

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Acquittal Appeal No.S-206 of 2021

Appellant:	Imam Ali Shah
Respondent:	Inderyas Masih
The State:	Through Ms. Sana Memon, Assistant Prosecutor General.
Date of hearing:	13.11.2025
Date of Judgment:	13.11.2025

J U D G M E N T

Muhammad Hasan (Akber), J.- Assailed in this appeal is the Judgment dated 03.08.2021, passed by learned Civil Judge & Judicial Magistrate-I/Model Trial Magistrate Court-II, Hyderabad, in Criminal Case No.204 of 2021, '*The State v. Inderyas Masih*' arising from F.I.R No.77/2020 of P.S. G.O.R., Hyderabad for the offence under section 489-F PPC., whereby Respondent/accused has been acquitted under section 245(i) Cr.P.C.

2. Brief facts of the case are that the complainant's friend Inderyas Masih son of Ghulam Masih, disclosed that his brother-in-law Khurram used to conduct business of handicrafts and also exported to Dubai. The accused requested the complainant to invest in the said business. In this regard, the complainant invested Rs.10,00,000/- (Rupees ten lacs) with the accused on profit basis, but when he did not receive the profit, the accused issued cheque No.102988789 for Rs.10,00,000/- dated 26-08-2020, drawn with NBP Bank Sindh University Branch Jamshoro. Upon presentation, the said cheque was dishonoured on 27-08-2020, due to insufficient funds, hence the FIR was lodged.

3. Perusal of the record shows that after framing of charge, the prosecution examined six witnesses, including PW-01 complainant Imam Ali Shah, PW-02 Zarrar Shah, P.W-03 HC Muhammad Imran, P.W-04 Tasawar Ali (OG-II Bank Al-Habib), P.W-05 Moula Bux (OG-III NBP Bank) and P.W-06 SIP Shafi Muhammad (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 Respondent/accused.

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".

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

5. 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 fulfillment 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.

6. To prove the Charge, the prosecution examined six witnesses, including the complainant, who produced the original cheque along with its return memo dated 27-08-2020 as Exhibits 3/A and 3/B. In his examination in chief, he disclosed that after registration of FIR, an agreement dated 26-09-2019 was executed between the complainant and the accused, which was produced in original as Exhibit 3/C. The prosecution also examined PW-Zarar Shah, the son of the complainant. It is pertinent to note that the agreement Exhibit 3/C wherein Khurram (the alleged exporter) has also been cited as Party No.03, however he has not been shown as an accused. The complainant stated in his cross-examination that he has no connection with Khurram, the brother-in-law of the accused Inderyas Masih. The prosecution has examined PW-02 Zarrar Shah the main witness of the alleged agreement who has failed to depose in his examination-in-chief regarding the execution of any agreement between complainant/ his father and the accused Inderyas Masih in his presence. In addition to the above, the complainant also admitted in his cross-

examination that on 07-07-2020 an agreement was reached between him and the accused at the police station Kotri, wherein it was agreed that the accused Inderyas Masih has to repay his amount, after getting the same from various persons. Learned counsel for the accused has urged that the main business of the complainant is to lend money on Interest (*sood ka karobar*) and in this regard, he has already lodged multiple cases of the same sort against various persons. He also filed copies of various Orders, being Cr.M.A No.1898/2019 '*Imam Ali Shah Vs Muhammad Qasim Soomro and Iftikhar*', before the learned Court of IInd Additional Sessions Judge Hyderabad; Cr.M.A No.610/2019 '*Imam Ali Shah Vs Noor Ali Pasha and others*', before the learned Court of Vth Additional Sessions Judges Hyderabad; Cr.M.A No.85/2020 '*Imam Ali Shah Vs Nisar Ahmed and others*', before learned Court of IInd Additional Sessions Judge Hyderabad, and many others along with blank stamp papers purchased in the name of the complainant. This shows that same sort of Applications of dishonoured cheques, with different stories, have been filed by the complainant. The complainant has failed to bring forward any reliable proof, which could substantiate that the subject cheque in the present case was an investment in the handicraft business of Khurram. The complainant was therefore unable to establish the existence of any '**obligation**' against the accused, and because of which the complainant was unable to establish dishonest issuance of the cheque by the accused. The obligation and the element of dishonesty, which were primarily required to be established by the complainant beyond a reasonable doubt, remained unestablished. Secondly, admittedly per the complainant's story, the business of sale and export of handicrafts was that of Khurram, and not of the accused and therefore, no obligation against the accused appears to have been established. Therefore, the learned trial Court was justified in holding that the prosecution failed to prove the existence of a legally enforceable liability or obligation on the accused; so also the consequent dishonest intention, as were mandatorily required to be established under Section 489-F PPC, to convict the person charged for the offence.

7. 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. This Court

has consistently followed these principles 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 ZubairFarooqui 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).

8. The third settled principle of criminal jurisprudence, which is 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.

9. 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. These are the reasons for my short Order dated 13.11.2025.

JUDGE