

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.39 of 2025

Appellant : Syed Ashraf Ali through Mr. Muhammad Aslam,
Advocate.

Respondent No.1 : The State through Mr. Qamaruddin Nohri,
Advocate.

.Respondent No.2 : Jawad Khan : Nemo

Date of Hearing : 07.05.2026.

Date of Order: 07.05.2026.

J U D G M E N T

TASNEEM SULTANA, J.— The appellant Syed Ashraf Ali has called into question the judgment dated 19.11.2024 passed by the learned Model Trial Magistrate Court-II / XXII-Civil Judge & Judicial Magistrate, Karachi East, in Criminal Case No.441 of 2023, arising out of FIR No.172 of 2023 registered at Police Station Ferozabad under Section 489-F, P.P.C., whereby respondent No.2 Jawad Khan was acquitted of the charge under Section 245(1), Cr.P.C.

2. Brief facts are that the complainant, Syed Ashraf Ali, allegedly entered into an agreement with Jawad Khan, owner of M/s Sheckles Enterprises, for purchase of Flat No.3, third floor, Plot No.53-C, Tariq Commercial, Street No.5, Phase-VII Extension, Karachi, and paid Rs.60,00,000/- as advance on 06.01.2022. It was alleged that, on failure to provide the original file/documents, Jawad Khan issued cheque No.A-18394303 dated 26.05.2022 for Rs.60,00,000/-, drawn on Meezan Bank, which was dishonoured on 30.05.2022. He thereafter issued another cheque No.21026770 dated 21.07.2022 for Rs.55,00,000/-, drawn on Dubai Islamic Bank, which was also dishonoured on 22.07.2022. Consequently, the F.I.R. was lodged.

3. After usual investigation, police submitted charge-sheet under section 173 Cr.P.C against respondent No.2 before the competent Court. Having been supplied requisite documents as provided under Section 241-A, Cr.P.C., the learned trial Court framed formal charge against respondent No.2, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined appellant Ashraf Ali, as PW-1, at Exh.03, he produced agreement to sell, cheques, return memos, legal notice, TCS receipt, delivery report, FIR and memo of site inspection as Exh.3/A to Exh.3/L, PW-2 SIP Muhammad Arif, Investigating Officer, at Exh.05, he produced letter for verification, bank reply, application of complainant, qaimi entry, departure and arrival entries and entry whereby accused joined the investigation as Exh.5/A to Exh.5/G. On application under Section 540,

Cr.P.C., Syed Farhan Ali Zaidi, Operation Manager, Bank Al-Habib Limited, Allama Iqbal Road Branch, was examined as Court witness at Exh.07. Thereafter, prosecution side was closed vide statement at Exh.08.

5. The statement of respondent No.2 was recorded under Section 342, Cr.P.C., at Exh.09, wherein he denied the allegations levelled against him by the prosecution and claimed innocence. According to him, he was doing business of real estate and used to work with Muhammad Sohail; that the appellant had entered into agreement with Muhammad Sohail; that he had no business transaction with the appellant; and that his cheque(s) were misused by his boss Muhammad Sohail, as he used to keep his signed cheque(s) in the office. He admitted his signatures on the disputed cheque(s), but denied issuance thereof in favour of the appellant against any liability. However, neither he examined himself on oath under Section 340(2), Cr.P.C., nor he opted to produce any witness in defence. The learned trial Court, after hearing learned ADPP for the State, learned counsel for the appellant and learned defence counsel, acquitted respondent No.2 vide judgment dated 19.11.2024.

6. Learned counsel for the appellant contended that the learned trial Court failed to properly appreciate the evidence available on record; that respondent No.2 admitted his signatures on the disputed cheque(s); that the cheque(s) and return memos were duly produced and proved; that the bank official confirmed that the cheque(s) were presented and dishonored; that respondent No.2 did not lodge any complaint regarding alleged misuse of his cheque(s); that the defence plea was not established 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.2 according to law.

7. Conversely, learned D.P.G. supported the impugned judgment and submitted that mere signature and dishonour of cheques were not sufficient to attract Section 489-F, P.P.C.; that the appellant failed to prove issuance of cheques against any legally enforceable liability; that the learned trial Court rightly extended benefit of doubt to respondent No.2; and that no perversity or illegality has been pointed out in the impugned judgment. He prayed for dismissal of the appeal.

8. Heard. Record perused.

9. 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.2 was charged. The said provision reads as under: -

“Whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation which is dishonored 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 honored and that the bank was at fault in not honoring the cheque.”

10. 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 fulfillment of an obligation; and fourthly, that upon presentation the cheque was dishonored. 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.

