

IN THE HIGH COURT OF SINDH AT KARACHI

CrI. Acq. Appeal No. 301 of 2011

Appellant : through Mr. Muhammad Haseeb Jamali, Advocate
Respondent No.1 : through Khawaja Saif-ul-Islam, Advocate
Respondent No.2 : The State
through Ms. Robina Qadir, D.P.G.
Date of hearing : 19th December, 2022

JUDGMENT

Omar Sial, J.: F.I.R. No. 215 of 2006 was registered at the Kharadar police station under section 489-F Cr.P.C. on 29.08.2006 against Saeed Abbas on the complaint of Haroon Agar. Agar recorded that he owned a company by the name of Agar International (Private) Limited and that he had business dealings with Saeed Abbas during which dealings a trade of ginger and garlic took place in the amount of Rs. 20,597,046. Saeed issued 48 cheques as the sale consideration all of which bounced when presented at the bank's counters for clearance.

2. Saeed pleaded not guilty and claimed trial. At trial the prosecution examined 3 witnesses. **PW-1 Muhammad Haroon Agar** was the complainant. **PW-2 S.I. Akbar Hussain** was the scribe of the F.I.R. whereas **PW-3 S.I. Mohammad Aslam** was the investigation officer of the case.

3. In his section 342 Cr.P.C. statement Saeed professed innocence and further stated that he along with one Farooq Chapra and one Abdul Majeed Agar had started a business on 01.07.2003 in which it was agreed that he and Abdul Majeed Agar would be entitled to 40% each of the profit whereas Chapra would get 20%. He acknowledged that he had issued the cheques but that he had issued them in the name of Agar Corporation and given them to his partner Abdul Majeed Agar and not Agar International. The issuance of cheques and them being dishonored was admitted by Saeed at trial.

4. The learned 4th Judicial Magistrate, Karachi South on 28.01.2011 held that the prosecution had succeeded in proving its charge beyond doubt. Saeed was sentenced to imprisonment for 3 years and directed to pay a fine of Rs. 45,000 or stay a further period of 2 months in prison if he did not pay the fine. This judgment was challenged before the learned 2nd Additional Sessions Judge, Karachi South. The learned appellate court on 24.06.2011 set aside the judgment of the learned trial court and acquitted Saeed on the ground that as the cheques were all issued in the name of Agar Corporation and that the same were deposited in the account of Agar International, therefore the element of dishonesty, a pre-requisite of section 489-F P.P.C. was not proved. Another reason which prevailed upon the learned trial court was that Saeed had filed a civil suit for settlement of accounts prior to the registration of the F.I.R. This appeal was filed by Agar International against the judgment of the learned appellate court.

5. I have heard the learned counsel for the appellant as well as the respondent No.1 and the learned DPG. The learned counsel has argued that the sole point over which the learned appellate court acquitted the respondent No.1 was decided by the Honorable Supreme Court in the appellants favor and thus the appellate court judgment should be set aside. To the contrary, the learned counsel for the respondent has relied on the same issue, discussed in detail below, to support the impugned judgment. The learned DPG has argued that no court or person can conflict with a point already decided by the apex court and thus she did not support the judgment of the learned appellate court. I have heard the counsels and with their assistance perused the record. My observations are as follows.

Civil Suit filed by Saeed Abbas

6. The controversy of the cheques and the circumstances surrounding it have been the subject of civil litigation between the parties. A suit numbered 1016 of 2006 seeking settlement of accounts was filed in this court by Saeed Abbas (titled Saeed Abbas vs Abdul Majeed Agar of Agar International). On the other hand Agar International filed a Summary Suit

bearing number 1438 of 2006 (Agar International vs Saeed Abbas) against Saeed Abbas which was decided in favor of Agar International. Saeed Abbas challenged the decision in the latter suit by filing High Court Appeal No. 192 of 2010. This appeal was dismissed. Being still aggrieved, Saeed Abbas preferred an appeal before the Honorable Supreme Court of Pakistan through Civil Petition No. 848-K of 2011 (titled Saeed Abbas vs Agar International Pvt. Limited). This appeal was also dismissed on 15.03.2012. A perusal of the order of the apex court shows that the same issue i.e. the cheques were issued in the name of Agar Corporation (Pvt) Limited and not Agar International (Pvt) Limited was heard and decided by the court in the following words in paragraph 5 of the order:

“So far the arguments advanced by the learned counsel for the petitioner is concerned, we note that the aspect of issuing cheques in the name of Agar Corporation was duly raised before the learned Single Judge as well as the learned Division Bench of the High Court and such objection has been dealt with by both courts with a finding of fact that Agar Corporation and Agar International (Pvt.) Limited are one and the same entity and all 48 cheques were in fact issued by the petitioner to the respondent towards payments of supplies made to him by the respondent, There being concurrent findings of fact by both courts below on such objection and nothing having been pointed out that it being based on erroneous assumption or being misreading of evidence or being contrary to law, we are afraid, there is no valid or legal justification given to us to interfere with such a finding of fact.”

7. With the Hon’ble Supreme Court having itself decided the above issue, albeit in the civil proceedings arising out of the same cheques, it is no longer open for me to reach a different view.

8. I have noticed however that though the learned appellate court had acquitted the appellant, it was only because of the issue of Agar Corporation and Agar International. The learned appellate court seems to have however not re-appraised the entire evidence in the case to

determine whether in its opinion, the other ingredients of an offence under section 489-F P.P.C. were satisfied. I am cognizant that I can also re-appraise the evidence but that perhaps would be to the detriment of the respondent as he would effectively have lost one forum of appeal. It would not be fair to him.

9. In view of the above, while allowing the appeal, the judgment of the learned appellate court is set aside and the case is remanded back to the learned appellate court to write a judgment afresh after having re-appraised the entire evidence produced at trial and having given its findings. The issue of Agar Corporation and Agar International will however not impact the learned appellate court, the same already having been decided by the Honorable Supreme Court. It is hoped that the learned appellate court will be in a position to render its judgment within a period of 3 months.

JUDGE