JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.2363 of 2017

Najeeb Ullah Durrani and another

Versus

Securities and Exchange Commission of Pakistan and others

Petitioners by:	Mian Sami-ud-Din and Mr. Nasir Mehmood, Advocates.
Respondents by:	Raja Muqsit Nawaz Khan, Advocate along with Muhammad Waseem A. Rana, SPP, SECP.
Research Assistance by:	Muhammad Fahad.
Date of Hearing:	**09.04.2025.**

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INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioners have assailed notices dated 24.04.2017, 17.05.2017 and 14.06.2017 **("Impugned Notices")** issued by the respondents **("SECP")** u/s 137 read with sections 139 & 141 of the Securities Act, 2015.

2. The transient facts are that the petitioners had engaged in the services of regulated securities activities, who were served with the Impugned Notices by the SECP stating therein that the commission has initiated an investigation into the trading of shares of Murree Brewery Company Limited **("MUREB")** regarding market manipulation. Briefly, the allegations in the Impugned Notices against the petitioners are that the petitioners traded shares of MUREB in a synchronized manner and ramped the price of the scrip and earned illegal gains in violation of section 133 of Securities Act 2015, during the period from 13.12.2013 to 04.10.2016. On preliminary investigation the prices of MUREB fluctuated between Rs.376.14/- to Rs.1265.29/- during the

said period registering an increase of 236%, showing an activity of market manipulation. The petitioners did not appear for recording of statements before the Investigating Officers on 1st notice. SECP then issued two call up notices requiring the petitioners to appear in Head office of the Securities and Exchange Commission of Pakistan before the Investigation Officers for examination and recording of statements regarding the manipulative trading activity in the stock market. The petitioners did not turn up before the Investigating Officers for recording of statements, rather challenged the legality of Impugned Notices through instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 **("Constitution")**. In the instant writ petition, the petitioners have challenged the Impugned Notices being without jurisdiction, illegal, without lawful authority and lack of facts and particulars of offence(s) in a specified manner. The petitioners have also raised fundamental questions of law and jurisdiction, implicating the petitioners' constitutional rights under Articles 12 and 13 (1) (b) of the Constitution, against which the petitioners have no adequate alternate remedy, hence, this petition.

3. The learned counsel for the petitioners contended that the Impugned Notices were issued without jurisdiction and violate the Constitutional rights of the petitioners as such the instant petition is maintainable; that the Impugned Notices failed to meet basic ingredients of a notice as no particulars of precise transactions or other acts committed over the span of 4 years have been communicated to the petitioners as the offence of *"Market Manipulation"* alleged by SECP under section 133, sub-section (1)(a)(i), and (1)(b)(ii) and (v), which is a complex offence having several ingredients, in respect of which no information have been provided to the petitioners. In this regard, the learned counsel placed reliance on the judgments in *Dr. Arsalan Iftikhar vs. Malik Riaz Hussain and others, (*PLD 2012 SC 903), in which the Honourable Supreme Court recognized the right of a person to provide full information and details regarding specific allegations

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made against him and *Ghulam Hussain Baloch and another vs. Chairman, National Accountability Bureau, Islamabad and 2-others, (*PLD 2007 Karachi 469), in which the High Court pointed out that details of information shall be stated in such notices.

4. It has also been argued by the learned counsel for the petitioners that the acts of the petitioners were committed during the period from 13.12.2013 to 04.10.2016, while the Securities Act 2015, was enacted in May 2015, as such Article 12 of the Constitution is attracted in this case, which prohibits SECP from taking any action against any acts of the petitioners done before enactment of Securities Act 2015. He further argued that the matter would also amount to self-incrimination and thus infringe the petitioners' fundamental right to protection against compelling them to be witnesses against themselves in violation of Article 13 (1) (b) of the Constitution while placing reliance on *Alpha Insurance Company Ltd., Karachi and others vs. United Insurance Company of Pakistan Ltd., Karachi and another, (1996 SCMR 1668)*.

