

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. S-688 of 2021
(Muhammad Shabbir Ahmed vs Syed Anjum Shakeel and others)

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For order on M.A.No. 13829/2021
2. For hearing of main case

03.12.2025

Mr. Nadeem Ahmed Farooqui, Advocate for the appellant.
Mr. Khawaja Izharul Hassan, Advocate for Respondent No.1
Mr. Muhammad Mohsin Mangi Assistant Prosecutor General, Sindh

JUDGMENT

Ali Haider 'Ada', J.- Through this Criminal Acquittal Appeal, the appellant Muhammad Shabbir Ahmed assails the judgment dated 25.10.2021 passed by the learned XXII-Judicial Magistrate, Karachi East in Criminal Case No. 493/2021 arising out of FIR No. 148/2021, registered under Section 489-F, PPC at Police Station New Town, Karachi. After a full-fledged trial, Respondent No.1 was acquitted of the charge.

2. Briefly, FIR No. 148/2021 was lodged on 24.03.2021, whereas the alleged transactions span the period from 09.10.2020 to 26.02.2021. The essence of the FIR is that the appellant/complainant invested an amount of Rs.1,56,00,000/- with respondent No.1. Upon demanding the return of the invested amount, respondent No.1 allegedly issued several cheques which, upon presentation, were dishonoured. The complainant approached respondent No.1 for repayment, but to no avail, subsequently the lodging of the FIR.

3. Following the usual investigation, the challan was submitted, the trial Court took cognizance, and charge was framed against the accused, who pleaded not guilty and claimed trial. During trial, the prosecution examined PW-1 Muhammad Shabbir, PW-2 Farhan Ahmed Khan, PW-3 Waseem Akhtar (author of the FIR), and Shahbaz Akhtar, the Investigating Officer. All relevant documents were produced through these witnesses, after which the prosecution evidence was closed.

4. The statement of the accused under Section 342, Cr.P.C. was recorded wherein he denied the allegations and professed innocence. He neither opted to examine himself on oath under Section 340(2), Cr.P.C. nor produced any evidence in defence. After hearing the parties, the learned trial Court acquitted respondent No.1 through the impugned judgment, which is now under challenge.

5. Learned counsel for the appellant contends that the cheques were issued in discharge of a legally enforceable debt representing repayment of the invested amount, and not merely as security; therefore, a prima facie case under Section 489-F, PPC was made out. He submits that the investment was duly acknowledged through a written agreement, and no suggestion regarding arbitration, exclusion of partnership, or any alternate arrangement was put to the complainant during cross-examination. Despite the supporting documentary record, the trial Court failed to appreciate the evidence in its proper perspective and extended undue benefit of doubt to the accused. According to him, the impugned judgment is perverse and warrants interference.

6. Conversely, learned counsel for respondent No.1 submits that the complainant himself lacked a clear understanding of the business structure of M/s Technology Force, which is engaged in exporting printers. He argues that even according to the findings of the trial Court, the alleged liability reflected through the cheques amounted only to Rs.64,00,000/- to Rs.65,00,000/-, not Rs.1,56,00,000/-, and that the complainant failed to establish the larger claimed amount through credible evidence. It is further contended that the alleged offence is not of a continuing nature within the meaning of Section 179, Cr.P.C.; that most of the cheques were stale; and that no balance sheet, audit report, or financial record was produced to substantiate the alleged liability. Learned counsel maintains that the trial Court has delivered a well-reasoned judgment and rightly acquitted respondent No.1.

7. The learned APG supports the impugned judgment and submits that no illegality, irregularity, or perversity has been pointed out by the appellant.

8. Heard and record perused with care.

9. At the outset, guidance may be taken from the judgment reported as *Fida Hussain alias Saboo v. The State* (2025 SCMR 993), wherein the Hon'ble Apex Court has reiterated that the scope of interference in an appeal against acquittal is indeed narrow. Unless the findings of the trial Court are demonstrated to be perverse, arbitrary, or the result of misreading or non-reading of evidence, the appellate Court ordinarily refrains from disturbing an acquittal.

