**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Acquittal Appeal No.284 of 2026

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| Appellant | : | Nadeem son of Mehnga Khan, through Mr. Jawaid Iqbal Awan, Advocate. |
| Respondent No.1 | : | Mst. Kiran John daughter of John Khokhar. |
| Respondent No.2 | : | The State. |
| Date of Hearing | : | 12.05.2026. |
| Date of Order | : | 12.05.2026. |

**J U D G M E N T**

**TASNEEM SULTANA, J**.— The appellant/complainant Nadeem has called into question the judgment dated 13.04.2026 passed by the learned Model Trial Magistrate Court / Judicial Magistrate-XV, Karachi South, in Criminal Case No.299 of 2025, arising out of FIR No.376 of 2024 registered at Police Station Mehmoodabad under Section 489-F, P.P.C., whereby respondent Mst. Kiran John was acquitted of the charge under Section 245(1), Cr.P.C.

2. Brief facts of the prosecution case are that complainant Nadeem alleged that he had paid an amount of Rs.300,000/- to respondent No.1 Mst. Kiran John for investment purposes, with an assurance that she would pay monthly profit. According to the complainant, respondent No.1 initially paid profit for three/four months, but thereafter stopped payment and left the locality. It was further alleged that, on repeated demands, respondent No.1 issued cheque No.30108172 amounting to Rs.300,000/-, drawn on UBL Bank, Azam Town Branch, which, upon presentation through Apna Microfinance Bank, Mehmoodabad Branch, was dishonoured on account of dormant account / insufficient funds. Consequently, the F.I.R. was lodged.

3. After usual investigation, police submitted charge-sheet under Section 173, Cr.P.C., against respondent No.1. Having been supplied requisite documents as provided under Section 241-A, Cr.P.C., the learned trial Court framed formal charge against respondent No.1, to which she pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined five witnesses. PW-1 Nadeem, complainant, was examined at Ex.03 and produced agreement, statement under Section 154, Cr.P.C., F.I.R., memo of site inspection, cheque, return memo and application under Sections 22-A & 22-B, Cr.P.C.; PW-2 HC Muhammad Toufeeq was examined at Ex.04; PW-3 ASI Syed Zulfiqar Hussain Shah, Investigating Officer, was examined at Ex.05; PW-4 SI Zahid Jadoon was

examined at Ex.06; and PW-5 Farzana Batool, Operation Manager, UBL Azam Town Branch, was examined at Ex.07. Thereafter, the prosecution closed its side.

5. Statement of respondent No.1 under Section 342, Cr.P.C., was recorded, wherein she denied the allegations levelled against her and claimed innocence. She, however, did not examine herself on oath under Section 340(2), Cr.P.C., nor led any evidence in defence. The learned trial Court, after hearing learned counsel for the accused and learned ADPP for the State, acquitted respondent No.1 vide judgment dated 13.04.2026.

6. Learned counsel for the appellant contended that the learned trial Court failed to properly appreciate the evidence available on record; that the complainant had fully supported the prosecution case; that the cheque and return memo were produced and proved; that PW-5 bank official confirmed that the cheque was returned due to inactive / dormant account; that once issuance and dishonour of cheque stood established, the learned trial Court ought to have convicted respondent No.1; that the defence plea was not proved through independent evidence; and that the impugned judgment is based on misreading and non-reading of evidence. He prayed for setting aside the acquittal and conviction of respondent No.1 according to law.

7. Heard learned counsel for the appellant and perused the record with his assistance.

8. Before proceeding to evaluate the merits of this appeal, it is appropriate to refer to Section 489-F, P.P.C., under which respondent No.1 was charged. The said provision reads as under: -

> "Whoever dishonestly issues a cheque towards repayment of a loan or fulfilment of an obligation which is dishonoured 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 honoured and that the bank was at fault in not honouring the cheque."

9. The essential ingredients required to be proved by the prosecution under the said provision are: firstly, issuance of a cheque; secondly, that such issuance was with dishonest intention; thirdly, that the cheque was issued towards repayment of a loan or fulfilment of an obligation; and fourthly, that upon presentation the cheque was dishonoured. Unless these foundational ingredients are established by the prosecution to the requisite standard, mere production of cheque and return memo would not, by itself, be sufficient to record conviction.

