JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Criminal Appeal No. 462 of 2024

Abdul Wahab Farid

VERSUS

Managing Director/CEO M/s Savour Foods, etc.

APPELLANT BY:	Ms. Maham Fatima and Mr. Waqas Ahmed, Advocates along with appellant.
RESPONDENTS BY:	Syed Abaid Ullah Shah, Advocate for respondents. Mr. Muhammad Ahsan Fiaz, Special Public Prosecutor Mr. Shamsher, ASI, P.S Ramna, Islamabad.
DATE OF HEARING:	24.09.2026

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AYYAZ SHAUKAT, J:- Through this appeal under section 10 of the Islamabad Consumers Protection Act, 1995 (the **"Act"**), the appellant has called in question the order dated 15.11.2024 passed by the learned Additional District Judge-IX, Islamabad (West), acting as the Authority under the Act (the **"Consumer Court"**), whereby his complaint under section 8 of the Act was dismissed.

2. The facts are short. On 15.09.2023 the appellant had lunch at the PWD Road Branch of M/s Savour Foods. The invoice reflected food worth Rs.4,900, sales tax of Rs.245 and Government POS charges of Re.1, and thereafter added Rs.78 under the head "Bank Fee (Keenu)", the total of Rs.5,224 being paid by card. The appellant avers that the charge was not shown on the menu or on any displayed price list and came to his knowledge only upon presentation of the bill. He served a legal notice on 25.09.2023 and, receiving no reply, filed a complaint on 22.11.2023 seeking imposition of a fine, refund of Rs.78, compensation of

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Rs.1,000,000 for mental agony, recovery of such charges collected from the public, and a permanent injunction.

3. The respondents contested the complaint. They pleaded that Keenu is operated by Wemsol (Pvt.) Ltd., an electronic money institution licensed by the State Bank of Pakistan; that the grievance, if any, lay before the State Bank; and that the facility had since been discontinued. The learned Consumer Court observed that the respondents "ought to have given prior information to the customer" but, relying on a letter of Wemsol (Pvt.) Ltd. dated 05.09.2023, held that the charge did not appear to be an unfair trade practice. It found the claim of mental agony unproved and dismissed the complaint.

4. Learned counsel for the appellant contends that the Consumer Court, having found that the charge was not disclosed, could not hold it lawful; that the respondents passed their own cost of card processing on to the customer under a misleading label; and that the letter relied upon was misread.

5. Learned counsel for the respondents supports the impugned order, submitting that the fee was levied through an authorised payment service provider, that the amount is trivial, that the claim of Rs.1,000,000 is an attempt to extract money, and that the practice has in any case been discontinued.

6. I have heard learned counsel for the parties and gone through the record with their assistance.

7. It is appropriate to begin with the nature of the proceedings. The Act is, in pith and substance, a penal statute (see ***Waqas and Brothers Enterprises (Pvt.) Ltd. v. M/s DHL Express and another*** ***(PLD 2021 Islamabad 333)***; ***Hassan Nawaz Khokhar v. Grand Works*** ***(Criminal***

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Appeal No. 205 of 2021, decided on 19.09.2022)), and the Code of Civil Procedure, 1908 therefore has no application to these proceedings. Yet the Act does not only punish; it also compensates. This twin character was explained in ***Ashfaq Ahmed Khan v. PTCL and others*** **(PLD 2016 Islamabad 112)**, wherein it was held that two separate kinds of speaking orders are required, one for the purposes of prosecution and the other for the purpose of compensation. The present complaint is essentially one for compensation under section 9(3); the prayer for a fine is dealt with separately below.

8. There is no real dispute that the appellant is a consumer. The Act, being a law for the protection of society, is to be given a purposive interpretation *(Muhammad Farooq Khan v. Excel-Labs (PLD 2015 Islamabad 81), followed in Waqas and Brothers)*. The appellant hired a catering service for consideration and paid for it, and thus falls squarely within section 2(c)(ii) of the Act.

9. The objection that the appellant should have approached the State Bank of Pakistan is misconceived. The complaint is not against Keenu, nor against the fee which Keenu charges the restaurant, but against what the restaurant charged its own customer. Liability under the Act emanates from its provisions and does not depend on a contractual relationship between the parties (see Waqas and Brothers); by the same reasoning, the arrangement between M/s Savour Foods and its payment service provider cannot determine the rights of the diner. Nothing has been shown which takes a restaurant's billing of its customers out of the jurisdiction of the Consumer Court.

