JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.324 of 2024

The State
Vs.
Asif Akhter Hashmi and others

Appellant by:	Mian Muhammad Faisal Irfan, Deputy Attorney General along with Tauqir, Inspector, FIA.
Respondents by:	Nemo.
Date of Hearing:	**17.04.2025.**

INAAM AMEEN MINHAS, J.- This appeal is directed against the order dated 08.03.2024 **("Impugned Order")**, passed by the Special Judge Central-II, Islamabad **("Trial Court")**, whereby applications u/s 265-K, Cr.P.C filed by the respondents were accepted and they were acquitted from case FIR No.07, dated 16.08.2016, u/s 420, 109, 34 PPC read with section 5(2)47 PCA, registered at Police Station FIA SIU, Islamabad.

2. Brief facts are that in Suo Moto Case No. 09/2011- SCP, Enquiry No. 02/2016 was initiated by the FIA in Islamabad. During the enquiry, it revealed that on 09.03.2009, Sharjeel Shah Muhammad, CEO of M/s Highland Living Concepts **("HLC")** Lahore, proposed to the Evacuee Trust Property Board **("ETPB")** for an investment in a project called "Elysium Ranches" in Defence Housing Authority **("DHA")** Islamabad to be developed by M/s Elysium Holding Pakistan Ltd. **("EHPL")**

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headed by Waseem Aslam. The then ETPB Chairman, Syed Asif Akhtar Hashmi and members of the Investment Advisory Committee approved this proposal by misusing their official positions in the meetings held in April and June 2009. Vice Chairman Muhammad Ali further signed agreements illegally without obtaining approval from the Law & Justice Division and without mandatory permission from the Federal Government under Section 4(2-c) of the ETP Properties (Management and Disposal) Act, 1975. ETPB transferred Rs. 986 million from its HBL account to the project vide three cheques between July and October 2009, which were signed by Asif Akhtar Hashmi the then Chairman, ETPB and Muhammad Akram the then Chief Controller Accounts. Out of this amount, Sharjeel Shah Muhammad CEO of M/s HLC used Rs. 378 million for himself and transferred Rs. 608 million to M/s EHPL's bank account and also paid Rs. 181.59 million to Mohib Asghar, a real estate agent in DHA Lahore. The said amount was misappropriated/embezzled by Sharjeel Shah Muhammad, Waseem Aslam and Mohib Asghar with the connivance of ETPB officials causing a loss to the tune of Rs.986 million to ETPB. Therefore, FIR No.07, dated 16.08.2016, u/s 420, 109, 34 PPC read with section 5(2) 47 PCA was registered at Police Station FIA SIU, Islamabad against Sharjeel Shah Muhammad, Waseem Aslam, Asif Akhtar Hashmi, Muhammad Akram, Amir Khan Wazir, Mohammad Nawaz Tishana, Doctor Ehasan Yaqoob and Azhar Ehsan and the challan was sent up before the learned Trial Court.

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3. During the trial, the respondents filed theapplications u/s 265-K, Cr.P.C before the learned Trial Court, which were accepted through the Impugned Order, hence this appeal.

4. Notices of the instant appeal were issued to the respondents, whereupon on 11.03.2025 Mr. Muhammad Umer Abbasi, Advocate appeared on behalf of the respondent No.1. However, today none has appeared on behalf of the respondents.

5. The learned Deputy Attorney General on behalf of the State contended that the respondents illegally invested a huge amount of ETPB funds without required permission from the Federal Government, violating Section 4(2-c) of the ETP Properties (Management and Disposal) Act, 1975, misused their official authority and caused financial loss to the government; that the learned Trial Court passed the Impugned Order in hasty manner, without proper legal reasoning and even did not frame charge in the case; that the prosecution was not allowed to produce its evidence and that both the investigation and the departmental inquiry had found the respondents guilty as such the Impugned order is against the law and facts of the case and liable to be set aside.

