IN THE HIGH COURT OF SINDH KARACHI

Criminal Acquittal Appeal No. S-85 of 2021
(Zaheer Anwar Alvi Versus the State and another)

DATE	ORDER WITH SIGNATURE OF JUDGES

1. For order on MA No. 1390 of 2021
2. For hearing of Main Case

12.12.2025

Mr. Sarosh Jamil, associate of Mr. Muhammad Jamil, Advocate for the Appellant
Syed Muhammad Abdul Kabir, Advocate for the Respondent No.2
Mr. Mumtaz Ali Shah, Assistant Prosecutor General Sindh

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JUDGMENT

ALI HAIDER 'ADA', J.- Through this Criminal Acquittal Appeal, the appellant has assailed the judgment dated 06.01.2021 passed by the learned Judicial Magistrate-V, Karachi South, in Criminal Case No.3700 of 2019 arising out of FIR No.131 of 2019 registered at Police Station Darakhshan, Karachi, for the offence punishable under section 489-F, Pakistan Penal Code. The learned trial Court, after a full-fledged trial, acquitted respondent No.1, who had been nominated as accused in the said FIR.

2. Briefly stated, the prosecution case is that the complainant Muhammad Qasim was running a restaurant and entered into an agreement with the accused whereby the business of the restaurant was allegedly handed over to him for a consideration of Rs.. 22,00,000/-. In partial discharge of the said liability, the accused issued two cheques bearing Nos.15492287 and 1542288, each amounting to Rs 5,00,000/-, dated 10.12.2018 and 15.12.2018 respectively. Both cheques were dishonoured on 12.12.2018 and 24.12.2018 on the ground of insufficient funds, whereupon the complainant lodged the FIR.

3. After registration of the FIR, the usual investigation was conducted and challan was submitted before the trial Court.

Cognizance was taken and after supply of documents under section 241-A Cr.P.C., charge was framed on 20.07.2019, to which the accused pleaded not guilty and claimed trial.

4. During trial, the complainant Muhammad Qasim appeared as PW-1 and produced copy of the FIR, dishonoured cheques and an agreement dated 24.07.2018. PW-2 Afaq was examined as a bank official, while Muhammad Ali, the Investigating Officer, also deposed and produced certain documents. Thereafter, the prosecution closed its side.

5. The statement of the accused under section 342 Cr.P.C. was recorded, wherein he denied the allegations and produced a bank letter, which was exhibited as Ex 8-A, regarding the stoppage of payment. After hearing the parties, the learned trial Court passed the impugned judgment acquitting the accused, which has been called in question through the present appeal.

6. Learned counsel for the appellant contends that the learned trial Court failed to properly appreciate the evidence. He argues that the letter relied upon by the accused was neither part of the investigation nor preceded by any exhibited request to the bank. According to learned counsel, issuance of the cheques and execution of the agreement established the business transaction and all ingredients of section 489-F PPC stood fulfilled. He further contends that the matter falls under the category of white-collar crime, and therefore, any delay in initiating proceedings should not be given significant weight. He further submits that once the issuance of the cheques was admitted, the burden shifted upon the accused, which was not discharged. It was argued that pendency of civil proceedings does not bar criminal action and that white-collar crimes should not be treated leniently. On these grounds, the acquittal was termed arbitrary and liable to be set aside. He placed reliance on the cases reported in 2013 YLR 1798, 2021 SCMR 510, 2013 P.Cr.L.J. 688, 2013 P.Cr.L.J. 400, 2008 SCMR 839, 2010 P.Cr.L.J. 351, 2016 SCMR 2163,

2007 SCMR 670, 2010 SCMR 949, 2024 YLR 1597, 2023 SCMR 117, 2018 NLR 259, 2022 P.Cr.L.J. 1480, and 2022 MLD 1444.

7. Conversely, learned counsel for respondent No.1 raised a preliminary objection regarding maintainability, submitting that the appeal was not filed by the complainant Muhammad Qasim and no proof of his death or authority in favour of the present appellant was produced. He further argues that the present appellant, though cited as a witness, was not examined during trial, attracting an adverse presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984. On merits, it was contended that the bank official named in the challan was Arif, whereas one Afaq was examined without any application under section 540 Cr.P.C. It was also argued that there was an unexplained delay in lodging the FIR, that the complainant admitted sub-letting the business without authority, and that the cheques were issued as security rather than towards the discharge of a legally enforceable liability. Further submits that the Investigating Officer failed to seize the original cheques, and defects in investigation must go in favour of the accused. In this respect, he relied upon 2024 SCMR 1116 and 2021 P.Cr.L.J. 586. In addition, he also submitted a written synopsis.