10. The central question is whether the charge of Rs.78 was an unfair trade practice. The Act does not reach every lapse of a supplier: while the terms "consumer" and "services" are broadly defined, the concept of

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"unfair trade practice" and the penal provisions are narrowly defined (Waqas and Brothers). The inquiry must therefore begin with section 2(f)(viii), which requires (a) a statement, oral or written, made in furtherance of the supply of a service; (b) that the statement concerns the price at which the service is ordinarily provided; and (c) that it misleads. Each ingredient is present. No menu, price list or notice mentioning the charge was produced, and the Consumer Court itself found that prior information ought to have been given. The invoice is a written statement which presented the extra amount as a "Bank Fee", as though a bank had levied it on the customer, who came to know of it only after the meal, when he had no practical choice but to pay. The price actually charged was thus higher than the price at which the service was held out. That is misleading the public about price in the plainest sense, and is the very kind of representation which clause (viii) was enacted to prevent. The same conduct is also hard to reconcile with the consumer's right under section 5 to be informed of the price of services.

11. This view is in line with recent authority. The Supreme Court in ***Muhammad Ishaq, Deputy Director, Benazir Income Support Programme v. Fardayaz Khan and others*** **(C.P. No. 5395 of 2025)** has observed that consumer protection laws aim to protect consumers from unscrupulous and deceptive business practices, including hidden fees, and to secure their right to clear and accurate information. As persuasive authority only, the Delhi High Court in ***National Restaurant Association of India v. Union of India*** **(W.P.(C) 10683 of 2022)** upheld guidelines prohibiting restaurants from adding a service charge to the bill by default, regarding it as misleading and an unfair trade practice; that reasoning applies with equal force to a "bank fee" added in the same manner.

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12. The learned Consumer Court was persuaded otherwise by the letter of Wemsol (Pvt.) Ltd. dated 05.09.2023. With respect, the letter does not support the respondents. The Consumer Court proceeded on a misreading of it. The letter records that Keenu charges a service fee of 1.5% per transaction to Savour Foods for processing card payments; the fee is thus the restaurant's own cost of accepting cards. The sum of Rs.78 works out to 1.5% of the card payment of Rs.5,224, and the bill was accordingly grossed up so that the customer bore the whole of Keenu's charge. The card slip of Bank AL Habib Ltd. for the same transaction records a single sale of Rs.5,224 to Savour Foods and shows no separate fee levied by any bank on the cardholder. The record therefore shows that the restaurant passed its own cost to the customer and called it a bank fee. The letter explains the charge; it does not justify it. The respondents' written reply adds to the difficulty: paragraph 2 of the complaint, which sets out the invoice with the Bank Fee of Rs.78, is not denied, yet paragraph 4 of the reply states that no extra amount was charged, while paragraph 11 admits that the facility was discontinued because of the "mis-understanding of certain customers". The levy of Rs.78 thus stands admitted in the pleadings and on the respondents' own documents, and under Article 113 of the Qanun-e-Shahadat Order, 1984 it needed no further proof. Most importantly, the Consumer Court itself having found that there was no prior disclosure, it could not hold the charge to be lawful. That conclusion rests on a misreading of the only document relied upon and cannot be sustained.

13. It was also argued that the amount is too small to matter. This argument cannot succeed. The Act does not make a consumer's rights depend on the size of his loss. Small charges of this kind are rarely challenged precisely because the sum at stake is small, while the total

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collected from many customers may be large. The law protects the principle of honest pricing in the small bill as much as in the large.

14. The next question is the relief. Section 9(3) of the Act empowers the Authority, where it deems appropriate, to order payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice. In ***Murtaza Talpur v. Leopards Courier Services*** (**2025 CLD 1141)**, a Division Bench, drawing on *Lucknow Development Authority v. M.K. Gupta (AIR 1994 SC 787)* as to the width of the word "any", held that the Consumer Court is empowered to award compensation for any damage or loss suffered through an unfair trade practice, provided the consumer is able to prove such damages. That Bench was constituted because a Single Bench had disagreed with paragraphs 22 and 23 of Ashfaq Ahmed Khan, which had confined compensation to actual loss and left general damages to a civil suit; to that extent Murtaza Talpur now holds the field. The power is, however, subject to two limits: proof, and proportion, the liability being required to be proportionate to the damage or loss attributable to the respondent (Waqas and Brothers).

