

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Acq. Appeal No.550 of 2018

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

Appellant : Muhammad Ahsan Mushtaq Paracha,
Through Mr. Muhammad Taqi, advocate.

Versus

Respondent No.1 : Sheikh Arif-ur-Rehman,

Respondent No.2 : The State

Date of hearing : **03.04.2019**

Date of decision : **19.04.2019**

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the judgment dated **03.09.2018** passed by IIIrd Civil Judge & Judicial Magistrate East, Karachi in Criminal **Case No.946/2014** whereby the trial Court has acquitted Respondent No.1 by extending them benefit of doubt.

2. Brief facts of the case are that complainant / appellant lodged an FIR on 01.04.2014 at P.S Aziz Bhatti, Karachi, wherein he stated that he entered into an agreement for purchasing of a House No.A141 PIA Society Block No.09 Gulistan-e-Johar Karachi with the owner of said house / alleged accused Arif-ur-Rehman s/o Aziz-ur-Rehman in the lump sum consideration of Rs.1,38,00,000/- (Rupees One Crore Thirty Eight Lac Only). The complainant alleged that as per agreement he paid Rs.10,00,000/- in the first instant and thereafter, he paid two cheques amounting 8/9 lac total Rs.17,00,000/- to the complainant. He further alleged that on 18.03.2014 the alleged accused cancelled the said contract and he gave two cheques No.A.21427871 of 9 lacs dated 18.03.2014 and A.21427873 of Rs.8

lac dated 19.03.2014 of Meezan Bank Bait-ul-Mukkarum Masjid Branch Gulshan-e-Iqbal Karachi. He further alleged that upon presentation of same cheques were bounced. He further alleged that thereafter, the alleged accused published a press release that he had cancelled the agreement regarding sale of his property, hence, this case.

3. I have heard the learned counsel for the appellant and perused the record.

4. The perusal of the impugned order shows that the evidence required for bringing the case within the ambit of Section 489-F of the 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:-

“.....the complainant admitted that the publication of dated 21.03.2014 was published by him wherein the complainant contended that he entered into an agreement and invited public objection on subject property within seven days, it means as per such press clipping till 21.03.2014 the said agreement was in existence / field and was not cancelled by the accused and as per said publication till 21.3.2014 the complainant was himself under obligation to pay the required balance amount within the required sixty days as per the said agreement. Likewise, till 21.03.2014 the accused was not under any obligation to pay any amount to the accused, the accused was only under obligation to execute his part of the said agreement on receiving the whole payment from the accused within sixty days as per agreement. The cheques in question were issued on 18.03.2014 and 19.3.2014 and were bounced on 20.03.2014. So, from the available evidence of prosecution and from the own version of the complainant it is proved that till 21.03.2014 the said agreement was in existence and the cheques

in question were not issued under any obligation by the accused. Even the PW-02 Muhammad Adnan Raza, who was broker in the said deal, has also stated in his statement before the Court that he came to know about the denial / cancellation of agreement through the press clipping of the accused as published on 27.03.2014. Meaning thereby as per the PW-02 Muhammad Adnan Raza the deal was in existence till 27.03.2014.....

The above observation of the trial Court for acquittal of respondent No.1 is also based on several judgments of superior Courts specifically mentioned in the impugned order. The appellant has not even suggested that the case law referred by trial Court was not relevant in the case of respondent No.1.

5. In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Crl. Acq. Appeal is dismissed alongwith listed application.

JUDGE