also maintained that the prosecution had failed to establish the requisite *mens rea* on the part of S.H. It was argued that there was no evidence to suggest that he had knowledge of or participated in the manipulation of cheques, the falsification of cashbook entries or the fabrication of bank receipts. At best, it was argued, the prosecution had made out a case of oversight or administrative failure, which did not meet the threshold for an offence under sections 9(a)(iii), (vi), or (xii) of the NAO, 1999. He therefore, prayed that the instant petition may be allowed and that the petitioner may be honourably acquitted.

7. Mr. Raja Muhammad Rizwan Ibrahim Satti, Special Prosecutor General (NAB) (**"SPG"**), has entered appearance on behalf of NAB and has contended that the petitioner, S.H, by virtue of holding key financial positions in the PTB – namely, Internal Audit Officer, Deputy Secretary (Administration), and Drawing and Disbursing Officer (DDO) – bore direct responsibility for supervising financial transactions and maintaining fiscal control. Despite this, he deliberately failed to verify or close the cashbook, signed cheques without scrutiny and permitted the cashier to retain substantial cash balances without reconciliation. The established procedure of pre-verification of cheques by the Accountant was also abandoned under his watch, thereby facilitating unchecked embezzlement. He argued that this pattern of willful dereliction was not mere negligence but a deliberate act of facilitation. The learned SPG further submitted that the embezzlement of Rs. 90,97,346/–, uncovered by the external audit, occurred entirely during S.H's tenure. Evidence showed that 45 tampered cheques bore his signature, and that no internal audit was conducted despite his designation requiring it. Testimony from multiple prosecution witnesses, including PTB

officials and bank officers, corroborated his complicity. The learned SPG concluded his arguments by stating that the evidence overwhelmingly establishes S.H's willful participation and justified the conviction.

8. We have heard the arguments of both the learned counsel at considerable length and have perused the voluminous record placed before us.

9. At the very outset it is pertinent to mention that the petitioner-S.H has been released from jail after having served out his sentence, however, the learned counsel for the petitioner had requested that the petitioner's case for acquittal may be heard on merits. The petitioner's request had been allowed by this Court *vide*: order dated 25.03.2025. Adverting now to the record of the case, it can be seen that the crime of embezzlement was alleged against the cashier, A.M, who had received cash payments from PWs-10 to 12 through different transactions amounting to Rs. 32,67,228/-, which were due to the PTB but were not deposited into PTB's account except Rs. 18,82,700/-. Thus, A.M allegedly retained Rs. 13,84,528/-. Likewise, he statedly tampered with 45 cheques by altering the amounts written on the cheques and withdrew excessive sums from PTB's bank account, pocketing the excess amount of Rs. Rs.22,02,240/-. The cumulative embezzled amount thus stood at Rs. 35,86,768/- or the sum the High Court directed to be recovered from A.M and the petitioner in equal parts as fine. Having explained the "*modus operandi*" of the embezzlement as the "Final Investigation Report" puts it, the exact claim against the petitioner is that he knowingly, willfully and deliberately facilitated the commission of embezzlement by the cashier-A.M by failing to exercise oversight, violating official protocols, bypassing verification processes, and signing cheques

without maintaining or inspecting the cashbook, thereby allowing the fraudulent withdrawal of public funds.

10. Before discussing the petitioner's various duties and alleged breaches thereof, it is important to examine the numerous positions held by the petitioner during his service and whether they coincided with the period during which the embezzlement took place i.e. July 1st, 2004 – December 17th, 2008. The record confirms that the petitioner was appointed as Internal Audit Officer on 13.11.1990[1] and on 19.09.2003 he assumed acting charge for the position of Deputy Secretary (Admin)[2]. The customary function of the Deputy Secretary (Admin) was also to act as the Drawing and Disbursing Officer (DDO). Subsequently on 09.03.2008, the petitioner was granted charge[3] of the office of Deputy Director (Budget & Finance), being promoted to the same later on 29.09.2008[4]. The proceeding paragraphs will detail the exact actions of the petitioner, allegedly constituting the breaches of duty and facilitation, for which the prosecution has sought a conviction.

11. The learned SPG had relied principally on the petitioner's alleged misuse of authority as a Drawing and Disbursing Officer in the PTB as envisaged under sections 9(a)(iii), (vi) and (xii) of the NAO, 1999. In this regard, the decisions rendered by this Court from time to time are of specific relevance. In the case of *Wahid Bakhsh Baloch v. The State* (**2014 SCMR 985**) this Court dealt with the question of what qualifies a misuse of authority in terms of the NAO, 1999:

> *"12. In M. Anwar Saifullah Khan v. State (PLD 2002 Lahore 458), the Court while adverting to the initial burden on prosecution to prove the charge of misuse of authority or powers held at page 477 as under:--*

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[1] *Vide*: Office Order No.Admin.Esbt.-17/169/PTB.
[2] *Vide*: Office Order No.Admin.Estb-17/335/PTB.
[3] *Vide*: Office Order No.Admin.Esbt.-17/589/PTB.
[4] *Vide*: Office Order No.Admin.Esbt.-17/53/PTB.

