

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 874 of 2025

Appellant	Dr.Mohammad Shahid Khan Mr. Muhammad Farooq Khan, Advocate.
Date of hearing	03.11.2025
Date of judgment	03.11.2025.

O R D E R.

TASNEEM SULTANA-J.:- Appellant /complainant has preferred the instant criminal acquittal appeal against the judgment dated 12.08.2025 passed by the learned Model Trial Magistrate-II/XXII-Civil Judge & Judicial Magistrate, Karachi East in Criminal Case No.734 of 2023 arisen out of FIR No.80/2021 at P.S. Model Colony, Karachi registered under Sections 489-F/420, P.P.C, whereby the respondent/ accused Muhammad Israr Qureshi was acquitted of the charge.

2 Brief facts of the case as narrated by complainant are that he is a Child Specialist and his wife Dr.Shabana Shahid, both run clinic in Model Colony since many years. On 27-06-2021 a publication was published in daily Jang Newspaper regarding sale of property on which they contacted Muhammad Israr Qureshi on his cell No. 0334-7000005 given in newspaper, who received the call and informed that subject plot is under litigation in Court and then they got signatures from both of them (husband and wife) on agreement and then they demanded Rs.1 Crore & 27 lacs for depositing the said amount in Court, and promised that after court decision they will receive the remaining amount and execute the sale deed, with promise that they will clear all the formalities from court as well as other concerned departments and for NOC, Site Plan and Mutation etc, they got time for four months. During this period they developed good family relation with each other, and they obtained Rs.1,27,00,000/- from complainant, and after hectic efforts they gave him some cheques of MCB Islamic Bank and out of them complainant deposited one cheque for encashment Rs.15 lacs in his account No.018301013758 of Mezan Bank but the same became bounced and when he demanded his amount accused extended life threats to him and warned to keep quiet. Hence the FIR was lodged for taking legal action.

3. After usual investigation, charge-sheet was submitted against the accused/appellant and he was sent up to stand trial.

4. Having been supplied requisite documents as provided under section 241-A Cr.P.C., the Trial court framed a formal charge against accused Dr.Muhammad Shahid Khan at Ex.2 to which he pleaded not guilty and claimed trial vide his plea recorded at Ex.2/A.

5. To prove the charge, prosecution examined PW-Complainant Dr.Muhammad Shahid, PW-Azeem Faisal, PW-Dr.Shabana Shahid, PW-ASI Maqsood Ali, Pw-Farrukh Shahid Khan, PW-ASI Iftikhar Ahmed and PW- Asif Ali. Thereafter, prosecution side was closed vide statement at Ex: 10.

6. The statement under Section 342 Cr.P.C of accused was recorded at Ex: 12, wherein he denied all the allegations levelled against him and stated that he is innocent and prayed for justice. However, he did not examine himself on oath nor produced any witness in his defense.

7. After full-dressed trial, the learned trial Court acquitted the accused/appellant through the judgment dated 12.8.2025 which is challenged in this appeal.

8. Learned counsel for the appellant contended that the learned trial Court failed to properly appreciate the evidence on record; that the dishonoring of cheque itself constituted sufficient proof of guilt under Section 489-F, P.P.C.; that the prosecution witnesses supported each other; and that the impugned judgment is perverse, arbitrary, and against the weight of evidence. It was argued that the learned Magistrate erred in holding the dispute to be of civil nature when clear elements of deceit and fraudulent intent were established. The counsel prayed for setting aside the acquittal and conviction of the accused according to law.

9. Conversely, learned counsel for the respondent/accused as well as the learned Assistant Prosecutor General supported the impugned judgment and submitted that the trial Court has properly appreciated the evidence; that there exist glaring contradictions, omissions, and improvements in the complainant's testimony; that no document or independent witness supports the alleged payment of Rs.1,27,00,000/-; and that the dispute, at best, was civil in nature. It was further argued that the view taken by the trial Court is a possible view supported by evidence and does not warrant interference by this Court.

