

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 89 of 2012

Applicant : Syed Sarwar Bukhari
through Mr. Muhammad Sohail, Advocate

Respondent : The State
through Mr. Tallib Ali Memon, A.P.G.

Complainant : through Mr. Zaheer Hussain, Advocate

Date of hearing : 15th September, 2022

JUDGMENT

Omar Sial, J.: Syed Sarwar Bukhari was accused of issuing a cheque in the sum of Rs. 2 million to Muhammad Sohail on 23.06.2010, which cheque bounced upon being presented for clearance. F.I.R. No. 827 of 2010 was registered under section 489-F P.P.C. on 28.8.2010 at the North Nazimabad police station.

2. Bukhari pleaded not guilty to the charge and claimed trial. The prosecution examined the following witnesses:

PW-1 A.S.I. Muhammad Aslam who had registered the F.I.R.;

PW-2 Muhammad Sohail Akhter who was the complainant;

PW-3 Ashiq Khan who said that he had witnessed Bukhari give a cheque to the complainant;

PW-4 Zeeshan Habib who was a bank official who confirmed that the cheque bounced due to insufficient funds;

PW-5 S.I. Zulfiqar Ali who was the investigating officer of the case.

Bukhari in his section 342 Cr.P.C. statement professed innocence and further stated that the cheque in question was neither written nor signed by him and that the same had been stolen and misused by the complainant.

3. The learned 6th Civil Judge and Judicial Magistrate, Karachi Central on 08.12.2011 held Bukhari guilty of an offence under section 489-F P.P.C. and sentenced him to 2 years in prison as well as directed him to pay a fine of

Rs.40,000 and if he did not pay the fine then he would have to spend another 4 months in prison. Bukhari challenged the decision before the learned 6th Additional Sessions Judge, Karachi Central, however on 19.03.2012 the learned appellate court upheld the judgment of the learned trial court. Bukhari being aggrieved by the two decisions has preferred this revision application.

4. I have heard the learned counsels for the appellant, the complainant and the learned APG. My observations and findings are as follows.

5. Whether or not the cheque in question was issued by the complainant should have been looked into by the courts below. Unfortunately, not only did the learned courts not do so, they also seem to have not addressed this aspect of the defence plea in their respective judgments.

Article 78 of the Qanun-e-Shahadat Order, 1984 provides that:

78. Proof of signature and handwriting of person alleged to have signed or written document produced. *If a document is alleged to be signed or to have been written wholly or in part by any person, the signature of the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.*

The above was admittedly not done. I find the reasoning given by the learned appellate court to not do so not satisfactory.

6. Article 84 of the Order further provides that where parties had not brought forward any expert witness to given opinion about genuineness of signatures in question (as was the situation in the present case), the trial Court would be competent to form its own opinion by comparing disputed signatures with the admitted signature. It is pertinent to mention that Bukhari had filed an application in the learned trial court seeking a hand writing expert's evaluation however for some reason the application was not looked into. If the learned trial court in its wisdom was of the view that a hand writing expert's opinion was not required, it should have then formed an opinion based on powers given to it by Article 84 of the Order. It appears from the record that this was also not done.

7. This Court on 18.09.2018 sent the cheque in question along with the specimen signatures of Bukhari to the Forensic Division for analysis. The laboratory on 11.02.2019 reported that the signature on the disputed cheque

were different from that of Bukhari. Bukhari was also made to sign in Court and the signature on the cheque did not also match with those signatures or the signature on Bukhari's National Identity Card. The learned counsel for the complainant had no explanation or clarification to give in this regard.

8. The complainant had filed Summary Suit No. 03 of 2013 before the learned 4th Additional Sessions Judge, Karachi Central seeking recovery of the Rs. 2 million he said Bukhari owed him and for which the disputed cheque was issued. He was unable to prove his claim and the Summary Suit was dismissed on 02.04.2022. The dismissal of the Summary Suit creates further doubt as to the bonafide of the complainant. If he could not establish that money was owed to him through civil proceedings, then why would Bukhari even issue him a cheque for that amount, let alone be criminally liable where the standard of proof could be a lot higher than in civil proceedings.

9. In the F.I.R that was lodged by the complainant he had stated that Bukhari had owed him money on account of selling BOPP polythene bags. The complainant at trial nor in appeal could produce documentary evidence to the alleged partnership. Similarly, he could also not produce any evidence to establish that Rs. 2 million was even owed to him by Bukhari. Section 489-F P.P.C. requires that the cheque in question should have been given for the satisfaction of a loan or fulfilment of an obligation. Neither was proved at trial. When asked to clarify this position, the learned counsel referred to an agreement – which does not have Bukhari as a party to it. There is one witness by the name of Ashiq Khan who claimed that the cheque was signed in front of him. He apparently was an old friend of the complainant. Even he did not state as to why Bukhari gave the complainant a cheque.

10. The record reflects that there has been sufficient bad blood between the complainant and the accused for quite some time. What started of as an amicable relationship turned sour at some stage and also saw the accused lodge an F.I.R. against the complainant. I find the defence version of what happened to be more accurate and believable than that of the prosecution. In my opinion the case against the applicant was not proved beyond reasonable doubt.

11. In view of the above, the revision application is allowed. The applicant is acquitted of the charge. He is on bail. His bail bond stands cancelled and surety discharged.

JUDGE