ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.33 of 2022

Date	Order with signature of Judge

For hearing of main case

04.12.2023

Mr. Asad Ali Leghari advocate for the appellant
Mr. Saleem Akhtar Buriro, Additional PG.

The appellant Asif Zameer has called into question the judgment dated 09.12.2021 passed by learned XIIth Additional Sessions Judge Karachi East, whereby he set aside the conviction awarded by the learned IIIrd Judicial Magistrate/Civil Judge in Cr. Case No. 217 of 2017 (The State v Qamar Raza and another) arising out of FIR No.98/2016, dated 09.12.2021, for the offense under Section 489-F/420/34, PPC, registered with Police Station Mubina Town, Karachi vide judgment dated 27.08.2019.

2. The charge against respondent No.2 is that he had taken a fine Atta of Rs. 60,000,00/- (Sixty Lac Rupees) from the applicant/complainant for business purposes; and, promised to pay him the amount, but failed to pay the said amount and on-demand respondent No.2 dishonestly issued five cheques bearing numbers (i) 51422327 of Rs. 1,98,250/- (ii) 51422309 of Rs. 197,500/ (iii) 51422311 of Rs 3,02,500/- (iv) 51422315 of Rs 2,36,000/- and (v) 51422313 of Rs. 3,94,500/- of Meezan Bank, Branch at Abul Hassan Asfahani Road, but all the cheques were dishonored on presentation, consequently FIR No.98/2016, under Section 489-F/420/34, PPC, was registered against the respondent No.2.

3. After completion of the investigation, the Investigating officer submitted a charge sheet against the accused persons, and a formal charge was framed against respondent No.2, and his plea was recorded wherein he did not plead guilty and claimed for trial. Thereafter, the trial was commenced and to substantiate the charge prosecution examined three witnesses.

4. Deposition of PW-1 Complainant (Asif Zameer) was recorded at Exh-03 who produced an application to SHO regarding fraud committed by the accused person at Ex.3/A. Copy of order passed by 2nd additional Sessions Judge Karachi on application under section 22-A and B Cr. P.C at Ex 3/B, FIR at Ex.3/C, Memo of the site at Ex.3/D, Memo of arrest of accused at Ex 3/E.

5. Deposition of PW-2 (Branch Manager Meezan Bank) was examined at Ex4, wherein he produced a copy of a letter sent to him by SHO for verification and reason for returned of these five cheques at Ex.4/a and its reply/ verification report at Ex.4/8. Thereafter prosecution made two Applications at Ex 5 and 6 wherein they gave up two witnesses namely ASI Muhammad Yaseen and Atif Khan.

6. Pw-3 Sohail Akhtar/ the investigation officer was examined at Ex.7, thereafter prosecution closed its side.

7. The statement of the accused person was recorded under section 342 Cr. P.C. at Ex. 9 and Ex.10, wherein they denied commission of the instant offense and claimed innocence, prayed for justice and mercy, neither they bother to examine themselves in the witness box on oath under section 340(2) Cr.PC nor opt to produce any defense witness.

8. After hearing the parties, the trial court vide judgment dated 9.12.2021 convicted respondent No.2 for the offense punishable under Section 489-F Pakistan Penal Code, 1860, and sentenced him to suffer simple imprisonment for a term of two and half years. However, the benefit of section 382-B Cr. P.C. was extended to the accused for the period he remained in judicial custody.

9. Respondent No.2 being aggrieved by and dissatisfied with the aforesaid judgment dated 9.12.2021 preferred an Appeal before the appellate Court which was allowed vide order dated 9.12.2021 and respondent No.2 was acquitted from the said charge.

