

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Acq. Appeal No.139 of 2019

Date	Order with signature of Judge
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1. For orders on M.A No.2168/2019 (Spl leave to appeal)
2. For orders on office objection & reply of Adv at flag 'A'.
3. For orders on M.A. No.2169/2019 (Ex/A)
4. For hearing of Main case

23.04.2019

Mr. Muhammad Akbar Awan, advocate for the applicant.

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NAZAR AKBAR,J:- This Crl. Acq. Appeal is directed against the judgment dated **29.01.2019** passed by VIIIth Judicial Magistrate (Central) Karachi in Criminal **Case No.327/2018** whereby the trial Court has acquitted Respondents No.1 & 2 by extending them benefit of doubt.

2. Brief facts of the case are that complainant namely Muhammad Fahad Saghir son of Muhammad Saghir lodged FIR on 26.01.2018 at 1830 hours in which he averred that he is doing business of parts of the tractors. Muhsin Shahid and his father Muhammad Shahid made an agreement with the complainant and borrow an amount of Rs.43,75000/- and stated that they will return the amount in few days. Further Muhsin Shahid gave four cheques of guarantee bearing No.A-02849319 dated 01.11.2017 of amount of Rs.6,50,000/-, 2) cheque bearing No.A-02849300 dated 01.11.2017 of amount of Rs.6,50,000/-, 3) cheque bearing No.A-02849322 dated 01.11.2017 of amount of Rs.400,000/- and 4) cheque bearing No.A-02849323 dated 01.11.2017 of amount of Rs.300,000/- of Meezan Bank limited DHA Phase-II (Ext) Branch, Karachi and also stated that the same cheque can be encashed on prescribed dates of the cheques. All the cheques were deposited in the account of the complainant i.e. Habib Bank Limited, Shahrah-e-Pakistan branch, Block-7, Federal-B Area,

Karachi, on 08.11.2017, and the same cheques were dishonoured due to stop payment. Hence, the instant FIR.

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:-

.....“In the present case, prosecution failed to produce single proof that he has delivered an amount of Rs.43,75,000/- to the accused Muhsin Shahid and his father Shahid as a loan against business.....The cheques issued from the account of Muhsin Shahid reflects that accused Muhsin Shahid issued the said cheques, however, whether those cheques were issued dishonestly or otherwise there is nothing on record submitted by prosecution.....The lacuna in the case of prosecution cannot be filled by any other prosecution witness as whole incident took place with the prosecution. Here, ingredients of section 489-F PPC are missing.....in view of deposition and evidence on record, there is no probability that accused Mohsin Shahid can be convicted of offence under section 489-F PPC where there is no proof of liability against accused Muhsin Shahid son of Muhammad Shahid”.....

The above observation of the trial Court based on evidence was enough for acquittal of respondents No.1 & 2.

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 applications.

JUDGE

SM