JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Cr. Acquittal Appeal No. S-15 of 2023

Applicant	:	Muhammad Ashraf through Mr. Muhammad Asif Zai, Advocate
Respondents	:	Musaddiq Ali and another Mr. Masood Ahmed Laghari, Advocate for the Respondent No. 1 and Mr. Neel Parkash, Deputy Prosecutor General Sindh for the State
Date of Hearing	:	02.09.2026
Date of Judgment	:	14.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: This appeal is against the acquittal of the Respondent No. 1 Judgment dated 20.09.2023 passed by the learned Judicial Magistrate-I, Mirpurkhas, in Criminal Case No. 37 of 2023 arising out of FIR No. 67 of 2022 registered by the Gharibabad Police Station, Mirpurkhas, under s. 489F of the PPC.

2. The prosecution case was that the Appellant carried on the wholesale business of flour and plain flour (maida) at Dholanabad, Mirpurkhas. Respondent No.1 allegedly used to purchase those commodities from him on credit and an amount of Rs.20,42,000/- was asserted to be outstanding. According to the FIR, Respondent No.1, towards that liability, issued five cheques drawn on Meezan Bank: cheque No. D-07586565 for Rs.50,000/- dated 10.07.2022; cheque No. D-07586569 for Rs.1,50,000/- dated 05.08.2022; cheque No. D-07586567 for Rs.1,50,000/- dated 05.09.2022; cheque No. D-07586568 for Rs.1,50,000/- dated 05.10.2022; and cheque No. D-07586569 for Rs.1,50,000/- dated 05.11.2022. The record itself thus repeats cheque No. D-07586569 for the second and fifth instruments; no correction of that duplication is reflected in the material placed before this Court. The aggregate face value stated for the five cheques is Rs. 6,50,000/-. The Appellant alleged that the cheques were delivered in the presence of Aneel Kapoor son of Narain Das Lohano and Shahid Hussain son of Muhammad Khursheed Abbasi. He deposited them in his account No.1274-0095-0048240-18 maintained at Bank Al Habib, Sir Syed Road, Mirpurkhas. The instruments were returned unpaid on 04.08.2022, 11.08.2022, 06.09.2022, 10.10.2022 and 10.11.2022 respectively. The impugned judgment describes the return reasons collectively as payment stopped by drawer/insufficient funds. The FIR was thereafter registered upon orders by the competent court in an application under s.

22A and B of the Cr.P.C. (The isolated reference in the opening paragraph of the trial judgment to Crime No. 67 of 2023 is plainly a clerical error, the title of that judgment and the appeal record consistently identifying FIR No.67 of 2022.)

3. During investigation, the police secured colour copies of the cheques and the bank-return memoranda, prepared a memo of site inspection, obtained letters and verification reports from Meezan Bank and Bank Al Habib and collected forty-three receipts said to relate to the business dealings. No arrest, physical recovery, medical or forensic proceeding is described in the supplied record. On completion of investigation, a challan under s. 173 of the Cr.P.C was submitted before the competent Magistrate; the date of its submission is not stated in the impugned judgment. The requisite documents were supplied to Respondent No.1 under s. 241-A of the Cr.P.C, receipt whereof was recorded at Ex.01. Formal charge under s. 489-F of the PPC was framed at Ex.02 and his plea was recorded at Ex.02/A. He pleaded not guilty and claimed trial. The prosecution examined three witnesses whose evidence is summarized below:

> **PW-1 Muhammad Ashraf**, complainant (Ex.03), reiterated the transaction and produced the certified true copy of the order directing registration of the FIR at Ex.03/A, the FIR at Ex.03/B, and five original cheques together with their respective bank-return memoranda at Ex.03/C to Ex.03/L. In its discussion, the trial Court additionally referred to forty-three receipts comprising six pages as Ex.03/M; elsewhere, while summarizing PW-3, the same record is described as receipts verified at Ex.04/D following a production memo at Ex.04/C. That discrepancy in exhibit description is preserved rather than resolved by assumption. The material admission recorded by the trial Court was that none of the receipts bore the name or acknowledgment of Respondent No.1; they bore the name and receiving of his father. The complainant also did not identify the date, quantity, rate, invoice or delivery particulars of the flour allegedly supplied to Respondent No.1.
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> **PW-2 Shahid Hussain** (Ex.04), one of the persons named as present when the cheques were issued, supported their issuance. He produced the memo for securing colour copies of the cheques and return memoranda at Ex.04/A and the memo of site inspection at Ex.04/B, and identified the originals already exhibited at Ex.03/C to Ex.03/L. His evidence, as recorded in the impugned judgment, went to delivery of the cheques but did not prove the underlying sale of flour, the dates or terms of any supplies, or the computation of Respondent No.1's alleged liability. No further material

admission from his cross-examination is identified in the impugned judgment.

