IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. S-303 of 2023

Appellant	:	M/s NTL (Pvt.) Ltd. through Mr. Abdullah Munshi, Advocate
The State	:	Through Mr. Muhammad Mohsin, Assistant Prosecutor General Sindh.
Respondent No.2		Mirza Raheel Baig, through Mr. Muhammad Kashif Badar, Advocate
Date of hearing	:	26.11.2025
Date of Judgment	:	26.11.2025

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J U D G M E N T

ALI HAIDER 'ADA', J.- Through the present Criminal Acquittal Appeal, the appellant, being the complainant, has assailed the judgment dated 29.04.2023 passed by the learned IInd Judicial Magistrate, Karachi (South) in Criminal Case No. 4458 of 2022 titled *"The State versus Mirza Raheel Baig"*, arising out of F.I.R No. 157/2022 registered under Section 489-F, PPC at Police Station Tipu Sultan, Karachi.

2. Briefly, prior to registration of the FIR, the appellant approached the learned Justice of Peace under Sections 22-A and 22-B Cr.P.C. seeking directions for recording his statement. Pursuant thereto, on 28.05.2022, the learned Justice of Peace directed the police officials to record the statement of the appellant, in consequence whereof the instant FIR was lodged. As per contents of the FIR, the complainant is a company, and during an internal audit it transpired that the accused, who was employed as an Accounts Officer, had embezzled an amount of Rs. 1,23,79,906/- for the period 2019–2021. It is further alleged that when confronted, the accused admitted his liability and issued a cheque dated 25.02.2022 towards part settlement; however, the said cheque was dishonoured vide bank memorandum dated 03.03.2022.

3. After registration of the FIR, usual investigation was conducted. The Investigating Officer collected relevant material and placed the same before the learned Judicial Magistrate concerned, who, upon submission of challan, took cognizance of the offence. After supply of requisite documents to the accused/respondent No.2, the learned trial Court framed charge on 15.08.2022, to which the accused pleaded not guilty and claimed trial. Consequently, the prosecution was directed to lead its evidence.

4. In support of its case, the prosecution examined the complainant along with his witnesses, including the Bank Manager, the author of the FIR and the Investigating Officer. After examining all its witnesses, the prosecution closed its side through a formal statement.

5. Thereafter, the statement of the accused under Section 342 Cr.P.C. was recorded, wherein he professed innocence and sought acquittal. The accused also opted to examine himself on oath but did not produce any defence evidence. Ultimately, the learned trial Court, after appraisal of the material available on record, acquitted respondent No.2 through the impugned judgment, which is now under challenge by the complainant.

6. Learned counsel for the appellant/complainant contends that the cheque in question was admittedly issued by the accused, and such issuance was grounded on the findings of the audit report, which was duly produced before the trial Court. He submits that the accused had executed an *Iqrarnama/settlement agreement* whereby he admitted the liability and expressed willingness to repay the outstanding amount. According to the learned counsel, despite clear admission and supporting documentary evidence, the learned trial Court failed to appreciate the material in its true perspective and erroneously extended the benefit of doubt to the accused. He further argues that once admission comes on record, even though the statement of the accused, the burden shifts upon the accused to rebut the presumption. Reliance is placed on ***Muhammad Sultan v. The State*** **(2010 SCMR 806).**

7. Conversely, learned counsel for respondent No.2/accused supports the impugned judgment. He argues that the trial Court has correctly noticed material contradictions in the prosecution case, particularly relating to the manner, timing

and circumstances under which the cheque was allegedly handed over to the complainant. He also submits that the authority letter filed on behalf of the complainant-company was defective as no valid Board Resolution was produced to authorize initiation of criminal proceedings. He further raises an objection regarding limitation, submitting that the judgment was announced on 29.04.2023 whereas the present appeal was filed on 19.06.2023, and no plausible explanation for such delay was initially furnished. He also questions the delay in lodging the FIR.

8. In rebuttal, learned counsel for the appellant submits that the objection of limitation was initially raised by the office but was subsequently overruled upon verification that certified copies were supplied to the appellant on 15.05.2023; thus, the appeal is within the prescribed time. Regarding the FIR, he submits that the complainant approached the Justice of Peace, and the FIR was lodged pursuant to the order under Sections 22-A and 22-B Cr.P.C; hence no delay can be attributed to the complainant.

9. On the other hand, the learned APG supports the impugned judgment by drawing attention to paragraph 28 thereof, wherein it has been observed that the prosecution failed to substantiate its case through reliable documentary evidence.

