

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Acquittal Appeal No.S-171 of 2021

Appellant: Mirza Arslan Baig son of Muhammad Fazal Ur Rehman
Respondent No.1: Salman Ahmed
Respondent No.2: The State, Through Ms. Sana Memon, Assistant Prosecutor General.

Date of hearing: 07.11.2025

Date of Judgment: 07.11.2025

J U D G M E N T

Muhammad Hasan (Akber), J. The Judgment dated 19.06.2021 has been assailed in this Acquittal Appeal, which was passed by learned Civil Judge & Judicial Magistrate-I/Model Trial Magistrate Court-II Hyderabad, in Criminal Case No.346/2021, '*The State v. Salman Ahmed*' arising out of F.I.R No.114/2020 of P.S. Cantonment, Hyderabad for the offence under section 489-F PPC., whereby Respondent No.1/Accused has been acquitted under section 245(i) Cr.P.C.

2. Succinct facts alleged by the prosecution are that the complainant is a businessman, and he gave a cash amount of Rs.21,00,000/- (Rupees Twenty one lac) on profit basis to the accused Salman Ahmed, in the presence of a witness, Mirza Faizan, for doing agricultural business. The accused neither paid any profit nor returned the principal amount, and on 27-08-2020 he issued a cheque No.309338296 dated 21-09-2021 for Rs.40,00,000. (Rupees Forty Lacs) drawn with ABL Bank, Quba Stop Branch, and an agreement dated 27-08-2020 was also executed between the parties in the presence of witnesses. Upon presentation, the said cheque was dishonoured due to insufficient funds in the account of accused Salman Ahmed, for which FIR was registered.

3. Heard learned APG for the State, who supported the judgment impugned and perused the record with her assistance.

4. Section 489-F PPC. provides as under:

"489-F Dishonestly issuing a cheque.- Whoever dishonestly issues a cheque towards repayment 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".

5. The essential ingredients of the provision are therefore, (i) dishonest issuance of a cheque; (ii) towards (a) repayment of a loan; or (b) fulfilment of an obligation; and (iii) its dishonour upon presentation.

6. Under Article 117 of Qanun-e-Shahadat Order 1984, the primary burden rests upon the complainant to prove his case beyond reasonable doubt, that the subject cheques were issued by the accused; that such cheques were issued with dishonest intention; that the said cheques were issued towards fulfilment of the obligation, as was being claimed by the complainant; and lastly, that the cheque was dishonoured upon presentation. Once these requirements are proved, the latter portion of the provision shifts the burden upon the accused to prove that he had made arrangements with the bank for encashment of the subject cheque and that the bank is at fault in dishonouring the cheque, but this is only once the accused has accepted his liability/ obligation. The stage of proving his part of the defence by the accused, would come only once the prosecution has successfully discharged its burden.

7. To prove the charge, after framing of charge, the prosecution examined six witnesses, including PW-01, complainant Mirza Arslan Baig, PW-02, Mirza Faizan Baig, P.W-03 SIP Fahad Anwar, P.W-04 Rafique (Operation Manager Bank Al Barka Cant Hyderabad), P.W-05 Arslan Khan Banking Service Manager, and P.W-06 SIP Sarfaraz (Investigation officer). The Statement of the accused under Section 342 CRPC was recorded, wherein he denied the prosecution's allegations. Upon conclusion of evidence, the learned trial court acquitted the respondents/accused.

8. During his cross-examination, the complainant admitted that he did not obtain any receipt of the payment of Rs.21,00,000/- to accused Salman. The complainant also admitted that he is an employee and not a businessman, and his salary was 50,000/ per month, with monthly savings up to 30,000/-. However, he was unable to establish in evidence from where did he obtain such a huge amount. He attempted to improve his case in evidence for the first time, by claiming that his

