

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Acquittal Appeal No. 125 of 2018**

Appellant : Canteen Stores Department, Ministry of Defence
through Mr. Mustafa Safvi, Advocate

Respondents : 1. The State
through Mr. Muhammad Naeem, A.A.G.
2. Abdul Sami (not represented)

Date of hearing : 29th October, 2018

Date of order : 15th November, 2018

ORDER

Omar Sial, J.: The Canteen Stores Department (CSD) has challenged the acquittal of Abdul Sami (Respondent No. 2) by the learned 26th Civil Judge and Judicial Magistrate, Karachi South on 8-1-2018.

2. The background to this appeal is that the CSD through an authorized officer had filed an F.I.R. bearing number 163 of 2015 under section 489-F P.P.C at the Saddar police station. In the said F.I.R. the CSD had alleged that Abdul Sami owed it money and in that connection issued a cheque for Rs. 279,185 which cheque bounced when presented at the Bank's counters for clearance. A full dress trial was conducted and Abdul Sami was acquitted.

3. The learned counsel for the appellant was asked as to point out what the illegality or infirmity was in the impugned judgment. Without being specific he submitted that the judgment was wrong as Abdul Sami had misappropriated sale proceeds of the store and when confronted had issued the cheque in question as reimbursement. He also submitted that though the appellant had issued the cheque, the learned trial court has observed that no evidence was led to establish that the cheque was issued for the fulfillment of an obligation. The learned counsel was unable to point out any defect in the reasoning of the impugned judgment but wished that the judgment should have been different.

4. The learned trial court has given cogent reasons for the decision it reached. After evaluating the evidence led before it, it concluded that the prosecution had failed to establish that the cheque was issued for the satisfaction of a loan or the fulfillment of any obligation that the appellant owed to CSD. It has been observed by the learned trial

court that the complainant himself at trial had expressed his inability to produce any evidence which would satisfy this important ingredient for an offence under section 489-F P.P.C. to occur. The complainant also expressed his inability to produce any evidence that there was any amount which had been misappropriated by the appellant. The learned trial court has rightly concluded that not every dishonoring of a cheque is an offence but that for an offence to be committed the ingredients of section 489-F P.P.C must be satisfied. In these proceedings too, the learned counsel for the appellant has not been able to put on record any evidence that would even prima facie show that Abdul Sami had misappropriated any money or that the cheque issued by him was for the payment of a loan or fulfillment of an obligation.

5. The learned counsel has been unable to point out any non-reading or misreading of evidence or any jurisdictional issues in the impugned judgment. He has further not been able to argue any ground that would indicate that the said judgment is arbitrary, perverse or capricious. Needless to say, a double presumption of innocence also works in favour of Abdul Sami. No ground has been made out that would merit interference with the judgment of the learned trial court.

6. In view of the above the appeal stands dismissed in limine.

JUDGE