IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

1st Civil Appeal No.S-37 of 2024

Appellant : Muhammad Hayat son of Dur Muhammad Palh, through Mr. Shabir Ahmed Bozdar, Advocate.

Respondent : Nadeem Yousif s/o Muhammad Yousif Rajput, through Mr. Najeebullah Jalbani, Advocate.

Date of Hearing: 19.05.2025.
Date of Judgment: 04.08.2025.

JUDGMENT

Abdul Hamid Bhurgri, J, The appellant, who was the defendant in the suit, has challenged the impugned Decree dated 15.08.2024, which was passed in consequence of the Judgment dated 12.08.2024 rendered by the learned 1st Additional District Judge, Naushero Feroz, whereby Summary Suit No.77/2021 filed by the respondent/plaintiff was decreed in his favour.

2. The respondent/plaintiff asserted that an amount of Rs.60,70,200/- was outstanding against the appellant/defendant, who had procured fertilizer from the respondent's paddy shop. On 10.11.2019, when the respondent/plaintiff demanded payment of the aforesaid amount, the appellant/defendant issued a cheque in settlement thereof. However, upon presentation, the said cheque was dishonoured by the bank on the grounds of insufficient funds. Consequently, the respondent/plaintiff lodged FIR No.99/2020 at Police Station Padian under Section 489-F of the Pakistan Penal Code against the appellant/defendant. Although the appellant was subsequently acquitted in the said criminal proceedings, he nevertheless failed to discharge his civil liability and did not tender the amount due. Deprived of any alternate remedy, the respondent/plaintiff instituted the instant summary suit seeking recovery of the outstanding dues, accompanied by the following prayers:

> *(a) Decree the suit of the plaintiff or recovery of amount of Rs.60,70,200/- against the defendant, for which defendant be directed to make payment, in case of failure the same amount should be recovered from him through due process of law.*
>
> *(b) Costs be awarded to the plaintiff.*
>
> *(c) Any other relief which this Honourable Court deems fit and proper be awarded to the plaintiff.*

3. Consequent to service of the summons, the defendant/ appellant filed his leave to defend application claiming that the plaintiff/ respondent has managed story and concealed the real facts, nevertheless, said application by consent was allowed together with applications under order XIII Rule 1&2 CPC and XVI Rule 1&2 CPC vide order dated 18.02.2022. Learned trial court in order to ascertain claim of the parties, framed following issues:-

1. Whether the plaintiff has paddy shop in Padidan and defendant purchased fertilizer from plaintiff at different occasions and amount of Rs.60,70,200/- (Rupees sixty laces, seventy thousand and two hundred only) of plaintiff became outstanding against defendant?

2. Whether the defendant issued cheque No. 1731288550 of Rs.60,70,200/- (Rupees sixty laces, seventy thousand and two hundred only), dated 15.11.2019 of his account No. PK26MUCS0897383791002269 of Muslim Commercial Bank Padidan Branch in favour of plaintiff in presence of witnesses which was dishonoured due to insufficient funds?

3. Whether cheque of defendant was stolen by plaintiff and nothing is outstanding against defendant?

4. Whether the suit of the plaintiff is barred by any law?

5. Whether the plaintiff is entitled for relief claimed?

6. What should the decree be?

4. In order to substantiate his claim, the plaintiff/respondent examined himself at Exhibit 16 and produced the cheque in question along with its dishonour memo, marked as Exhibits 16/A and 16/B, respectively. He also led the evidence of PW-2 Muhammad Ishaq (Ex.17), PW-3 Shan Ali (Ex.18), PW-4 Khalil Afzal (Ex.19), and PW-5 Talib Hussain (Ex.20), the latter of whom also produced the dishonoured cheque and accompanying memo, marked as Exhibit 20/A. Conversely, the defendant/appellant filed his own affidavit in evidence, supported by affidavits of his witnesses, namely Tayyab and Dildar Ali, produced as Exhibits 22 through 24. All the witnesses were subsequently subjected to cross-examination by learned counsel for the plaintiff.

5. Upon conclusion of the evidence and after hearing the learned counsel for both parties, the learned trial Court was pleased to decree the suit in favour of the plaintiff with costs and interest, vide impugned Judgment dated 12.08.2024 and Decree dated 15.08.2024.