10. Heard and perused the record with the able assistance of learned counsel for the parties.

11. First and foremost, offences relating to financial dishonesty have become a serious concern in our society, adversely affecting commercial transactions, corporate governance and individual financial security. Originally, such acts were largely regulated through Section 20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001; however, in view of the increasing number of financial losses suffered by companies as well as private individuals, the legislature deemed it appropriate to criminalize the conduct more broadly. Consequently, in the year 2002, Section 489-F was inserted into the Pakistan Penal Code, thereby providing a specific penal provision to address the issuance of dishonoured cheques with dishonest intent. However, the provision of Section 489-F, PPC does not confer an unrestrained right upon an individual or a company to initiate criminal proceedings merely to recover a financial claim. The legislature, by introducing Section 489-F, intentionally imposed certain restrictions and boundaries to ensure that only cases

involving dishonest issuance of a cheque for repayment of a loan or fulfillment of an obligation fall within its ambit. In other words, the criminal law cannot be used as a substitute for civil remedies where no dishonest intent or legal obligation exists. For ready reference, Section 489-F, PPC is reproduced as under :-

> ***489-F Dishonestly issuing a cheque:- Whoever dishonestly issues a cheque towards re-payment of a loan or fulfillment of an obligation which is dishonored on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honored and that the bank was at fault in not honoring the cheque****.***

12. The essential ingredients of Section 489-F, PPC are well-settled. The prosecution must establish: firstly, the issuance of a cheque by the accused; secondly, that such cheque was issued for a specific purpose, namely *repayment of a loan* or *fulfilment of a lawful obligation*; and thirdly, that the cheque was subsequently dishonoured. The statutory expression “dishonestly” forms the foundational element of the provision, as Section 489-F penalizes the dishonest issuance of a cheque for the purpose of repayment or discharging an existing obligation. Thus, while examining the present matter, the Court is required to carefully assess whether these ingredients stand satisfied from the material on record and whether the issuance of the cheque was indeed connected with a subsisting liability or obligation.

13. In the present matter, the prosecution has primarily relied upon a single piece of documentary evidence, namely the internal audit report. It came on record that during the audit conducted for the period 2019–2021, the accused/respondent No.2 was found responsible for embezzlement of an amount of Rs. 1,23,79,906/-. However, for the audit report to have any corroborative or evidentiary value, it was incumbent upon the prosecution to establish its case strictly within the ambit of Article 117 of the Qanun-e-Shahadat Order, 1984, which governs the burden of proof in criminal proceedings. For ready reference, Article 117 is reproduced as under:—

> ***117. Burden of proof. (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.***
>
> ***(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.***

14. From the evidence led by the prosecution, it is noted that the complainant produced an audit report, exhibited as Exh. 3/I. A perusal of the said document reveals that it is merely a tabulated chart reflecting an amount of Rs. 16,194,906/–, which is entirely different from the figure of Rs. 1,23,79,906/– alleged in the FIR. Likewise, when the *agreement/Iqrarnama*, on which the prosecution heavily relied as an admission of liability by the accused is scanned, it reflects outstanding amounts of Rs.10,829,457/–, Rs. 400,000/– and Rs. 525,000/–. Even if all such sums are aggregated, the total comes to Rs. 11,754,457/–. This inconsistency in the financial figures between the FIR, the audit report, and the alleged admission remains wholly unexplained by the prosecution. Such discrepancies directly undermine the prosecution's stance regarding the exact quantum of alleged embezzlement and the liability sought to be enforced through the dishonoured cheque. The prosecution was under a legal obligation to establish its case with clarity and certainty, particularly when the allegation pertained to financial embezzlement. Its failure to present consistent, reliable and corroborated financial figures renders the prosecution case doubtful. Guidance in this regard may be taken from the judgment of this Court in ***Muhammad Sohail Haroon v. Shoukat Ali and 2 Others*** **(2024 YLR 2804)**, wherein it was held that:

> ***6. It may be observed that for constituting an offence under section 489-F, P.P.C., the initial burden lies upon the prosecution to establish that the alleged cheque(s) was issued dishonestly by the accused towards repayment of a loan or fulfillment of an obligation. In the instant case, it is claim of the appellant that he sold out Metallic Yarn to the respondent No.1 worth of Rs.21,73,000/-and against that the later issued him seven cheques, which were dishonored on presentation. However, the appellant failed to produce on record any evidence to establish that he had in fact supplied Metallic Yarn worth of said amount to the respondent No.1 to justify issuance of the alleged cheques towards fulfilment of an obligation under the sale transaction. It has been admitted by the appellant in his cross-examination that he has not produced any proof regarding supply of said products to the***

respondent No.I. Besides, the I.O. A.S.I. Amir Ghayas (PW-6 at Exh.8) has also admitted in his deposition that :the appellant did not hand over him any document to show business transaction between him and the respondent No.1.