5. Conversely, the learned counsel for SECP contended that SECP acted in accordance with the law and there is *mala fide* in issuance of the Impugned Notices; that the Impugned Notices served on the petitioners contain complete and all the relevant information as per the decisions of the superior Courts relied upon by the learned counsel for the petitioners. He further contended that SECP is performing its functions under SECP Act, 1997 and in terms of section 139 of Securities Act, 2015, SECP may initiate investigation on its own motion upon reasonable cause and in the present matter the share price of MUREB was manipulated during the period, which constitutes such reasonable cause, thus by issuance of the Impugned Notices, no fundamental or Constitutional right of any of the petitioners has been violated, rendering the instant writ petition not maintainable.

6. I have given due consideration to the arguments of the learned counsel for the parties and gone through the material available on the record with their able assistance.

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7. The grounds raised by the parties reveal that following significant questions need adjudication by this Court:-

i. W*hether the petitioners can challenge notices under section 137 read with section 139 of Securities Act 2015, issued by competent regulatory body (SECP) at the investigation stage, which is prima-facie yet to be acted upon, in a constitution petition?*

ii. *Whether the contents of impugned notices do not provide particulars of information in light of the principle laid down in Ghulam Hussain Baloch and another vs. Chairman, National Accountability Bureau, Islamabad and 2-others, (PLD 2007 Karachi 469), approved by the Apex Court in case reported as Dr. Arsalan Iftikhar vs. Malik Riaz Hussain and others, (PLD 2012 Supreme Court 903)?*

iii. Whether the Securities Act 2015 is applicable to past transactions prior to its enactment in light of Article 12 of the Constitution?

iv. Whether the Impugned Notices attract Article 13(1)(b) of the Constitution?

8. Before coming to the contents of Impugned Notices, at the first instance this Court would like to consider that whether the petitioners can file a petition against the issuance of Impugned Notices at this very initial stage, which is simply an opportunity to explain the position in the course of the investigation. In case of adverse result of investigation arising out of Impugned Notices, the petitioners will have the remedy of appeal and in presence of such adequate and alternate remedy, interference by this Court at this juncture will create hurdle for regulator to exercise its functions. Honourable Supreme Court in a reported judgment dated 09.04.2025 (citation awaited) in ***M/s Payoneer***

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***Inc., New York, United States of America through its authorized officer vs. Federation of Pakistan, through Secretary Revenue Division, Ministry of Finance, Govt. of Pakistan, Islamabdad and others,* (C.P No.4177/2024)** held that if a better statutory recourse is available under any law then extraordinary writ jurisdiction can only be invoked under exceptional circumstances, which do not exist in the present case.

9. The learned counsel for the petitioners raised objections on the grounds of technicalities, procedure, jurisdiction as well as violation of fundamental rights. The questions pertaining to jurisdictional defect and violation of fundamental rights will be addressed at later stages, whereas regarding the technicalities and procedures adopted by the regulatory body SECP, this Court does not see any malice or ulterior motive on the part of SECP or violation of the principles of natural justice. In such circumstances, this Court would not like to exercise discretion in petitioners' favour to thwart the whole process arising out of the notices and set aside notices on any of the technical ground, which will amount to interfering in the exercising of functions of regulatory body at the initial stage of investigation and also jeopardized the intent of legislator behind enactment of the Securities Act 2015, preamble of which provides regulation of securities industry and protection of investors. The Lahore High Court in case of ***Sadiq Poultry (Private) Limited vs. Federation of Pakistan and others***, **(2025 CLD 90)** held as under:-

> *"19. This petition was filed against the "impugned notices" by the "Petitioners", which is not an adverse order and by agitating the same against such an injury which is neither actual nor immediate rather perceived and suppositious. The issuance of the "impugned notices" is an initial yet primary step of the process to ensure fair opportunity, which is also akin to probability of mediation as well pointed out by the Supreme Court in Commissioner Inland Revenue v. Messrs RYK Mills (2023 SCMR 1856). It is an opportunity for the "Petitioners" to explain their position and if they do so, the "impugned notices" are*

