

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No. 51 of 2021

Applicant : Muhammad Riaz
through Mr. Khalid Hussain Chandio, Advocate

Respondent : The State
through Mr. Zafar Ahmed Khan, Addl.P.G.

Complainant : through Ms. Uzma, Advocate

Date of hearing : 27th October, 2022

JUDGMENT

Omar Sial, J.: F.I.R. No. 308 of 2018 was registered on 11.08.2018 under section 489-F P.P.C. on the complaint of one Mazhar Ahmed. Mazhar recorded that on 13.06.2018, Mazhar (although it was his wife Rukhsana) entered into an agreement with Muhammad Riaz, the applicant in these proceedings, for purchasing a plot of land for Rs. 750,000. Subsequently, Mazhar found out that the plot of land had been illegally encroached. When he informed Muhammad Riaz about it, Riaz agreed to return Mazhar the money he had given. A cheque for the said amount was issued by Riaz to Mazhar on 10.07.2018. When the cheque was sent for clearance, it was declined on the ground that there was not sufficient money in the account.

2. Riaz was tried by the court of the learned 22nd Judicial Magistrate, Karachi East. Mazhar Ahmed, the complainant, was the first prosecution witness. S.I. Mohammad Abid, the investigating officer was the second prosecution witness. The third prosecution witness was Mohammad Asif who was a witness to the inspection of the place of incident as well as the original cheque being handed over by the complainant to the investigating officer. Aziz-ur-Rehman, the fourth witness was a bank officer who testified that the cheque was returned due to insufficient funds being in the account. For his part, Riaz in his section 342 Cr.P.C. statement, admitted that he had sold the plot of land to Mazhar. He however further added that the plot was occupied 6 months after the date of sale and that

it was not his concern who and why had occupied it. He denied outright that he had ever issued the cheque in question to Mazhar.

3. The learned trial court was not impressed with the defence taken by Riaz and therefore on 22.10.2020 convicted him for an offence under section 489-F P.P.C. and sentenced him to a 2 year prison term as well as a fine of Rs. 30,000. Riaz would have to stay in prison for another 2 months period if he did not pay the fine. Riaz challenged the judgment of the learned trial court before the learned 2nd Additional Sessions Judge, Karachi East; however, his appeal was dismissed on 02.02.2021. He has now preferred this revision application.

4. I have heard the counsel for the applicant and have also heard the learned Addl.P.G. who was assisted by the learned counsel for the complainant. Their arguments are not being reproduced for the sake of brevity, but are reflected in my observations and findings below.

5. A sale agreement was entered into between Rukhsana (Mazhar's wife) and Riaz on 13.06.2017 for the purchase of the said plot against a consideration of Rs. 750,000. This agreement is not denied by either side. Clause 5 of this agreement records that Riaz had taken upon himself the obligation of returning double the amount of the sale consideration to Rukhsana if at any stage after the sale it was found that there was another claimant to the land. The learned counsel for the applicant has argued that the so called sale agreement is not enforceable as it is not witnessed in accordance with the provisions of the Qanun-e-Shahadat Order 1984. Be that as it may, the fact that Riaz admits that he sold the plot of land to Rukhsana against a consideration of Rs. 750,000 shall suffice for the purpose of these criminal proceedings.

6. On 22.11.2017 the two gentlemen entered into yet another agreement which recorded that Riaz would return the Rs. 750,000 to Mazhar by or before 15.01.2018. Learned counsel raised the same objection that the agreement was not witnessed in accordance with the Order. It appears that Riaz, once again, failed to fulfil his commitment by the agreed deadline. Finally, a cash cheque was given to him on 10.07.2018. On 13.07.2018, the Bank returned it with the note "Balance insufficient in account".

7. An offence under section 489-F Cr.P.C. is not an offence of strict liability as the intention of dishonesty has to be proved. Further, it must also be shown that

the cheque was issued for the “repayment of a loan” or “fulfilment of an obligation”. In the present case, the mens rea of dishonesty was demonstrated on a couple of occasions by the applicant. He admitted quite categorically to court that he was not the owner of the property which he sold. He therefore started of this transaction by giving a false representation that he was the “sole and absolute owner of the said property which is free from all sort of disputes and encumbrances” (Term 2 of the Sale Agreement dated 13.06.2017). This was admittedly not the case. Riaz had no title to the property nor the right to sell it to anybody, let alone the complainant. Dishonest conduct was also demonstrated when he completely violated the Sale Agreement by not returning the money of the complainant when it was discovered that the land he sold was an encroached land (Term 5 of the Sale Agreement dated 13.06.2017). Dishonesty was also demonstrated when the applicant kept the complainant on false hope that he would return their money but it was not until 6 months later that he issued the cheque, that too was not for the amount he had agreed for in the Sale Agreement dated 13.06.2017. In the Cancellation Agreement dated 22.11.2017, the applicant acknowledged his liability and his obligation to return the money to the complainant and issued the cheque in question, however, the same was not honored. Blank denials were given by the applicant claiming that he had not executed either agreement, however, the signatures on these agreements match those of the applicant and the applicant did not take any step to seek cancellation of these “false and fake” agreements. Even if the cheque had bounced for insufficient funds, honesty on the part of the applicant would have been to give the complainant cash or make an effort to deposit the requisite amount in his bank so that the cheque could be re-presented. He did not do either, which again, indicates dishonesty on his part. The cheque went to his bank, the bank did not return the cheque on account of signatures differing but returned it on account of insufficient funds. This would show that the signature on the cheque was his. He gave no explanation, in fact did not even attempt to come with an excuse to show as how the complainant was in possession of an original cheque. These acts also show dishonesty. I have also noted from the record that the learned trial judge has noted that it was due to the “unethical and illegal behavior” of the applicant that Mazhar could not be cross examined for a period of over one year. It has to be kept in mind that the complainant party is a very poor and illiterate party. Perhaps the applicant thought that delaying the

matter would help him escape the arm of the law. It appears to me that the applicant cheated the complainant party by making a sale of land which the applicant knew very well was not his to sell.

8. The obligation that the applicant took upon himself is contained in the 2 agreements he executed. Dishonest conduct is shown by the observations in the preceding paragraph. The cheque was admittedly dishonored and the applicant could not show 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. An offence under section 489-F P.P.C. was proved against the applicant.

9. The learned 22nd Judicial Magistrate, Karachi East has given a comprehensive and well-reasoned judgment and I see no reason to interfere with her wisdom. The appeal is therefore dismissed.

JUDGE