> *"20. Misuse of authority means the use of authority or power in a manner contrary to law or reflects an unreasonable departure from known precedents or custom. Every misuse of authority is not culpable. To establish the charge of misuse of authority, the prosecution has to establish the two essential ingredients of the alleged crime i.e. "mens rea" and "actus reus". If either of these is missing no offence is made out. Mens rea or guilty mind, in context of misuse of authority, would require that the accused had the knowledge that he had no authority to act in the manner he acted or that it was against law or practice in vogue but despite that he issued the instruction or passed the order. In the instant case the documentary evidence led by the prosecution and its own witnesses admit that the appellant was told that he had the authority to relax the rules and the competent authority P.W.3 could make the appointments thereafter. The guilty intent or mens rea is missing. Even the actus reus is doubtful because he had not made the appointments. He merely approved the proposal and sent the matter to the competent authority. At worst he could be accused of mistake of civil law. i.e. ignorance of rules. But a mistake of civil law negates mens rea."* [...]"
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> **[emphasis supplied]**

Likewise, in the case of The State and others v. M. Idrees Ghauri and others (**2008 SCMR 1118**) this Court acquitted the accused whilst stating that:

> *"11.* [...] *There is no cavil to the proposition that an illegal order in a particular set of fact, may have the penal consequence but the question required to be adhered in the present case, was as to whether the act of grant of propriety rights of the land without the power of Collector, by itself would constitute an offence of corruption and corrupt practices within the meanings of section 9(a)(vi) of the Ordinance without proof of essential ingredient of illegal gain and undue favour to constitute such an offence and the answer would certainly be in the negative.* [...] *The striding of law to bring an action within its compass is in conflict to the concept of fair treatment, therefore it is primary duty of the Court to ascertain whether the alleged offence was outcome of an act in violation of some law which can be termed as actus reus of the crime (guilty act) and if this essential element of crime is missing, the breach may not subject to the sanction of criminal law, therefore, a person who is blamed to have committed an offence if is not accountable in criminal law for his action, he cannot be subject to the prosecution. The mens rea (guilty mind) is another essential component of crime without proof of which a person cannot be held guilty of an offence and similarly without the proof of concurrence to commit the crime, the offence is not complete. In addition to the above basic components of a crime, the harm caused in consequence to an act is also*

considered an essential element of a crime because the act if is harmless it may not constitute a crime. [...]

12. The charge against the appellant was that he by misuse of his authority, committed an offence of corruption and corrupt practices within the meanings of section 9(a)(vi) punishable under section 10(a) of the Ordinance. The misuse of authority in general, means wrong and improper exercise of authority for the purpose not intended by law, therefore, in order to prove the charge of misuse of authority, at least two basic ingredients i.e. mens rea and actus reus of the crime have to be necessarily established and in case anyone of these two elements is found missing, the offence is not made out. Mens rea in context to the misuse of authority means to act in disregard of the law with the conscious knowledge that act was being done without authority of law and except in the case of strict liability, the element of mens rea is necessary constituent of crime. The offence of corruption and corrupt practices within the meanings of section 9(a)(vi) of the Ordinance, is not an offence of strict liability, therefore, the use of authority without the object of illegal gain or pecuniary benefit or undue favour to any other person with some ulterior motive, may not be a deliberate act to constitute an offence. ***The mens rea for an offence under section 9(a)(vi) of the Ordinance, is found in two elements i.e. conscious misuse of authority and illegal gain or undue benefit and in absence of anyone of these basic components of crime, the misuse of authority is not culpable, therefore, the prosecution must establish mens rea and actus reus of the crime to establish the charge, as without proof of these elements of crime, mere misuse of authority, has no penal consequence.*** *The offence of corruption and corrupt practices has not been as such defined in the Ordinance but in general terms, the corruption is an act which is done with intent to give some advantage inconsistent with law and wrongful or unlawful use of official position to procure some benefit or personal gain, whereas the expression corrupt practices is series of depraved/debased/morally degenerate acts, therefore, as contemplated in section 14(d) of the Ordinance, unless the prosecution successfully discharges the initial burden of proving the allegation in a reasonable manner, the accused cannot be called to disprove the charge by raising a presumption of guilt. In the present case, the NAB authorities on the basis of order passed by the appellant by virtue of which land was allotted to the affectees of Lal Sohanra Park, launched prosecution against the appellant for the charge of committing an offence under section 9(a)(vi) of the Ordinance whereas the appellant in his defence plea asserted that he having found that the rights of allottees were acknowledgeable in law, exercised the powers of Collector in a good faith with bona fide intention and perusal of record would show that no direct or circumstantial evidence was brought on record to suggest that appellant exercised the power of Collector for the consideration of an illegal gain or an undue benefit for himself or for any other person and consequently, the case would not fulfil the test of section 9(a)(vi) of NAB Ordinance to justify the criminal prosecution.*