10. The appellant being aggrieved by the aforesaid decision has filed the instant acquittal appeal, inter-alia on the ground that the accused dishonestly had taken the amount from the appellant for which he had issued cheques as mentioned in the facts above, and the said cheques were dishonored on presentation in the Bank, therefore, dishonesty and guilt of accused beyond any shadow of a doubt have been established and commission of the offense by the accused /Respondent No.2 has been very much proved in evidence by the appellant by way of oral as well as documentary evidence; that it is a well-settled principle of law that conviction can be based only on the solitary statement of a witness and no particular number of witnesses are required for the proof of a fact as importance is given to the quality of evidence of a witness not the quantity of the witnesses. Per learned counsel, the prosecution proved the case based on the documentary evidence however the trial Court discarded the evidence and erroneously acquitted respondent No.2. He prayed for

allowing the acquittal appeal and that respondent No.2 may be convicted of the aforesaid crime.

11. None present on behalf of respondent No.2 though he has been served but he has chosen to remain absent.

12. I have heard the learned counsel for the appellant as well as learned Additional P.G Sindh, who has supported the judgment of the trial court and not the appellate court.

13. The appellant has admitted in the cross that the respondent used to receive flour from his Mill after selling the same in the market he used to pay the amount through an online payment. He also admitted that he used to transfer the amount to his account in short installments. He also admitted that in the flour business, he used to take a guarantee of the whole seller through their market reputation. He also admitted that he delivered the flour to the respondent in August and September 2015 but he failed to disclose this factum in his FIR and 161 Cr. P.C statements. He also admitted that this was not the first deal between the parties. He also admitted that on 13.01.2016 he lodged FIR No. 22/2016 under Section 489-F, 420 PPC at PS PIB colony against both accused persons wherein he alleged that on 12.09.2015 he had given flour of Rs. 25,00,000/- to the respondent. He also admitted that the respondent had filed a civil suit against him wherein he submitted his written statement by annexing 34 cheques and and all the cheques were given to him by the respondent. He also admitted that the dates were mentioned in the cheques as per intimation to the respondent. He also admitted that in his written statement, in the Civil Suit, he disclosed the factum that the total agreed / outstanding amount against the respondent was Rs. 52,00,000/-. He further admitted that the subject five cheques were not deposited in his account maintained at Meezan Bank. He also admitted that no memo of dishonoring of cheques of Dubai Islamic Bank was attached to the cheques that he produced before the Court. He also admitted that all the business dealing regarding flour is taken with the consent of all partners. He also admitted that his two partners were not witnessed in this case and they did not file any complaint against the respondent.

14. As per the admission of the appellant which shows that the respondent Adeel’s father had taken the flour of Rs. 50,000/- from the appellant and his son issued the subject cheques of Meezan Bank, Abul Hassan Isfahani Road, Karachi. The Bank Manager deposed that his bank had received cheque No. 315 amounting to Rs. 2,36,000/- in clearing from Dubai Islamic Bank, Shershah Branch Karachi the same was returned due to insufficient balance and Bank also received four cheques in clearing

from Dubai Islamic Bank Shershah Branch Karachi which were also returned due to invalid date 31.11.2015 and remaining cheques were returned due to insufficient balance whereupon they issued four written memorandums.

15. A perusal of the aforesaid evidence reveals that the prosecution has failed to prove the ingredients of section 420 PPC, which deals with cheating and dishonestly inducing delivery of property, which factum is missing in the present case as no evidence has been brought on record to suggest that the appellant was cheated by the respondent or he induced the appellant to deliver the property even the appellant failed to produce a single document/purchase invoice of flour with an exact calculation of Rs.60 lacs in the FIR. No receipt for receiving the flour was issued and signed by the respondent. Even no witness was produced to oversee such taking over and handing over of such a huge amount of transaction. Besides, there is the admission of the appellant about giving flour on a guaranteed basis. Hence, the prosecution has miserably failed to establish the delivery of flour to the respondent of Rs 60 lacs and also failed to explain, why he accepted 33 cheques in bulk quantity on a single date 12-09-2015, without mentioning dates thereon which were to be filled intimation/instruction of the respondent.

