

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR.**

Criminal Acquittal Appeal No.S-56 of 2024

Date of hearing: 16.10.2024

Date of decision: 16.10.2024

Appellant:- Ali Hassan, through Mr. Ghulam Murtaza Korai,
Advocate

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 03.04.2024, passed by Civil Judge and Judicial Magistrate-I, Pano Akil, in Criminal Case No.249/2022, outcome of FIR bearing Crime No.49/2022, u/s 489-F PPC, registered at PS Dadloi, District Sukkur, whereby the private respondent/accused has been acquitted by extending him benefit of doubt.

2. The brief facts of the prosecution case are that the accused Meer Ahmed used to purchase articles from the shop of complainant Mir Hassan Indher on credit basis, whereas, an amount of Rs.222,000/- was outstanding against the accused, hence on demand of the complainant, he issued a cheque of his Bank Account No.004148919862 bearing No.89158629 dated 05.07.2021 of National Bank Pano Akil Branch of the said outstanding amount, which was deposited by the complainant in his Bank account maintained in J.S Bank Pano Akil Branch, which was dishonoured due to insufficient funds. Thereafter the complainant approached the accused for payment of his amount, who refused hence the complainant filed an application before the Court of Ex-Officio Justice of Peace and obtained such order for registration of FIR. Hence the complainant went to police station and lodged the FIR.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondent vide impugned judgment dated 03.04.2024, hence, this criminal acquittal appeal.

4. Heard learned counsel for the appellant and perused the impugned judgment as well as the depositions available on record.

5. Perusal of the impugned judgment reflects that the learned trial court has mainly acquitted the private respondent on the reasoning mentioned in para-7 of the impugned judgment which is reproduced as under:-

7. The case of the complainant is that complainants owns one shop in village Jado Indhar where accused Meer Ahmed s/o Abdul Aziz used to purchase articles from shop of complainant on credit basis and amount Rs.2,22,000/- was outstanding against the accused for which accused issued one cheque drawn on NBP Pano Aqil branch which was dishonored, complainant approached the accused for recovery of his outstanding amount but accused refused to pay outstanding payment, hence complainant lodged FIR against the accused. From fair perusal of evidence of complainant and witnesses it transpires that sufficient doubt has been created as complainant and witness have stated contradictory to each other. Neither any receipts/bills have been exhibited by the complainant to corroborate the version of complainant nor statements of complainant and witness are coherent in support of prosecution case. Complainant in his examination in chief deposed that outstanding amount towards accused was Rs.222,000/- whereas PW Ali Raza in his examination in chief deposed that outstanding amount was Rs.220,000/- towards the accused which leads to believe that PW does not support the claim of complainant. Complainant in his cross examination deposed that accused used to purchase household articles of ration like sugar, flour, oil, detergents and other usable articles, whereas on the other hand PW Ali Raza deposed in his cross examination that he does not know what type of articles accused used to purchase from complainant. How it is possible that PW being brother of complainant does not know what type of articles accused to use purchase from complainant when complainant has shop of kiriyana articles. Which creates sufficient doubt in the prosecution story. From the perusal of cheque which is produced by the complainant during his evidence it shows that different colors of blue pens were used in bearer name, amount and signature of accused person which also suggest that cheque was filled by more than one person. Complainant in his examination in chief has deposed that accused issued cheque dated:05.07.2021 whereas PW Ali Raza deposed in his examination in chief that accused issued cheque dated:05.07.2022. The ingredients of section 489-F PPC as mentioned below should be completed to constitute an offense U/s. 489F PPC and dishonesty be proved on the part of accused.

Dishonestly means fraudulent act, it is also a pre-condition that the cheque should be dishonored on "Presentation". The basic ingredients for attracting the Section 489- F, P.P.C are as under; (i) Dishonestly issuance of cheque. (ii) Towards re-payment of loan. (iii) Fulfillment of an obligation. (iv) Dishonored on presentation. 10. Mere issuance of cheque

and its dishonor by itself is not an offence unless the aforementioned ingredients are fulfilled. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as "Allah Ditta v. The State" (2013 SCMR 51), that "Every transaction where a cheque is dishonored may not constitute an offence. The foundational elements to constitute an offence under this provision are issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation and lastly that the cheque in question is dishonored." In the present case, complainant and his witnesses have not been able to prove the issued cheque was for the repayment of loan or any financial obligation from their statements of documentary evidence, their statements are contradictory to each other which has created sufficient doubt in the prudent mind. Therefore, the point No:1 is answered as doubtful."

6. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that 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 Honourable Supreme Court in the case of State Versus Abdul Khaliq and others (PLD 2011 SC 554), wherein the Hon'ble Supreme Court has held as under:-

"From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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 into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal 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. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”

7. The sequel of above discussion is that the learned trial Court has committed no illegality or irregularity while recording acquittal of the private respondent/accused by way of impugned judgment, which even otherwise does not call for any interference by this Court by way of instant Criminal Acquittal Appeal, the same fails and is dismissed accordingly together with listed application.

J U D G E

ARBROHI