8. Learned Assistant Prosecutor General supported the impugned judgment and submitted that the trial Court passed a well-reasoned and speaking judgment. He further pointed out that despite the availability of other witnesses mentioned in the agreement, the prosecution examined only three witnesses, which adversely affected the prosecution's case.

9. Heard and perused the record with due care.

10. First of all, the contention of the learned counsel for the appellant that the matter pertains to section 489-F PPC and is classified as white-collar crime, and that delay in lodging the FIR is irrelevant due to such classification, is **misconceived**. The theory of white-collar crime, like other academic classifications of crime, is primarily for logical and sociological purposes and does not alter the

legal principles under criminal jurisprudence. Under criminal law, every offence must be examined in accordance with substantive and procedural provisions; therefore, any doubt arising in the evidence benefits the accused. Delay in reporting a crime is a relevant factor and must be considered in light of all applicable principles, and the academic classification of the offence.

11. The instant matter constitutes an offence under the applicable law; it may be termed a white-collar crime from an academic perspective, but such classification does not displace the legal requirements for proof. Criminologists have developed several classifications of crime based on social context, the nature of the offence, and the status of the offender, which are useful for academic analysis as well:

> **White-collar crime** refers to non-violent offences such as fraud, embezzlement, corruption, or bribery, typically committed by individuals in positions of authority, trust, or high social status in the course of their occupation. The term was coined by sociologist Edwin H. Sutherland in 1939 and elaborated in his book White Collar Crime (1949). While these offences may involve complex financial transactions, the legal requirement to establish all ingredients of the offence, including dishonest intention and failure to discharge a legal obligation under section 489-F PPC, remains essential.
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> **Blue-collar crime** generally involves straight offences committed by individuals, often characterized by direct physical acts such as theft, robbery, or assault. These crimes are discussed in standard criminology texts, including Larry J. Siegel's Criminology: The Core.
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> **Red-collar crime** is a concept in forensic criminology referring to violent acts committed by white-collar offenders, typically to conceal, facilitate, or escape detection of their original white-collar offences. This concept is discussed in works by Frank Cullen, John Paul Wright, and Kristie Blevins, including Taking Stock: The Status of Criminological Theory (2008).
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> **Green-collar crime** relates to offences causing environmental harm, such as pollution, illegal dumping, wildlife crimes, and regulatory violations. This category arises from environmental and green criminology studies, as discussed in Rob White's Crimes Against

> Nature: Environmental Criminology and Ecological Justice.
>
> Other color-coded crimes, including black-collar, pink-collar, yellow-collar, and gold-collar offences, are primarily used for academic, sociological, or analytical purposes.

12. In conclusion, while the academic classifications provide useful insights into the nature and context of offences, they do not modify the legal standards required to establish an offence under the Pakistan Penal Code or procedural requirements under the Criminal Procedure Code. All evidence must be assessed according to the law, and any doubt or lacuna in the prosecution's case must benefit the accused.

13. On this aspect, and in the given context, in the present matter, the cheques were allegedly issued on 10.12.2018 and 15.12.2018, but were dishonoured on 12.12.2018 and 24.12.2018, respectively. However, there is no plausible explanation or justification for the delay of approximately three months in lodging the FIR. The unexplained delay in approaching public functionaries or law enforcement authorities for presentation of the cheques raises serious doubts regarding the prosecution's case.

14. The law recognizes that in cases involving dishonoured cheques under section 489-F PPC, the delay in lodging the FIR is a relevant factor, particularly when there is no reasonable explanation for such delay. Courts have consistently held that an unexplained delay casts doubt on the veracity of the prosecution's version and may support the acquittal of the accused. This position has been reinforced in several authoritative judgments, including **Iqbal Ahmed vs. Syed Danish Hussain Zaidi and 2 others 2022 YLR Note 202, Ali Sher vs. The State 2022 YLR Note 138, Muhammad Yasin vs. Muhammad Zubair Farooqui 2022 YLR Note 98, Abdul Majeed vs. The State 2022 P.Cr.L.J. Note 22, Muhammad Asif vs. Tanveer Iqbal 2021 YLR 324, Muhammad Ashruf vs. The State 2021 P.Cr.L.J. 586, Ali Dost vs. The State 2021 P.Cr.L.J. Note 59, and Muhammad Nasir vs. The State 2020 YLR Note 144**. In all these cases, the courts emphasized that the

prosecution bears the burden of explaining the delay in reporting the offence, and failure to do so strengthens the defence case. Therefore, in the present matter, the unexplained lapse of three months in lodging the FIR, coupled with other evidentiary deficiencies, constitutes a significant factor in favour of the accused and justifies the acquittal recorded by the trial Court.