6. Learned counsel for the appellant submitted that the learned trial Court, while rendering the impugned Judgment and Decree,

committed errors both of law and fact, having failed to consider the evidence on record in its proper legal perspective. He contended that the respondent had lodged FIR No.99/2020 at Police Station Padian under Section 489-F of the Pakistan Penal Code in respect of the dishonour of the disputed cheque, and that the appellant was acquitted in the said criminal proceedings by a judgment of the trial Court dated 15.11.2021, which attained finality and remained unchallenged. Counsel further argued that although the respondent/plaintiff alleged that the appellant had purchased fertilizer worth Rs.60,70,200/- from his paddy shop, no documentary evidence had been adduced to establish either the sale or the transaction. He submitted that in the absence of such proof, the decree granted in favour of the respondent was patently erroneous. It was also urged that the appellant had been an employee of the respondent, and that the claim raised by the respondent was retaliatory in nature, owing to his failure to pay outstanding salary dues to the appellant. According to the appellant, upon demand of his unpaid wages, the respondent became aggrieved and maliciously implicated him in false criminal proceedings. Learned counsel further contended that the appellant was neither a zamindar nor in possession of the land in question, and that no supporting evidence to the contrary was brought forth by the respondent. He also alleged that the cheque in dispute had been misplaced inadvertently by the appellant and was not intended to effect payment. In conclusion, he prayed for the appeal to be allowed, and for the dismissal of the suit. In support of his submission, he placed reliance upon an unreported decision in the case of Kamran Aslam v. Nawab Khan, Civil Appeal No.46/2023, decided by a learned bench of this Court.

7. Conversely, learned counsel for the respondent submitted that the judgment and decree of the learned trial Court was rightly premised upon the cheque adduced in evidence, together with the accompanying dishonour memo. He pointed out that the manager of the concerned bank had been examined, and had confirmed that the cheque had indeed been dishonoured due to insufficient funds. He further contended that the acquittal of the appellant in the criminal proceedings does not ipso facto negate the civil liability arising therefrom. The absence of an appeal against the acquittal, he argued, does not preclude the plaintiff/respondent from pursuing an independent civil action for the recovery of the outstanding amount evidenced by the dishonoured cheque. In support of

his position, learned counsel placed reliance on an unreported authority in the case of Shahbaz Ahmed v. Abdul Khaliq, decided in Civil Appeal No.S-47/2023 by a learned Bench of this Court.

8. Heard learned counsel for parties and perused the material available in the file.

9. In order to decide this appeal following points for determination are framed:-

POINTS

1. Whether the cheque has been issued by the applicant/defendant and same has been dishonoured?

2. Whether the acquittal of defendant/appellant under Section 489/F PPC precludes civil recovery?

3. Whether the judgment and decree passed by the learned trial court suffer from any legal or factual infirmity warranting interference?

4. What should the decree be?

10. My findings, on the above points are as follow:-

FINDINGS

Point No.1 ..... Affirmative.
Point No.2 ..... Negative.
Point No.3 ..... Negative.
Point No.4 ..... Appeal is dismissed.

POINT NO.1.

11. In order to discharge the burden of proof in respect of this point, the initial obligation lies with the plaintiff. The appellant's principal contention was that the respondent bore the responsibility of establishing, by cogent evidence, that the alleged transaction involving the sale of fertilizer had in fact occurred. It was argued that, pursuant to Article 117 of the Qanun-e-Shahadat Order, 1984, it was incumbent upon the respondent to prove the facts asserted in the suit. While this proposition of law is, in general, correct, it must be read in conjunction with the statutory presumption provided under Section 118 of the Negotiable Instruments Act, 1881. This statutory provision presumes, unless the contrary is proved, that every negotiable instrument was made or drawn for consideration. The relevant provision is reproduced as follows:

> *"118. Presumptions as to negotiable instruments---(a) Of consideration; (b) as to date; (c). as to time of acceptance; (d) as to time of transfer; (e) as to order of endorsements (1) as to stamp; (g) that holder is a holder in due course. ---Until the contrary is proved, the following presumptions shall be made*

(a) that every negotiable instrument was made or drawn of consideration, and that every such instrument, when it has been accepted, endorsed negotiated or transferred, was accepted, endorsed negotiated or transferred for consideration:

(b) that every negotiable instrument bearing a date was made or drawn on such date;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) that every transfer of an negotiable instrument was made before its maturity; that endorsements appearing upon a negotiable.

