

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Acquittal Appeal No.S-243 of 2019.

Appellant: Ali Nawaz through Mr. Abdul Hameed Bajwa, Advocate.

Respondent No.1: Muhammad Habib through M/s. Razia Ali Zaman Patoli and Sanjeeda Shahzad, Advocates.

The State: Through Ms. Sana Memon, Assistant Prosecutor General.

Date of Hearing: 04.12.2025.

Date of Decision: 24.12.2025.

**JUDGMENT**

**Muhammad Hasan (Akber), J-.** Assailed in this appeal, is the Judgment dated 13.11.2019 passed by learned Civil Judge & Judicial Magistrate (MCTC), Golarchi at Badin in Criminal Case No.43/2019, 'The State v. Muhammad Habib' arising out of F.I.R No.126/2019 of PS SF Rahu for the offence under Section 489-F PPC., whereby Respondent No.1 / accused (Muhammad Habib) has been acquitted under section 245(i) Cr.P.C.

2. Brief allegations in the FIR are that the complainant Ali Nawaz sold out vegetables to the accused and in lieu thereof on 20.05.2019 at 13:00 hours, when complainant approached for payment to the accused at his shop, the accused issued a cheque bearing No.13960727 for Rs.6,84,400/- dated 03.06.2019 drawn on his account No.0046619040016 with Allied Bank Golarchi, in favour of the Complainant. Upon presentation, the cheque was dishonored for insufficient funds.

3. Mr. Abdul Hameed Bajwa, learned senior counsel for the Appellant/complainant has contended that the impugned Judgment passed by learned trial Court is opposed to facts, law and material available on record; that the impugned Judgment is based upon non-reading and misreading of the evidence; that the learned Trial Court failed to consider the version of complainant who fully supported the prosecution story; that the learned Trial Court had failed to consider that the prosecution had fully established the charge by producing the direct, natural and confident inspiring material evidence and proved the case beyond the shadow of doubt against the accused / respondent but the learned Trial Court has committed serious illegality while delivering the impugned Judgment. Lastly, he prayed for setting aside the impugned judgment. Reliance was placed upon 2013 YLR 1798, 2013 P.Cr.L.J 688, KLR 2010 Criminal Cases 16 and 2010 SCMR 806.

4. Conversely, Ms. Sanjeeda Shahzad Advocate for Respondent No.1 read the relevant portions of the evidence of the prosecution witnesses and vehemently argued that the complainant himself and his witnesses had clearly admitted that no agreement or the receipt / details of the alleged transaction between the parties were produced in evidence nor any witness of the transaction of sale was produced by the prosecution and therefore, the first basic requirement U/s 489-F PPC qua "obligation" were not established by the prosecution side; and without which, the Second ingredient of "dishonesty" was also not established, hence the mandatory requirements of Section 489-F were not fulfilled and the learned Trial Court rightly acquitted the Respondent No.1. She further argued that there is a marked distinction between appeals against convictions, as compared to appeals against an acquittal, which carries a presumption of double innocence. Lastly, she prayed to dismiss the instant Cr. Acquittal Appeal. Learned APG supported the Judgment impugned.

5. Heard learned counsel for both parties and learned A.P.G and perused the record.

6. Record in this case reflects that after framing of charge, the prosecution examined six witnesses, including **PW-01** Ali Nawaz (complainant), **PW-02** Allah Dino, **PW-03** Hameer, **PW-4** Muhammad Sulleman (Branch Manager Allied Bank SF Rahu), **PW-5** ASI Shahmir Chandio (Investigation Officer) and **PW-6** Muhammad Iqbal. The Statement of the accused under section 342 CRPC was recorded wherein he denied the prosecution allegations. Upon conclusion of evidence, the learned trial Court acquitted the respondent No.1 / accused. The prosecution's allegation is that the complainant sold vegetables to the accused; on 20.05.2019 at 13:00 the accused issued cheque No.13960727 for Rs.6,84,400/- dated 03.06.2019 drawn on Allied Bank Golarchi account 0046619040016 in the complainant's favour, which was presented and subsequently dishonoured. Complainant admitted that he has not produced any agreement or document in support of his contention that he was having a vegetable trade with the present accused. He has not produced any receipt or anything which shows that the complainant was under an obligation to return the amount. Also not produced any witnesses of the transaction of sale. The Investigation Officer failed to inquire about the alleged transaction from any independent person acquainted with the parties, which further undermines the prosecution's case. From the above, it can be concluded that the complainant was unable to establish the existence of the alleged transaction or 'obligation' through any written instrument between the parties or any witnesses. Because of this, the complainant was also

unable to establish the dishonest issuance of the cheque by the accused. The learned trial Court was, therefore, justified in holding that the prosecution failed to prove the existence of a legally enforceable liability or obligation; and consequently, the dishonest intention, as was mandatorily required to be established under Section 489-F PPC. to convict the persons charged for the offence.

