

**Amendment to section 10 of the Offences
in Respect of Banks (Special
Courts) Ordinance, 1984**

Report No. 127

**AMENDMENT TO SECTION 10 OF THE OFFENCES
IN RESPECT OF BANKS (SPECIAL COURTS)
ORDINANCE, 1984**

The subject Ordinance was promulgated for speedy trial of certain offences committed in respect of banks and for the matters connected therewith or incidental thereto. Section 10 of the Ordinance provides remedy for filing appeal against the sentences passed by special court but there is no provision of appeal to be filed against acquittal. Number of appeals filed in High Courts against the acquittal of the accused persons could not be admitted due to the non availability of provision for filing appeal under the Ordinance. By not providing the provision of such appeal against acquittal, the aggrieved party is left handicapped to challenge the same and is compelled to file the appeal under section 417 of the Code of Criminal Procedure, 1898 however, sub-section (2) of section 5 of the Code clearly says that the provisions of the Code are subject to the provisions of the special enactment and in case of inconsistency between the provisions of the Code and of a special relevant enactment, the latter is to prevail. Hence, the superior courts are reluctant to admit such kind of appeals because of the reason that the said Ordinance does not provide appeal against acquittal and ruled that if any alleged offender is tried under the special law then the whole procedure would be followed by such law rather than the Code.

In such cases where the accused are acquitted, where huge amount is involved and if such offences that are not proved are against the interest of society and institutions as well, then there is a need to have such provision in order to bring the accused person to book who has committed financial crimes thus causing huge financial corruption and embezzlement.

Section 10 of the Ordinance, reads as under;

Section 10.— Appeals from sentences passed by Special Court, etc.—(1) A person sentenced by a Special Court shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code or of any other law for the time

being in force or of anything having the force of law by whatsoever authority made or done, no court shall have authority to revise such sentence, or to transfer any case from a Special Court or to make any order under section 426 or section 491 or section 498 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Court,

(2) An appeal under sub-section (1) shall be preferred to the High Court within thirty days of the passing of the sentence and shall be heard and decided by a Bench of not less than two Judges of the High Court.

(3) Chapter XXIX of the Code shall apply to the suspension, remission and commutation of sentences passed by a Special Court.

Section 10 provides for appeals against the sentences passed by Special Court but no provision is there which provides for appeal against acquittal as sub-section (3) of section 10 of the Ordinance confines the application of Chapter XXIX of the Code of the Criminal Procedure, 1898 up to the suspension, remission and commutation of the sentences awarded by a Special Court, thus creates bar to the filing of acquittal appeal. In this regard, there is a judgment of High Court titled “**Habib Bank Vs The State, PLD 1988, Karachi, 49**” which observed that section 10 of the Ordinance bars the filing of appeal against acquittal and the provisions of Chapter XXIX of the Code are only applicable to the suspension, remission and commutation of sentences passed by a Special Court and the appeal against acquittal cannot be imported for the reasons that the right of appeal is the creature of the statute and it should be provided expressly.

It was observed;

“.... It may further be noticed that all offences under any other law are also to be investigated, inquired into and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner and place of

investigating, inquiring into, trying or otherwise dealing with such offences.

The above-quoted subsection (2) of section 5 of the Code clearly indicates that the provisions of the Code are subject to the provisions of the special enactment and in case of any inconsistency between the provisions of the Code and of a special relevant enactment, the latter is to prevail.”

It was further observed as under,

“B”. If we were to hold that section 10 of the Ordinance bars the filing of an appeal or revision other than an appeal to the High Court against the sentence, it must follow that we can’t import the provisions of Chapter XXIX of the Code which provides, inter alia, appeal against an acquittal judgment. We are inclined to hold that factually an acquittal appeal and a revision are barred by section 10 of the Ordinance for the reasons stated herein below. This being so, the above contention is untenable.

It was observed as under:-

“Para 5, the right of appeal is the creature of the statute, it should be expressly provided for, it cannot be claimed under inherent jurisdiction or by implication.”

Section 5 of the Code reads as under;

Section 5.-Trial of offences under Penal Code.—(1)
All offences under the Pakistan Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) Trial of offences against other laws.— All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place

of investigating, inquiring into, trying or otherwise dealing with such offence.

According to sub-section (2) of section 5 of the Code, the provisions of the Code are subject to the provisions of the special law and the special law would prevail over the ordinary law in case there is any inconsistency found between the ordinary and special law.

In an offence tried by a court of criminal jurisdiction, a right of appeal is provided to a complainant against an order of acquittal passed by such court under section 417 of the Code which reads as under;

Section 417. Appeal in case of acquittal.—(1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

“(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.”