10. In the present case, the prosecution produced the subject cheque and return memo. However, mere issuance or dishonour of a cheque, by itself, does not constitute an offence under Section 489-F, P.P.C., unless it is further proved that the cheque was dishonestly issued towards repayment of a loan or fulfilment

of a legally enforceable obligation. The foundational requirement, therefore, was to prove the underlying transaction, exact liability and dishonest intention attached to issuance of the cheque.

11. Upon examination of the evidence recorded at trial, it appears that the prosecution case suffered from material infirmities. PW-1/complainant admitted in cross-examination that he had not produced any evidence to establish payment of Rs.300,000/- to respondent No.1. Although he relied upon the cheque and the alleged agreement, his own admissions show that the agreement pertained to May, 2016, the cheque was issued in May, 2016 without date, and the same was presented on 01.02.2024 after lapse of about eight years. These admissions materially weaken the prosecution version and create serious doubt regarding existence of any active and legally enforceable obligation at the time when the cheque was presented.

12. It is also significant that the complainant admitted that the agreement was prepared at a typist's shop; that, at the time of preparation of the agreement, only he and Anees, husband of respondent No.1, were present; and that respondent No.1 did not sign the agreement at the time of its preparation. Although Anees was shown to be a material person in relation to the alleged agreement, he was not examined by the prosecution. The agreement was produced by the complainant himself, but its execution was not proved through any independent witness. These circumstances create serious doubt regarding the execution, authenticity and evidentiary worth of the alleged agreement, particularly when no receipt, bank statement, account record or other independent documentary evidence was produced to establish actual handing over of Rs.300,000/- to respondent No.1.

13. The delay in presentation of the cheque is another material circumstance. The complainant admitted that the cheque was issued in May, 2016 without date, whereas the same was presented on 01.02.2024. He also admitted that during the intervening period of eight years, he did not lodge any complaint against respondent No.1 before any forum. This long silence, coupled with the complainant's admission regarding an undated cheque, supports the view taken by the learned trial Court that the prosecution failed to establish dishonest intention at the time of issuance of cheque.

14. The evidence of PW-5 Farzana Batool, Operation Manager, UBL Azam Town Branch, at the most proves that the cheque was returned for the reason of inactive / dormant account. In cross-examination, she admitted that in Ex.5/I, the reason "insufficient balance" was not mentioned. She further stated that she had not produced any evidence regarding last transaction of the account. Thus, the bank evidence only proves return of the cheque, but does not prove that

respondent No.1 had issued the cheque dishonestly towards repayment of a loan or fulfilment of an existing legally enforceable obligation.

15. The prosecution also failed to produce any reliable material to establish that the alleged amount was paid as loan. The complainant's own version shows that the amount was allegedly given for investment purposes with monthly profit. Such nature of transaction, in absence of proof of actual payment, profit arrangement, accounts, receipts or any independent witness, gives the dispute a civil and financial complexion. The learned trial Court, therefore, was justified in observing that Section 489-F, P.P.C., could not be used as a tool for recovery of a stale or disputed liability.

16. The legal position on this aspect has been dealt with in Malik Safdar Ali v. Syed Khalid Ali and 2 others (PLD 2012 Sindh 464), wherein it has been held that where no evidence is led by the complainant to show the business transaction which created lien of the amounts mentioned in the cheques to justify issuance of the cheques, the accused can hardly be held liable to pay such dues. It was further held that since the element of business transaction is the root-cause of issuance of cheques, the same is a prerequisite condition for holding the issuer of dishonoured cheques as guilty. In the said case, both sides were admittedly on business terms prior to issuance of the cheques; therefore, the complainant-company could have come forward with record of such business transactions justifying existence of the claim allegedly met through issuance of the cheques, but no such material was produced by the prosecution and the acquittal was maintained.

17. The above principle squarely applies to the present case. The appellant/complainant alleged that he paid Rs.300,000/- to respondent No.1 for investment purposes and that the subject cheque was issued against such liability, yet no receipt, bank transaction, account statement, independent witness, profit record or any reliable document was produced to prove actual payment of the amount or existence of a legally enforceable obligation. In absence of such material, mere production of cheque and return memo could not satisfy the essential ingredients of Section 489-F, P.P.C., particularly dishonest intention and fulfilment of an obligation.

