

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Rev. Application No. 194 of 2017

Applicant : Farhaj Ahmed @ Guddo
through Mr. Mamoon A.K. Sherwany, Advocate

Complainant : through Mr. Faiz Ahmed Durrani, Advocate

Respondent : The State
through Ms. Robina Qadir, DPG

Date of hearing : 1st. November, 2022

ORDER

Background to the case

1. A lady by the name of Tasneem Razzak ("**Razzak**") sent a written complaint to the police, which was converted into F.I.R. No. 161 of 2013, and registered under sections 420, 489-F and 406 P.P.C. on 23.03.2013 at the Gulshan-e-Iqbal police station.
2. Razzak recorded that her late husband had invested Rs. 9.5 million in a business run by Mr. Farhaj Ahmed ("**Ahmed**"), who is the applicant in these proceedings. Ahmed handed over original documents to a property owned by him, to the late husband of Razzak, as security for the money invested. The two men had also agreed that Ahmed would give Razzak's husband a certain profit intermittently. Till March 2005 when the husband died, Razzak had regularly given him the profit on investment.
3. After her husband's death, Razzak requested Ahmed that a fresh agreement be executed between her and Ahmed for the earlier arrangement between him and her late husband. The revised agreement was entered into between Razzak and Ahmed on 01.08.2008. Ahmed continued to give Razzak profit till 26.11.2009. He also made some sporadic payments till 26.01.2010 after which he stopped and told Razzak that business was down and hence he could not pay her the profit anymore. Razzak then asked him to return the principal amount to her if he could not give her any profit. Ahmed gave her one cheque for Rs. 25,000 on 12.05.2010, which was not honored when presented at the bank counter for clearance. Subsequently, Ahmed gave Razzak 9 cheques, all of which

bounced. The details of these cheques are a part of the record and therefore not being reproduced.

4. When Razzak complained, she was told by Ahmed that he is selling the business and that once it is sold he will return her the principal. Not only did Ahmed sell the business without informing Razzak and not giving her any money, but also disappeared from the scene after also selling the house he had lived in. When located, Ahmed once again told Razzak that he had invested the money from the sale of his earlier business and once his new business flourished, he would give her some money. This is the point in time when the F.I.R. mentioned in the first paragraph was registered.

5. Ahmed was tried by the court of the learned 4th Judicial Magistrate, Karachi East, who on 12.09.2013 held him guilty of committing an offence under sections 406 and 489-F P.P.C. and sentenced him as follows:

(i) 3 years imprisonment and a fine of Rs. 30,000 or a further period of 3 month imprisonment for the offence under section 489-F P.P.C.

(ii) 3 years imprisonment and a fine of Rs. 40,000 or a further period of 3 month imprisonment for the offence under section 406 P.P.C.

6. This judgment was challenged before the learned 5th Additional Sessions Judge, Karachi East; however the appeal was dismissed on 23.10.2017. Ahmed has now preferred this revision application against the judgments of the learned trial and appellate courts.

7. Learned counsel for the applicant has basically denied that any money is due to Razzak on any account whatsoever. The investment agreement on record between the parties, it is argued, was not executed by Ahmed. The cheques on record that have bounced, it has been argued, were issued as charitable donations to Razzak. Learned DPG who was assisted by the learned counsel for the complainant have both supported the impugned judgments. I have heard the counsels and perused the record. My observations and findings are as follows.

8. For an offence under section 489-F to be established it has to be shown that the cheque in question was issued either for the satisfaction of a loan or fulfilment of an obligation; that it should have been issued dishonestly and that the bank was not at fault.

9. There are 4 Agreements of Investment dated 01.08.2008 on record which evidence the applicant's acknowledgment of a loan taken from Razzak and the promise to pay it back. The agreements are signed and witnessed. The witnesses whose names appear on the agreement were not examined at trial, however the agreements were executed in the presence of **PW-2 Javid Hussain** and **PW-3 Mustafa Razzak**, who did testify the same at trial. The signatures on the agreements have been compared against Ahmed's signatures and there is little doubt that the signatures are the same. The amendments made to the agreements have also been confirmed by both Razzak and Ahmed by signing against the amendments made. The signatures have also been compared with the signatures on some of the cheques issued, and they too appear to be the same. Indeed, the bank did not return the cheques on account of the signatures not matching but on account of insufficient funds.

10. The 9 cheques that were given by Ahmed to Razzak are also on record with their memos showing that all of them have been dishonored on account of insufficient funds. **PW-4 Adnan Zaver**, the manager operations of Dubai Islamic Bank, **PW-5 Yasir Khan**, of Bank Al-Falah, **PW-6 Muhammad Asim Butt**, of Meezan Bank and **PW-7 Mirza Aamir Iqbal**, of Meezan Bank, confirmed this at trial. It is quite unusual to see that Ahmed has 2 different signatures he uses in the accounts he maintains with 3 different banks. An adverse inference is drawn against Ahmed from the fact that in his section 342(2) Cr.P.C. statement he said that he signed all documents with one signature; but then went on to admit that he operated his account in 2 different banks with 2 different signatures. Be that as it may, the issuance of the cheques is not denied; however what is argued is that the cheques were issued as charity to Razzak and not for the satisfaction of a loan. This argument carries no weight in my opinion. The cheques in question have been issued intermittently over a period of nearly 15 months. All bounced. Why was Ahmed going on issuing cheques that bounced one after the other, as charity was not explained. Surely, he knew that he did not have money in his account that they would be honored. He made no arrangement with the bank that after the first cheque bounced sufficient amount was in his bank so that the cheque could be represented. It has also not been argued by the applicant's counsel that the bank is at fault in dishonoring the cheques.

11. Ahmed's blatant denial of executing the agreements is prima facie dishonesty on his part. He acknowledged that he had issued the cheques but said that these were for financial help. In his cross examination in the section 340(2) Cr.P.C. statement he however took a somersault and said that though he issued the cheques he had told Razzak that she should not have them encashed. What sort of charity was this? Dishonesty on Ahmed's part is also reflected when he acknowledged that he had given his original property documents to the late Razzak; however, he had not given them as a security for the loan he took but because there had been a robbery in his house and therefore he had given them to Razzak for safekeeping. Not for a second do I believe this justification. It appears from the record that after the death of the late Razzak, Ahmed channeled the money given to him by the late Razzak for his own use, while depriving Razzak of her due share in the investment.

12. In view of the above findings and observations, I find no reason to interfere with the judgments of the 2 courts below. The appeal is therefore dismissed. Farhaj Ahmed may be taken into custody to serve out the remaining period of his sentence.

JUDGE