*13. **The allegation without specific evidence that appellant in connivance with his co-accused acted for a dishonest or unlawful purpose or the land in question was allotted to the persons who were not entitled for such allotment under the law, would seriously reflect upon the truthfulness of the allegation and learned DPG has not been able to satisfy us that in such a case, mere use of authority contrary to law, is a wrong of the nature, which would necessarily entail the penal consequence under NAB Ordinance. The prosecution also has not been able to bring on record any evidence direct or circumstantial in proof of the fact that the appellant in collusion with his co-accused or in connivance with the allottees of the land by indulging in corruption and corrupt practices, extended undue favour to them for some personal gain or pecuniary advantage, therefore, the mere jurisdictional defect in the allotment without any motive, illegal gain or undue benefit, would not constitute an offence of corruption and corrupt practices within the meanings of section 9(a)(vi) read with section 10(a) of the NAB Ordinance, 1999**."*

[**emphasis supplied**]

Again, in the case of *Mansur-ul-Haque* (**PLD 2008 SC 166**) it was held that:

"9. [...] Learned counsel for the petitioner has not been able to convince us from the evidence on the record that essential elements of mens rea and intention to commit an offence under section 9(a)(vi) of NAB Ordinance were traceable in the transaction or the accused acted for their personal gain at the cost of causing financial loss to the organization (PNSC) or the ships in question were not of viable technology and were not that of international standard and specification. The mere procedural irregularities in the transaction, would not be sufficient to constitute an offence under section 9(a)(vi) of the ibid Ordinance. This is essential to draw distinction between procedural irregularities and violation of substantial provisions of law to determine the question of criminal liability in the transaction. The procedural irregularities may bring an act done in the official capacity within the ambit of misconduct which is distinguishable from criminal misconduct or an act which may constitute an offence and thus unless it is established through the evidence that an act or series of acts done in the transaction constituted an offence, the criminal charge would be groundless. We may point out that notwithstanding the special provision contained in the NAB Ordinance regarding shifting of the burden of proof, the fundamental principle of the law of criminal administration of justice that basic onus is always on the prosecution to establish the commission of an offence is not changed and in the present case, we find that the respondents having negotiated with the seller company abroad in the official

> *capacity entered into the contract of purchase of ships and in the process certain procedural irregularities constituting an act of misconduct in the contemplation of law applicable to their service were probably committed but the same may not constitute a criminal offence under section 9(a)(vi) of NAB Ordinance punishable under section 10 of the said Ordinance or under any other law without proof of the existence of element of dishonest intention of personal gain. The prosecution in the present case has not been able to bring on record any evidence to substantiate the allegation of dishonest intention to cause financial loss to the organization for personal gain to bring the case within the purview of National Accountability Bureau Ordinance, 1999.*"
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> [**emphasis supplied**]

After examining the foregoing cases at some length, this Court summarized in the case of *The State v. Anwar Saifullah Khan* (**PLD 2016 SC 276**) that the threshold required for an action to be considered a misuse of authority within the purview of section 9(a)(vi) of the NAO, 1999 in the following terms:

> "10. With reference to the precedent cases mentioned above the law appears to be settled by now that in a case involving a charge under section 9(a)(vi) of the National Accountability Ordinance, 1999 the prosecution has to make out a reasonable case against the accused person first and then the burden of proof shifts to the accused person to rebut the presumption of guilt in terms of section 14(d) of the said Ordinance. It is also apparent from the same precedent cases that a mere procedural irregularity in the exercise of jurisdiction may not amount to misuse of authority so as to constitute an offence under section 9(a)(vi) of the National Accountability Ordinance, 1999 and that a charge of misuse of authority under that law may be attracted where there is a wrong and improper exercise of authority for a purpose not intended by the law, where a person in authority acts in disregard of the law with the conscious knowledge that his act is without the authority of law, where there is a conscious misuse of authority for an illegal gain or an undue benefit and where the act is done with intent to obtain or give some advantage inconsistent with the law. The said precedent cases also show that misuse of authority means the use of authority or power in a manner contrary to law or reflecting an unreasonable departure from known precedents or custom and also that mens rea or guilty mind, in the context of misuse of authority, would require that the accused person had the knowledge that he had no authority to act in the manner he acted or that it was against the law or practice in vogue but despite that he issued the relevant instruction or passed the offending order."
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> [**emphasis supplied**]