18. The learned trial Court, after examining the evidence, reached the conclusion that the prosecution case was doubtful. Such conclusion is supported by the record, particularly in view of the complainant's admissions regarding absence of proof of payment, undated cheque, presentation of cheque after about eight years, no complaint during the intervening period, defective proof of agreement, non-examination of Anees and dormant account. The findings recorded by the learned trial Court, therefore, cannot be termed perverse, arbitrary, artificial or shocking.

19. The scope of interference in an appeal against acquittal is narrow, as an accused, after acquittal, earns double presumption of innocence. The Hon'ble Supreme Court of Pakistan in the case of **Muhammad Riaz versus Khurram Shehzad and another (2024 SCMR 51)** has held as under: -

> "10. The aforesaid set of circumstances creates misgivings and suspicions regarding the presence of the prosecution witnesses at the scene of the crime, and the discrepancies and defects in the investigation and the prosecution case pointed out by the learned High Court in the impugned judgment also colors the case in doubt and improbability. Therefore, the learned High Court rightly held that the prosecution badly failed to substantiate the case against the respondent No.1, and the learned Trial Court was not justified in convicting him on the strength of untrustworthy or uncorroborated evidence which was full of material contradictions, especially contradictions in the ocular and medical evidence. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly."

20. In **State versus Abdul Khaliq and others (PLD 2011 SC 554),** the Hon'ble Supreme Court has further held as under: -

> "From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence, such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals."

21. In the present case, no patent misreading or non-reading of material evidence, perversity, arbitrariness or gross illegality has been pointed out in the

impugned judgment. The learned trial Court has considered the prosecution evidence and has assigned reasons for extending benefit of doubt to respondent No.1. The view taken by the learned trial Court appears to be a possible and plausible view of the evidence available on record. Even if another view may be possible, that by itself would not furnish a lawful basis to interfere in an appeal against acquittal.

22. For the foregoing reasons, the instant Criminal Acquittal Appeal was dismissed in limine vide short order dated 12.05.2026 and the judgment dated 13.04.2026 passed by the learned Model Trial Magistrate Court / Judicial Magistrate-XV, Karachi South, in Criminal Case No.299 of 2025, whereby respondent No.1 Mst. Kiran John daughter of John Khokhar was acquitted under Section 245(1), Cr.P.C., was maintained.

These are reasons of my short order dated

**JUDGE**

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Criminal Acquittal Appeal No.284 of 2026

Appellant : Nadeem son of Mehnga Khan, through Mr. Jawaid Iqbal Awan, Advocate.

Respondent No.1 : Mst. Kiran John daughter of John Khokhar.

Respondent No.2 : The State.

Date of Hearing : 12.05.2026.

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Operation Manager, UBL Azam Town Branch, was examined at Ex.07. Thereafter, the prosecution closed its side.

5. Statement of respondent No.1 under Section 342, Cr.P.C., was recorded, wherein she denied the allegations levelled against her and claimed innocence. She, however, did not examine herself on oath under Section 340(2), Cr.P.C., nor led any evidence in defence. The learned trial Court, after hearing learned counsel for the accused and learned ADPP for the State, acquitted respondent No.1 vide judgment dated 13.04.2026.

6. Learned counsel for the appellant contended that the learned trial Court failed to properly appreciate the evidence available on record; that the complainant had fully supported the prosecution case; that the cheque and return memo were produced and proved; that PW-5 bank official confirmed that the cheque was returned due to inactive / dormant account; that once issuance and dishonour of cheque stood established, the learned trial Court ought to have convicted respondent No.1; that the defence plea was not proved through independent evidence; and that the impugned judgment is based on misreading and non-reading of evidence. He prayed for setting aside the acquittal and conviction of respondent No.1 according to law.

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10. In the present case, the prosecution produced the subject cheque and return memo. However, mere issuance or dishonour of a cheque, by itself, does not constitute an offence under Section 489-F, P.P.C., unless it is further proved that the cheque was dishonestly issued towards repayment of a loan or fulfilment of a legally enforceable obligation. The foundational requirement, therefore, was to prove the underlying transaction, exact liability and dishonest intention attached to issuance of the cheque.

