

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No.241 of 2019

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

Appellant : Kamal Kumar,
through Mr. Aroon Parsad, advocate.

Versus

Respondent No.1 : The State.
Respondent No.2 : Muhammad Riaz.
Respondent No.3 : Muhammad Nisar.(Nemo)

Date of hearing : **03.06.2019**

Date of decision : **08.07.2019**

JUDGMENT

NAZAR AKBAR, J:- This CrI. Acq. Appeal is directed against the judgment dated **27.03.2019** passed by the XII Judicial Magistrate Malir Karachi, in Cr. Case **No.08/2017** whereby the trial Court has acquitted Respondents No.2 & 3 under **Section 245(i)** of the Cr.P.C.

2. Brief facts of the case are that complainant on **02.2.2019** lodged FIR No.14/2017 for offences under Section 489-F, 506-B and 34 of the PPC at Police Station Gadap, Karachi against four accused including the appellant. He alleged in FIR that from 01.12.2016 to 19.01.2017 at different times at GBB Dairy near Bukhari Dargah Super Highway Karachi accused Mohammad Riaz Gaddi had dishonestly issued and delivered the following cheques viz. (i) Cheque No.75812677 worth of Rs.444470/- dated 27.7.2016, (2) Cheque No.75812710, worth of Rs.162250/- dated 14.09.2016, (3) Cheque No.75812612 worth of Rs.255680/- dated 20.09.2016, (4) Cheque No.75812714 worth of Rs.214650/- dated 23.09.2016, (5) Cheque

No.75812677 worth of Rs.444470/- dated 27.7.2016 (6) Cheque No.75812716 worth of Rs.235215/- dated 27.09.2016 (7) Cheque No.82425772, worth of Rs.600000/- dated 29.10.2016 (8) Cheque No.82425771, worth of Rs.600000/- dated 25.10.2016 (9) Cheque No.8245773, worth of Rs.600000/- dated 02.11.2016 (10) Cheque No.82425788, worth of Rs.10,00,000/- dated 01.11.2016 (11) Cheque No.82425774, dated 05.11.2016 (12) Cheque No.82425789, worth of Rs.1000000/- dated 07.11.2016 (13) Cheque No.2425790, worth of Rs.10,00,000/- dated 13.11.2016 of Standard Chartered Bank Garden Road, vide A/C No.001155909601 and cheque (1) 45298717, worth of Rs.289500/-, (2) 45298718, worth of Rs.65019/- dated 13.09.2016, (3) 45298720, worth of Rs.285000/- dated 15.09.2016, (4) 45298719, worth of Rs.66770/- dated 16.09.2016 (5) 45298721, worth of Rs.243865/- dated 18.09.2016, (6) 45298728, worth of Rs.500000/- dated 06.10.2016, (7) 45298731, worth of Rs.699428/- dated 21.10.2016, (8) 40194068, worth of Rs.178000/- dated 01.01.2017, (9) 40194056, worth of Rs.178000/- dated 01.12.2016, (10) 40194061, worth of Rs.178000/- dated 01.10.2016 (11) 40194063, worth of Rs.178000/- dated 01.11.2016, (12) 45298729, worth of Rs.700000/- dated 11.10.2016, (13) 45298740, worth of Rs.500000/- dated 05.11.2016, (14) 45298741, worth of Rs.500000/- dated 10.11.2016, (15) 45298742, worth of Rs.50000/- dated 16.11.2016 for the repayment of the amount payable by him towards the business transactions i.e. Feeds of Cattles/Calves. Complainant presented the said cheques in his account and on presentation the same were dishonored/bounced. On demand of payment after the cheques were bounced the accused threatened the appellant of dire consequences, therefore, the crime was registered against the present accused persons.

3. Learned trial Court after hearing the parties, acquitted / Respondents No.2 & 3 by judgment dated **27.03.2019**. Therefore, the appellant / complainant has filed the instant Criminal Acquittal Appeal.

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

5. 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 cheques were issued towards payment of loan or “fulfillment of an obligation” by the respondents? In this context the complainant was required to produce evidence of liability but no such evidence was even mentioned by the appellant. The trial Court has observed that, *the complainant did not bother to keep any account or documentary proof of dues against the accused nor cited witnesses to the transaction which involved financial obligation*. Such was the state of evidence about obligation as required to be proved in case of Section 489-F of the PPC and the evidence about the alleged offence under Section 506-B of the PPC, the Court observed that, *the complainant in his deposition alleges that he has been intimidated by Accused and accused threaten him to kill, the case of oral testimony for which court has to be very cautious while convicting the accused and admittedly there is no eye witness of the incident and no other evidence except complainant own statement. Thus, the prosecution has miserably failed to prove the charge under Section 506-II PPC against*

the present accused. Hence, the benefits of doubts renders to them and this point is answered as not proved.

6. 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

Karachi, Dated: 08.07.2019.

SM
Ayaz Gul