two other brothers, including PW-2 Mirz Faizan Baig had also invested in the principal amount. The complainant also produced an agreement dated 27-08-2020 at Exhibit-03/A, allegedly held between him and accused Salman after more than two years of handing over the alleged cash amount. However, such an agreement was completely silent about any agricultural business. Moreover, neither complainant nor his witnesses deposed any description of the agricultural business. The complainant claimed that the agreement was executed in presence of witnesses, PW.2 Mirza Faizan Baig and Abdul Rehman. On the contrary, PW-2 Mirza Faizan admitted in his evidence that he had *no knowledge about the terms and conditions settled in between the complainant and the accused, nor any knowledge about any profit amount*. PW-2 also admitted that the alleged agreement was prepared by the complainant. He also admitted that the handwriting on the subject cheque was of the complainant and not of the accused. Despite claiming to be the alleged co-investor of the principal amount and despite being the alleged marginal witness of the said agreement, PW-2 did not support the complainant's version, nor did he know anything about the terms and conditions of the alleged agreement. The sanctity, authenticity and existence of such belated agreement, therefore, became doubtful. He also admitted that the complainant *was employed and was not doing business, as claimed in the FIR*. The complainant's handwriting, both on the cheque and on the agreement, casts serious doubts on the entire allegations. The Investigating Officer, SIP Sarfaraz (Exhibit-8) also admitted that neither did he verify the stamp paper of said agreement, nor did he record the statement of any independent person, to testify about the said transaction whereas, PW-2 and the complainant are both real brothers. The complainant therefore utterly failed to establish, the handing over of a heavy amount of Rs.21,00,000/- cash to the accused. The complainant also failed to bring on record any specification and detail of his alleged business. His claim of doing business was contradicted by PW-2. His handwriting on the alleged agreement, so also on the subject cheque creates serious doubts about the genuineness of the said documents, as well the entire alleged transaction. The complainant has therefore, failed to bring forward any reliable proof which could substantiate that the cheque in question was for the fulfilment of any obligation, so also the consequential 'dishonesty' against the accused. Once the accused had denied the very existence of any transaction between the parties, the primary

burden to prove the same was on the complainant; however, from the above, it appears that the complainant utterly failed to establish the existence of any obligation and agreement between the complainant and the accused; most of his statements remained unestablished; PW-2 also contradicted his statement in the FIR; the IO also could not support him; and lastly, he also contradicted his own statement.

9. From the above, it can be concluded that the complainant was unable to establish the existence of the alleged investment, or any 'obligation' against the accused; and because of which, the complainant was unable to establish dishonest issuance of cheque by the accused. Hence, the obligation and the element of dishonesty, which were primarily required to be established by the complainant beyond a reasonable doubt, remained unestablished. The complainant also failed to establish his other claims and allegations. He also failed to establish the subsequent agreement and therefore utterly failed to establish the very existence of the "obligation" between him and the accused. The learned trial Court was, therefore, justified in holding that the prosecution failed to prove the existence of a legally enforceable liability or obligation; and consequently, the dishonest intention, as was mandatorily required to be established under Section 489-F PPC. to convict the persons charged for the offence.

10. Two principles, which have been consistently followed in acquittal appeals on the Charge under section 489-F PPC., are: (i) that an appeal against an acquittal, being an extraordinary remedy, has distinct features from that of an appeal against conviction; and (ii) that to reverse an order of acquittal, it will have to be established that the acquittal order is unreasonable, perverse and manifestly wrong. These principles have been consistently followed by this Court in the cases of '**Muhammad Sohail Haroon V. Shoukat Ali and 2 others**' (2024 YLR 2804), '**Kim Seon Bae v. The State and 2 others**' 2021 YLR 114, '**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), '**Amanullah Khan V. Ahtisham Khan and 3 others**' (2020 PCr.LJ 152), '**Mehdi Hassan V. Muhammad Sajid and 2 others**' (2018 MLD 1349).

11. The third settled principle of criminal jurisprudence applicable here is, that even if a single circumstance exists, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the benefit of such doubt is to be extended to the accused, not as a matter of grace and concession, but as a matter of right. Reliance in this regard is placed upon '**Tariq Pervez v. The State**' (1995 SCMR 1345) and '**Muhammad Akram v. The State**' (2009 SCMR 230). As already discussed above, in the present case, multiple contradictions, deficiencies and flaws exist, which will go to the benefit of the accused.

12. The fourth settled principle which will apply to the present appeal is that, an Order of acquittal carries with it a double presumption of innocence in favour of the accused and in such cases, the Court is required to act slowly before interfering with such order of acquittal, unless the grounds for acquittal were perverse, wholly illogical or unreasonable. These principles have been settled in '**The State v. Abdul Khaliq and others**' (PLD 2011 SC 554); '**Ghulam Sikandar v. Mamrez Khan**' PLD 1985 SC 11; and '**Tariq Pervez v. The State**' (1995 SCMR 1345); '**Muhammad Asghar and another v. The State**' (PLD 1994 SC 301); '**Mirza Noor Hussain v. Farooq Zaman and 2 others**' (1993 SCMR 305); '**Yar Mohammad and 3 others v. The State**' (1992 SCMR 96). Applying all the above principles to the facts of the present case, no illegality, infirmity, perversity, or jurisdictional error could be established which would call for interference in the impugned Judgment. Accordingly, the Judgment impugned is upheld; and the instant Criminal Acquittal Appeal is dismissed along with the pending application. These are the reasons for my short Order dated 07.11.2025.

JUDGE