



20:00 hours at Gul Ahmed Chowrangi, Lucky Hotel, Quababad, Landhi Karachi, respondent No. 1/accused in furtherance of common intention with respondent No. 2/accused had delivered to the complainant one cheque bearing No. 013888 of Rs.5,00,000/= for repayment of the amount payable by him being obligated to return of the said amount towards money entrusted to accused. The said cheque was dishonestly issued by respondent No. 2/accused on behalf of respondent No. 1/accused in furtherance of common intention with him, as on submission of this cheque by complainant in Bank on 06.08.2013, the same was dishonored/bounced due to insufficient funds during bank timings. On completion of usual investigation, both respondent Nos. 1 and 2/accused were charges sheeted.

3. To substantiate the charges by the complainant side, prosecution after framing of charge examined five witnesses. PW-1 complainant, produced copy of F.I.R, memo of site inspection, memo of cheque, copy of agreement and photostate copy of his CNIC; PW-2 Syed Mohammad Ishaque; PW-3 Abdul Sattar; PW-4 Mustafa Baig and lastly PW-5 ASI Ismail Ahmed, I.O, of the case, was examined. Learned ADPP for the State given up PWs Akhtar Malik, Mohammad Jan and SIP Sadaqat.

4. On the other hand, the accused, in their respective statements recorded under Section 342 Cr. P.C. denied the prosecution allegations and claimed their innocence.

5. Arguments heard. Record perused.

6. Learned counsel for the Appellant/Complainant argued that the impugned judgment is the result of misreading and non-reading of evidence and is bad in law and facts; therefore, the same is liable to be set aside. Learned counsel appearing on behalf of the appellant/complainant has further contended that the impugned judgment is illegal, arbitrary, capricious fanciful and

unwarranted under the law, as the appellant/complainant has produced all the witnesses before the learned trial Court, who fully supported the version of the appellant/complainant beyond any shadow of doubt and implicated the respondents No. 1 and 2 in the offence. He specifically invited attention towards the evidence of PW-4, who being Branch Manager of Bank Islami, Aisha Manzil Branch appeared before the learned Judicial Magistrate Xth, Malir Karachi and admitted that on 06.08.2013 one Cheque No.13888, drawn on the account of Mohammad Sheera/respondent No. 2 for the amount of Rs.500,000/= dated 05.08.2013 in favour of the complainant/appellant was presented in his branch for clearing in clearance department from where it was sent to him for clearing he checked the balance in the account of drawer and found that it has insufficient funds on such dated i.e. 06.08.2013, as such bank returned the cheque as dishonored alongwith memo showing such reasons. The learned counsel for the appellant/complainant has further argued that both the respondent No. 1 and 2 admitted that they gave the cheque to the appellant, which was bounced due to insufficient funds but the learned trial Court neither considered the documentary evidence of the complainant nor the case law relied upon by his counsel i.e. 2010 SCMR 806. The learned counsel for the appellant/complainant has pointed out in his arguments that respondent No. 1 and 2 and their defence witnesses admitted that respondent No. 2 handed over the cheque to the appellant/complainant of his own account on direction of respondent No. 1. The learned counsel for the appellant/complainant argued that admittedly as per bank statement the cheque No. 13888 of Rs. 500,000/= was bounced due to insufficient funds as respondent No.2 had already withdrawn Rs. 500,000/= on 05.08.2013, which proves the intention of both respondents No. 1 and 2, but the learned trial court did not consider it. He has prayed for conviction of accused persons.

7. The learned A.P.G for the State has supported and adopted the arguments of the learned counsel for the appellant/complainant and prayed for dismissal of instant Acquittal Appeal.

8. Conversely the learned Counsel for the Respondents No. 1 & 2 argued that the learned trial Court has rightly acquitted the respondents, who are innocent and actually falsely implication by the appellant/complainant in this case. The learned counsel for the respondents No. 1 and 2 has further argued that after issuing cheque on request of the appellant/complainant due to short time in Eid occupation, he asked his friend Sheeraz/respondent No.2 to hand over cash of Rs.500,000/= to the appellant/complainant and accordingly cash was handed over by respondent No.2 to the cousin/PW-3 Abdul Sattar under acknowledgement. He further argued that present FIR has been lodged by the appellant/complainant with delay of about 10 months and no plausible explanation has been given by him for that delay. He has pointed out that there are contradictions in respective statement of PWs which created doubt and the said contradiction made the case of the appellant/complainant doubtful, due to such reasons the learned trial Court acquitted both the respondents. He prayed for dismissal of present acquittal appeal of the appellant/complainant by upholding the judgment of the learned trial court, as there is no illegality, gross irregularity and infirmity in the impugned order.