PW-3 ASI Zulfiqar Ali, Investigating Officer (Ex.05), verified the order for registration of the FIR at Ex.03/A, the FIR at Ex.03/B, the memo at Ex.04/A, the original cheques and return memoranda at Ex.03/C to Ex.03/L and the site-inspection memo at Ex.04/B. He produced roznamcha entry No.13 at Ex.05/A, roznamcha entries Nos.09 and 15 at Ex.05/B, letters from the two banks at Ex.05/C and Ex.05/D, the Meezan Bank verification report at Ex.05/E and the Bank Al Habib verification report at Ex.05/F. He also verified the production memo and receipts described in the witness summary as Ex.04/C and Ex.04/D. His evidence proved the investigative steps and bank correspondence, but he had no first-hand knowledge of the alleged flour supplies or the circumstances in which the cheques were issued. The impugned judgment records no further material admission from his cross-examination.

4. The learned ADPP closed the prosecution side through a statement at Ex.06. The statement of Respondent No.1 under s. 342 of the Cr.P.C is also described in the impugned judgment as Ex.06, an apparent duplication in exhibit numbering. Respondent No.1 denied the allegations, asserted that the complainant had lodged a false case and stated that he had no concern with the alleged transaction. The judgment also records his plea that the complainant had misused his cheques and that a suit for cancellation of the cheques had been instituted. It further refers to a certified copy of the complainant's written statement in that suit, said to have been tendered with the s. 342 statement, according to which business dealings were with the father of Respondent No.1. Respondent No.1 did not examine himself on oath under s. 340(2) of the Cr.P.C and did not call any defence witness or formally prove any defence document.

5. By judgment dated 20.09.2023, the learned trial Court held that the prosecution had proved presentation and dishonour of the cheques but had failed to prove the antecedent flour transaction, an existing obligation of Respondent No.1 for the cheque amounts, or dishonest intention at the time of issuance. It considered that no agreement, date of sale or evidence of delivery to Respondent No.1 had been produced; PW-2 was only a witness to issuance; and the forty-three receipts bore the name and acknowledgment of the father of Respondent No.1 rather than Respondent No.1. The Court also relied upon the interval between dishonour of the first cheque and registration of the FIR, the pending civil suit and the defence explanation. Consequently, the Respondent No. 1 was acquitted as already stated.

6. Mr. Muhammad Asif Zai for the Appellant contended that the impugned judgment is contrary to the evidence and rests upon misreading and non-reading of material documents. He argued that the five original cheques and bank-return memoranda were produced; their issuance and the signatures of Respondent No.1 were not denied; PW-2 witnessed their delivery; the Investigating Officer proved the bank correspondence and verification reports; and all three witnesses supported the prosecution. According to learned counsel, the forty-three business receipts, read with the oral evidence and the admitted cheques, sufficiently established the commercial dealings, whereas the trial Court attached undue significance to the absence of a written agreement and misapplied Art. 17 of the Qanun-e-Shahadat Order, 1984. He further submitted that the civil suit was instituted after the criminal case; the assertion that the cheques had been stolen or misused was neither reported to the police nor proved by examining the father or uncle of Respondent No.1; and documents appended to an unsworn s. 342 statement could not displace proved prosecution evidence. It was lastly urged that the delay finding was misconceived because the cheques were successively dishonoured up to 10.11.2022, the judicial direction followed on 16.11.2022 and the FIR was registered on 30.11.2022. He prayed that the acquittal be set aside.

