

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Acq. Appeal No.488 of 2018

Date	Order with signature of Judge
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1. For orders on M.A. No.8241/2018.
2. For orders on M.A. No.8242/2018.
3. For hearing of Main case

09.05.2019

Mr. Muhammad Hanif Khan, advocate for the appellant.
Mr. Rasheed Ashraf Mughal, advocate files power on
behalf of Respondent No.1
Ms. Seema Zaidi, D.P.G.

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NAZAR AKBAR,J:- This Crl. Acq. Appeal is directed against the judgment dated **28.08.2018** passed by VIh Civil Judge & Judicial Magistrate Wests, Karachi in Private Complaint **No.2145/2016** whereby the trial Court has acquitted Respondents No.1 by extending him benefit of doubt.

2. Brief facts of the case are that Complainant run his own private business at Northern bypass and accused Syed Arsalan ul Ibad Rizvi was his business partner. Complainant entered into agreement with accused regarding 10 thousand Ton Barite on the basis of partnership, out of which 5 thousand ton materials were given to accused which amount of Rs.129,62,400/- dues were outstanding against him (accused). Accused Syed Arsalan ul Ibad Rizvi gave one cheque bearing No.0106282 of Bank Islamic Pakistan Limited main Branch Clifton Karachi of dated 19.6.2013 against the said money which complainant submitted in account No.100101201460001 of Bank Islamic Ghani Chowrangi Site Area Karachi dated 19.06.2013 which was bounced on presentation. Complainant informed accused Syed Arslan ul Ibad Rizvi several times about bouncing of cheque. Hence the complaint.

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:-

.....“It is a matter of common knowledge that during course business every company and businessman keep record of transactions but interestingly no any such record or agreement has been produced by the complainant regarding the dues, or obligation of the accused”.....

.....“It is a settled law that prosecution is bound to establish guilt against the accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence and if Court comes to the conclusion that the charge so leveled against the accused has not been proved beyond reasonable doubt, then accused becomes entitled for his acquittal on getting benefit of doubt. Rule of benefit of doubt is essentially a rule of prudent which could not be ignored while dispensing Justice in accordance with law”.....

Beside the above, the record shows that cheque was bounced on **19.06.2013** and the private complaint was filed on **05.09.2016** after more than three years. This unexplained delay was more than enough to even refuse notices on the private complaint.

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