9. Before making discussion of merits of the instant acquittal appeal, it would be expedient to clear that the scope to interfere in appeal against acquittal is narrow and limited, the reason being that in acquittal, the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that applicant/accused shall be presumed to be innocent until proved guilty, in other words, the presumption of innocence is double. Judgment of acquittal can only be interfered with, if it is found on its face to be capricious, perverse, arbitrary in nature or based on misreading, non-appraisal of evidence or is

artificial, arbitrary and lead to gross miscarriage of justice. Reliance in this respect is placed on Feroz Khan Versus State, reported in 1991 SCMR 2220, State through Mehmood Ahmed Butt Versus Sharaf Uddin Shaikh and others reported in 2013 SCMR 565 and Haji Paio Khan Verses Sher Biaz and others reported in 2009 SCMR, 803, while examining the facts shown in the acquittal order, substantial weight should be given to the findings of the subordinate Courts, whereby accused was exonerated from the commission of crime as held by the Hon'ble Apex Court in Muhammad Ijaz Ahmed Versus Fahim Afzal reported in 1998 SCMR 1281. It is settled principle of law that acquittal would be unquestionable when it could not be said that acquittal was either perverse or that acquittal judgment was improper or incorrect and if any doubt created about guilt of accused, its benefit must go to the accused and the court would never come to the rescue of prosecution to fill up the lacuna appearing in evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

10. In instant case under Section 489-F PPC, the paramount consideration is the cheque No. 13888, issued by respondent No.2 from his account when respondent No. 1 asked him to issue a cheque of Rs. 500,000/= and give it to the appellant/complainant, while perusing the evidence of both the sides, it reveals that issuance of cheque by the respondent No.2 is not disputed and it is also not disputed that the said cheque was bounced. The claim of the respondent No.1 is that the appellant/complainant collected the cheque from his friend/respondent No.2 and deposited the same in Bank account at Allied Bank, Gulshan-e-Maymar branch but the cheque was sent for clearing and it could not encash in time due to up coming Eid Holidays, therefore, appellant/complainant called him and demanded the payment in cash as he/complainant required the payment in urgency for meeting Eid expenses, on the request of appellant/complainant he again asked his friend/respondent No.2 to give the

case to appellant/complainant, which was later on received by the cousin of the appellant/complainant namely Abdul Sattar/PW-3 under acknowledgement. According to the respondent No.1, the appellant/complainant ensured him to return the said cheque of his friend/respondent No.2 after receiving payment of Rs.500,000/= but he did not return it to him. Admittedly, the Suit bearing No.222 of 2014 filed by the respondent No.1 for cancellation of the cheque in question is pending before the learned IInd Senior Civil Judge, Malir Karachi for adjudication. On the contrary the appellant/complainant lodged the instant FIR No. 229 of 2014 after delay of about 10 months and he did not approach to the Civil Court for recovery of alleged amount of Rs.500,000/= against the respondent No.1. While perusing the evidence of the appellant/complainant, PW-3 Abdul Sattar and both the respondent No.1 and 2, it reveals that their statements regarding receiving the cheque in question are contradictory. The appellant/complainant claimed that he received the cheque, PW-3 Abdul Sattar deposed that he and appellant/complainant went to hotel and respondents No. 1 and 2 came there and gave cheque to the appellant/complainant, respondent No.1, Ehtisham Khan in his statement on oath deposed that he told the appellant/complainant to collect the cheque from the house of his friend/respondent No. 2, while respondent No. 2 Sheeraz deposed that on 05.08.2013 respondent No.1 on phone told him to hand over cheque of Rs. 500,000/= to Abdul Sattar, so he handed over the cheque to him.

11. For the forgoing reasons and discussion, I am of the clear view that the appellant/complainant has miserably failed to point out any infirmity or illegality in the impugned judgment. I therefore, maintain the impugned judgment dated 12.07.2017 passed by the learned Xth Civil Judge and Judicial Magistrate, Malir Karachi. Resultantly, the instant appeal stands dismissed.

J U D G E

Faheem/P.A