

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 146 of 2020

Appellant : Aftab Anwar through Mr. Amir Raza,
Advocate.

Respondent No.1 : Nemo

Respondent No.2&3 : The State through Mr. Shoaib Safdar,
A.P.G.

Date of Hearing : 02.02.2026.

Date of Order : 02.02.2026.

JUDGMENT

TASNEEM SULTANA J:- Through this criminal acquittal appeal, the appellant has assailed the judgment dated 08.01.2020 passed by the learned XIV Judicial Magistrate, Karachi (West), whereby the respondent was acquitted of the charge under section 489-F P.P.C. The appellant has also filed an application under section 428 Cr.P.C. read with section 561-A Cr.P.C. seeking permission to produce outward gate passes and allied documents as additional evidence. Since both the appeal and the application arise out of the same facts and are inter-linked, they are being decided together through this judgment.

2. Brief facts of the prosecution case, is that the complainant was associated with the business of ghee/oil products and was working as Marketing Manager in Western Industries (Private) Limited. According to him, business relations existed with the accused persons namely Azhar Farooq and Athar Waseem, who were carrying on their business at Khanewal. It was alleged that during business dealings, products of the complainant's company were supplied to the accused persons from time to time on credit basis. In discharge of the outstanding liability arising out of such transactions, the accused persons allegedly issued cheque bearing No.226753685 dated 14-02-2017 for an amount of Rs.3,30,000/- drawn on Allied Bank Ltd in favour of the complainant/company. The complainant further alleged that upon presentation of the cheque through banking channel, the same was dishonoured on account of insufficient funds. Thereafter, despite repeated demands, the amount was not paid, whereupon the present F.I.R. was lodged.

3. After usual investigation police submitted charge -sheets before the learned trial Court. the requisite documents as required under Section 241-

A Cr.P.C. were supplied to the appellant/accused. Formal charge under Section 489-F P.P.C. was framed, to which the accused pleaded not guilty and claimed trial.

4. In order to substantiate the charge, the prosecution examined six witnesses PW-1 Aftab Anwar the complainant at Ex.05, he produced original cheque at Ex.05/A, memo of site inspection at Ex.05/B, Authority letter at Ex.05/C and FIR at Ex.05/D. PW-2 Muhammad Asim (Officiating Branch Manager MCB) at Ex.06, he produced letters of IO and Bank reports at Ex.06/A & 06/B and 06/C & 06/D respectively. PW-3 Muhammad Nasir at Ex.07, PW-4 SIP Ch. Muhammad Nazeer at Ex.08, he produced application at Ex.08/A and entry No.26 at Ex.08/B, PW-5 ASI Rizwan Rasheed at Ex.09, he produced memo of arrest and site inspection and at Ex.09/A, PW-6 Inspector Muhammad Farooq I O at Ex.10, he produced entries from Ex.10/A to 10/F, letter to securing necessary permissions) mashirnama of arrest dated 04.09.2018, On 04.09.2018, mashirnama of arrest dated 04.9.2018 the PW Muhammad Farooq, ASI Muhammad Rizwan along with letter of Home Department for permission Ex.10G, eateries of diaries at P.S. Khanewal, departure arrival entries of station diaries of P.S. City Court as Ex. 10/H to Ex.10K respectively. Certified true copies of FIR No.414/2016 & 444 of 2016 P.S. Korangi Industrial Area (CRO) as Ex. 10/L & Ex. 10/M respectively. Statement of the respondent/accused was recorded under Section 342 Cr.P.C. at Ex.12, wherein he denied all the allegations levelled against him, professed innocence and asserted that the cheque in question was issued merely as a **security/guarantee cheque** and not towards discharge of any legally enforceable liability. The accused disputed supply of goods, outstanding amount and business transaction. He examined DW Yaseen at Ex.13.

5. After hearing the learned counsel for appellant/accused, learned counsel for complainant and learned A.D.D.P. for the State, learned trial Court acquitted the respondent/accused vide impugned judgment dated 08.01.2020, hence this Criminal Acquittal Appeal.