15. Furthermore, Exh-3/I cannot be treated as a proper audit report. The document contains neither findings nor conclusions, nor does it specify any rules or identify the accused as responsible for the alleged shortage. It is, in substance, merely a tabulated chart indicating a shortfall in accounts, without attributing any liability to respondent No.2. In such circumstances, it was incumbent upon the prosecution to produce a detailed audit report before the learned trial Court, clearly highlighting the findings against the accused. However, no such detailed report was placed on record, nor were the findings of the audit reflected in the FIR, or relied upon in the prosecution's case. Consequently, the requirement of establishing a lawful cause for the issuance of the cheque remains wholly unfulfilled. The prosecution's case, therefore, suffers from a material deficiency at its very inception, rendering it inherently doubtful and unsubstantiated.

16. It is further observed that there is no record on file indicating that the company took any disciplinary action against the accused in his capacity as an employee. No show-cause notice, final show-cause notice, hearing of the parties, or termination letter was produced or relied upon during the trial. Such crucial procedural steps, if taken, ought to have been highlighted and examined during the cross-examination of witnesses. However, the record reflects that the Investigating Officer did not even make any effort to obtain such information from the company during the course of the investigation. The absence of such evidence further weakens the prosecution's claim that the accused was liable and responsible for the alleged embezzlement, thereby raising serious doubts regarding the initial basis of the complaint.

17. Furthermore, the *Iqrarnama* annexed by the prosecution does not indicate that the accused expressly bound himself to issue the cheque in question. It merely records the accused's acknowledgment of his intention to pay certain outstanding amounts, namely Rs. 10,829,457/-, Rs. 400,000/- and Rs. 525,000/-. The accused, however, denied these claims during his examination. Even if the document is taken at face value, it remains inherently inconsistent and contradictory when compared with the figures mentioned in the FIR and the audit chart relied upon by the

prosecution. In view of these discrepancies, the learned trial Court rightly concluded that the prosecution had failed to prove its case beyond reasonable doubt and accordingly passed the impugned judgment of acquittal.

18. Now, with regard to the question of delay, the FIR in the present case was lodged on 02.06.2022, whereas the order of the Justice of Peace directing the registration of the FIR was passed on 28.05.2022. No plausible explanation has been provided as to why the complainant could not have acted upon the order immediately. Thus, a delay of three days in lodging the FIR remains unexplained. Furthermore, the application under Sections 22-A and 22-B Cr.P.C. was filed on 23.05.2022, which also raises questions regarding the sequence of events. More importantly, the alleged incident, according to the prosecution, spanned the period 2019–2021; yet, the FIR records the date of the incident as 03.03.2022. This discrepancy between the stated period of the alleged embezzlement and the date mentioned in the FIR introduces further inconsistencies in the prosecution case and casts doubt on the reliability and credibility of the complaint itself.

19. In the present case, a careful appreciation of evidence reveals several infirmities in the prosecution's case, including delayed lodging of the FIR, material discrepancies, and contradictory statements. It is a settled principle that the mere issuance of a cheque, which is subsequently dishonoured, does not, by itself, constitute an offence under Section 489-F, PPC, unless it is established that the cheque was issued *dishonestly*, with the specific intention of repayment of a loan or to discharge a legally enforceable obligation. Reliance in this regard may be placed on the following decisions: ***Iqbal Ahmed v. Syed Danish Hussain Zaidi and 2 Others*****, 2022 YLR Note 202;** ***Muhammad Yasin v. Muhammad Zubair Farooqui and Another*****, 2022 YLR Note 98;** ***Raja Abdul Hameed v. Mashooq Ali Rajpar and 2 Others*****, 2022 YLR Note 54; and** ***Muhammad Nasir v. The State and 2 Others*****, 2020 YLR Note 144.**

20. It is a well-settled principle of law that the scope of interference in an acquittal is very limited, and the prosecution bears a heavy burden in this regard, particularly in view of the presumption of double innocence in favor of the accused. Reliance may be placed on **Fida Hussain alias Saboo v. The State (2025 SCMR 993)**. It is also firmly established that where contradictions or doubts exist in the

prosecution's case, the benefit of such doubt must always be extended to the accused. Reliance is placed on **Qurban Ali v. The State (2025 SCMR 1344)**.

21. In the present matter, having carefully considered the record, the evidence, and the legal position, this Court finds no ground to interfere with the impugned judgment. Consequently, the instant criminal acquittal appeal is dismissed, and the judgment of the learned trial Court is maintained.

J U D G E