6. I have heard the learned DAG and perused the record.

7. Perusal of the record reveals that the ETPB in its 272nd meeting held on 16.04.2009, approved a proposal presented by Mr. Sherjeel Shah Muhammad, the then Chief Executive Officer of M/s HLC. The proposal involved investment in a real estate development project named “Elysium Ranches” in DHA, Islamabad. Following the approval

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by the ETPB, a formal agreement was executed between ETPB and M/s HLC. Under this agreement, a substantial sum amounting to Rs. 986 million was transferred into the bank accounts of the said company and a real estate agent namely Mohib Asghar.

8. According to the prosecution's case, this financial transaction was allegedly conducted through collusion among various individuals namely Sherjeel Shah, Waseem Aslam, Aamir Khan Wazir, Muhammad Nawaz Tishna, Dr. Ehsan Yaqoob and the respondents. The prosecution placed names of accused persons Waseem Aslam Butt and Aamir Khan Wazir in column No. 2 of the challan as during investigation they were found not involved in the commission of the alleged offence. During the trial, both the accused persons Waseem Aslam Butt and Aamir Khan Wazir filed applications under section 265-K, Cr.P.C, which were allowed and they were acquitted from the case.

9. Upon query whether any appeal was filed by the State against the acquittal of these two individuals, the response was in negative, indicating that their acquittal was not challenged and thus attained finality.

10. It is an undisputed fact that the decision to invest the amount in question was approved by the ETPB, which comprised of 21 members. However, the prosecution selectively targeted only a few individuals from the Board, even though all members gave the approval unanimously and collectively. This raises a fundamental issue of fairness and consistency. Since the approval was granted through a joint

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and unanimous decision, each Board member played an equal role by independently signing the approval of the same transaction. Therefore, it is not reasonable or legally justifiable to separate the actions of some members from the rest. Either all members should be held equally accountable or none of them should be as the act was done jointly with shared responsibility. Importantly, the present respondents were also Board members and performed duties similar to those of co-accused Aamir Khan Wazir, who served as the Secretary of the Board at the relevant time and was acquitted by the learned Trial Court due to a lack of evidence against him. Given that the respondents were involved in the same transaction and carried out similar responsibilities, it follows logically and legally that they should be treated like co-accused Aamir Khan Wazir. The role of the respondents is identical to that of co-accused Aamir Khan Wazir, the then Secretary ETPB, who was acquitted by the learned Trial Court u/s 265-K, Cr.P.C. Similarly co-accused Waseem Aslam Butt, CEO M/s EHPL, who had signed the agreement with ETPB was acquitted from the case u/s 265-K, Cr.P.C. All the accused were involved in the same transaction, faced the same allegations and were subject to the same evidence, despite which, the prosecution did not challenge the acquittal of co-accused Aamir Khan Wazir. However, acquittal of the respondents has been challenged through the instant appeal on the ground that the acquittal was merely based on technical grounds and that the learned Trial Court had committed legal errors by not allowing the prosecution to produce its evidence. This argument, however, does not hold weight under the law.

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11. It is also pertinent to note that the FIR in this case was registered on 16.08.2016 and yet after almost nine years no formal charge has been framed. This prolonged delay is solely attributable to the prosecution's inaction and lack of interest. In legal terms, no person should be uncertain or subject to criminal proceedings indefinitely due to the prosecution's negligence. The right to a fair and timely trial is a cornerstone of justice. Therefore, in light of the identical roles, the prior unchallenged acquittal, and the unjustified delay entirely caused by the prosecution, the respondents are also entitled for the same relief, which has already been granted to the co-accused. The learned Trial Court properly appreciated the available record and rightly concluded that there is no chance of conviction of the respondents, even if the evidence is recorded.

12. The argument of the learned DAG that without framing of charge, the respondents have been acquitted is concerned, u/s 265-K, Cr.P.C the Court is empowered to acquit an accused at any stage of the case, if there is no probability of the accused being convicted of any offence.

13. In light of the above discussion, the Impugned Order has been passed in accordance with law, which does not call for any interference. Consequently, the instant appeal is **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 29.04.2025

JUDGE

R.Anjam

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