IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.820 of 2024

Appellant	:	Liaquat Ali through Mr. Naeem Akhtar Khan, Advocate.
Respondent No.1	:	Shahid Ali : Nemo.
Respondent No.2	:	The State through Ms. Rubina Qadir, Addl. P.G. Sindh.
Date of Hearing	:	02.02.2026.
Date of Order	:	02.02.2026.

J U D G M E N T

TASNEEM SULTANA, J.— The appellant Liaquat Ali has called into question the judgment dated 28.10.2024 passed by the learned Model Trial Magistrate Court / Judicial Magistrate-XV, Karachi South, in Criminal Case No.7311 of 2023, arising out of FIR No.414 of 2023 registered at Police Station Clifton under Section 489-F, P.P.C., whereby respondent No.1 Shahid Ali was acquitted of the charge under Section 245(1), Cr.P.C.by extending benefit of doubt.

2. Brief facts of the prosecution case are that the complainant was running Liaquat Hotel at Upper Gizri, Karachi, where respondent No.1 used to visit. According to the appellant, friendly relations developed between the parties and, on the assurance of respondent No.1 regarding online trading business, the appellant allegedly paid him an amount of Rs.1,38,50,000/-. It was further alleged that respondent No.1 executed an agreement and issued cheque No.10012875 dated 22.09.2023 for Rs.1,38,50,000/-, drawn on Bank Al-Habib Limited, Buner KPK Branch, which was deposited in the HBL Zamzama Branch account of Shahzada, brother of the appellant, but the same was returned with the endorsement “payment stopped by the drawer”. Consequently, the FIR was lodged.

3. After usual investigation, police submitted charge-sheet under section 173 Cr.P.C., against respondent No.1 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.1, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined six witnesses. PW-1 Muhammad Javed, Duty Officer, was examined at Ex.03 he produced letter along with statement under Section 154, Cr.P.C., order passed on application under Sections 22-A & 22-B, Cr.P.C., FIR and other connected papers as Ex.3/A to

Ex.3/B(i). PW-2 Liaquat Ali, complainant, was examined at Ex.04 and produced agreement, memo of site inspection, subject cheque, return memo and memo of arrest as Ex.4/A to Ex.4/D. PW-3 Shahzada was examined at Ex.05; PW-4 Habib-ur-Rehman was examined at Ex.06; PW-5 Khalid was examined at Ex.07; and PW-6 ASI Waqar Mushtaq, Investigating Officer, was examined at Ex.08 and produced investigation papers, bank correspondence, CDR record, roznamcha entries and road certificate as Ex.8/A to Ex.8/P. Thereafter, the prosecution closed its side vide statement at Ex.09.

5. The statement of respondent No.1 was recorded under Section 342, Cr.P.C., at Ex.10, wherein he denied the allegations levelled against him by the prosecution and claimed innocence. According to him, he used to keep his money with the appellant and, as the appellant required a cheque for starting business, he had handed over a signed cheque only as security. He further stated that an agreement was executed between him, appellant and Habib-ur-Rehman. However, neither he examine himself on oath under Section 340(2), Cr.P.C., nor opted to examine any witness in defence. The learned trial Court, after hearing learned ADPP for the State, appellant in person and learned defence counsel, acquitted respondent No.1 vide impugned judgment dated 28.10.2024.

6. Learned counsel for the appellant contended that the learned trial Court failed to properly appreciate the evidence available on record; that appellant and prosecution witnesses fully supported the prosecution case; that respondent No.1 did not deny his signature on the cheque; that the cheque and return memo were duly produced and proved; that Bank Al-Habib confirmed that the cheque was signed by the customer and was stopped by the drawer; that the agreement between the parties and subsequent decree passed in Summary Suit No.201 of 2023 established the liability of respondent No.1; that the learned trial Court attached undue weight to minor contradictions and technicalities; 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. Conversely, learned Addl. P.G. Sindh supported the impugned judgment and submitted that the prosecution was required to prove not only issuance and dishonour of cheque, but also dishonest intention and legally enforceable obligation; that the agreement itself showed the cheque to be a security / guarantee cheque; that the appellant failed to produce any money trail or independent proof of payment of such huge amount; that there were material admissions and contradictions in the prosecution evidence; and that the view taken by the learned trial Court is neither perverse nor arbitrary. She 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.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."

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 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.

11. 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.

