

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Rev. Application No. 173 of 2018.

Applicant Mian Karim Jan through Mr. Noor Muhammad, advocate.
Respondent No.4 the State through Syed Meeral Shah Bukhari, Addl.
P.G.

Date of hearing: 09.07.2019
Date of Judgment: _____

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- By filing the instant criminal revision application, the applicant/accused impugns the concurrent findings of two Courts below regarding his conviction by learned Judicial Magistrate XIII, Karachi West in Criminal Case No. 1448/2015 initiated on the basis of F.I.R. No. 294/2015 of PS SITE-A, under Section 489-F PPC. As per impugned judgment of the trial Court dated 05-03-2018, the applicant/accused was convicted for imprisonment for a term of 3 years. The said sentence was upheld by the lower appellate court (Additional Sessions Judge-XI, Karachi West) through impugned judgment dated 14-09-2018 in Cr. Appeal No. 07/2018.

2. The factual milieu of the case is that the complainant in his aforementioned F.I.R. described that he had given an amount of Rs.2,00,000/- for the purpose of business to the applicant/accused, who is owner of Karim Jan Motors in the year 2014 under some written agreement. The said agreement was violated and respondent did not pay the profit to him. Subsequently, he gave him one cheque bearing number 9027562 amounting to Rs. 5,00,000/- dated 10-12-2014 of UBL, Orangi Town, Karachi, which was deposited by him in Sindh Bank, Metroville but it was dishonoured.

3. After registration of the F.I.R., the applicant/accused was arrested and after completing an investigation, a report under Section 173 of the Code of Criminal Procedure, 1998 (hereinafter referred as 'CrPC') was submitted before the trial Court. After completing the requisite formalities, the trial Court framed a charge against the accused which was denied by him and he claimed trial. Hence the trial was conducted and the conviction was awarded, which was subsequently maintained by the appellate Court.

4. The learned counsel for the applicant/accused has assailed the impugned judgments pronounced by both the Courts below. According to him, certain material facts have not been considered by the trial Court as well as the appellate Court. He draws attention towards certain contradictions as well as intentional avoidance of the complainant to reply questions regarding the previous criminal case initiated by him, which was failed after the trial. He submits that the trial Court as well as the appellate Court overlooked the statement of the applicant/accused recorded under Section 342 CrPC, which has to be taken into consideration in juxtaposition with complainant's case. After drawing attention of this Court towards certain weakness of the prosecution during trial, he seeks acquittal of the applicant/accused.

5. On the other hand, the learned Prosecutor opposes the instant application by submitting that there are concurrent findings and no ground is available to upset the said findings in the revisional jurisdiction of this Court.

6. I have heard the arguments advanced and have scanned the available material. In the instant case, the learned trial Court has convicted the applicant/accused for a term of three years imprisonment by holding that charge against him has been proved and he is guilty for the offence under Section 489-F PPC. The said conviction was subsequently upheld by

the lower appellate forum. But after scrutinizing the entire material, I am of the view that some important aspects of the prosecution case were not properly appreciated by the Courts below and when the same are placed in juxtaposition with the statement of applicant/accused recorded before the trial Court under Section 342 CrPC, a different picture evolves. The complainant has placed a 'loan agreement' (معابده قرض) on the record (Ex. 3/A) during his deposition. It is the claim of the complainant that a cheque was issued by the applicant/accused in his favour. A conciliation agreement (صلح نامه) dated 22-09-2014 is also available on the record, which is admitted by the complainant during cross examination in the following words:

“It is correct to suggest that one agreement was made on 04.03.2014. It is correct to suggest that another agreement of compromise made on 22.09.2014. Voluntarily three agreements was made. It is correct to suggest that according to agreement on 22.09.2014, accused Mian Karim Jan issued two cheques Nos. 9027561 and 9027562 to me.”

7. It is useful to point out that from the compromise agreement dated 22-09-2014, which is written in Urdu, it appears that the same was executed at a time when the applicant/accused was already arrested in another case lodged by the complainant. It is quite rational that if the delivery of cheques by the accused was made; when he was already in custody in another F.I.R. lodged by the complainant then it cannot be said that the cheques were voluntarily handed over by the applicant/accused. It is noteworthy that the trial Court as well as appellate Court did not accept the plea taken by the applicant/accused in his statement under Section 342 CrPC that at the time of handing over the cheques, he was in custody and the same were issued in duress. Nevertheless, I am of the view that when the statement of applicant/accused under Section 342 CrPC is placed in juxtaposition with the statement of complainant quoted above, there will be no reason to brush aside the version taken by complainant regarding his arrest and issuance of cheques under

durance. Besides, the applicant/accused has claimed that he has paid off nearly entire amount but in spite of that the complainant has lodged the instant case. In his statement, he referred certain cheques claimed to be given by him to the complainant, which have been properly negotiated according to the Bank Statement filed by him with his statement under Section 342 CrPC. The applicant/accused has also produced a copy of the statement recorded by one Javed Iqbal in a previous case initiated by the complainant against him, which was regarding the other cheque of Rs. 5,00,000/- allegedly given to the complainant in the same transection and in that case, the applicant was acquitted. The said Javed Iqbal was an important prosecution witness in the previous case, who during cross-examination admitted that out of Rs.20,00,000/- an amount of Rs. 19,80,000/- has already been paid off by the applicant/accused to the complainant. Apparently, it was the main reason that when during cross-examination, some questions were asked about that previous case, the complainant replied that 'he did not remember'.

8. Another aspect of the case is important; it is an essential ingredient to attract the offence Section 489-F PPC that the cheques should be given in respect of a loan or future obligation. It is worth mentioning that complainant during his deposition has produced a photocopy of a written complaint dated 27-04-2015 (Ex. 3/B) in which it is a stated that the cheques were issued in surety regarding some business promotion activity. I am of the view that the word issuance of cheque 'in surety' neither fulfil the requirement of future obligation or loan nor the same amounts to 'dishonestly' issuance of cheque as such it does not attract the criminal liability under the provision of 489-F PPC.

9. The ultimate outcome of the above discussion is that there is sufficient material available in the record to create doubt about the prosecution case, as such the instant criminal revision application is allowed and the applicant/accused is acquitted from the charge.

J U D G E