

PRESENTED ON
30-07-2020

[Signature]
Deputy Registrar (Judl.)

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IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Revision No. *121* /2020

Muhammad Zaman

S/o Sher Muhammad Khan Lodhi

Muslim adult, resident of
Karachi.

*Presently Confined in
Lords Jail Khi.*

..... Appellant/Accused

VERSUS

(1)- The State

(2) COURT OF IST ADJ
KARACHI-CENTRAL

(2)- COURT OF VIITH CIVIL JUDGE &
JUDICIAL MAGISTRATE/
Model Trial Magistrate Court,
Karachi-Central.

----- Respondents

FIR No. 96/2019
U/S. 489-F, PPC
P.S. Taimoria.



CRIMINAL REVISION UNDER SECTION 439
CRIMINAL PROCEDURE CODE



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THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.121 of 2020

Present: Mr. Justice Jan Ali Junejo

For Applicant: Mr. Muhammad Riaz, Advocate

For State: Mr. Qammar Din Nohri, APG. Along
with

Complainant

Date of hearing: 17-03-2025

Date of Judgment: 17-03-2025

JUDGMENT

Jan Ali Junejo, J.— This Criminal Revision Application has been preferred by the applicant against the concurrent judgments of the learned VII Judicial Magistrate Central at Karachi, dated 04.11.2019, and the learned Ist Additional District Judge. Central Karachi, dated 17.03.2020, whereby the applicant was convicted under Section 489-F PPC and sentenced to two years of rigorous imprisonment along with a fine of Rs. 30,000/-. In case of default, he was to further undergo one month of simple imprisonment.

2. The prosecution case, as set forth in FIR No. 96/2019, registered at P.S. Taimoria. Karachi, is that the complainant, Muhammad Faisal Khan, alleged that on 07.10.2018, he advanced a loan of Rs. 12,50,000/- to the applicant, who assured repayment within two months. Upon demand, the applicant issued a cheque (No. 5315297) of Rs. 5,00,000/- drawn on Bank AL-Habib, which was dishonored on presentation on 07.12.2018 due to 'stop





payment.' The complainant made repeated demands, but the applicant failed to honor his commitment, leading to the registration of the FIR under Section 489-F PPC.

3. The challan was submitted, and the trial commenced following the framing of charges against the appellant. During the proceedings, the prosecution presented the following witnesses along with their respective exhibits:

a. PW-1: Muhammad Faisal Khan (Complainant)

o **Exhibits:**

- Cheque No. 5315297 (Ex-3/A)
- Memo of deposit slip (Ex-3/B)
- Return memo (Ex-3/C)
- Application to SHO (Ex-3/D)
- Statement under Section 154 Cr.P.C. (Ex-3/E)
- FIR No. 96/2019 (Ex-3/F)
- Memo of site inspection (Ex-3/G)
- Memo of arrest (Ex-3/H)
- Two property files (Ex-3/I and Ex-3/J)

b. PW-2: Muhammad Ali Sheikh (Private Witness/Mushir)

o **Exhibits:**

- Memo of site inspection (Ex-3/G)
- Memo of arrest (Ex-3/H)

c. PW-3: Munawar Syed (Bank Manager)

o **Exhibits:**

- Original cheque (Ex-3/A)
- Verification letter (Ex-5/A)



- Bank reply (Ex-5/B)

d. PW-4: Chaudhry Liaqat Ali (ASI, Author of the FIR)

◦ **Exhibits:**

- Application along with approval order (Ex-6/A and Ex-6/B)
- Statement under Section 154 Cr.P.C. (Ex-3/E)
- FIR (Ex-3/F)

e. PW-5: SIP Johar U Rahman (Investigation Officer)

◦ **Exhibits:**

- Various diary entries (Ex-7/A to Ex-7/J)
- Bank verification application of cheque (Ex-7/B)
- Notice (Ex-7/C)
- CRO letter (Ex-7/H)
- Verified memo of site inspection (Ex-8/G)
- Verified memo of arrest (Ex-8/H)



4. The prosecution concluded its evidence after examining five witnesses and producing documentary evidence to support its claim. Upon completion of the prosecution's case, the applicant was examined under Section 342 Cr.P.C., wherein he denied the allegations, claimed innocence, and reiterated that the cheque was issued as security. However, he refused to record his statement under oath as per Section 340 Cr.P.C. and did not lead any defense evidence to substantiate his claim that his liability had been discharged. The absence of any documentary or oral evidence in his favor further weakens his stance and strengthens the prosecution's case. The trial Court convicted the applicant, relying upon the testimony of the complainant and corroborating evidence, including the dishonored cheque, bank return memo, and other

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documents. The appellate court upheld the conviction, finding no material irregularity in the judgment of the trial Court.

