

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Cr. Acquittal Appeal No. S-33 of 2026

Afzal Khan

...Appellant

Versus

Matloob Ahmed and another

...Respondents

For the Appellant	:	Mr. Wishan Das Kolhi, Advocate
For the Respondents	:	Nemo
For the State	:	Mr. Neel Parkash, Deputy P.G Sindh.
Date of Hearing	:	30.09.2026
Date of Judgment	:	07.10.2026

JUDGMENT

Muhammad Humayon Khan, J.: The Appellant had lodged FIR No. 147 of 2024 before the Kot Ghulam Muhammad Police Station against the Respondents under ss. 489F, 420, 506-II and 34 of the PPC. The case was tried as Criminal Case No. 28 of 2025 by the learned Judicial Magistrate-II, Kot Ghulam Muhammad, who, by his Judgment dated 20.05.2026, acquitted the Respondents of the charges. The Appellant, being the Complainant in the criminal case, is aggrieved of the Judgment dated 20.05.2026 and has filed this appeal against acquittal under s. 417 of the CrPC.

2. The Appellant's case was that, on 05.02.2022, he had sold his car, being Suzuki Alto Model 2019, to the Respondents at their showroom in Fateh Garden, Samaro, for a price of Rs. 1,900,000/-. A sum of Rs. 600,000/- was given to him by the Respondent No. 2 while, against the remaining amount of Rs. 1,300,000/-, the Respondent No. 2 issued the following cheques:

- i) Cheque No. 10191135 dated 05.10.2022 amounting to Rs. 500,000/- drawn on Bank Al-Habib Limited Account No. PK56BAHL1180095100313901; and
- ii) Cheque No. 00216752 dated 26.05.2023 amounting to Rs. 800,000/- drawn on Askari Bank Limited Account No. PK51ASCM0001460350003680.

The Appellant is stated to have gone to Bank Al-Habib, Kot Ghulam Muhammad Branch, for cashing the Cheque dated 05.10.2022 on 14.04.2023, 29.05.2023 and 09.06.2023 and the said cheque was dishonoured and returned. He is stated to have presented the second cheque dated 26.05.2023 at Askari Bank Limited on 23.10.2023 which was also dishonoured and returned. Thereupon, it is alleged that the Appellant demanded the Respondents to make payment to him of the remaining amount but they refused and issued threats of dire consequences.

3. After usual investigation, a final challan under s. 173 of the CrPC was presented. The Respondents pleaded not guilty and claimed trial. The prosecution examined four witnesses whereafter the statements of the accused under s. 342 of the CrPC were recorded where they denied any liability and claimed innocence. They did not lead any evidence in defence nor gave any statement on oath. After arguments, they were acquitted as stated above.

4. I have heard Mr. Wishan Das Kolhi for the Appellant and the learned Deputy Prosecutor General and have gone through the record of the case with their assistance.

5. Mr. Wishan Das Kolhi argued, inter alia, that the impugned Judgment is contrary to the facts and the law. He stated that the prosecution had proved its case beyond reasonable doubt and the learned Court below has failed to appreciate the evidence properly. He stated that the learned

Trial Court had considered the cheques to be security cheques although they were the result of a business transaction between the parties and not security cheques. He contended that the Respondents Nos. 1 and 2 have not denied the issuance of the cheques nor their signatures are denied and the same were dishonoured by the banks of presentment for insufficiency of funds. He therefore prayed that the impugned Judgment be set-aside and that the Respondents may be convicted of the offences proved against them.

6. On the other hand, the learned Deputy Prosecutor General supported the impugned Judgment and contended that the same is in accordance with the law. He argued that the learned Court below has considered the evidence and the applicable law both in their right perspectives and that the same should be upheld. He argued on the same lines as the reasoning of the learned Court below and contended that this appeal should be dismissed.

7. I begin by noting that this is a criminal acquittal appeal and in respect of which it is already well-established that the criteria for interference is quite narrow and limited. The appellant must prove some clear and manifest misreading or nonreading of evidence that may be so important as to make the conclusion palpably wrong and unjust. It is also well-established that, once an accused is acquitted by a court, he has the benefit of a double presumption of innocence which is to be dislodged through cogent and convincing material and cannot be rebutted simply because a different view is possible and was not taken.

8. It will be seen that the first cheque drawn on Bank Al-Habib and dated 05.10.2022 was presented on 14.04.2023 for the first time and was returned by the bank. The cheque was presented beyond the period of six months and consequently it was a stale cheque and as such it could not have

been validly presented for being honoured or dishonoured. In *Rashid Mehmood v Dilawar Khan* First Appeal No. S-96 of 2026 (Judgment dated 17.09.2026; 2026 SHC MPK 1770; unreported), the Court was required to consider the concept of honouring and dishonouring of cheques. I had the opportunity to hear the case and in my judgment I had reasoned as follows (para 6; emphasis added):

“6. I now turn to the point for determination framed by this Court. The dispute in particular relates to a cheque, which is an instrument among many others covered by the Negotiable Instruments Act, 1881 (hereinafter referred to as the “1881 Act”) and defined in s. 6 thereof. Now, it is quite well known that the payment to be made by cheque is materialised when it is honoured by the drawee (bank). *However, in the honouring or dishonouring of a cheque, there is an important antecedent, indeed indispensable, step to which an entire chapter (Chapter V) has been dedicated in the 1881 Act: presentment, and not only presentment in its mechanical or slipshod form but also, and to say once and for all, due and valid presentment.*”

9. The dynamics of a stale cheque are dealt with under s. 84 of the Negotiable Instruments Act, 1881, which provides as follows:

“84. When cheque is not duly presented and drawer damaged thereby: (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent of which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.”