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)

Section 417 of the Code provides remedy of appeals against acquittal to the aggrieved party only who is tried under the criminal jurisdiction because sub-section (2) of section 5 of the Code of Criminal Procedure, 1898 does provide that Code would be subject to any other enactment. The judgment titled “**Habib Bank Vs The State PLD, 1988 Karachi, 49**” also shows that the right of appeal against the acquittal is essentially the creature of the statute.

In another judgment of Supreme Court titled “**Allied Bank of Pakistan Ltd VS Khalid Farooq SCMR. 1991, 599**” in which the question of acquittal was raised and discussed at length, however, the Supreme Court observed that the question is open for examination. The following observation was given as under;

Where an acquittal is recorded, there is no question of any sentence. An acquittal is a finding and not a sentence. Section 10(1) of the Ordinance provides an appeal against a sentence recorded by a Special Court and bars a revision against the same. Where an appeal against an acquittal is not provided, the question still arises whether a revision is not incompetent. Just because an appeal against the finding of acquittal is not provided by section 10 of the Ordinance, the question whether a revision against such a finding is barred, cannot be foreclosed. However, I would also leave this question open for examination for an appropriate occasion.

In the light of the above discussion and judgments of High Court and Supreme Court, it is very important that providing the provision of appeal against acquittal is essential and if it is not provided it amounts to discrimination and injustice to the aggrieved party, hence this right should not be curtailed and as in other such special laws of criminal offences, the right of appeal is provided, therefore, it would be just and proper that if any party aggrieved by the acquittal of an accused person should have a right to appeal by providing the provision in this Ordinance.

The proposal to amend section 10 of the Ordinance, 1984 was placed before the Sub-Committee on 04-02-2013 as follows,

“Section 10(A). Appeal against acquittal. An aggrieved party prefers an appeal to High Court against an order of acquittal passed by the Special Court within thirty days of such order.”

The Sub-Committee considered and approved the proposal with slight changes made therein on the lines of section 417 (2) of the Code of Criminal Procedure, 1898, as follows,—

“Section 10-A. Appeal in case of Acquittal.If an order of acquittal is passed by the Special Court in any case, the High Court may, on an application made within thirty (30) days by an aggrieved party in this behalf, grant special leave to appeal from the order of acquittal whereupon the aggrieved party may present such an appeal to the High Court.”

The proposal was placed before the Law and Justice Commission of Pakistan for consideration.

COMPARATIVE TABLE

Existing Provision	Proposed Amendment
<p>Section 10. Appeals from sentences passed by Special Court, etc. (1) A person sentenced by a Special Court shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code or of any other law for the time being in force or of anything having the force of law by whatsoever authority made or done, no court shall have authority to revise such sentence, or to transfer any case from a Special Court or to make any order under section 426 or section 491 or section 498 of the Code, or</p>	<p>No Change</p>

<p>have any jurisdiction of any kind in respect of any proceedings of a Special Court,</p> <p>(2) An appeal under sub-section (1) shall be preferred to the High Court within thirty days of the passing of the sentence and shall be heard and decided by a Bench of not less than two Judges of the High Court.</p> <p>(3) Chapter XXIX of the Code shall apply to the suspension, remission and commutation of sentences passed by a Special Court.</p>	<p style="text-align: center;">No Change</p> <p>Section 10-A. Appeal in case of Acquittal. If an order of acquittal is passed by the Special Court in any case, the High Court may, on an application made within thirty (30) days by an aggrieved party in this behalf, grant special leave to appeal from the order of acquittal whereupon the aggrieved party may present such an appeal to the High Court.</p>
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Commissions deliberations on 8th September, 2013

The proposal was placed before Commission, wherein, it deliberated that the statute titled the Offences in Respect of Banks (Special Court) Ordinance, 1984, does not provide right of appeal against acquittal, which requires to be addressed so that an aggrieved party may have the opportunity for redressal of his grievances. Thus, proposal was approved.

Draft Bill for amendment of the law is hereby enclosed.

A

Bill

To further amend the Offences in Respect of Banks (Special Court) Ordinance, 1984 (Ordinance No.IX of 1984).

Whereas it is expedient to amend the Offences in Respect of Banks (Special Court) Ordinance, 1984 for the purpose herein after appearing.

It is hereby enacted as follows;-

1. Short title and Commencement.—(1) This Act may be called the Offences in Respect of Banks (Special Court) (Amendment) Ordinance, 2013.

(2) It shall come into force at once.

2. Amendment in Section 10.— After section 10 the following new Section 10-A shall be inserted.

Section 10-A. Appeal in case of Acquittal. If an order of acquittal is passed by the Special Court in any case, the High Court may, on an application made within thirty (30) days by an aggrieved party in this behalf, grant special leave to appeal from the order of acquittal whereupon the aggrieved party may present such an appeal to the High Court.