

1
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. *JP/* of 2021

Muhammad Ramzan

S/o Shah Baig,
Muslim, adult, resident of
House No.1516, Street No.3,
Sajjan Goth, Baldia Town,
Karachi.....Appellant/Complainant *449*

PRESENTED ON
22-10-2021

[Signature]
Deputy Registrar (Judl.)

VERSUS

1. **Ghulam Ali Malik**
S/o Ghulam Haq
Muslim, adult, resident of
District Ghotki

2. **Model Trial**
Magistrate-II/ XXII Judicial Magistrate,
(East) Karachi.....Respondents

3. The State

FIR No.58/2019
U/s 489-F PPC
P.S. Jamshed Quarters
Karachi

CRIMINAL ACQUITTAL APPEAL
U/S 2-A OF SECTION 417 CR.P.C.



THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.591 of 2021
[Muhammad Ramzan vs. Ghulam Ali Malik & Others]

For Appellant: Mr. Muhammad Daud Narejo, advocate

For Respondent No.1: Mr. Abdul Latif Memon, advocate

For State: Mr. Mumtaz Ali Shah, A.P.G. a/w
P.I. Akhtar Aziz, P.S. Jamshed Quarters.

Date of hearing: 07-03-2025

Date of Judgment: 07-03-2025

JUDGMENT

Jan Ali Junejo, J.-- The appellant, being aggrieved by the judgment dated 24.09.2021 (here-in-after referred to as the "Impugned Judgment"), passed by the learned Judicial Magistrate-II/XXIInd (Model Trial Magistrate Court), Karachi-East (here-in-after referred to as the learned Trial Court), has preferred the instant criminal acquittal appeal. Through the impugned judgment, the accused Ghulam Ali Malak was acquitted under Section 245(i) of the Code of Criminal Procedure, 1898 in Criminal Case No. 878 of 2019, arising out of FIR No. 58/2019, registered at Police Station Jamshed Quarter, Karachi, under Section 489-F of the Pakistan Penal Code, 1860.



2. As per the prosecution, the complainant Muhammad Ramzan, an employee at Dawood Engineering University, had allegedly lent Rs. 2,000,000 to the accused, who was a travel agent. The accused, failing to return the amount, issued a cheque bearing No. 1634947166 dated 07.12.2017, which was dishonored. Subsequently, two additional cheques amounting to Rs.571,000/- and Rs.30,000/- dated 05.12.2018 were also dishonored due to insufficient funds. Consequently, the

[2]

complainant lodged the FIR against the accused for dishonestly issuing cheques in violation of Section 489-F PPC.

3. The learned trial court, after a full-fledged trial, acquitted the accused on the following grounds:

- i. The prosecution failed to prove beyond a reasonable doubt that the accused had issued the disputed cheques dishonestly and under any legal obligation.
- ii. The accused presented a valid defense that he had already transferred Rs. 850,000 via online banking to the complainant.
- iii. No independent witnesses or documentary evidence were produced to substantiate the complainant's version.
- iv. The complainant failed to rebut the evidence presented by the accused, including bank records verifying the transfer of Rs. 850,000.
- v. Mere dishonoring of a cheque does not automatically establish dishonesty unless the prosecution proves that it was issued under an obligation.

4. The learned counsel for the appellant argued that the prosecution successfully established its case beyond a reasonable doubt through oral and documentary evidence, including the dishonored cheques and bank memos. The complainant (PW-1) provided a consistent and confidence-



[3]

inspiring statement, corroborated by bank officials and documentary proof. It was contended that Section 489-F PPC creates a presumption against the drawer of a dishonored cheque unless he proves that he had made prior arrangements for its clearance. It is further argued that the accused failed to rebut this presumption and did not provide any concrete evidence that he had arranged for funds in his bank account. It is further argued that the issuance of multiple cheques, all dishonored, indicates a fraudulent scheme by the accused to deceive the complainant and evade his financial obligations. If there was no liability, as claimed by the accused, why did he issue the disputed cheques in the first place? It is further contended that the trial Court misread and misapplied the law, failing to appreciate that mere denial by the accused is not sufficient to rebut the prosecution's case. It is further emphasized that the trial Court gave undue weight to the accused's claim of online transfer of Rs. 850,000, which was neither a full payment nor a valid defense under Section 489-F PPC. It is further contended that the benefit of doubt cannot be extended to the extent of ignoring strong prosecution evidence. It is further argued that the trial court's reasoning for acquittal was flawed and contrary to settled principles of law, warranting interference by this Hon'ble Court. The learned counsel prayed for setting aside the Impugned Judgment dated 24.09.2021 and convicting the accused under Section 489-F PPC, awarding maximum punishment of three years imprisonment with fine, in light of the prosecution's overwhelming evidence.



5. The learned counsel for respondent No.1 emphasized that once an accused is acquitted by a trial court, he enjoys a double presumption of innocence. It is further argued that the appellate court should not interfere unless the trial court's judgment is found to be perverse or based on misreading of

[4]

evidence. It is further contended that the burden of proof always lies upon the prosecution, which failed to establish dishonest intention behind the issuance of cheques. He further contended that mere dishonoring of a cheque does not automatically constitute an offense under Section 489-F PPC unless it is proven that the cheque was issued for the repayment of a legally enforceable debt or obligation. It is further argued that the accused had already transferred Rs. 850,000 to the complainant, which was verified by the bank record and confirmed by a witness. It is further contended that this transaction disproves dishonest intention, a key ingredient of Section 489-F PPC. He further contended that the complainant failed to produce any independent witness to support his claim that the accused owed him money. He further contended that no written agreement, promissory note, or other proof of a legally binding financial transaction was brought on record. It is further argued that the complainant converted a civil dispute into a criminal case to pressure the accused. He further contended that the correct legal remedy for the complainant was to pursue a civil suit for recovery, rather than lodging a criminal case under Section 489-F PPC. In view of the above arguments, the learned counsel prayed for the dismissal of the appeal, maintaining the Impugned Judgment of acquittal.



