

IN THE HIGH COURT OF SINDH KARACHI

***Criminal Acquittal Appeal No. S-137 of 2023
(Hassan Shahzad Versus Muhammad Asghar and another)***

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For order on MA No. 13870/2025
2. For order on office objection
3. For hearing of Main Case

05.12.2025

Mr. Ubedullah Abro Advocate for the Appellant.
Mr. Muhammad Fahad Saeed Advocate for the Respondent No.1.
Ms. Rubina Qadir, Additional Prosecutor General

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JUDGMENT

Ali Haider 'Ada', J:- Through this Criminal Acquittal Appeal, the Appellant assailed the judgment dated 28.02.2023 passed by the learned XXIII Civil Judge & Judicial Magistrate, Karachi South in Criminal Case No. 2848 of 2022, arising out of FIR No. 641 of 2021 registered under Section 489-F PPC at Police Station Aram Bagh, Karachi, whereby the learned trial Court, after a full-fledged trial, acquitted the accused of the charge.

2. The brief facts of the prosecution case are that FIR No. 641 of 2021 was lodged on the allegation that an agreement for sale of property had been executed between the parties. It was alleged that in the event of failure to perform the agreement, the accused was liable to return the amount, and in that context, he issued a cheque dated 15.06.2021 for an amount of Rs. 60,000,000/-, which was dishonoured on 14.07.2021 as per the bank memo. Thereafter, the complainant lodged the FIR on 16.09.2021.

3. After registration of FIR, usual investigation was carried out. The learned trial Court took cognizance, supplied requisite documents, and framed charge, to which the Respondent No.1/accused pleaded not guilty and claimed trial. The prosecution was allowed to lead evidence and examined PW-1 Hassan Shahzad (complainant), PW-2 Ejaz Karim, PW-3 SIP Abdul Ghaffar, PW-4 SIP Ghulam Murtaza, PW-5 ASI Saeed Iqbal (mashir of arrest), and lastly PW-6 Babar Ali (bank official). After recording their evidence, the prosecution closed its side. The learned trial Court then examined the Respondent No.1 under Section 342 Cr.P.C., wherein he professed innocence and sought acquittal. He neither examined himself on oath nor produced any evidence in defence. Thereafter, the learned trial Court heard the matter and delivered the judgment now under challenge.

4. Learned counsel for the appellant, present today, submits that he has filed MA No. 13872/2025 seeking withdrawal of his vakalatnama on the ground that the Appellant is not attending the proceedings. He points out that despite several opportunities granted to the Appellant, he has remained absent. The endorsement submitted by SHO, PS Aram Bagh, Karachi South states that the complainant/appellant resides in Peshawar and despite efforts his present whereabouts could not be ascertained. Learned counsel affirms the same, submitting that the whereabouts of the Appellant are unknown. In these circumstances, MA No. 13872/2025 for withdrawal of vakalatnama is allowed.

5. On the other hand, learned counsel for Respondent No.1 contends that the learned trial Court rightly acquitted the accused, as the prosecution case was inherently weak. He submits that the alleged property transaction lacked legal sanctity, and even the suit for specific performance filed by the complainant was later withdrawn and dismissed. He further submits that summary proceedings initiated by the complainant against the Respondent No.1 were also unsuccessful. Thus, according to him, the acquittal requires no interference and deserves to be maintained.

6. Learned Additional Prosecutor General supports the impugned judgment. She submits that the learned trial Court, after properly evaluating all material on record, rightly concluded that the prosecution failed to establish the case against the Respondent No.1. She argues that the evidence falls short of proving the essential elements required under Section 489-F PPC.

7. Heard and perused the material available on record.

8. The essential ingredients of Section 489-F PPC are well-settled. The prosecution must prove: (i) issuance of a cheque by the accused; (ii) that the cheque was issued for repayment of a loan or for discharging a lawful obligation; and (iii) that the cheque was dishonoured. The element of dishonesty is central to the offence, as the provision criminalizes the dishonest issuance of a cheque to discharge an existing liability. Thus, the Court must assess whether the prosecution has shown that the cheque was issued in connection with a legally enforceable obligation.

9. From the facts of the present case, non-compliance with the terms of a property agreement, even if established, is a matter falling within the realm of civil obligations relating to enforcement of contracts. Mere failure to perform a contract does not ipso facto attract penal consequences under Section 489-F PPC. Even according to the purported sale agreement, non-payment would give rise to civil remedies but would not

automatically constitute the offence under Section 489-F PPC. The prosecution has not produced evidence demonstrating that the cheque in question was issued to discharge a legally enforceable debt or liability as contemplated by the law. Rather, the material on record reflects a contractual dispute lacking the necessary criminal intent required under the provision.

10. The inconsistencies in the prosecution's case further weaken its position regarding the alleged financial liability underlying the cheque. In allegations of financial misconduct, the prosecution must establish its case with precision, consistency, and corroboration. Failure to provide clear, reliable, and consistent financial particulars renders the prosecution case doubtful. Guidance may be taken from **Muhammad Sohail Haroon v. Shoukat Ali and 2 Others (2024 YLR 2804)**, wherein it was held that:

6. It may be observed that for constituting an offence under section 489-F, P.P.C., the initial burden lies upon the prosecution to establish that the alleged cheque(s) was issued dishonestly by the accused towards repayment of a loan or fulfillment of an obligation. In the instant case, it is claim of the appellant that he sold out Metallic Yarn to the respondent No.1 worth of Rs.21,73,000/-and against that the later issued him seven cheques, which were dishonored on presentation. However, the appellant failed to produce on record any evidence to establish that he had in fact supplied Metallic Yarn worth of said amount to the respondent No.1 to justify issuance of the alleged cheques towards fulfilment of an obligation under the sale transaction. It has been admitted by the appellant in his cross-examination that he has not produced any proof regarding supply of said products to the respondent No.1. Besides, the I.O. A.S.I. Amir Ghayas (PW-6 at Exh.8) has also admitted in his deposition that :the appellant did not hand over him any document to show business transaction between him and the respondent No.1.

11. It is a settled principle that the mere issuance of a cheque, which is subsequently dishonoured, does not, by itself, constitute an offence under Section 489-F, PPC, unless it is established that the cheque was issued dishonestly, with the specific intention of repayment of a loan or to discharge a legally enforceable obligation. Reliance in this regard may be placed on the decisions: **Iqbal Ahmed v. Syed Danish Hussain Zaidi and 2 Others, 2022 YLR Note 202; Muhammad Yasin v. Muhammad Zubair Farooqui and Another, 2022 YLR Note 98; Raja Abdul Hameed v. Mashooq Ali Rajpar and 2 Others, 2022 YLR Note 54; and Muhammad Nasir v. The State and 2 Others, 2020 YLR Note 144.**

12. The scope of interference in an acquittal is very limited, and the prosecution bears a heavy burden in this regard, particularly in view of the presumption of double innocence in favor of the accused. Reliance may be placed on **Fida Hussain alias Saboo v. The State (2025 SCMR 993)**. It is also firmly established that where

contradictions or doubts exist in the prosecution's case, the benefit of such doubt must always be extended to the accused. Reliance is placed on **Qurban Ali v. The State (2025 SCMR 1344)**.

13. In the present matter, having carefully considered the record, the evidence, and the legal position, this Court finds no ground to interfere with the impugned judgment. Consequently, the instant criminal acquittal appeal is dismissed, and the judgment of the learned trial Court is maintained.

JUDGE