6. Learned counsel for the appellant contends that the impugned judgment is the result of misreading and non-reading of evidence; that issuance and dishonour of cheque stood proved; that the learned trial Court erred in extending benefit of doubt despite admitted issuance of cheque; and that the respondent failed to rebut the presumption arising therefrom. He further contended that the trial Court adopted an overly technical approach by insisting upon documentary proof of supply and that oral testimony regarding business dealings ought to have been believed. With respect to the application under section 428 Cr.P.C., it was argued that the

outward gate passes and allied documents are relevant, were not produced earlier inadvertently, and are necessary for a just decision of the case.

7. Per contra, learned APG for the State supported the impugned judgment and contended that mere issuance or dishonour of cheque does not constitute an offence under section 489-F P.P.C. unless the prosecution establishes a legally enforceable liability and dishonest intention at inception. He argued that no demand note, purchase order, invoice, delivery challan, acknowledgment of receipt, or account statement was produced to show supply of goods or crystallization of liability. He further contended that the application under section 428 Cr.P.C. is a belated attempt to fill foundational lacunae and that allowing additional evidence at this stage would undermine the double presumption of innocence.

8. Heard. Record perused.

9. At the outset, it is reiterated that an order of acquittal confers upon the accused a double presumption of innocence firstly, the presumption available to every accused person under criminal jurisprudence, and secondly, the reinforced presumption arising from a judicial verdict of acquittal. Interference in an acquittal is, therefore, an exception and is warranted only where the findings of the trial Court are shown to be perverse, manifestly arbitrary, or based on misreading or non-reading of material evidence. Mere possibility of a different view does not justify appellate interference.

10. The legal position under section 489-F P.P.C. is equally well settled. Dishonour of a cheque, by itself, does not ipso facto constitute the offence. The prosecution is required to establish, beyond reasonable doubt, that the cheque was issued towards repayment of a loan or fulfilment of a legally enforceable obligation; that such liability existed and stood crystallised at the time of issuance; and that the cheque was issued with dishonest intention (*mens rea*) at inception. In cases emanating from alleged commercial dealings, the existence of a legally enforceable liability ordinarily requires contemporaneous documentary substantiation, and the cheque amount must be shown to be arithmetically and transactionally traceable to the underlying transaction. Where the foundational transaction remains unproved, the inference of dishonest intention cannot be safely drawn in criminal jurisdiction.

11. Reverting to the evidence, the prosecution succeeded in proving issuance and dishonour of cheque through the bank record. This aspect was not seriously disputed. However, beyond this limited fact, the prosecution failed to establish the foundational ingredients of the offence.

12. The complainant (PW-1), while asserting supply of goods, admitted in cross-examination that no purchase orders, demand notes, or written requisitions were produced to show that the respondent ever demanded supply of goods. He further admitted that no invoices, delivery challans, transport receipts, bilty records, or acknowledgments of receipt were produced. He also conceded that no account statement or ledger was brought on record to demonstrate how the amount of Rs.3,30,000/- was calculated or became payable. He admitted that no documentary proof regarding transportation of goods, mode of delivery, or receipt by the accused was produced, and that no such material was provided to the Investigating Officer during investigation. These admissions strike at the very root of the prosecution case, particularly when the alleged transaction was commercial in nature and required documentary substantiation. The remaining prosecution witnesses did not cure these deficiencies. The bank witness merely proved dishonour of cheque and had no knowledge of the underlying transaction. The investigating officer admitted that no documentary proof of business transaction was provided during investigation. Thus, the prosecution evidence remained confined to oral assertions unsupported by contemporaneous documentary material.