12. Upon examination of the evidence recorded at trial, it appears that the prosecution case suffered from material infirmities. Appellant during cross examination admitted that, in the agreement produced by him at Ex.4/A, the subject cheque was mentioned as a guarantee cheque. He further admitted that the agreement did not contain the title of the cheque or the date of the cheque and that the copy of the cheque annexed with the agreement did not show the name of Shahzada in the pay column. He also admitted that he had not produced proof of payment allegedly made to respondent No.1. He further admitted that the agreement was valid for five years from 01.08.2023 and that, as per its contents, if any party wanted to withdraw the amount, three months' prior notice was required. Admittedly, no legal notice was served upon respondent No.1 prior to presentation of the cheque. The explanation that respondent No.1 was not traceable remained unsupported by any independent material. These admissions directly affected the prosecution version regarding existence of a clear, definite and legally enforceable liability at the time when the cheque was presented, and presentation of a security / guarantee cheque without compliance of the agreed

notice requirement was rightly treated by the learned trial Court as a circumstance creating doubt.

13. The prosecution also failed to produce any reliable money trail to prove actual payment of Rs.1,38,50,000/- to respondent No.1. Appellant further admitted that during investigation he neither disclosed any money trail before the Investigating Officer nor produced the same before the trial Court during examination-in-chief. He volunteered that the amount was arranged after disposal of his flat, but no sale document, receipt, bank statement, withdrawal record, account statement or any independent document was produced to support such assertion. In a case involving such a huge amount, absence of credible proof of actual payment could not be ignored.

14. The evidence of PW-3 Shahzada, PW-4 Habib-ur-Rehman and PW-5 Khalid also does not cure the above defects. PW-3 Shahzada admitted that no direct transaction took place between him and respondent No.1 and that he was only shown as a witness in the agreement. He further admitted that the copy of the subject cheque annexed with the agreement was blank and that the facts regarding blank cheque, subsequent insertion of his name, initial investment of Rs.50,00,000/- and receipt of Rs.28,00,000/- as profit were not mentioned in his statement under Section 161, Cr.P.C. PW-4 Habib-ur-Rehman admitted that he did not state before the police that respondent No.1 had firstly given a blank cheque or that the name of Shahzada was subsequently mentioned therein; that he did not produce any receipt regarding payment before the Investigating Officer; and that no notice was served upon respondent No.1 as per the terms of the agreement. PW-5 Khalid was admittedly an employee of the complainant and he too admitted that he had not specifically deposed the dates and amounts allegedly paid to respondent No.1. The Investigating Officer, PW-6 ASI Waqar Mushtaq, also admitted in cross-examination that the picture of the subject cheque forming part of the agreement neither bore the date nor the name in the pay column; that he did not mention the fact of money trail in the charge-sheet; that in the partnership agreement dated 01.08.2023 it was mentioned that the subject cheque was received as security; that no witness stated under Section 161, Cr.P.C., that the subject cheque was subsequently received in the name of Shahzada; and that the cheque was returned with the reason “payment stopped by drawer.” These omissions, improvements and admissions materially weakened the prosecution case and supported the defence plea as well as the reasoning adopted by the learned trial Court.

15. It is true that Bank Al-Habib correspondence requires that respondent No.1 was the account holder, the cheque was signed by him and the cheque was stopped by the customer. However, bank evidence, at the most, proves the fact of signature and return of cheque. It does not prove that the cheque was

dishonestly issued towards repayment of a loan or fulfilment of a legally enforceable obligation. The reason “payment stopped by drawer” may be relevant, but it cannot by itself substitute the prosecution’s burden to prove dishonest intention and the underlying obligation.

16. The reliance of the appellant upon the decree passed in Summary Suit No.201 of 2023 also does not improve the prosecution case for the purpose of criminal conviction. The said decree was passed in civil proceedings under Order XXXVII, C.P.C., after respondent No.1 failed to comply with the condition of furnishing security. Such decree may have its own civil consequences between the parties, but criminal liability under Section 489-F, P.P.C., still requires independent proof of dishonest issuance of cheque towards repayment of loan or fulfilment of obligation. A civil decree, particularly one founded upon procedural default, cannot dispense with the prosecution’s burden to prove all ingredients of the criminal charge beyond reasonable doubt.

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 complainant 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 dishonoured cheque as guilty. The above principle squarely applies to the present case, where the prosecution failed to produce reliable proof of actual payment, money trail, account record, receipt or independent documentary material to establish the alleged business transaction and legally enforceable 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 agreement describing the cheque as security / guarantee cheque, absence of prior notice despite agreed terms, absence of money trail, blank payee/date in the cheque annexed with the agreement, material omissions and improvements in prosecution evidence 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 02.02.2026 and the judgment dated 28.10.2024 passed by the learned Model Trial Magistrate Court / Judicial Magistrate-XV, Karachi South, in Criminal Case No.7311 of 2023, whereby respondent No.1 Shahid Ali son of Zar Farosh Khan was acquitted under Section 245(1), Cr.P.C., was maintained. These are the reasons for the said short order.

JUDGE