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> *and ought to be deemed satisfied without any further adverse action. As the matter has not been ripened under Chapter IV of the "Act" under which certain powers have been given to the Regulator to decide the matter and once it is decided by the "CCP", the "Petitioners" have the remedies under Section 41 of the "Act" by way of an appeal before the Appellant Bench of the Commission and appeal to the Competition Appellate Tribunal under Section 42 of the "Act" and further appeal to the Supreme Court under Section 44 of the "Act", and such remedies have not been exhausted by the "Petitioners". This Court in Chenab Flour and General Mills v. Federation of Pakistan and others (PLD 2021 Lahore 343) has held that if a Regulator is barred from exercising any of such functions, the purpose of law will not only be compromised but the intent behind making of such law will also be jeopardized. Moreover, if the Court starts interfering at initial steps of the Regulator for not initiating inquiry, then it will create hurdle for the Regulator to proceed in the matter to protect the very purpose and object of law. It is settled law by now that this Court, before granting relief to a Petitioners by exercising its extraordinary jurisdiction under Article 199 of the "Constitution", must satisfy itself regarding the non-availability of any alternate remedy, or in case Court is inclined to grant relief even in presence of alternate remedy, Court should be satisfied that circumstances of the case make the other remedy inadequate…."*

10. Thus this Court observes here that indeed the writ jurisdiction of this Court is not meant to be exercised to restrain the competent regulatory body SECP from taking action under law against regulated person(s) under the Securities Act 2015, against whom *prima facie* evidence showing his involvement in the market manipulation was available, for the reasons that any such direction at this very initial stage of the investigation proceedings would be disharmonious to the principle of good governance and regulation of securities market. Rather causing undue interference to hamper the smooth functioning of the regulatory bodies, more particularly SECP.

11. The learned counsel for the petitioners raised objection on the contents of the Impugned Notices while relying on the principles laid

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down by the superior Courts that any notice seeking information from a person must clearly specify the factual context, point of inquiry/investigation, allegation, offence or the identity of the person in respect of whom the information is being sought. The rationale behind this requirement is that unless a person is made aware of the specific nature of the inquiry and the particulars involved, such person would not be in a position to effectively assist the competent authority or furnish a meaningful response. The power to call for information and ask any person to appear before the Investigation Officer was questioned and examined in detail by Sindh High Court in a case reported as ***Ghulam Hussain Baloch and another vs. Chairman, National Accountability Bureau, Islamabad and 2 others,*** **(PLD 2007 Karachi 469)**. The relevant portion is reproduced as follows:-

> *"...A bare reading of the said provisions reveals that if an inquiry or investigation is ordered in respect of offence punishable under the Ordinance by the Chairman NAB then during the course of said inquiry or investigation of such offence the Chairman NAB or any officer duly authorized by him is authorized to call for information from any person for the purpose of satisfying himself whether there has been any contravention of provisions of the Ordinance or any rule or order made thereunder. In this clause, "any person" would mean all persons including witnesses and accused from whom the information is required. The question arises as to what sort of information the person is required to furnish to the competent authority. The information would be in respect of offence alleged or any matter which can suggest that the provisions of the Ordinance, rule or order made thereunder have been contravened. For that purpose competent authority is required to ask any person from whom such information is required to provide information which has nexus with the above provisions. If a person does not know the point or allegation or offence or fact on which information is to be provide or the person against whom such information is required then how such person would be in a position to help the competent authority, therefore, while calling the information from any person, the person must be informed the fact, point, allegation, offence, name of accused, specified matter,*

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> *if any, concerning the matters of the provisions in the notice so that the person can furnish such information…."*

12. The above observations were approved by the Apex Court in case reported as ***Dr. Arsalan Iftikhar vs. Malik Riaz Hussain and others***, **(PLD 2012 SC 903)**. In regard to the Impugned Notices, SECP has the power to call for information from any person for the purpose of investigation under section 137 of Securities Act, 2015 and initiate investigation under section 139 of Securities Act, 2015.