15. Now, even though the business transaction is alleged to have occurred, a perusal of the agreement available at page 63, executed between the complainant and the accused, reveals inconsistencies. The agreement included the payment of the chart produced during deposition and recorded by the trial Court, which reflects an advance payment of Rs. 400,000/- to be paid in the first week of September 2018 and Rs. 8,00,000/- in the first week of December 2018. However, during cross-examination, the complainant deposed that Rs. 9,50,000/- was paid, an amount not prescribed in the agreement. Such discrepancies raise serious doubts about the authenticity and transparency of the transaction, particularly when key witnesses mentioned in the agreement were not produced.

16. The inconsistencies in the prosecution's case further weaken its position regarding the alleged financial liability underlying the cheques. In cases involving financial misconduct, the prosecution is required to establish its case with accuracy, consistency, and corroboration. Failure to provide clear, reliable, and consistent particulars regarding the transaction renders the prosecution's case doubtful. Guidance may be taken from the case of **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.l. 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.*

17. Now, offences relating to financial dishonesty have become a serious concern in society, adversely affecting commercial transactions, corporate governance, and individual financial security. Initially, such acts were largely regulated under Section 20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. However, in view of the increasing financial losses suffered by companies and private individuals, the legislature deemed it necessary to criminalize such conduct more broadly. Consequently, in 2002, Section 489-F was inserted into the Pakistan Penal Code, providing a specific penal provision to address the issuance of dishonoured cheques with dishonest intent. For ready reference, the **Section 489-F PPC** is read as under:

> *489-F Dishonestly issuing a cheque:- Whoever dishonestly issues a cheque owards re-payment of a loan or fulfillment of an obligation which is dishonored on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honored and that the bank was at fault in not honoring the cheque.*

18. It is, however, settled that the provisions of Section 489-F, PPC do not confer an unrestrained right upon an individual or company to initiate criminal proceedings merely to recover a financial claim. The legislature intentionally imposed certain restrictions to ensure that only cases involving dishonest issuance of a cheque for repayment of a loan or fulfillment of a lawful obligation fall within its ambit. Criminal law cannot be invoked as a substitute for civil remedies where no dishonest intent or legally enforceable obligation exists.

19. The essential ingredients of Section 489-F, PPC are well-settled. The prosecution must establish: first, that the accused issued a cheque dishonestly; second, that the cheque was issued for a specific purpose, namely, repayment of a loan or fulfillment of a lawful obligation; and third, that the cheque was subsequently dishonoured. The statutory expression dishonestly forms the foundational element of the provision, as Section 489-F penalizes the dishonest issuance of a cheque for repayment or discharge of an existing obligation. Accordingly, while examining the present matter, the Court must carefully assess whether these ingredients are satisfied from the material on record and whether the issuance of the cheque was indeed connected with a subsisting liability or obligation.

20. Further, the burden of proof lies squarely upon the prosecution as provided under **Article 117 of the Qanun-e-Shahadat Order, 1984**, which requires the party asserting a fact to establish it, particularly when criminal liability is sought. For ready reference, Article 117 is reproduced as follows.

> *117. Burden of proof: (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

21. Furthermore, the concerned Bank Officer was not examined during the trial. The accused specifically pleaded that the amounts were stopped, and it was incumbent upon the prosecution to produce relevant witnesses to substantiate their case. The letter in question was relied upon by one Afaq, whose name was not included in the list of witnesses, and no application under Section 540 Cr.P.C. was made to formally include him. Additionally, the present appellant, Zaheer Anwar Alvi, was claimed to be a business partner of Muhammad Qasim, the complainant, but the prosecution failed to establish this partnership through any cogent evidence.

22. It is a well-settled principle of law that the scope of interference in an acquittal is very limited, and the prosecution bears a heavy burden, 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, as held in **Qurban Ali v. The State (2025 SCMR 1344)**.

23. In view of the foregoing reasons, discussions, facts and circumstances of the case, there is no need to interfere with the judgment of the trial Court. Consequently, the instant criminal acquittal appeal is dismissed, and the judgment of the trial Court is maintained.

J U D G E

Amjad/PS