10. Offences involving financial dishonesty pose serious threats to commercial dealings, corporate governance, and individual financial security. Historically, such matters were primarily addressed under Section 20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. However, in view of the rising number of financial losses suffered by companies as well as private individuals, the legislature deemed it appropriate to criminalize such conduct more comprehensively. Consequently, in 2002, Section 489-F was inserted into the Pakistan Penal Code, providing a specific penal provision to address the issuance of dishonoured cheques with dishonest intent.

11. It must, however, be noted that Section 489-F, PPC does not grant an unrestrained right to any individual or entity to initiate criminal proceedings merely to recover a financial claim. The legislature, while introducing this provision, intentionally imposed certain statutory limitations to ensure that only those cases fall within its ambit where a cheque is issued dishonestly for the repayment of a loan or fulfillment of a legally enforceable obligation. Section 489-F does not contemplate indiscriminate criminal prosecution arising out of ordinary monetary disputes; the statutory ingredients must be strictly proved. In other words, criminal law cannot be invoked as a substitute for civil remedies where dishonest intent or a legal obligation is absent. For ready reference, Section 489-F, PPC is reproduced as under:-

489-F Dishonestly issuing a cheque:- Whoever dishonestly issues a cheque towards re-payment 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.

12. It was incumbent upon the prosecution to establish its case strictly within the ambit of Article 117 of the Qanun-e-Shahadat Order, 1984, which governs the burden of proof in criminal proceedings. For ready reference, Article 117 is reproduced as under: —

117. Burden of proof. (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

13. Though the complainant alleged an investment, the agreement produced is purely contractual in nature and does not substantiate any claim regarding payment by the appellant as alleged in the FIR. Even the clauses of the agreement referred to in the deposition do not indicate any liability on the part of the accused to repay any amount. Furthermore, the internal inquiry and termination clauses cited in the agreement, which pertain to breaches, were not supported by any proof from the prosecution demonstrating that the agreement was terminated due to a breach. While, the complainant has not established any evidence showing actual substantial investments. The prosecution also failed to provide documentation or testimony to trace the conduct of the business, prove the sustainability of any losses, or verify the existence of a significant investment. Additionally, no internal inquiry records of the company were presented to support the allegations. Crucially, no bank official was examined to corroborate the dishonour of the cheques or to establish the circumstances surrounding their presentation. Regarding the alleged stale cheques, no evidence was provided in compliance with the requirements set forth by the State Bank of Pakistan's Schedule/ glossary or under the Negotiable Instruments Act. In light of these deficiencies, the prosecution has failed to establish the necessary evidentiary foundation to substantiate the complainant's claims.

14. The record further reflects an unexplained delay in lodging the FIR, material contradictions, and inconsistencies in the prosecution evidence. It

is well-settled that mere issuance and dishonour of a cheque do not constitute an offence under Section 489-F, PPC, unless dishonest intent at the time of issuance, coupled with an existing enforceable obligation, is proved through credible evidence. In the present case, a careful appreciation of evidence reveals several infirmities in the prosecution's case, including delayed lodging of the FIR, material discrepancies, and contradictory statements. Reliance in this regard may be placed on the following decisions: *Iqbal Ahmed v. Syed Danish Hussain Zaidi and 2 Others*, 2022 YLR Note 202; *Muhammad Yasin v. Muhammad Zubair Farooqui and Another*, 2022 YLR Note 98; *Raja Abdul Hameed v. Mashooq Ali Rajpar and 2 Others*, 2022 YLR Note 54; and *Muhammad Nasir v. The State and 2 Others*, 2020 YLR Note 144.

15. It is a well-established principle of law, summarized in the Latin maxim *In dubio pro reo*: **meaning when in doubt, rule for the accused**, that where doubtful circumstances arise, the benefit should be given to the accused. This principle has been consistently recognized and elaborated by the Hon'ble Apex Court, including in the case of *Qurban Ali v. The State* (2025 SCMR 1344).

16. In these circumstances, and upon a thorough re-appraisal of the material available on record, this Court finds no perversity, arbitrariness, or misreading or non-reading of evidence in the impugned judgment that would warrant interference. Accordingly, the Criminal Acquittal Appeal is dismissed, and the judgment of the learned trial Court is upheld.

JUDGE

Wasim/PS