

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No.576 of 2017

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

Appellant : Mr. Muhammad Salman, through
Mr. Zafar Iqbal, Advocate.

Versus

Respondent No.1 : The Court of 1st Judicial Magistrate (East)
Karachi.
Ms. Rubina Qadir, D.P.G.

Respondent No.2 : Mr. Sajjad Khan. (Nemo).
Respondent No.3 : Ms. Noreen Sajjad. (Nemo).

Date of hearing : **25.03.2019**

Date of decision : **25.03.2019**

JUDGMENT

NAZAR AKBAR, J:- This CrI. Acq. Appeal is directed against the Judgment dated **17.10.2017** passed by the learned I-Judicial Magistrate, East Karachi in Criminal Case No.961/2015 arising out of FIR No.125/2015 under Sections 489-F PPC registered at P.S Aziz Bhatti, Karachi, whereby learned trial Court had acquitted the accused/Respondents No.2 and 3.

2. Brief facts of the case are that the accused/Respondents in order to fulfillment of their obligation to repay the amount in respect of business purpose, issued three cheques bearing No.10072710 amounting to Rs.150,000/- dated 18.06.2014 drawn on Bank Al-Habib, Regal Chowk Branch, Karachi, cheque No.0766134 amounting to Rs.300,000/- dated 20.10.2014 drawn on UBL, Station Road Branch, Karachi and cheque No.7311791 amounting to

Rs.250,000/- dated 20.06.2014 drawn on UBL, Al-Haroon Road Branch, Karachi in favour of the complainant/appellant Muhammad Suleman, the said cheques were dishonored on presentation before the concerned banks due to insufficient balance, therefore, the complainant/appellant lodged FIR against the accused/Respondents.

3. After usual investigation, challan was submitted in the trial Court and formal charge was framed against respondents/accused to which they pleaded not guilty and claimed to be tried. The prosecution examined several PWs and closed their side for evidence. Statement of respondents/accused under Section 342 Cr.P.C was recorded. They 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/ Respondents No.2 and 3 by judgment dated **17.10.2017**. 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 Respondents/accused have clearly admitted receiving of money from the appellant in CD which appellant has recorded by his cell phone and produced before the trial Court, however, the trial Court has not considered the same and 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:-

Firstly, the date on the stamp on which Iqrarnama is written is 08.12.2014 whereas the three cheques produced in evidence are of dates before 08.12.2014. Secondly, the Iqrarnama is not notarized/registered. Thirdly, the witnesses of the Iqrarnama namely Shaikh Abdullah and Muhammad Ishaq Khan are not produced/made witness by the prosecution. Fourthly, the iqrarnama reflects that the accused persons are liable towards Muhammad Salman s/o Muhammad Abdul Salam and his mother and his four sisters. Prosecution has not produced/made witness the mother and concerned sisters of complainant Muhammad Salman s/o Abdul Salam to give evidence in Court. This gives the impression that they had nothing to say OR had they appeared they would have given evidence not supporting the prosecution case by virtue of article 129(g) Qanun-eShahadat Order, 1984. Fifthly, prosecution has not produced any evidence of handing/ taking over of money to accused persons. Sixthly, prosecution has not produce any witness of handing/taking over of cheques in question. Seventhly, admittedly no written agreement entered into of starting the business. These very facts create doubt in the prosecution story.

The above observations of the trial Court for acquittal of the respondents 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 **25.03.2019** and these are the reasons for the same.

JUDGE

Karachi
Dated: 29.03.2019

Ayaz Gul