(e) that endorsements appearing upon an negotiable instrument were made in the order in which they appear thereon;

(f) that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that the holder of a negotiable instrument is a holder in due course, provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence of fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

12. Section 118 of the Negotiable Instruments Act, 1881 creates statutory presumption that every Negotiable Instrument was made or drawn for consideration. The burden of proof, therefore, shifts upon the drawer of the cheque to rebut the presumption through credible evidence. In the present case plaintiff/respondent not only produced the dishonoured cheque and the returned memo from the bank indicating "insufficient funds" but also examined the bank manager who confirmed the dishonour of the cheque. These steps were sufficient to attract the presumption under Article 118. The defendant, apart from raising verbal denials and alleging a different nature of transaction, failed to bring on record any cogent or documentary evidence to rebut this presumption. Though the appellant/defendant claimed that he remained an employee of the plaintiff but no receipt or employment agreement or any other proof was tendered to establish that he was merely an employee or the cheque was issued under duress or as a blank stamp. The appellant alleged that the cheque in question had been stolen or misused and may have been issued either under duress or as a blank instrument. However, despite making such

assertions, he neither lodged a formal complaint with the police nor informed the relevant bank authorities of any such theft or misplacement. Although the appellant claimed to have submitted an application in this regard, no such document was produced in evidence to rebut the statutory presumption of validity attached to negotiable instruments. The unreported case law cited by learned counsel for the appellant is distinguishable on facts. In the referred case, the defendant/appellant had promptly lodged an online complaint with Police Station Mehrabpur and had also duly informed the concerned bank authorities about the misplacement of the cheque. During the investigation in that matter, documentary evidence substantiating the claim was brought on record. In contrast, in the present matter, no such complaint was filed before either the police or the bank authorities, and no supporting material was produced to negate the presumption arising under the law. Therefore, the case law relied upon by the appellant's counsel is clearly inapplicable and does not lend any assistance to his case. Reliance is placed on judgment of the Honourable Supreme Court in the case of ***Fine Textile Mills Ltd, Karachi v. Haji Umar reported in PLD 1963 SC 163*** wherein following observations were made:-

> *"It is no doubt true that under section118 of the Negotiable Instruments Act there is an initial presumption that an negotiable instrument is made, drawn, accepted or endorsed for consideration, but this presumption is are but able presumption and the onus is on the person denying consideration to allege and prove the same".*

Similar view was taken in the case of ***Miller v. Minister of Pensions, 1947 AIR 372***, wherein the Honourable Court held as under:-

> *"If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not."*

13. In view of the above, the plaintiff/respondent proved his case by leading cogent and inspiring evidence so also under Article 118 of Negatable Instrument Act, 1881, accordingly, this point is answered in the ***Affirmative***.

POINT NO.2.

14. It is a settled proposition of law that acquittal in a criminal case does not bar independent civil proceedings. The standard of proof in a criminal case is proof beyond reasonable doubt, while in civil cases, it is based on the preponderance of probability. The contention of learned

counsel for appellant that since he has been acquitted in case punishable under Section 489/F PPC, the suit is not maintainable is totally misconceived. It is trite law that criminal acquittal does not automatically extinguish civil liability unless the matter has been conclusively determined on merits in a manner binding on the civil forum. Therefore, the plea based on acquittal for offence punishable under section 489/F PPC is misconceived and, therefore, the point under discussion is replied in the ***Negative***.

POINT NO.3.

15. The trial court thoroughly evaluated the evidence and applied the correct principles of law. The burden of rebutting the statutory presumption remained undischarged. The decree passed in favour of the respondent/plaintiff is based on admissible evidence and well-reasoned findings. No legal infirmity or perversity is pointed out in the impugned judgment that would warrant interference by this Court at appellate jurisdiction. Hence, the point No.3 is also answered in the ***Negative.***

POINT NO.4.

16. In view of the above discussion the appeal being devoid of merits is accordingly ***dismissed*** with no order as to costs. The judgment dated 12.08.2024 and decree dated 15.08.2024 passed by the learned trial court is upheld. The respondent/plaintiff has duly established his claim and the defendant/appellant has failed to rebut the presumption arising under article 118 of Negotiable instrument Act, 1881. The plea of criminal acquittal having no bearing on civil liability, also stands repelled. Decree to follow.

Judge

A.R Brohi/PS