16. In my view mere allegedly issuance of cheques which were subsequently dishonored does not constitute an offense under Section 489-F PPC unless it is proved that the same were issued dishonestly and for payment of outstanding amount due and payable or for discharging of any obligation. In this matter business transaction had to be proved to establish the element of dishonesty against the Appellant/accused but it could not be proved from the evidence adduced at trial. As far as the offense under Sections 489-F and 420 PPC are concerned, it is noticeable that the ingredients of the aforesaid sections have not been met in the trial Court to award a conviction, which was set aside by the Appellate Court. It has already been clarified by the Supreme Court in the cases of *Shahid Imran v. The State and others* (**2011 SCMR 1614**) and *Rafiq Haji Usman v. Chairman, NAB and another* (**2015 SCMR 1575**) that the offenses are attracted only in a case of issuance of cheques with dishonest intention or delivery of property through inducement.

17. I have minutely gone through the prosecution evidence and have not come across any such probability, even of remote in nature. Likewise, I have also noticed that this is not the case of the complainant that respondent No.1 ever made any misrepresentation so as to give rise to an offense under section 420 PPC. Rather the issue between the parties was delivery of fine Atta on credit basis subject to future payments, however

parties have failed to prove the dishonesty element on the part of the respondent to attract Section 489-F PPC. Even, during the course of arguments, the counsel for the appellant was duly confronted with the situation in hand but he failed to make reference to any such material, which may give birth to any possibility of awarding of conviction to respondent No.1 in offenses under section 489-F and 420 PPC.

18. It has been agitated that the Civil Suit filed by the respondent has been decreed in his favor. Since the respondent has been acquitted from the subject charge by full-fledged trial, very strong evidence would be required to curtail the liberty of the accused charged, after the culmination of the trial, which otherwise is a precious right guaranteed under the Constitution of the country. However, the complainant had also the right to prove his case before the learned trial Court beyond the shadow of a doubt; however, he failed to prove his case which ended in the acquittal of respondent No.2 by the Appellate Court.

19 The evidence of the appellant in the instant criminal case before the Trial Court was/is vague and sketchy, therefore, no reliance can be placed on the evidence of the complainant and has rightly been upset by the Appellate Court.

20. I have perused the evidence and do not find valid justification to award a conviction by the Trial Court, and rightly set aside by the learned Appellate Court. It is well settled by now that the scope of appeal against acquittal is very narrow there is a double presumption of innocence and the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Supreme Court in the case of *State Versus Abdul Khaliq and others* ***(PLD 2011 SC 554)***.

21. From perusal of judgment passed by the Appellate Court it appears that the same is speaking one and does not suffer from any interference by this Court. In these circumstances, the learned Appellate Court obviously was right to record the acquittal of the private respondent by extending him the benefit of the doubt, and such acquittal is not found to have been recorded in an arbitrary or cursory manner, which may call for interference by this Court. In the case of ***The State and Others vs. Abdul Khaliq and others (PLD 2011 SC-554),*** it is held by the Apex Court 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. 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 in a grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous . The Court of appeal should not interfere simply for the reason that on the reappraisal 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".***

22. I am fully satisfied with the appraisal of record done by the learned Appellate Court and I am of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal, and in the latter case, interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. the appellant failed to disclose any misreading and non-reading of recor made available before the Appellate Court.

23. In the case of ***Muhammad Zafar and another v. Rustam and others*****(2017 SCMR 1639)**, the Hon'ble Supreme Court of Pakistan has held that:-

> **"We have examined the record and the reasons recorded by the learned appellate court for acquittal of respondent No.2 and for not interfering with the acquittal of respondents No.3 to 5 are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant/appellant and learned Additional Prosecutor General for the State, which would have resulted in grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents Nos. 2 to 5 which reasons have not been found by us to be arbitrary, capricious of fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of accused because it is well-settled law that in criminal trial every person is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. As a sequel of the above discussion, this appeal is without any merit and the same is hereby dismissed"**

24. Based on the above discussion, I have found that the acquittal of the respondent does not suffer from any illegality to call for interference by this court with the impugned judgment, passed by the Appellate Court.

25. Based on the law concerning an appeal against acquittal and the fact that the learned Appellate Judge has advanced valid and cogent reasons for passing a finding of acquittal in favor of the respondent, I see no legal justification to disturb the same as such the appeal against the acquittal of the respondent is dismissed.

JUDGE