

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.605 of 2023

Appellant : **Syed Adil Mehmood** through Mr. Maroof Hussain
Hashmi, Advocate.

Respondent : The State through Mr. Qamaruddin Nohri, D.P.G
Sindh.

Date of Hearing : 21.04.2026

Date of Decision: : 21.04.2026.

JUDGMENT.

TASNEEM SULTANA-J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed judgment dated 16.10.2023 passed by learned Judicial Magistrate-XXXII, Karachi-East in Criminal Case No.1107 of 2022 arising out of FIR No.739/2022 registered at Police Station Gulistan-e-Johar for offence punishable under Section 489-F PPC, whereby respondent/accused Mst. Afshan Bilal daughter of Bilal Ahmed was acquitted under Section 245(1) Cr.P.C.

2. Brief facts of prosecution case are that complainant Syed Adil Mehmood alleged that in January 2021 he purchased two plots bearing Nos.A-97 and A-98 situated in Muhammad Bin Qasim Cooperative Housing Society from accused Mst. Afshan Bilal along with co-vendors namely Tariq Wali, Kausar Bilal and Bilal Afandi for total consideration amount of Rs.40,00,000/-. According to complainant, despite payment of entire sale consideration through different cheques, possession and documents of plots were not handed over to him. Thereafter, upon demand of refund amount, accused persons allegedly issued two cheques of Rs.20,00,000/- each in favour of complainant. One cheque bearing No.2448952504 drawn on Allied Bank Limited, Dastagir Colony Branch Karachi dated 31.07.2022, when presented before bank, was dishonoured twice due to "payment stopped by drawer". Consequently, FIR in question came to be lodged against respondent/accused under Section 489-F PPC.

3. After usual investigation, challan was submitted before learned trial Court. Copies of relevant documents were supplied to accused in compliance of Section 241 Cr.P.C. Formal charge under Section 489-F PPC was framed against respondent/accused at Exh:02, to which she pleaded not guilty and claimed trial.

4. In order to substantiate accusation, prosecution examined complainant Syed Adil Mehmood as PW-01 at Exh:03, who produced bank statements at Exh:03/A-1 to Exh:03/A-5, subject cheques and return memos at Exh:03/B to Exh:03/E, application to police at Exh:03/F, statement under Section 154 Cr.P.C at Exh:03/G, FIR at Exh:03/H, memo of site inspection at Exh:03/I and settlement agreement at Exh:03/J. Thereafter PW-02 Pir Bux Lashari @ Safeer Ahmed was examined at Exh:04 as mashir of inspection, who verified memo of site inspection. Prosecution gave up PW ASI Mubarak Ali vide statement at Exh:05. Thereafter Investigating Officer ASI Moeen Khan was examined as PW-03 at Exh:06, who produced copy of FIR at Exh:06/A, bank verification at Exh:06/B, roznamcha entries at Exh:06/C to Exh:06/E and also referred to memo of site inspection already exhibited. Thereafter prosecution side was closed vide statement at Exh:07.

5. Statement of respondent/accused under Section 342 Cr.P.C was recorded at Exh:08, wherein she denied prosecution allegations and pleaded innocence. She admitted issuance of cheques but stated that the same were not dishonestly issued. According to her, complainant himself was dealing in property business after retirement and she had purchased plots from complainant for which subject cheques were issued, however, since complainant failed to provide possession and documents of plots, payment of cheques was stopped. She further stated that complainant was her close relative and had purchased several plots through her for family members. However, she neither examined herself on oath under Section 340(2) Cr.P.C nor produced any witness in defence.

6. On conclusion of the trial, after hearing learned counsel for the parties, learned trial Court acquitted the accused/respondent of the charge vide judgment dated 16.10.2023, which is challenged in this appeal.

7. Learned counsel for appellant mainly contended that respondent/accused had admitted issuance of subject cheques during her statement under Section 342 Cr.P.C and such admission itself was sufficient to establish prosecution case; that complainant had fully supported prosecution story and produced bank statements proving transfer of huge amounts to respondent/accused; that settlement agreement produced on record established liability of accused side and dishonour of cheques due to "payment stopped by drawer" clearly attracted provisions of Section 489-F PPC; that learned trial Court misread evidence and extended benefit of doubt on flimsy grounds. Lastly, learned counsel prayed that impugned judgment be set aside and respondent/accused be convicted in accordance with law.

