

IN THE HIGH COURT OF SINDH KARACHI

Present: **Mr. Justice Dr. Syed Fiaz ul Hassan Shah**

Crl. Acquittal Appeal No. 191 of 2023

Appellant: Aziz Damji through Mr. Muhammad Nishat Warsi advocate for the appellant

The State: Through Ms. Seema Zaidi, Addl. P.G. Sindh

Date of hearing: 10.07.2025

Date of Judgment: _____

JUDGMENT

Dr. Syed Fiaz ul Hassan Shah, J.-Through this Criminal Acquittal Appeal seeks setting aside of judgment dated 31.01.2023, passed by learned Judicial Magistrate-XVIII (MTMC) Karachi South in Crl. Case No. 6838/2021, whereby respondent No.1 was acquitted from the charge in Crime No. 77/2021 u/s 489-F PPC registered at PS Boat Basin.

2. I have considered the arguments advanced by the learned counsel for the appellant, who has failed to point out any illegality or material irregularity in the impugned judgment. The record reflects that there is no dispute between the parties regarding the issuance of the cheque in favour of the appellant. The statement of respondent No.1, recorded under Section 342, Cr.P.C., reveals a categorical admission of the issuance of the cheque, coupled with a specific

plea that the same was issued subject to certain conditions. It was further asserted that the complainant committed default in fulfilling the contractual obligations mutually settled between the parties. For clarity and better appreciation, the relevant portion of the statement is reproduced hereinbelow:

“As per said agreement I have issued conditional cheques (cheque in question) and cash amount total amounting to Rs.150,00,000/-. However, the complainant has failed to fulfill the terms and condition of the agreement and no documentary proof is available on record regarding the supply of googles and gowns and the said fact is also admitted by the complainant.”

3. The Respondent has taken a specific plea under **Article 122 of the Qanun-e-Shahadat Order, 1984**, asserting that the burden of proving facts especially within the knowledge of the appellant lies upon him. This plea stands substantiated through the appellant's own admission that he had earlier received **Rs.15 million** and failed to perform certain contractual obligations. The appellant's acknowledgment of receipt and non-performance is further corroborated by his examination-in-chief, wherein he stated: ***“I could not be able to send 15% share of the accused, hence accused arranged a third party with 200% higher price than that of actual cost and supplied the items. When I came to know that the accused is supply the said items to the third party hence I claimed my profit amount as per agreed terms.”*** Additionally, during cross-examination, the appellant reaffirmed the conditional nature of the transaction and admitted that the cheques were issued subject to performance of specific terms, which he failed to fulfill. He deposed during cross examination: ***“It is correct to suggest that I failed to fulfill my obligation due to Covid-19. Voluntarily says I have fulfilled my obligation partially.I say I have received***

amount of Rs.150,00,000/- on account of oral agreement of 50% each. It is incorrect to suggest that an amount of Rs.150,00,000/- was handed over in terms of agreement “Mark-5”.

4. In view of the above, the essential ingredients of **Section 489-F, P.P.C.**—namely, *dishonest intent, existing liability or fulfillment of obligations*—are not established. The Hon’ble Supreme Court in *s “Muhammad Sultan v. The State” (2010 SCMR 806)* and *Muhammad Javed v. The State (2015 SCMR 864)* has consistently held that mere issuance of a cheque does not constitute an offence under Section 489-F unless it is shown to have been issued dishonestly and against a legally enforceable liability. In *Muhammad Sultan* (supra) held that:

“A perusal of section 489-F, P.P.C. reveals that the provision will be attracted if the following conditions are fulfilled and proved by the prosecution:

- i. issuance of cheque;
- ii. such issuance was with dishonest intention;
- iii. the purpose of issuance of cheques should be:-
 - (a) to repay a loan; or
 - (b) to fulfill an obligation (which in wide term inter alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds person to some performance).
- iv. on presentation, the cheque is dishonoured. However, a valid defence can be taken by the accused, if he proves that: -
 - (i) he had made arrangements with his bank to ensure that the cheques would be honoured; and
 - (ii) that the bank was at fault in dishonoring the cheque. If the accused establishes the above two facts through tangible evidence and that too after the prosecution proves the ingredients of the offence then he would be absolved from the punishment”.

5. 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.”

6. The Supreme Court in the unreported case of **Muhammad Anwar Vs. The State** decided recently vide Order dated 3.6.2024 reaffirmed view laid down in *Mian Allah Ditta (supra)*:-

“8. This Court has held in the case titled Mian Allah Ditta, that every transaction where a cheque is dishonored may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of the cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and lastly the cheque is dishonored.”

7. Furthermore, in **Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif (PLD 2017 SC 265)**, the apex Court emphasized the evidentiary value of admissions and the burden of proof under Article 122, reinforcing that where a party admits material facts, the burden shifts accordingly. Therefore, in view of such admission of the appellant himself that he had failed to fulfill the contractual obligation, which establishes the fact that cheques were issued subject to certain terms and conditions, therefore the basic ingredients of section 489-F PPC have not been existing, which may warrant interference by this Court. Another important aspect is that appellant in his examination-in-chief on oath has not confirmed the contents of his complaint (available at page 77-79) and the

description of cheques and amounts are at variance for which no plausible explanation of valid justification has been given by the appellant and on the contrary failed to discharge his burden of prove in view of dictums laid down by the Apex Court in the case of ***The State and others vs. Abdul Khaliq and others*** (PLD 2011 SC 554).

8. The prosecution was under a bounden duty to establish not only that the cheques in question were issued in discharge of a legally enforceable obligation or liability, but also that their issuance was accompanied by dishonest intent, as required under Section 489-F, P.P.C. However, the prosecution failed to substantiate these essential ingredients through credible and convincing evidence and the prosecution did not satisfactorily demonstrate the existence of a subsisting liability or the requisite mens rea on the part of the respondent. This failure has materially eroded the evidentiary value of the prosecution's case and vitiated the trust of this Court in the complainant's version. In this regard, reliance is placed on the authoritative pronouncements of the Hon'ble Supreme Court in ***Muhammad Rafiq v. State*** (2014 SCMR 1698), ***Usman alias Kaloo v. State*** (2017 SCMR 622), and ***Nasrullah alias Nasro v. The State*** (2017 SCMR 724).
9. Besides, the doctrine of double innocence is fully applicable in the case of respondent. Accordingly, the trial Court has rightly appreciated the defence plea, which is both specific and supported by documentary and oral evidence. The issuance of cheques in the present case, being conditional and not accompanied by dishonest intent or subsisting liability. A mere issuance of a cheque and its dishonour does not ipso facto constitute an offence under Section

489-F, P.P.C., unless the prosecution proves the existence of a legally enforceable liability and dishonest intention beyond reasonable doubt.

10. The prosecution has failed to discharge its burden, and the defence has successfully rebutted the presumption of guilt through credible admissions and corroborative testimony. Consequently, the appeal is not maintainable and is hereby dismissed.

JUDGE

Kamran/PS