

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Criminal Acquittal Appeal No.371 of 2016**

Date	Order with signature of Judge
------	-------------------------------

**Present: Mr. Justice Nazar Akbar**

Appellant : Shehzad Ayub, through  
Mr. Ch. Abdul Rasheed, Advocate.

**Versus**

Respondent No.1 : Arsalan Parvaiz. (Nemo).

Respondent No.2 : The State.  
Ms. Seema Zaidi, D.P.G.

Date of hearing : **13.03.2019**

Date of decision : **13.03.2019**  
-----

**JUDGMENT**

**NAZAR AKBAR, J:-** This Crl. Acq. Appeal is directed against the Judgment dated **15.08.2016** passed by the learned I-Judicial Magistrate, South Karachi in Criminal Case No.98/2013 arising out of FIR No.145/2012 under Sections 489-F PPC registered at P.S Frere, Karachi, whereby learned trial Court had acquitted the accused/Respondent No.1.

2. Brief facts of the case are that the appellant/complainant has handed over an amount of Rs.10,00,000/- to respondent No.1/accused for investment in property business in the year 2009. At the beginning respondent No.1/accused used to pay the profit but in the year 2010 respondent No.1/accused stopped payment of profit. Therefore, appellant/complainant demanded his principal amount and on such demand respondent No.1/accused had issued cheque bearing No.5213037 dated 14.07.2010 amounting to Rs.10,00,000/-

drawn on Bank Al-Habib Limited, Dehli Colony Branch, Karachi, pertaining to the joint account of respondent No.1 and his wife, which was bounced on presentation. Thereafter appellant/complainant kept on demanding his amount but respondent No.1/accused did not pay the same on one pretext or the other, therefore, appellant/complainant on refusal to register FIR by police, approached the Court of 2<sup>nd</sup> Additional District and Sessions Judge, South Karachi and finally got the case registered FIR against the appellant.

3. After usual investigation, challan was submitted in the trial Court and formal charge was framed against respondent No.1/accused to which he pleaded not guilty and claimed to be tried. The prosecution examined four PWs and closed their side for evidence. Statement of respondent No.1/accused under Section 342 Cr.P.C was recorded. He did not opt to be examined on oath nor produced any evidence in his defence.

4. Learned trial Court after hearing learned counsel for the parties, acquitted accused/ Respondent No.1 by judgment dated **15.08.2016**. Therefore, the appellant/ complainant has filed the instant Criminal Acquittal Appeal.

5. I have heard learned counsel for the appellant as well as learned DPG for the State and perused the record.

6. Learned counsel for the appellant/complainant contended that the impugned judgment passed by the trial Court is based on mis-reading and non-reading of evidence as the prosecution evidence clearly shows that a huge amount was outstanding against respondent No.1/ accused in respect of investment in property business and the cheque was issued by respondent No.1/accused

knowing well it would be dishonored, therefore, the trial Court has wrongly passed the impugned order.

7. Learned D.P.G. representing the State supported the impugned judgment. She contended that the impugned judgment has been passed in accordance with the law.

8. The perusal of impugned order shows that the evidence required for bringing the case within the ambit of Section 489-F PPC was not available. Learned counsel for the appellant/complainant was directed to satisfy the Court through evidence that the ingredients of an offence under **Section 489-F** was proved. Whether the cheque was issued towards payment of loan or “fulfillment of an obligation” by the respondent? In this context the observations of the trial Court in the impugned judgment are well reasoned which are reproduced below:-

*In view of the evidence the prosecution case regarding dishonest intention of accused are full of doubt. The complainant had admitted that he had received the amount in the year 2010 and the complainant had also voluntarily stated that the present cheque was issued by accused towards repayment of the amount given by complainant to the brother of accused which statement is contradictory with the previous statement of complainant in the FIR and examination in chief. The complainant had retained the (amount) of accused for about 29 months and entered into several business reconciliations talks with the accused in the political party office also. The matter between the accused and complainant is of civil nature and there liabilities and rights are already pending in civil litigation for its determination and decision by civil court. In this case of criminal nature the mens rea is missing in the case and to prove this criminal case specific ingredient of case i.e dishonest intention and issuance of cheque to fulfill the obligation is missing.*

The above observation of the trial Court for acquittal of the respondent are also based on several judgments of superior Courts specifically mentioned in the impugned order. The learned counsel for

the appellant has not even suggested that the case law referred by trial Court was not relevant in the case of respondent.

9. In view of the above, instant Criminal Acquittal Appeal was dismissed by short order dated **13.03.2019** and these are the reasons for the same.

JUDGE

Karachi  
Dated: 16.03.2019

Ayaz Gul