

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Acquittal Appeal No.S-163 of 2022.

Appellant: Sahib s/o Photo Mal.
 Respondent: Zulfiqar Ali s/o Bahadur Bhatti.
 The State: Through Ms. Sana Memon, Assistant P.G.
 Date of Hearing: 13.11.2025.
 Date of Decision: 13.11.2025.
 Date of Reasons: 18.11.2025

J U D G M E N T

Muhammad Hasan (Akber), J.- Assailed in this appeal, is the Judgment dated 14.06.2022 passed by learned Civil Judge & Judicial Magistrate-I Nawabshah, in Criminal Case No.247/2021, '*The State v. Zulfiqar Ali*' arising out of F.I.R No.237/2021 of PS A-Section Nawabshah, for the offence under Section 489-F PPC., whereby the Respondent/accused has been acquitted under section 245(i) Cr.P.C.

2. Brief allegations in the FIR are that the complainant Sahib purchased plot from accused in the sum of Rs.3,059,910/- out of which the complainant paid Rs.1,250,000/- as an advance amount, however, subsequently such transaction of plot was cancelled and accused returned back Rs.750,000/- as cash amount while for remaining amount, issued a cheque No.21669265 amounting to Rs.500,000/- (Five Lac Rupees) of Allied Bank, Sakrand Branch from his account No.PK22ABPA0010060185020016 in favor of complainant, which was dishonored upon presentation, leading to the initiation of this case.

4. Heard learned A.P.G, who supported the Judgment impugned and also relied upon a number of citations, which will be discussed in the latter part of this Judgement.

5. Perusal of the record reflects that after framing of charge, the prosecution examined four witnesses, including **PW-01** Sahib Oad (complainant), **PW-02** Raja Sabhash Oad, **PW-03** ASI Darban Ali Gopang (Investigation Officer) and **PW-4** Aijaz Ahmed Memon (Operation Manager at Allied Bank Sarkand Branch). The Statement of the accused under section 342 Cr.PC. was recorded wherein he denied the

prosecution's allegations. Upon conclusion of evidence, the learned trial court acquitted the respondent/accused.

6. Three essential ingredients of the provision of section 489-F PPC. are:

- (i) dishonest issuance of a cheque;
- (ii) towards (a) repayment of a loan; or (b) fulfilment of an obligation; and
- (iii) dishonour of the cheque upon presentation.

7. The primary burden rests upon the complainant to prove his case beyond reasonable doubt, that the subject cheque was issued by the accused; that such cheque was issued with dishonest intention; that the said cheque was issued towards fulfilment 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.

8. The prosecution alleges that the complainant purchased a plot from the accused for Rs.3,059,910/-, for which he paid Rs.1,250,000/- as advance. The transaction was subsequently cancelled, and the accused refunded Rs.750,000/- in cash and issued a cheque (No.21669265, Allied Bank, Sakrand Branch) for the balance sum of Rs.500,000/-, which was dishonoured upon presentation. It is pertinent to note that in the bank's return memo, the three (3) reasons for such dishonour were: ***(i) Balance insufficient in account, (ii) Account Dormant/unclaimed, and (iii) Drawer's signature is forged.*** The complainant in his deposition testified that he did not obtain the accused's CNIC copy or title documents for the subject property, despite raising allegations of cheating against the accused. The complainant conceded in his cross-examination, that the purported agreement (*Iqrarnama*) was not executed by the accused but was executed by his brother, Jumma Khan. He also admitted, having no business dealings with the accused. He also admitted that no civil Suit for specific performance was filed by the complainant against the accused for the subject property. He also admitted that no suit for recovery of the subject amount was filed by him. He also admitted that the cheque contains different handwritings with different colours of pen. The PW, son of the

complainant Raja Sabhash, also admitted in his evidence that he was not a witness to the agreement (*lqarnama*). He also admitted that the agreement (*lqarnama*) pertains to the same cheque. He admitted that the agreement (*lqarnama*) was executed between the complainant and Jumma (brother of the accused). He also admitted that the accused had no specific role in the said agreement (*lqarnama*) and also admitted that he himself and the accused were not present at the time of execution of the agreement (*lqarnama*).

9. From the above, it can be safely concluded that the complainant was unable to establish the existence of the agreement (*lqarnama*) with the accused, which was even otherwise admittedly not executed by the accused. The handwriting and the use of multiple pens, so also interpolations on the subject cheque also cast serious doubts on the said cheque having been issued by the accused himself. Lastly, the bank's Cheque Return Memo, clearly mentioning the reason for return of the cheque as **"Drawer's signature is forged"**, completely demolishes the complainant's claim that the said cheque was drawn by the accused. Moreover, non-filing of any suit for specific performance for the said property or a suit for recovery of the amount also diminishes the story put forth by the complainant. In these circumstances, the complainant has utterly failed to establish any transaction between the parties or any 'obligation' against the accused; and consequently, he was unable to establish the dishonest issuance of cheque by the accused. Hence, learned trial Court was, therefore, justified in holding that the prosecution failed to prove the mandatory requirements of section 489-F PPC., being **"obligation"** and **"dishonesty"** beyond reasonable doubt, to convict the persons charged for the offence.

10. While deciding an acquittal appeals, on the Charge under section 489-F PPC., the guidelines provided by the Honourable Supreme Court are that:

(i) an appeal against an acquittal, being an extraordinary remedy, has distinct features from that of an appeal against conviction; and

(ii) to reverse an order of acquittal, it will have to be established that the acquittal order is unreasonable, perverse and manifestly wrong. These principles have been consistently followed by this Court 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 Zubair Farooqui 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) and '*Mehdi Hassan V. Muhammad Sajid and 2 others*' (2018 MLD 1349).

11. The third guideline in this regard 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.

12. Lastly, 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).

13. Applying all the above guidelines 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** along with the pending application. These are the reasons for my short Order dated 13.11.2025.

Before parting with this Judgment, the able assistance provided by the learned Assistant Prosecutor General is appreciated.

JUDGE