10. I have heard the learned counsel for the parties and have carefully examined the impugned judgment along with the entire record.

11. At the very outset, it would be advantageous to note that for establishing offence under Section 489-F PPC, the prosecution must prove: (i) dishonest issuance of a cheque; (ii) towards repayment of a loan or fulfillment of an obligation; and (iii) dishonor on presentation. Thus, section 489-F PPC is confined to determining the commission of a criminal offence and is not a mechanism for recovery of money. Where disputes pertain to civil transactions or breach of contractual obligation, criminal proceedings are not the appropriate forum. Reliance is placed in the case of **Muhammad Afzal v. The State and others (2012 YLR 2780)**, wherein it was held:

"The provisions of section 489-F, P.P.C. have not been promulgated for using it as a tool for recovery of the amounts due in business dealings for which the civil remedy has already been provided by law."

12. Upon careful scrutiny of the record, I find that the learned trial court has conducted a thorough analysis of the prosecution evidence and has recorded detailed findings on the critical aspects arrived therein. The trial court correctly noted significant discrepancies between the FIR, charge sheet, and oral testimony. The complainant introduced facts regarding two pay orders of Rs. 7,50,000/- each obtained on 15.11.2021, which were not mentioned in the FIR or charge sheet; the issuance of six cheques of different amounts was stated in testimony but omitted from the FIR and charge sheet and the investigation officer admitted in cross-examination that crucial aspects were not investigated or disclosed. All these are not minor contradictions but material improvements that go to the root of the case. The principle is well-settled that improvements in testimony cast serious doubt on the prosecution case, particularly when they introduce new material facts.

13. The investigation officer's admissions in cross-examination are also fatal to the prosecution case. He admitted that complainant did not disclose when, where, and in what manner the amount was handed over to the accused. He also admitted in his cross examination that he did not investigate the matter concerning the disputed plot and the complainant did not disclose facts regarding the handing over of pay orders during investigation. These deficiencies undermine the entire foundation of the prosecution case.

14. Consequent to the above scrutiny of record, it reveals that no obligation was proved. The complainant admittedly never obtained copies of the plot documents for verification; never met the actual owner of the plot; never entered into any agreement with the real owner; he could not produce complete proof of payment of Rs.1,27,00,000/- and in both agreements, the accused was not shown as the owner of the plot.

15. After anxious consideration of the entire material on record and the arguments advanced, it reveals that the learned trial court has neither committed any material irregularity nor arrived at any perverse or unreasonable conclusion. The trial court correctly identified material contradictions, improvements in testimony, and failure to prove essential ingredients of the offences charged. The judgment is based on proper appreciation of evidence and is well-reasoned, therefore, prosecution has failed to establish its case against the accused-respondent beyond reasonable shadow of doubt.

16. As regards the improvements in the prosecution case, reliance is placed in the case of **Muhammad Rafiq vs The State reported (2010 SCMR 385)** wherein the august Supreme Court of Pakistan held as under:-

"Improvement made by a witness in order to strengthen the prosecution case, lose his credibility and evidentiary value and when a witness made contradictory statement or improvement changing his version to in line his testimony with the story of prosecution, if found to be deliberate and dishonest, would cast serious doubt on his veracity".

17. It is also a settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on **InayatUllah Butt v. Muhammad Javed etc. (PLD 2003 SC 563)**, **Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others (2017 SCMR 1710)**.

18. In case of **Tarique Pervez vs. The State (1995 SCMR 1345)**, it has been held by Hon'ble Apex Court that:

"For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the

guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.”

19. From the above, I have reached at the conclusion that the acquittal of respondent does not suffer from any illegality so as to call for interference with the impugned judgment. The learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favour of respondent and I see no legal justification to disturb the same. Resultantly, the instant Criminal Acquittal Appeal is dismissed in limine.

JUDGE

Shabir/P.S