15. Tested on these principles, the claim for refund of Rs.78 is made out. The invoice and the card slip both show the sum, the levy is admitted in the pleadings, and the respondents seek only to justify it. The loss is direct, quantified and wholly attributable to them, and it must be returned.

16. The claim of Rs.1,000,000 for mental agony stands on a different footing. Under Article 117 of the Qanun-e-Shahadat Order, 1984, the burden of proving it lay on the appellant. Nothing on record proves it: there is no medical record, no affidavit of anyone who saw its effect on him, and nothing to show how a charge of Rs.78 caused the "mental

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agony and torture" pleaded in the complaint. In ***Mrs. Subhan Umar v. D. Watson Super Store*** **(Criminal Appeal No. 421 of 2022)**, this Court refused enhanced compensation for want of proof of causation. The present claim is weaker still. The appellant's own complaint and legal notice state that the agony "cannot be compensated in shape of money", and the sum was demanded "as matter of deterrence". A claim of that kind is not a claim to be made whole but a claim to punish, whereas compensation under section 9(3) runs only to the extent of the loss suffered. In **D. Watson Super Store**, this Court likewise refused further compensation, including the exemplary damages claimed, for want of proof. **Murtaza Talpur** opens the door to general damages, but only on proof. The Consumer Court rightly declined this part of the claim.

17. It is further observed that the relief of fine cannot be granted in this appeal. A fine is a punishment payable to the State and is distinct from compensation *(Ashfaq Ahmed Khan, relying on Pakistan Telecommunication Authority v. Pakistan Telecommunication Company Limited (2016 SCMR 69))*. It is available only in a prosecution under section 9(1) or 9(2), which requires a charge and a trial *(Waqas and Brothers)* and must rest on the personal conduct of the person charged *(Hassan Nawaz Khokhar)*. No charge was framed and no trial was held, and a sentence cannot be passed for the first time in appeal without these safeguards.

18. Similarly, the prayer for recovery of such charges from the public, and for an audit of the respondents' business, is outside section 9(3), which speaks of compensation "to the consumer" for loss which "the consumer has suffered". It does not allow one complainant to recover money on behalf of unnamed others.

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19. As for the injunction, the respondents admitted in their written reply that the facility has been discontinued. The Consumer Court recorded the same, and the Blue Area invoice of 24.07.2024 bears it out. That relief has become infructuous.

20. The Court has considered whether the matter should be remanded for trial afresh. The Consumer Court decided the matter on merits; the appellant does not complain that he was denied the chance to lead evidence, his own memorandum of appeal stating that the parties produced their evidence; and the facts that matter are documentary and admitted. The case is thus distinguishable from Hassan Nawaz Khokhar, where remand followed a dismissal on a preliminary ground with no facts determined, and from Waqas and Brothers, where the complaint had been rejected under Order VII Rule 11 CPC and a decision on merits at the appellate stage would have denied the parties their right of appeal under section 10. As in D. Watson Super Store, the appeal is decided on the record, a remand serving no purpose and putting the parties to expense out of all proportion to the amount involved.

21. As to costs, Murtaza Talpur recognises that costs of litigation are actual costs which reimburse the successful party *(Muhammad Akram v. Mst. Farman Bi (PLD 1990 SC 28))* and that costs follow the event *(Mehr Ashraf v. Station House Officer (PLD 2022 Lahore 328)).* The appellant, however, has placed nothing on record about the costs actually incurred, and has succeeded only to the extent of Rs.78 against a claim of more than one million rupees. In these circumstances the parties shall bear their own costs.

22. For the reasons given above, this appeal is **partly allowed** in the following terms:

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(i) The finding of the learned Consumer Court on points (a) and (b), which were decided together, is set aside to the extent that it holds that the charge was not an unfair trade practice. It is held that the amount charged as "Bank Fee (Keenu)" on 15.09.2023 was an unfair trade practice within the meaning of section 2(f)(viii) of the Act.

(ii) M/s Savour Foods, through respondents No. 1 and 3, shall pay the amount charged as "Bank Fee (Kenue)" to the appellant as compensation under section 9(3) of the Act within thirty days of this judgment.

(iii) The refusal of compensation for mental agony, and of the prayers for a fine, recovery on behalf of the public and injunction, is maintained. The complaint against respondent No. 2 stands dismissed.

(AYYAZ SHAUKAT)
JUDGE

Announced in opne Court on **07.10.2026.**

JUDGE

Approved for reproting.

Saeed.

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