11. In the present case, the prosecution produced the cheque(s) and return memos. However, mere signature on cheque(s) or dishonour thereof does not constitute an offence under Section 489-F, P.P.C., unless it is further proved that the cheque(s) were dishonestly issued towards repayment of a loan or fulfillment 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(s).

12. Upon examination of the evidence recorded at trial, it appears that the prosecution case suffered from material infirmities. The agreement to sell produced by the appellant at Ex.3/A shows Muhammad Sohail as vendor and the appellant as vendee. Respondent No.2 Jawad Khan is not shown as vendor, owner or beneficiary of the alleged sale consideration; rather, his name appears as a witness to the agreement. The receipt also appears to have been issued by Muhammad Sohail. In cross-examination, the appellant admitted that he had not produced any document to establish that Jawad Khan was partner of Sohail. This admission materially affected the prosecution version regarding existence of a direct and legally enforceable obligation of respondent No.2 towards the appellant.

13. The prosecution also failed to produce any reliable material to prove actual payment of Rs.60,00,000/- to respondent No.2. The appellant stated that he paid Rs.60,00,000/- in connection with purchase of the flat, but the documents relied upon by him relate to the agreement with Muhammad Sohail. The Investigating Officer also admitted in cross-examination that, during investigation, the appellant did not produce any proof regarding handing over of amount to the accused. He further admitted that the appellant did not produce any agreement executed between the respondent No. 2 and the appellant. In a case where criminal liability was sought to be fastened upon respondent No.2 under Section 489-F, P.P.C., absence of proof of payment

and absence of any agreement between the appellant and respondent No.2 could not be ignored.

14. It is also significant that the appellant's own evidence contains material improvements and inconsistencies. In the FIR, the allegation mainly related to dishonored cheque(s) allegedly issued by respondent No.2 for return of money, whereas in examination-in-chief the appellant introduced detailed facts regarding agreement with Sohail Ahmed, total sale consideration of Rs.1,20,00,000/-, payment mode and transaction through Shackles Enterprises. The appellant also admitted that all three cheque(s) were open cash cheque(s) and that the total amount mentioned in all three cheque(s) was more than the amount allegedly due. One cheque was returned as "mutilated instrument", while the other two were returned due to insufficient funds. These circumstances created doubt regarding the exact liability and the manner in which the cheque(s) allegedly came into possession of the appellant .

15. The evidence of the bank official also does not prove the essential ingredient of obligation. CW-1 Syed Farhan Ali Zaidi, Operation Manager, only confirmed that the cheque(s) were deposited by the appellant in his bank account and were returned by the concerned banks, two on account of insufficient funds and one on account of mutilated instrument. Such evidence, at the most, proves presentation and return of the cheque(s). It does not establish that respondent No.2 had dishonestly issued those cheque(s) to the appellant towards repayment of any loan or fulfillment of a legally enforceable obligation.

16. It is true that respondent No.2, in his statement under Section 342, Cr.P.C., admitted his signatures on the disputed cheque(s). However, he explained that he used to work with Muhammad Sohail and that his signed cheque(s) kept in the office were misused by Muhammad Sohail. Whether such defence was conclusively proved or not, the prosecution was still required to first establish that the cheque(s) were issued by respondent No.2 to the appellant towards a legally enforceable liability. In absence of proof that respondent No.2 was vendor, owner, partner, recipient of amount or otherwise liable under the agreement, mere admission of signatures could not substitute the prosecution's burden to prove dishonest issuance and obligation.

17. 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 appellant to show the business transaction which created lien of the amount mentioned in the cheque to justify issuance of the cheque, 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 cheque, the same is a prerequisite condition for

holding the issuer of dishonored cheque as guilty. The above principle squarely applies to the present case, where the prosecution failed to produce reliable proof of actual payment to respondent No.2, any agreement with him, or any document establishing that he was under a legally enforceable obligation towards the appellant.

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 agreement showing Muhammad Sohail as vendor, respondent No.2 appearing only as witness, absence of proof that respondent No.2 was partner or owner, absence of proof of payment to respondent No.2, improvements in the evidence of appellant and failure to prove dishonest intention. 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. For the foregoing reasons, the instant Criminal Acquittal Appeal was dismissed vide short order dated 07.05.2026 and the judgment dated 19.11.2024 passed by the learned Model Trial Magistrate Court-II / XXII-Civil Judge & Judicial Magistrate, Karachi East, in Criminal Case No.441 of 2023, whereby respondent No.2 Jawad Khan son of Muzaffar Khan was acquitted under Section 245(1), Cr.P.C., was maintained. These are the reasons for the said short order.

JUDGE