12. In the instant case, although the learned SPG has contended that the petitioner acted in connivance with A.M to perpetrate the crime, he has not demonstrated how the petitioner was involved with A.M at all. The actual embezzlement has allegedly been perpetrated by A.M and in this regard no substantial claim has been made against the petitioner save that he misused or fettered his discretion to facilitate the embezzlement. In this context, the petitioner's actions/omissions can at most be described as procedural improprieties which would not *per se* be categorized as a "misuse of authority" attracting the offence under section 9(a)(vi) of the NAO, 1999. Again, the learned SPG has neither placed on record the petitioner's wealth statements, bank statements, assets or tax documents; nor has he done so for the petitioner's family, close friends or known associates. In doing so, the SPG has failed to prove that the petitioner, his family, close friends or known associates were the beneficiaries of any alleged misuse of authority – there is no grant or rendition of any illegal gain by the petitioner.

13. Moreover, it is an admitted position that S.H was exonerated in departmental inquiries and only ten cheques were found to be signed and alleged to be tampered by him and these too were subsequently attributed to A.M and not to him. The record also reveals that S.H was never entrusted with the charge of Deputy Secretary (B&F), as no such post exists in the PTB, rather he was given additional charge of DD(B&F) on 26.05.2008 and not on 09.03.2008, as alleged. Moreover, it has come on record that it was not the duty of the DD(B&F) to counter sign the cheque book, rather it was the duty of the accountant namely Tahir Raza, who has been exonerated in the inquiry conducted by the PTB.

14. It has also come on record that the initial audit report was against A.M and the internal inquiries were stated to have been proved against him and

not S.H. Though in the initial inquiry, S.H was held responsible for the alleged embezzlement, however, in the final inquiry report furnished by the fact finding committee, he was exonerated. It was found by the committee that the cheques were signed by A.M and countersigned by Tahir Raza, the Accountant. It is also seen that in the depositions of various PWs, specific, concrete and confidence inspiring allegations, with regard to the involvement of S.H, in the embezzlement has not been proved and there are marked contradictions in the depositions of some of the PWs with regard to S.H's involvement in the alleged misappropriation and misuse of authority. It is also a matter of record that the complaint of the Chairman PTB was primarily against A.M and not against S.H. The perusal of record further reveals that the confidential report dated 23.12.2008 was prepared by Bashir Ahmed Khan (Assistant Director (M)), Malik Haq Nawaz (Deputy Director (D)) and Ali Gohar (Secretary, PTB) regarding embezzlement of Rs. 7.7 million on the statement Tahir Raza, the Accountant, which clearly depicts that it was A.M who embezzled the amounts in the following manner:

Sr. #	Date	Amount in millions (PKR)
1.	30.05.2008	2.0
2.	30.07.2008	1.5
3.	29.08.2008	3.0
4.	30.10.2008	1.2

It has also come on record that A.M has confessed almost all the allegations of forging/tampering the cheques and preparing fake documents depicting deposits in the PTB's bank account in his statement furnished to the fact finding committee, however, he rested the entire responsibility of the misappropriation on S.H. Surprisingly, the said fact finding committee has not named S.H and has observed that the embezzlement took place because of A.M and the defects in the accounting system adopted by the PTB.

15. In view of the foregoing, we are sanguine that the case against the petitioner has not been proved and that the offence under section 9(a)(vi) of the NAO, 1999 has not been made out. The petitioner's case is one that merits acquittal and consequently, the impugned judgments of the Trial Court and the High Court are set aside by extending the benefit of doubt in the petitioner-Sardar Hussain's favour. He is acquitted from all the charges. The instant petition is therefore converted into an appeal and the same is allowed in the terms above.

16. These are the detailed reasons for our short order dated 16.06.2025, which is reproduced below for the facility of reference:

> *"For reasons to be recorded later, this petition is converted into an appeal and the same is allowed. The petitioner is acquitted from the charge framed against him by extending the benefit of doubt in his favour. The listed Crl.M.A. is accordingly disposed of."*

Islamabad, the
16th of June, 2025.
Naseer/Mustafa Kundi J.L.C*

"Approved for reporting"