13. In order to answer the above question, it is important to examine the contents of Impugned Notices in light of the dicta laid by the superior Courts, which are reproduced below:-

> *"Whereas, in exercise of the powers pursuant to Section 139 of the Securities Act, 2015 (the Act); the Securities and Exchange Commission of Pakistan (hereinafter referred to as the 'SECP') has initiated an investigation into the dealings, business or other transactions pertaining to trading in Murree Brewery Company Limited (MUREB) during the period from January 01, 2013 to December 31, 2016 (the "period" for commission of offences relating to market manipulation as provided under Sections 133 punishable under Section 159 of the Act having imprisonment which may extend to either description of three years or a fine or both.*
>
> *It is revealed during preliminary investigation that that price of Murree Brewery Company Limited (MUREB) has fluctuated between Rs. 376.14 to Rs. 1265.29 during the period from December 13, 2013 to October 04, 2016 respectively registering an increase of 236%. On further probe in the matter, it was noted that during the period you and your brother Nadeem Ullah Durrani traded in synchronized manner and ramped price of the scrip and earned illegal gains, which is in violation of Section 133 Sub-section (1)(a)(i), (1)(b)(ii & v) of the Securities Act, 2015.*
>
> *In this regard, you are hereby called upon to appear in person on Tuesday, June 19, 2017at 11:00 AM at Head office of the Securities Exchange Commission of Pakistan situated at 63, NIC Building, Jinnah Avenue, Blue Area, Islamabad before Investigation officers for*

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> *examination and recording of your statement regarding the prima facie manipulative trading activity in the stock market. Moreover, you are also directed to bring your original CNIC along with its Photostat copy evidencing your identification.*
>
> *You are advised that any failure to comply with this notice and non-provision of the relevant required information / documents / non-appearance is an offence and may entail penal consequences."*

14. Upon examination of the contents of the Impugned Notices, this Court has reached to the conclusion that the requisite particulars of information, including the factual matrix surrounding the alleged manipulative trading activity; namely, the suspicious and synchronized trading that resulted in an abnormal 236% increase in the share price of MUREB between December 13, 2013 and October 4, 2016. It further specifies the relevant provisions of offence involved i.e., Sections 133(1)(a)(i) and (1)(b)(ii & v) of the Securities Act, 2015. Additionally, Impugned Notices are served under Section 137 of the Act, where the commission is empowered to call for information; it also identifies the nature of the investigation initiated under section 139, along with the date, time, and venue for appearance before the Investigation Officers. The Impugned Notices clearly indicate the subject matter and the context in which the information is being sought. Thus, the essential requirement of providing adequate particulars as mandated in the above-cited judgments, stands fulfilled. Therefore, Impugned Notices are neither an adverse order nor vague on the basis of its contents, hereby no justification exists for setting aside the same on the ground of alleged vagueness or lack of particulars.

15. Since the subject-matter of the controversy before this Court is regarding section 137 and section 139 of Securities Act, 2015 and its retrospective applicability under Article 12 of the Constitution, it will be relevant to produce necessary parts of section 137 and 139 of the Act:-

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"137. Power of the Commission to call for information.— *(1) Notwithstanding anything contained in any other law for the time being in force, the Commission may, by notice in writing, require any person to furnish it with such information as it may require during the course of inquiry, inspection or investigation and for the purposes thereof, within such time and verified in such manner as it may specify.*

(2) The Commission may by notice in writing require any person to appear before it or a Commissioner or an officer authorized by the Commission or produce such record and documents as are required by the Commission.

(3) ……..

(4) ……..

(5) ……..

(6) ……..

139. Investigation.— *(1) Where the Commission has reasonable cause to believe, either on its own motion or as a result of a complaint received, that —*

(a) an offence has been committed under this Act or under any rules or under any regulations made under this Act or is about to be committed;

(b) a licensed person may have or is about to engaged in defalcation, fraud, misfeasance or other misconduct in connection with his licensed activity; or

(c) the manner in which a licensed person has engaged or is engaging or about to engage in his licensed activity is not in the interest of the customer or the public interest,

the Commission may in writing direct one or more of its employees or one or more other persons, hereinafter referred to as "the investigator", to investigate any of the matters referred to in clauses (a), (b) or (c) and to report the results of the investigation to the Commission.

(2) Any person who is reasonably believed or suspected by the investigator to have in his possession

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or under his control any record or document relevant to an investigation under this section or who is so believed or suspected of otherwise having such information in his possession or under his control shall—

(a) produce to the investigator, within the time and at the place as the investigator requires in writing, any record or document specified by the investigator which is or may be, relevant to the investigation and which is in his possession or under his control;

(b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under clause (a);

(c) attend before the investigator at the time and place as the investigator requires in writing, and answer under oath administered by the investigator truthfully and to the best of his ability all questions relating to the matters under investigation as the investigator may put to him; and

(d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question by the investigator.