11. Upon examination of the evidence recorded at trial, it appears that the prosecution case suffered from material infirmities. PW-1/complainant admitted in cross-examination that he had not produced any evidence to establish payment of Rs.300,000/- to respondent No.1. Although he relied upon the cheque and the alleged agreement, his own admissions show that the agreement pertained to May, 2016, the cheque was issued in May, 2016 without date, and the same was presented on 01.02.2024 after lapse of about eight years. These admissions materially weaken the prosecution version and create serious doubt regarding existence of any active and legally enforceable obligation at the time when the cheque was presented.

12. It is also significant that the complainant admitted that the agreement was prepared at a typist's shop; that, at the time of preparation of the agreement, only he and Anees, husband of respondent No.1, were present; and that respondent No.1 did not sign the agreement at the time of its preparation. Although Anees was shown to be a material person in relation to the alleged agreement, he was not examined by the prosecution. The agreement was produced by the complainant himself, but its execution was not proved through any independent witness. These circumstances create serious doubt regarding the execution, authenticity and evidentiary worth of the alleged agreement, particularly when no receipt, bank statement, account record or other independent documentary evidence was produced to establish actual handing over of Rs.300,000/- to respondent No.1.

13. The delay in presentation of the cheque is another material circumstance. The complainant admitted that the cheque was issued in May, 2016 without date, whereas the same was presented on 01.02.2024. He also admitted that during the intervening period of eight years, he did not lodge any complaint against respondent No.1 before any forum. This long silence, coupled with the complainant's admission regarding an undated cheque, supports the view taken by the learned trial Court that the prosecution failed to establish dishonest intention at the time of issuance of cheque.

14. The evidence of PW-5 Farzana Batool, Operation Manager, UBL Azam Town Branch, at the most proves that the cheque was returned for the reason of inactive / dormant account. In cross-examination, she admitted that in Ex.5/I, the reason “insufficient balance” was not mentioned. She further stated that she had not produced any evidence regarding last transaction of the account. Thus, the bank evidence only proves return of the cheque, but does not prove that respondent No.1 had issued the cheque dishonestly towards repayment of a loan or fulfilment of an existing legally enforceable obligation.

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16. The legal position on this aspect has been dealt with in **Malik Safdar Ali v. Syed Khalid Ali and 2 others (PLD 2012 Sindh 464)**, wherein it has been held that where no evidence is led by the complainant to show the business transaction which created lien of the amounts mentioned in the cheques to justify issuance of the cheques, the accused can hardly be held liable to pay such dues. It was further held that since the element of business transaction is the root-cause of issuance of cheques, the same is a prerequisite condition for holding the issuer of dishonoured cheques as guilty. In the said case, both sides were admittedly on business terms prior to issuance of the cheques; therefore, the complainant-company could have come forward with record of such business transactions justifying existence of the claim allegedly met through issuance of the cheques, but no such material was produced by the prosecution and the acquittal was maintained.

17. The above principle squarely applies to the present case. The appellant/complainant alleged that he paid Rs.300,000/- to respondent No.1 for investment purposes and that the subject cheque was issued against such liability, yet no receipt, bank transaction, account statement, independent witness, profit record or any reliable document was produced to prove actual payment of the amount or existence of a legally enforceable obligation. In absence of such material, mere production of cheque and return memo could not satisfy the essential ingredients of

Section 489-F, P.P.C., particularly dishonest intention and fulfilment of an obligation.

18. The learned trial Court, after examining the evidence, reached the conclusion that the prosecution case was doubtful. Such conclusion is supported by the record, particularly in view of the complainant's admissions regarding absence of proof of payment, undated cheque, presentation of cheque after about eight years, no complaint during the intervening period, defective proof of agreement, non-examination of Anees and dormant account. The findings recorded by the learned trial Court, therefore, cannot be termed perverse, arbitrary, artificial or shocking.

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"10. The aforesaid set of circumstances creates misgivings and suspicions regarding the presence of the prosecution witnesses at the scene of the crime, and the discrepancies and defects in the investigation and the prosecution case pointed out by the learned High Court in the impugned judgment also colors the case in doubt and improbability. Therefore, the learned High Court rightly held that the prosecution badly failed to substantiate the case against the respondent No.1, and the learned Trial Court was not justified in convicting him on the strength of untrustworthy or uncorroborated evidence which was full of material contradictions, especially contradictions in the ocular and medical evidence. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly."

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"From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave

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These are the reasons for the said short order.

JUDGE

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