

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Criminal Acquittal Appeal No.616 of 2012**

Date	Order with signature of Judge
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***Present: Mr. Justice Nazar Akbar***

Appellant : Sardar Muhammad Naeem Durani, through  
Mr. Amar Naseer, Advocate.

**Versus**

Respondent No.1 : The State.  
Ms. Seema Zaidi, Additional P.G.

Respondent No.2 : Muhammad Younus Ismail, through  
Mr. Ashraf Ali Shah, Advocate.

Date of hearing : **22.02.2019**

Date of decision : **15.03.2019**

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**JUDGMENT**

**NAZAR AKBAR, J:-** This Crl. Acq. Appeal is directed against the Judgment dated **30.10.2017** passed by the learned XVII-Judicial Magistrate, East Karachi in Sessions Case No.480/2016 arising out of FIR No.195/2016 under Sections 489-F PPC registered at P.S Ferozabad, Karachi, whereby learned trial Court had acquitted the accused/Respondent No.2.

2. Brief facts of the case are that appellant/complainant being sales Executive of M/s Al-Raaziq International Pvt. Ltd. registered FIR on **30.05.2016** stating therein that his company was engaged in providing cleaning, freight forwarding and transportation services to accused Younis Ismail (proprietor of UID Enterprises). M/s Al Raaziq International rendered services to accused Younis Ismail for import of his shipments and outstanding bills of different amounts used to

accrue against accused in the course of business, which were paid by him at different intervals of time. When the outstanding bills of services rendered by M/s Al-Raaziq International accrued to Rs.27,50,086/-, respondent No.2/accused issued six cross cheques viz Cheque No.56066317, 56066318, 56066319 dated 17.02.2015 amounting to Rs.400,000/- each, Cheque No. 56066320, 56066321 and 56066322 dated 28.02.2015 amounting to Rs.500,000/- each and one cash cheque No. 56066325 dated 30.04.2015 amounting to Rs.200,000/- of his account in Bank Alfallah, Khalid Bin Waleed Road Branch in favour of M/s Al-Raaziq International towards payment of outstanding payment of Rs.27,50,086/-. The said cheques were dishonored upon presentation due to insufficient funds. After dishonoring of said cheques, the appellant informed accused but he used delaying tactics and refused to pay the outstanding amount, therefore, FIR was lodged against respondent No.2/accused.

3. Formal charge was framed against accused persons to which they pleaded not guilty and claimed to be tried. In order to prove its case, prosecution examined five PWs and therefore the prosecution closed their side. Statement of respondent No.2/accused was recorded under Section 342 Cr.P.C at Ex.9 wherein he denied the allegation as leveled against him and stated that he has paid the outstanding bills of M/s Al-Raaziq International through online deposits. However, neither he examined himself on oath nor led any evidence in his defence.

4. After examination of witnesses and hearing learned counsel for the parties, learned trial Court acquitted accused/ Respondent No.2. Thereafter the complainant/ appellant filed instant Cr. Acq. Appeal against the said order.

5. I have heard learned counsel for the parties and perused the record as well as case-laws relied upon by the learned counsel for the parties.

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.2/ accused in respect of services rendered by the appellant/ complainant to the accused when the cheques were issued by respondent No.2/accused which is ingredient for constituting offence punishable under Section 489-F PPC, therefore, the trial Court has wrongly passed the impugned order. In support of his contentions he relied upon the following case-laws:-

- i. Mian Allah Ditta vs. The State and others (2013 SCMR 51);*
- ii. Muhammad Sultan vs. The State (2010 SCMR 806);*
- iii. Muhammad Ali vs. Muhammad Yaqoob and 3 others (1998 SCMR 1814);*
- iv. Mrs. Rukhsana Aziz vs. Muhammad Emad and another (2013 YLR 1798);*
- v. Qazi Faisal Wajid vs. Munir Ullah Khan and others (2013 P Cr.L.J 400).*

7. Conversely, learned counsel for respondent No.2 has supported the judgment and contended that respondent No.2/accused has been falsely implicated by the appellant/complainant in this case. He further contended that respondent No.2/accused has paid the disputed amount of Rs.27,50,086/- to M/s Al-Raaziq International through online deposits. He argued that respondent No.2/accused has also filed civil suit for cancellation of subject cheques and petition under Section 22-A(6) Cr.P.C in Lahore against the

appellant/ complainant. In support of his contentions, learned counsel for respondent No.2/accused relied upon the following case-laws:-

- i. *Jalaluddin vs. Dileep and another (2018 YLR 697)*;
- ii. *Noor Ahmed vs. Asadullah and another (2018 P Cr.L.J Note 142)*;
- iii. *Adamji vs. Muhammad Farooq and another (2016 P Cr. L J 1846)*.

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

9. The perusal of impugned order shows that the evidence required for bringing the case within the ambit of Section 489-F PPC was not proved by the appellant/complainant. Learned counsel for the appellant/complainant was directed to satisfy the Court on the ingredients of **Section 489-F** regarding issuance of cheque (towards payment of loan or “fulfillment of an obligation”) was to prove by evidence. In this context the observations of the trial Court in the impugned judgment are well reasoned which are reproduced below:-

*Perusal of documentary evidence brought on record by complainant reveals that as per Debtor Ledger account of M/s Al-Raaziq International, the outstanding amount of Rs.27,50,086/- accrued against accused Younis Ismail in December, 2015, whereas the subject dishonored cheques have been issued in the months of February, March and April, 2015. The issuance of subject cheques and their subsequent dishonoring has been occasioned prior to accrument of alleged liability of Rs.27,50,086/- upon accused Younis Ismail in the month of December, 2015 as per Debtor Ledger Account of M/s Al-Raaziq International, which is beyond any stretch of prudence and imagination that cheques were issued for fulfillment of liability, which has accrued after about 8 months from the issuance of subject cheques, as per record produced by complainant.*

*Furthermore, accused has taken plea in his statement U/s 342 Cr.P.C that subject cheques were issued in favor of M/s Al-Raaziq International as security and has not denied the issuance of cheques. He further stated that no liability of Rs.27,50,086/- existed against him at the duration of issuance of cheques and complainant has falsely implicated him in false case. Perusal of the evidence of complainant and Debtor Ledger of M/s Al-Raaziq International produced at Ex:3-C/1 to Ex:3-C/17 shows that the outstanding amount of Rs.27,50,086/- accrued against accused Younis Ismail on **07.12.2015**, which not only creates doubt in respect of issuance of subject cheques by accused for payment of outstanding amount of Rs.27,50,086/- but also supports the version of the accused regarding issuance of subject cheque as guarantee/security.*

Since the appellant/complainant has failed to discharge the burden of proof, the learned trial Court has rightly acquitted the accused. It is settled law that scope of acquittal appeal is considerably narrow and limited and opposed to approach for dealing with the appeal against the conviction. On acquittal the accused has double presumption of innocence. The case-laws relied upon by the learned counsel for the appellant are distinguishable with the facts and circumstances of the present case and it is also a settled law that each and every case should be decided on its own merits.

10. In view of the above, instant Criminal Acquittal Appeal is dismissed along with pending application(s).

JUDGE

Karachi  
Dated:15.03.2019

Ayaz Gul