7. On the other hand, Mr. Masood Ahmed Laghari for the Respondent No. 1 and Mr. Neel Parkash, the Deputy Prosecutor General, contended that an acquittal carries a reinforced presumption of innocence and the Appellant had shown no perversity warranting interference. They submitted that dishonour alone does not establish s. 489-F of the PPC; the prosecution was required first to prove an existing loan or obligation and dishonest issuance. The claimed outstanding sum of Rs.20,42,000/- was unsupported by ledgers, invoices, delivery challans, account statements or receipts bearing the acknowledgment of Respondent No.1; the five stated cheque amounts totalled only Rs.6,50,000/-; the FIR narration repeated one cheque number; PW-2 witnessed issuance only; Aneel Kapoor, the other named witness, was withheld; and no bank official or independent person concerned with the supply or delivery of flour was examined. It was argued that the bank material proved no more than dishonour, while the receipts connected the business with the father of Respondent No.1. The burden contained in the concluding proviso to s. 489-F could not shift until the prosecution proved those foundational elements.

8. It is by now well-established that a finding of acquittal carries a double presumption of innocence and may not be interfered with in an acquittal appeal simply because a different view of the material can be taken. In fact, the scope of an appeal against acquittal is quite narrow and limited to circumstances of perversity, misreading and nonreading of evidence, which are well-settled and need

not be repeated. Therefore, the Court will have to look into the matter in this perspective and not otherwise.

9. Now, in order to prove an offence under s. 489F of the PPC, the prosecution has to establish beyond reasonable doubt four things: (a) issuance of the cheque by the accused; (b) dishonest intention accompanying the issuance; (c) issuance towards repayment of a loan or fulfillment of an existing obligation; and (d) dishonour on presentment. Reference may be made to *Mian Allah Ditta v The State and others* 2013 SCMR 51 and *Mian Muhammad Akram v The State and others* 2014 SCMR 1369. With this in mind, it would appear that elements (a) and (d) were proved by the prosecution, but the learned Trial Court rightly reached the conclusion that elements (b) and (c) were not proved beyond reasonable doubt. This is a critical difficulty to which I shall now turn.

10. PW-2's evidence corroborated delivery of the cheques, but the trial judgment does not record that he witnessed any supply of flour, knew the running account, settled the balance or heard Respondent No.1 acknowledge Rs. 20,42,000/- or Rs. 6,50,000/- as due. Aneel Kapoor, the other person named in the FIR as present at issuance, was not examined. The prosecution is not required to multiply witnesses, and his non-examination would not alone defeat the case where PW-2 testified. Yet a natural and material witness may not be withheld without consequence where the purpose and circumstances of issuance are disputed. *Lal Khan v The State* 2006 SCMR 1846 explains that non-production of a natural and material witness may attract the presumption under Art. 129(g) of the Qanun-e-Shahadat Order, 1984. Here the omission at least deprives the prosecution of the independent clarification that the record required.

11. The trial Court's invocation of Art. 17 of the Qanun-e-Shahadat Order, 1984 requires qualification. That provision regulates proof of financial or future obligations when reduced to writing; it does not enact that every commercial obligation must invariably originate in a written and attested agreement. An oral transaction may be proved through admissible, credible and confidence-inspiring evidence. The absence of an agreement was therefore not conclusive. The decisive point is that neither the oral evidence nor the receipts, viewed cumulatively, proved the alleged supplies to Respondent No.1, the settled balance or his assumption of liability beyond reasonable doubt. Thus, correction of the trial Court's overbroad formulation does not alter the result. The finding of an unexplained three-month delay also cannot be accepted without qualification. Although the first cheque was returned on 04.08.2022, the instruments were post-dated in a series and the last was returned on 10.11.2022. The Appellant obtained the judicial direction on

16.11.2022 and the FIR followed on 30.11.2022. Measured against the last dishonour, the interval was twenty days, with an intervening recourse to the Court. The chronology does not justify treating delay as an independent reason for acquittal. Even after excluding that reason, however, the unproved obligation and mens rea remain fundamental and incurable deficiencies.

12. The grounds raised go to the defence of the Respondent No. 1, however, they do not make a difference because as a matter of law the primary burden to prove its case beyond reasonable doubt lied on the prosecution, and I agree with the learned Trial Court that the prosecution's case was not free from doubt. For these reasons, the Appellant has failed to establish and perversity, misreading or nonreading in evidence and no case for interference has been made out.

13. I therefore dismiss this appeal while maintaining the impugned Judgment subject to the clarifications provided above and without prejudice to any civil litigation between the parties which shall have to be decided on its own merits and standard of proof.

JUDGE

Faisal