10. It will be seen that there is a clear requirement that the cheque must be presented within reasonable time for it to be accepted. Consequently, the bank will not be under any obligation to encash a cheque not presented

within reasonable time and the drawer will then be discharged of the liability to the extent provided in s. 84. But what period is to be counted as reasonable time? The answer to that is found in the authoritative guidelines of the State Bank of Pakistan issued under s. 33B of the Banking Companies Ordinance, 1962 and which were discussed at appropriate length by the Supreme Court in *Messrs DW Pakistan (Private) Limited, Lahore v Begum Anisa Fazl-i-Mahmood and others* 2023 SCMR 555 in the following manner (paras 9 and 10; emphasis added):

“9. ...According to section 6 of the Negotiable Instruments Act, 1881, a ‘cheque’ is a bill of exchange drawn on a specific banker and not expressed to be payable otherwise than on demand. While section 84 of the same Act deals with the consequences where a cheque is not presented for payment within a reasonable time of its issue and, under subsection (2), it is provided that in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case. While handing over the cheque to the officer of the Court by the learned Trial Court, it was ignored that all cheques remain valid for certain time, thereafter it loses its efficacy/ validity. When a cheque runs out its time it becomes unacceptable to the banker unless it is revalidated and confirmed by the drawer. According to the State Bank of Pakistan, Banking Glossary, (Ref: [website link]), ‘A stale cheque is a cheque that has been outstanding for an unreasonable time. A cheque may be outstanding for more than six months and a bank may under its discretion refuse to honor such a cheque. A bank is under no obligation to a customer to pay a cheque, other than a certified cheque, after more than six months of its date, but it can charge its customer’s account for a payment made thereafter in good faith.’ Whereas in the State Bank of Pakistan, Guidelines for Clearing Operations, the definition of ‘Stale Instrument’ means the payment instrument that is presented with a date of issue that has exceeded six (6) months from the date of the payment instrument or as specified on it.’ Ref: [website link].

10. ...Even otherwise, if the cheque is not presented for encashment and only retained in custody of the Court’s officer, it will become stale after six months, and thereafter nothing will remain in Court to decipher the readiness and willingness of the buyer with good faith to perform his part of the contractual obligation...”

11. I am quite clear in my mind that under s. 84 of the 1881 Act read with the guidelines of the State Bank, a cheque that is not presented for encashment within six months of its date is a “stale cheque” and the bank to which it is presented after six months is under no obligation to accept the

same. In my view, such a cheque is not validly presented, and if it is not validly presented, then as I have observed in *Rashid Mehmood*, it will not reach the stage where it could be honoured as such there will not be any dishonouring if it is returned. For a stale cheque to be honoured and accepted, the bank must be instructed by the account holder, but in the absence of such explicit instruction, the cheque will not necessarily be encashed and no legal proceeding of a criminal or summary nature under Order XXXVII of the CPC would flow from it though a civil suit for the underlying liability, if proved, may lie: *Riaz Ahmed v The State* 2024 YLR 1144 (Sindh; para 12) and *Col. (R) Mukarram Ali Shah v The State and another* PLD 2025 Sindh 63. As such, I fully agree with the learned Trial Court that no liability flowed from the Cheque dated 05.10.2022 which was presented after six months of its date without any instruction by the account holder.

12. The second Cheque dated 26.05.2023 was not a stale cheque, however, it still does not give rise to a liability against the Respondents for different reasons. The learned Trial Court has observed, quite rightly, that there was no agreement between the parties to show any business transaction or obligation; that both the cheques were not issued in the name of the Complainant but rather one was a blank cheque and the other was issued in the name of one Asmatullah; and that there is no independent witness of the transaction. It is also on evidence that certain witnesses could not recall the name of the showroom where the purported transaction took place. The Investigation Officer came in evidence as DW-2 (Exh-06; pp. 51 and 53) but he could not recall the exact vehicle which was sold. The witnesses were not able to remember important details about the alleged transaction. Similarly, as against the remainder of charges under s. 420 and 506-II of the PPC, no evidence has been provided by the prosecution except mere assertions. I have no reason to disagree with the learned Trial Court

in its decision to acquit the Respondents and in the circumstances of the case I must admit I would have done the same.

13. For these reasons, this criminal acquittal appeal is dismissed and the acquittal of the Respondents is maintained.

JUDGE

APPROVED FOR REPORTING
FAISAL