(3) …….

16. Before proceeding further, this Court deems it necessary to explicate the distinction between substantive and procedural law in order to address the question raised. Substantive law defines rights, while procedural law deals primarily with the process or remedies involved. Procedure is merely a machinery and its object is to facilitate, not obstruct the administration of justice. Procedural laws are meant to guide judicial system, protecting rights of individuals within the fair and sound justice system. The purpose is to safeguard and uphold the due process of law and ensure a fair trial in both civil and criminal proceedings. It is a settled principle of law that procedural law serves as the framework that governs the initiation, conduct, and progression of

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legal proceedings, outlining the manner in which the adjudicatory process is to be carried out before the Courts. It also regulates and oversees the procedures employed. Substantive law, on the other hand, comprises statutory obligations relevant to the subject matter, declaring the applicable rights and obligations, and regulating the demeanor of an individual or government. Substantive law defines the rights whereas the law of procedure defines the modes and conditions of the application of one to the other. Substantive law governs the matter outside the Courts, whereas the procedural law regulates affairs and conduct inside the Courts, both procedural and substantive laws must co-exist, as neither can function independently. The Securities Act, 2015, while encompassing certain substantive obligations relating to securities regulation, largely sets out the procedures and mechanisms through which SECP exercises its regulatory oversight. Although the Act contains provisions that define rights and impose duties, its primary function is to facilitate regulatory compliance and enforcement through administrative processes. Accordingly, it may be regarded as procedural in nature, insofar as it governs the mode and manner of implementation of securities law.

17. In the present case, the Commission has started the investigation, to probe the trading activities in the shares of the MUREB during the period of 13.12.2013 to 04.10.2016. The question whether the sections 137 and 139 are substantive provisions or procedural in nature. I have no doubt, that sections 137 and 139 of the Securities Act, 2015 are procedural and can operate retrospectively because it provides a procedure for collection of information and does not determine the final and ultimate right. Therefore, initiation of investigation under such provisions was not prejudicial to the petitioners' substantive rights. It is well settled principle that procedure operates retrospectively while penal consequences are always prospective. The Honourable Supreme Court of Pakistan, in the most recent case of ***Muslim Commercial Bank Limited vs. Punjab Labour Appellate Tribunal through Chairman, Lahore and others***, **(2025**

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SCMR 303) held that procedure operates retrospectively. The relevant paragraph is reproduced as under:-

> *"10. The outcome of legislation or changes in law that pertain solely to the procedures or legal remedies indicates that if legislation is enacted with the primary intent to alter or modify procedural aspects without prejudicing the rights of the litigants, then no doubt, it will apply to all pending and future actions. Individuals do not possess a vested right in any particular course of procedure, so for all intents and purposes, the change in the law of procedure operates retrospectively. However, laws affecting, curtailing or prejudicing vested rights shall be applied prospectively…."*

18. Furthermore, SECP is empowered under section 139 of the Securities Act, 2015, to initiate investigation on its own motion upon reasonable cause, therefore, the question raised regarding reasonable cause by the petitioners is not justifiable. Hence, the Impugned Notices issued by SECP pertains to administrative procedure of the regulator, thus the ground agitated by petitioners regarding applicability of Securities Act, 2015 on events prior to its enactment is not maintainable.

19. Finally, the petitioners tried to make Article 13(1)(b) of the Constitution as the basis of attack on the proceedings relying on ***Alpha Insurance Company Ltd., Karachi and others vs. United Insurance Company of Pakistan Limited, Karachi and another***, **(1996 SCMR 1668)**, with utmost respect, this judgment is distinguishable from the facts and circumstances of the instant case. Furthermore, the question before Honourable Supreme Court in the above mentioned case was related to matters arising out of a consolidated judgment of the High Court of Sindh reported as **Adamjee Insurance Company Ltd. vs. Assistant Director, Economic Enquiry Wing, (1989 PCrLJ 1921)** to examine whether an inquiry could be undertaken into the affairs of the appellants which are Insurance Companies without formally registering a criminal case against them and whether the summons/notices requiring them to produce the records of the companies for

