

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Rev. A. No. S- 48 of 2009

DATED	ORDER WITH SIGNATURE OF JUDGE
30.01.2018	

For orders on office objection
For regular hearing

Mr. Nandan A. Kella, advocate for applicant
Mr. Shahzado Saleem Nahiyoon, D.P.G.

OMAR SIAL, J.- The Applicant was convicted and sentenced to suffer 30 months rigorous imprisonment and pay a fine of Rs. 10,000 (or undergo 6 months imprisonment if he did not pay the fine) for an offence under Section 489-F P.P.C. by the learned Civil Judge and Judicial Magistrate-1 at Hala on 26-11-2008. The learned 1st Additional Sessions Judge, Hyderabad upheld the decision of the trial court vide its judgment of 22-4-2009. Through this criminal revision application, the Applicant Abdul Ghaffar has impugned both, the judgment of the trial court and the appellate court.

2. I have heard the learned counsel for the Applicant and the learned DPG and perused the record with their able assistance. This criminal revision application has been pending adjudication for the last 9 years and it appears that the complainant has never made his appearance. My observations are as follows.

- i. One Mohammad Yousif on 28-7-2006 registered F.I.R at the Hala police station. He stated in the F.I.R. that he and the Applicant are partners in a business. He further reported that he had given a cash amount of Rs. 1,250,000 to the Applicant for business purposes. The Applicant returned Rs. 423,356 in cash to the complainant and sought time to pay the remaining money. On 15-6-2006, the Applicant issued a cheque bearing number 653333 for an amount of RS. 520,000 drawn on the Hala Branch of the National Bank of Pakistan. The cheque subsequently was not honoured by the Bank, which reported that there were insufficient funds in the bank account of the Applicant.

In order to be liable for an offence u/s 489-F the following ingredients have to be satisfied:

- (i) The cheque in question must have been issued dishonestly;
- (ii) It should have been issued for the repayment of a loan or fulfilment of an obligation; and

(iii) The same should have been dishonoured.

It appears that the learned trial judge determined the “dishonest” intention of the Applicant in issuing the cheque only on the ground that the cheque was presented three times at the counter of the Bank and all three times it was dishonoured. Without making any observation on the reasoning of the learned trial court on this count, my attention is drawn towards the second limb of the ingredients required to constitute an offence under Section 489-F P.P.C. It appears that this question was not addressed in trial or in appeal and no finding was given on the same. The learned courts simply went along with the assertion of the complainant that he had given money to the Applicant, however, the purpose the money was given for remained unexplored. Admittedly, the Applicant and the complainant were business partners. It appears from the evidence that was led in trial that the money given by the complainant was more in the nature of equity rather than a loan or an obligation. Upon a query from the learned D.P.G. in this regard, he after going through the file, very honestly agreed that there appeared to be none that would establish the same. With much respect, I am of the view that there was no evidence to establish that the money given, if indeed at all, was of a nature that would make the Applicant liable for an offence u/s 489-F P.P.C.

3. In view of the above, this criminal revision application is allowed. The judgments of the learned Civil Judge and Judicial Magistrate-1 at Hala on 26-11-2008 and the learned 1st Additional Sessions Judge, Hyderabad of 22-4-2009 are set aside. The Applicant is acquitted of the charge. He is present on bail. His bail bonds are cancelled and surety discharged.

JUDGE