

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Acquittal Appeal No.S-104 of 2022

Appellant: Nemo.
Respondent-1: Through Mr. Farooq Ali Jakhrani, Advocate.
Respondent-2/State: Through Mr. Imran Ahmed Abbasi, Assistant
Prosecutor General, Sindh.
Date of hearing: 25.11.2022.
Date of judgment: 25.11.2022

JUDGMENT

ADNAN-UL-KARIM MEMON, J. Appellant Bilawal has impugned the judgment dated 24.03.2022 passed by learned 1st Judicial Magistrate/MTMC Mirpurkhas in Criminal Case No.270 of 2021 arising out of Crime No.108 of 2021 under sections 489-F, 420 P.P.C whereby learned Judge after conducting full-fledged and scrutinizing the evidence acquitted the respondent No.1 from the charge.

2. The brief story of aforesaid F.I.R is that a contract amounting to Rs.70,00,000/- for construction of boundary wall of commissioner house was executed between appellant and respondent No. 1 wherein an amount of Rs.50,00,000/- paid to appellant/complainant in cash by the respondent No.1 while for remaining amount he issued two cheques amounting to Rs.7,70,000/- dated 12.03.2021 and Rs. 500,000/- dated 28.05.2021 which were turned dishonor when appellant/complainant deposited the same in concerned Bank due to insufficient funds.

3. After registration of F.I.R usual investigation was started and after completing the same challan was submitted in the Court of law, thereafter a formal charge was framed against the respondent No.1, to which, he pleaded not guilty and claimed to be tried.

4. At trial the prosecution examined as many as five witnesses to prove the case; however, in statement of accused recorded under section 342 Cr.P.C the respondent No.1 denied the allegation leveled against him by pleading his innocence.

5. After recording evidence, the trial Court acquitted the respondent No.1 as stated in para-I *supra*.

6. None present on behalf of appellant to address the arguments; however, I have perused the contents of memo of appeal wherein appellant has submitted that impugned judgment is result of mis-reading and non-reading of evidence; that prosecution's witnesses was fully supported its case but the learned Trial Court did not consider the same against the respondent No.1 and acquitted him from the charge; that learned Trial Court given unnecessary weight to the defence of respondent No.1 thereby completely ignored the material available against him to award him conviction, as such, impugned judgment is not sustainable in law which may be set-aside by convicting the respondent No.1.

7. Mr. Imran Ahmed Abbasi, learned Assistant Prosecutor General, Sindh has supported the impugned judgment by submitting that learned Trial Court after carefully examined the record found the respondent No.1 innocent hence the Judgment of learned Trial Court is well reasoned and speaking one need not to be interfered by this Court, therefore, prays for dismissal of instant Criminal Acquittal Appeals.

8. I have considered the arguments advanced by the counsel for the respondents and examined the grounds raised by the appellant in the memo of appeal as well as the contents of FIR, challan, and charge framed by the learned trial court and the impugned judgment dated 24.03.2022, passed by learned Civil Judge & Judicial Magistrate-I Mirpurkhas in said criminal case.

9. I have noted from the record that the prosecution failed to prove the dishonest intention i.e. mensrea of the respondent No.1 for issuing cheque in question.

10. Mere issuance of cheque and its dishonoring could not be able to attract the provision of Section 489-F PPC.

11. Primarily the evidence brought on record does not transpire confidence which could be made basis for conviction; therefore, the acquittal appeal filed by the appellant/complainant is not based upon cogent reasons to upset the decision dated 24.3.2022 passed by the learned 1st Judicial Magistrate Mirpurkhas in Cr. Case No. 270 of 2021.

12. In the light of above facts and circumstances of the case and for the reasons alluded hereinabove this appeal fails and is accordingly dismissed.

JUDGE