

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.178 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR HEARING OF CASE

01.10.2025

Appellant in person

Dr. Fiaz ul Hassan Shah, J. Appellant in-person contends that he is seriously aggrieved with the impugned Judgment as the learned trial Court has failed to appreciate that a cheque bearing No.27592030 dated 16.3.2020 drawn at ABL, Gulshan-e-Maymar Branch was issued by the respondent No.2 in favour of respondent No.1 on account of advance security deposit for the usage of tenement, of which the appellant is landlord.

2. I have heard the appellant and perused the record.

3. I have considered the contention of appellant that the abovementioned cheque was dishonoured. On Court's query, appellant states that the cheque was issued by the respondent No.2 with regard to the advance security deposit in addition to the monthly rent which has been paid by the respondent No.2 as tenant of the premises No.A-304, Block-5, Gulshan-e-Iqbal, Karachi. Therefore, appellant has failed to point out the essential ingredients to invoke Section 489-F PPC with regard to liability or future promises for the repayment.

4. No doubt advance security deposit has been paid by the tenant to the landlord as a precautionary measure that in case of some damage or impairing rental property which gives by a landlord to the tenant monthly rent, that such landlord may adjust his losses and damages if any occurred. When confronted to learned counsel for appellant with regard to any damages or losses caused by the respondent to the demised premises and suffered by the appellant at the hand of respondent No.2, he fails to demonstrate the same. The deposition of the appellant is silent. Neither the losses nor damages have mentioned nor the quantum of such losses and damages has been given in the evidence at Exh.3 adduced before the trial Court that may entitle the appellant to adjust from the advance security deposit of Rs.4,50,000/- and culminate it into a criminal liability.

5. On the other hand, I have further observed that the appellant has already filed a summary suit which has also been decreed in his favour. It is settled principle that in case of unrecovered amount with regard to tenement, the landlord has every option to recover such losses by institution suit for recovery.

6. The prosecution was under a bounden duty to establish not only that the cheques in question were issued in discharge of a legally enforceable obligation or liability, but also that their issuance was accompanied by dishonest intent, as required under Section 489-F, P.P.C. However, the prosecution failed to substantiate these essential ingredients through credible and convincing evidence and the prosecution did not satisfactorily demonstrate the existence of a subsisting liability or the requisite mens rea on the part of the respondent. This failure has materially eroded the evidentiary value of the prosecution's case and vitiated the trust of this

Court in the complainant's version. In this regard, reliance is placed on the authoritative pronouncements of the Hon'ble Supreme Court in Muhammad Rafiq v. State (2014 SCMR 1698), Usman alias Kaloo v. State (2017 SCMR 622), and Nasrullah alias Nasro v. The State (2017 SCMR 724).

Hence no ground is made out and consequently appeal is dismissed.

JUDGE

asim/PA