6. The learned APG fully supported the arguments of the complainant's counsel and emphasized that: The trial court's decision was based on misinterpretation of law and erroneous appreciation of evidence. The prosecution had successfully discharged its burden by proving that the accused issued the disputed cheques dishonestly. The Appellate Court should set aside the acquittal, convict the accused, and impose a strict sentence to prevent the misuse of banking

instruments. The learned APG prayed for allowing the appeal, setting aside the acquittal, and convicting the accused.

7. After carefully considering the arguments put forth by the learned counsel for the Appellant, the learned counsel for Respondent No.1, and the learned Assistant Prosecutor General (APG) for the State, as well as thoroughly examining the material on record with due diligence, certain fundamental legal principles must be acknowledged. It is the prosecution's primary duty to establish the accused's guilt beyond a reasonable doubt, as the accused is always presumed innocent unless proven guilty. A review of the record reveals that the prosecution failed to substantiate its claim that Respondent No.1 had issued the disputed cheques dishonestly and under any legal obligation. On the contrary, Respondent No.1 provided a plausible defense, demonstrating that he had already transferred Rs. 850,000 through online banking to the Appellant. This fact was further verified through bank records, which the Appellant failed to rebut with any cogent evidence. Furthermore, the Appellant did not produce independent witnesses or any documentary proof to validate his allegations. In such circumstances, the mere dishonoring of a cheque does not automatically imply dishonesty, unless the prosecution conclusively proves that the cheque was issued under an enforceable financial obligation. Additionally, once an accused has been acquitted by a competent court of law, he benefits from a double presumption of innocence, which can only be overturned by strong and compelling evidence. In the present case, the prosecution's failure to present credible, unimpeachable, and confidence-inspiring evidence, coupled with discrepancies in the Appellant's case, the absence of independent witnesses, and the lack of proof of dishonest intent (*mens rea*), renders the case doubtful. Under settled legal



[6]

principles, when two interpretations of evidence are possible, the one favoring the accused must be adopted. Therefore, the prosecution's case does not warrant interference with the acquittal of Respondent No.1.

8. The Hon'ble Supreme Court of Pakistan in numerous judgments has consistently held that conviction cannot be based on presumptions and assumptions; rather, it must rest on clear, cogent, and convincing evidence. In the present case, the failure of the prosecution to establish the essential ingredients of the alleged offence, coupled with contradictory testimonies, has rightly created doubts in the prosecution's version.

9. Even on merits, the case against the respondent No.1/accused is not sustainable. The learned trial Court, after thoroughly evaluating the evidence, acquitted the accused by recording comprehensive findings based on contradictions and inconsistencies in the prosecution's case. Under the criminal jurisprudence, once an accused is acquitted by the trial Court, he earns a presumption of innocence. In the present case, the learned trial Court rightly acquitted the accused (Respondent No.1) based on material contradictions, unreliable prosecution evidence, and failure to establish the charge beyond a reasonable doubt. These factors fully justified the acquittal of the accused. Since the appellant has not pointed out any illegality, perversity, or misreading of evidence in the impugned judgment, this Court finds no reason to interfere. Reference is made to the authoritative ruling of the Honourable Supreme Court of Pakistan in the case of *Muhammad Riaz v. Khurram Shehzad and another* (2024 SCMR 51), wherein the Apex Court unequivocally upheld the principle that: "It is a well-settled exposition of law that in an appeal against acquittal,



[7]

the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly".



10. In view of the above discussion, it is evident that the learned trial Court has passed a well-reasoned judgment after carefully appreciating the evidence on record. The findings are based on sound legal principles, and no illegality, perversity, or misreading of evidence has been pointed out by the appellant to warrant interference by this Court. Accordingly, the instant Criminal Acquittal Appeal stands dismissed, and the Impugned Judgment of acquittal 24-09-2021 passed by the learned trial Court is upheld.

[Signature]
JUDGE

THE HIGH COURT OF SINDH, KARACHI
CERTIFIED TO BE TRUE COPY

[Signature]
(MUHAMMAD SARFARAZ)
I/C: ASSISTANT REGISTRAR (COPYING)

COPY APPLIED FOR ON 16-08-2025

FEES ESTIMATED ON do

ESTIMATED FEES DEPOSITED ON do

COPY MADE READY/CERTIFIED ON do

STAMP SUPPLIED ON do

COPY DELIVERED ON do

URGENT/NORMAL FEES:	PAGE:	08	RS:
COPYING FEES:	PAGE:		RS: 10/-
COMPARING FEES	PAGE:		RS: 1/-
TOTAL:			RS: 10/-

COMPARING BY/
OFFICE ASSOCIATE

[Signature]
(MUHAMMAD SARFARAZ)
I/C: ASSISTANT REGISTRAR (COPYING)