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investigation and inquiry was not violative of Article 13(b) and Article 14(2) of the Constitution. The Honourable Supreme Court's view was specifically in the context of incorporated entity. The relevant paragraph is reproduced as under:-

> *"10. A large question which necessarily arises in these cases has engaged our attention. It is whether for the propose of clause (b) of Article 13 of the Constitution, "person" includes an incorporated entity like a public or private limited company. Article 260 of our Constitution defines "person" so as to include anybody politic or corporate unless the context otherwise requires. In clause (b) of Article 13 only those accused are granted protection who can appear as a witness against themselves. The protection is against appearing as a witness against oneself. Now the question is who can appear as a witness. Can a company or an incorporate entity appear as a witness? The clear answer would be no. Therefore, in the context of clause (b) of Article 13, a human being, a, corporeal being a natural person, has to be in existence for claiming this protection. It cannot be availed of by an incorporated company."*

20. It is pertinent to mention here that the Honourable Supreme Court of Pakistan found no merits in the appeal against judgment of the High Court of Sindh and dismissed it.

21. The protection enshrined under Article 13(1)(b) of the Constitution, which provides that **"no person, when accused of an offence, shall be compelled to be a witness against himself,"** is not attracted in the present case because the petitioners are not witnesses against themselves and are only required to provide information to Investigating Officers under section 137 of the Securities Act, 2015. Moreover, under section 139 of the Securities Act, 2015 the person appearing before the Investigating Officer is not a witness. The shield of Article 13 of the Constitution is therefore not available to prevent the proceedings against the petitioners under Securities Act, 2015, being a regulated person under the Act, and the Impugned Notices issued by the SECP are part of an administrative investigation, initiated under its statutory mandate to supervise and regulate the capital market. At the

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preliminary stage of the investigation, the petitioners do not fall within the scope of Article 13(1)(b) of the Constitution, and hence the Constitutional bar is inapplicable. The Supreme Court of Pakistan in the case of ***Saif ur Rehman Khan (in all cases) vs. Chairman, NAB, Islamabad and others***, **(PLD 2022 SC 409)**, while examining Article 13 of the Constitution held that:-

> *"12. Similarly, the ground agitated by the petitioner that in view of the proceedings conducted by the SECP, the second proceedings by the NAB regarding the same matter would amount to double jeopardy and thus infringe his fundamental right to protection against double punishment guaranteed by Article 13 of the Constitution, is also not legally tenable. Article 13(a) provides that no person shall be prosecuted or punished for the same offence more than once. The expressions "prosecuted" and "same offence" used in Article 13 are of vital significance in determining the scope of the protection guaranteed. The expression "prosecuted" means prosecuted on a charge of criminal nature before a Court of law; it does not include prosecution on the basis of breach of some code of conduct by a disciplinary authority or breach of some regulatory framework by an administrative authority. The expression "same offence" means offence constituted of the same ingredients and does not mean "same matter" or "same facts". The ingredients of the offence earlier charged and the offence subsequently charged should be the same, to attract the bar of Article 13, in the sense that the facts constituting the offence earlier charged were also sufficient to justify the conviction of the offence subsequently charged ...."*

22. This Court is of the view that SECP's investigative powers are derived from legislative instruments that impose a statutory obligation to regulate securities industry and ensure protection of investors. Regulated entities and persons are under obligation to maintain accountability and cooperation with such lawful investigations, which cannot be construed as self-incrimination, and cannot resist or obstruct an ongoing regulatory investigation against any compliance with regulatory duties, particularly where the petitioners' conduct involves

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public interest, fiduciary responsibilities, and large financial implications. Accepting such a plea for this Court would render financial regulatory enforcement ineffective and would defeat the very purpose of investor protection and market discipline obligated under the Securities Act, 2015.

23. In view of the above legal and factual position, this Court is convinced not to interfere in the proceedings initiated, which is the very initial stage of the investigation by the regulator SECP in writ jurisdiction under Article 199 of the Constitution. Resultantly, the instant writ petition is hereby **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 30.04.2025

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APPROVED FOR REPORTING

R.Anjam.

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