8. Conversely, learned counsel for respondent supported impugned judgment and argued that prosecution failed to establish essential ingredients of Section 489-F PPC. It was contended that there was admittedly no written agreement regarding

alleged sale transaction of subject plots and even details of eleven cheques allegedly issued by complainant were withheld. Learned counsel further argued that settlement agreement relied upon by complainant neither contained name of respondent/accused nor reflected any liability against her. It was further argued that complainant himself admitted during cross-examination that several plots had been purchased through respondent/accused for his family members, which probalized defence plea. According to learned counsel, learned trial Court rightly appreciated evidence and recorded acquittal after extending benefit of doubt.

9. Heard. Record perused.

10. It is settled law that acquittal once recorded by a competent Court strengthens presumption of innocence attached to accused person. Superior Courts have consistently held that interference in acquittal is permissible only where findings recorded by trial Court are arbitrary, capricious, perverse, fanciful or based upon gross misreading or non-reading of evidence. If view taken by trial Court is possible and plausible from material available on record, acquittal ordinarily should not be disturbed.

11. Perusal of record reflects that prosecution case mainly hinges upon testimony of complainant/PW-01 Syed Adil Mehmood. According to complainant, he purchased two plots from respondent/accused and others for Rs.40,00,000/- and paid entire consideration through eleven cheques. Surprisingly, however, no written sale agreement whatsoever was produced before trial Court regarding alleged sale transaction. Even details, numbers, dates and particulars of eleven cheques allegedly issued by complainant were admittedly not disclosed during evidence.

12. The complainant himself admitted during cross-examination that several other plots had been purchased through respondent/accused for his family members. This admission assumes significance because respondent/accused specifically pleaded that complainant had entered into property business after retirement and that subject cheques were issued by her in connection with plots purchased from complainant himself. Though accused did not produce defence evidence, yet burden initially remained upon prosecution to establish dishonest issuance of cheques beyond reasonable doubt.

13. A careful examination of settlement agreement produced at Exh:03/J reveals that same was allegedly executed between complainant and one Tariq Wali. Significantly, respondent/accused Mst. Afshan Bilal is neither shown as party to said agreement nor as signatory thereto. The agreement also does not specifically attribute any outstanding liability to respondent/accused. Moreover, prosecution itself alleged outstanding amount of Rs.40,00,000/- whereas settlement agreement

referred to liability of Rs.52,00,000/-, thereby creating material inconsistency in prosecution story.

14. The learned trial Court has rightly observed that although issuance of cheques was admitted, mere issuance of cheque is not sufficient to attract Section 489-F PPC unless prosecution establishes dishonest intention behind issuance coupled with existence of legally enforceable obligation. The law laid down by august Supreme Court in case of "Muhammad Sultan versus The State" (2010 SCMR 806) clearly requires prosecution to prove dishonest issuance of cheque towards repayment of loan or fulfillment of obligation.

15. In the present case, prosecution failed to establish foundational transaction through cogent and confidence inspiring evidence. Neither any written sale agreement regarding subject plots was produced nor possession documents were brought on record. Even investigation conducted by Investigating Officer appears to be deficient as he admittedly did not properly inspect subject plots nor collected material corroborative evidence regarding alleged transaction.

16. It further appears that subject cheques were dishonoured on ground of "payment stopped by drawer". Respondent/accused consistently maintained that payment was stopped because complainant failed to provide possession and documents of plots. In circumstances of present case, such defence cannot be said to be wholly improbable particularly when prosecution itself failed to establish exact nature of transaction and liability through independent documentary evidence.

17. The learned trial Court has elaborately discussed evidence available on record and after proper appreciation thereof reached conclusion that prosecution failed to prove charge beyond reasonable doubt. The findings recorded by learned trial Court are based upon sound reasoning and material available on record. Learned counsel for appellant has failed to point out any illegality, arbitrariness or gross misreading/non-reading of evidence warranting interference by this Court.

18. I have noticed that the trial court Judgment is very elaborative and needs no further deliberation on my part as no illegality has been pointed out by the appellant; even otherwise it is well settled principle of law that burden of proving the case is always upon the shoulders of prosecution which is bound to prove the same beyond shadow of reasonable doubt, and if a single circumstance creates doubt it goes in favour of accused, benefit of which shall be extended to the accused not as a matter of grace but as a matter of right as laid down by Honourable Supreme Court of Pakistan in case of Tariq Pervaiz v. The State (1995 SCMR 1345) , **Muhammad Akram v. The State (2009 SCMR 230)** and in case of **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**.

19. It is a settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on ***Muhammad Riaz v. Khurram Shehzad and another (2024 SCMR 51)***.

20. In view of above discussion, I am of considered view that impugned judgment does not suffer from any legal infirmity, arbitrariness or perversity requiring interference by this Court. Consequently, instant Criminal Acquittal Appeal is dismissed in limine. These are reasons of my short order dated 21.04.2026.

JUDGE