5. The learned counsel for the applicant contended that the trial court and the appellate court failed to appreciate the contradictions in the prosecution evidence. He emphasized the following points: a. The complainant received two property files from the applicant, which discharged his obligation. b. The cheque was issued as security and not for repayment of a loan, which does not attract Section 489-F PPC. c. The complainant failed to prove the existence of a legally enforceable debt beyond a reasonable doubt. d. The prosecution's evidence was full of contradictions, including differing statements in the FIR, under Section 154 Cr.P.C., and examination-in-chief. e. The dishonor of the cheque due to 'stop payment' does not necessarily establish dishonest intent.

6. In rebuttal, the learned APG contended that the prosecution successfully proved its case through documentary and oral evidence. The applicant admitted issuing the cheque, and its dishonor was sufficient to establish criminal liability. The applicant failed to produce any document to substantiate his claim that he discharged the liability through property files. The defense failed to create reasonable doubt to merit acquittal. Lastly, the learned APG prayed for dismissal of Criminal Revision Application.

7. I have considered the arguments advanced by the learned counsel for the Applicant, the learned APG for the State and perused the evidence available on record. After careful scrutiny of the evidence on record, the following aspects require deliberation. The prosecution examined five witnesses, including the complainant, bank manager, and investigating



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officer, all of whom supported the prosecution case. The dishonored cheque and bank return memo substantiate the prosecution's claim that the applicant issued the cheque, which was dishonored upon presentation. The complainant's testimony is corroborated by the bank manager's statement, which confirmed that the cheque was dishonored due to 'stop payment' instructions from the drawer. The applicant, in his statement under Section 342 Cr.P.C., admitted issuing the cheque but claimed that it was given as security. However, he failed to produce any document supporting this assertion. The burden to prove arrangements with the bank to honor the cheque, as per Section 489-F PPC, lay on the applicant, which he failed to discharge. In light of the above discussion, it is clear that the prosecution has established all essential ingredients of Section 489-F PPC. The applicant issued a cheque in fulfillment of an obligation, and its dishonor, coupled with his failure to arrange for its encashment, constitutes a criminal offense. The applicant's defense that the cheque was issued as security does not find support from any documentary or credible oral evidence. Furthermore, dishonesty can be inferred from the fact that he stopped payment after issuing the cheque. In similar circumstances, in the case of **Muhammad Sultan v. The State** (2010 SCMR 806), the Honourable Supreme Court of Pakistan upheld the conviction and observed: "*A perusal of Section 489-F of the Pakistan Penal Code (PPC) reveals that the provision applies only if the prosecution successfully establishes the following conditions:*

1. Issuance of a cheque.
2. Dishonest intent behind issuing the cheque.
3. Purpose of issuance must be either:
 - a) Repayment of a loan, or



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b) Fulfillment of an obligation (which broadly applies to lawful agreements, contracts, services, promises, or any act that legally binds a person to perform).

4. Dishonor of the cheque upon presentation.

However, the accused can present a valid defense by proving:

1. He had made arrangements with his bank to ensure the cheque would be honored.
2. The bank was at fault for dishonoring the cheque.

If the accused establishes these two facts with tangible evidence—and only after the prosecution has proven the ingredients of the offense—he would be absolved of liability". In the present case, the prosecution successfully proved all the essential elements constituting an offense under Section 489-F, PPC. However, the appellant failed to substantiate his defense, thereby confirming the offense against him.

8. The trial Court and the Appellate Court have correctly appreciated the evidence and legal principles. No illegality, misreading, or non-reading of evidence has been found to warrant interference in the concurrent findings of the facts recorded by the learned Courts below.

9. In light of the above discussion, I find no merit in this Criminal Revision Application. Both the trial Court and the Appellate Court have correctly evaluated the evidence and applied the relevant law in convicting the applicant. Accordingly, the present Criminal Revision Application is dismissed, and the conviction and sentence imposed by the trial Court, as upheld by the Appellate Court, are hereby affirmed.




JUDGE