7. Section 489-F PPC provides as under:

***"489-F Dishonestly issuing a cheque.- Whoever dishonestly issues a cheque towards repayment 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".***

The essential ingredients of the provision are (i) dishonest issuance of a cheque; (ii) towards (a) repayment of a loan; or (b) fulfilment of an obligation; and (iii) its dishonour on presentation.

8. In a Charge under Section 489-F PPC, Article 117 of Qanun-e-Shahadat Order 1984, imposes the primary burden upon the complainant to prove his case beyond reasonable doubt, (a) that the said cheque was issued towards fulfillment of the obligation; (b) that the subject cheque was issued by the accused; (c) that such cheque was issued with dishonest intention; and lastly, (d) that the cheque was dishonoured upon presentation. Once these requirements are proved, the latter portion of the provision shifts the burden upon the accused to prove that he had made arrangements with the bank for encashment of the subject cheque and that the bank was at fault in dishonouring the cheque. The stage of proving his part of the defence, by the accused, would come only once the prosecution has successfully discharged its burden.

9. Two principles, which have been consistently followed in appeals against acquittal on the Charge under section 489-F PPC., are: (i) that an appeal against an acquittal, being an extraordinary remedy, has distinct features from that of an appeal against conviction; and (ii) that to reverse an order of acquittal, it will have to be established that the acquittal order is unreasonable, perverse and manifestly wrong. These principles have been consistently followed by this Court in the cases of '***Muhammad Sohail Haroon V. Shoukat Ali and 2 others***' (2024 YLR 2804), '***Kim***

**Seon Bae v. The State and 2 others'** 2021 YLR 114, '**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), '**Amanullah Khan V. Ahtisham Khan and 3 others**' (2020 PCr.LJ 152), '**Mehdi Hassan V. Muhammad Sajid and 2 others**' (2018 MLD 1349). The third settled principle of criminal jurisprudence applicable here is that even if a single circumstance exists, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the benefit of such doubt is to be extended to the accused, not as a matter of grace and concession, but as a matter of right. Reliance in this regard is placed upon '**Tariq Pervez v. The State**' (1995 SCMR 1345) and '**Muhammad Akram v. The State**' (2009 SCMR 230). As already discussed above, in the present case, multiple contradictions, deficiencies and flaws exist, which will go to the benefit of the accused. The fourth settled principle which will apply to the present appeal is that an Order of acquittal carries with it a double presumption of innocence in favour of the accused, and in such cases, the Court is required to act slowly before interfering with such an order of acquittal, unless the grounds for acquittal were perverse, wholly illogical or unreasonable. These principles have been settled in '**The State v. Abdul Khaliq and others**' (PLD 2011 SC 554); '**Ghulam Sikandar v. Mamrez Khan**' PLD 1985 SC 11; and '**Tariq Pervez v. The State**' (1995 SCMR 1345); '**Muhammad Asghar and another v. The State**' (PLD 1994 SC 301); '**Mirza Noor Hussain v. Farooq Zaman and 2 others**' (1993 SCMR 305); '**Yar Mohammad and 3 others v. The State**' (1992 SCMR 96).

10. Reliance was placed by the appellant's learned counsel on '**Farooq Shah v. The State**' (2013 P.Cr.LJ 688), '**Muhammad Sultan v. The State**' (KLR 2010 Cr. Cases 16), and the case of '**Muhammad Sultan v. The State**' (2010 SCMR 806), which have been vehemently opposed by learned Advocate for the Respondent on the ground that these Judgments were passed in appeals against conviction under section 410 Cr.PC., whereas the present appeal is preferred against the acquittal of the accused under section 417 Cr.PC. Needless to mention that the parameters applicable in an acquittal appeal are completely different from those of an appeal against conviction, where a double presumption of innocence is involved, which cannot be lightly ignored, as held in the above-referred decisions by the Honourable Supreme Court. On the other hand, the case relied by Appellant's Advocate viz. '**Mrs. Rukhsana Aziz v. Muhammad Emad**' (2013 YLR 1798), she argued that firstly, the accused was not convicted, but the matter was remanded back to the learning trial

court for rewriting of the Judgement; and secondly, the principles governing acquittal appeals under section 417 Cr.PC. were also not considered in the said Judgment. Considering the above, I am inclined to agree with the arguments extended by Ms. Sanjeeda Shehzad learned counsel for the Respondent, that none of the above Judgments apply to the facts and circumstances of the present case.

11. Upshot of the above-discussed principles and facts of the present case is that no illegality, infirmity, perversity, or jurisdictional error could be established by the appellant side, which could call for interference in the impugned Judgment. Accordingly, the Judgment impugned dated 13.11.2019 is upheld; and the instant Criminal Appeal for acquittal is dismissed.

**JUDGE**