13. In criminal jurisprudence, particularly in cases arising out of alleged commercial transactions, oral assertions without documentary corroboration are insufficient to establish a legally enforceable obligation. In the absence of proof of demand, proof of supply pursuant to such demand, proof of delivery and acceptance, and proof of quantified liability, the cheque cannot be treated as issued in discharge of any legally enforceable obligation. Closely linked with the above is the requirement of dishonest intention. Dishonesty must exist at the time of issuance of cheque. In the present case, no evidence was produced to show that at the time of issuing the cheque the respondent knew that it would not be honoured or that he had made no arrangement with the bank. Prior business dealings, as admitted, further weaken the inference of dishonest intention at inception.

14. The defence stance throughout trial was a consistent denial of supply of goods, denial of liability, and denial of issuance of cheque towards any legally enforceable obligation. This defence cannot be termed implausible or an afterthought, as it finds support from the prosecution's own evidentiary omissions and admissions.

15. The learned trial Court, therefore, extended benefit of doubt on a correct and lawful appreciation of evidence. The acquittal represents a plausible, rational and legally sustainable view on the material placed

before it, and does not suffer from perversity, misreading or non-reading of the record. The double presumption of innocence enjoyed by the respondent remains intact and has not been displaced by anything brought before this Court in appeal.

16. The appellant seeks to overcome the above evidentiary deficiencies by invoking section 428 Cr.P.C. for production of additional documents described as outward gate passes and allied papers. Section 428 Cr.P.C. empowers an appellate Court to take additional evidence where such evidence is necessary for a just decision. The power is exceptional and must be exercised with circumspection, particularly in appeals arising out of acquittal. It is not meant to afford a second opportunity to repair fundamental defects or to reconstruct a prosecution that failed at trial despite full opportunity.

17. The Hon'ble Supreme Court in the case of **Dildar v. The State (PLD 2001 SC 384)** has laid down that the powers relating to additional evidence are discretionary and are to be exercised sparingly; additional evidence cannot be permitted to fill lacunae or to cure inherent defects left in the prosecution case; and such power is not to be invoked to repair blunders, negligence or omissions of a party which had the opportunity to produce evidence during trial. The same principle has been reiterated in **The State v. Ahmed Omer Sheikh (2021 SCMR 873)**, wherein it has been emphasized that appellate Courts must show extreme restraint, particularly where an acquittal is under challenge, and additional evidence is not to be allowed unless it is shown that despite due diligence the evidence could not be produced earlier for reasons beyond control.

18. Tested on the touchstone of the above authoritative pronouncements, the appellant has not furnished any satisfactory explanation for non-production of the documents during trial, despite the fact that such documents, if genuine, were within the appellant's domain. No plea of unavailability, subsequent discovery, or prevention beyond control has been established. The request, therefore, does not meet the statutory and judicially settled threshold for exercise of discretion under section 428 Cr.P.C.

19. Even otherwise, the documents sought to be produced are outward gate passes. A gate pass, by its very nature, merely indicates movement of goods from a premises. It is not a purchase order; not an invoice; not a delivery challan; nor an acknowledgment of receipt. It does not prove demand, supply pursuant thereto, delivery to and acceptance by the respondent, or crystallization of liability. Significantly, no demand notes or

purchase order has been produced even at this stage, and the gate passes themselves do not disclose any purchase order number, customer reference, rate, valuation, acknowledgment of receipt, or linkage with the cheque amount. Even if taken on record, such documents would not cure the foundational defects already noted, nor would they, by themselves, establish the ingredients of section 489-F P.P.C. Permitting such material at the appellate stage would amount to reconstructing the prosecution case after acquittal, which is impermissible in law and would undermine the double presumption of innocence enjoyed by the respondent.

20. In these circumstances, the acquittal cannot be characterized as perverse or based on misreading or non-reading of evidence. Rather, it represents a plausible and legally sustainable view arising from the prosecution's failure to discharge its primary burden.

21. For the foregoing reasons, the application under section 428 Cr.P.C. read with section 561-A Cr.P.C. is dismissed. Consequently, the Criminal Acquittal Appeal, being devoid of merit, is also dismissed, and the impugned judgment dated 08.01.2020 is maintained.

JUDGE

Shabir/PS/Nadeem