

**JUDGMENT SHEET**

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

Cr. Acquittal Appeal No.S-182 of 2020

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objections.
2. For hearing of main case.

05.12.2022.

Ms. Sana Memon, Assistant P.G Sindh.

**JUDGMENT**

Through this Criminal Acquittal Appeal, the appellant / complainant has called in question the judgment dated 18.03.2020 passed by learned Model Trial Magistrate Court-II, Judicial Magistrate-1, Hyderabad (trial Court) in Criminal Case No.1751 of 2029 (Re: The State v. Saqib Iqbal and another) emanated from Crime No.103 of 2019 registered at P.S Cantonment Hyderabad for offences under Sections 489-F, 420, 506/2, 504, 34 PPC, whereby respondents/accused have been acquitted of the charges.

2. Perusal of record it reflects that this appeal against acquittal was presented in the office on 20.10.2020 and initially it came before the Court for hearing on 29.10.2021 when notice was issued to Additional P.G at the first instance. Right from 29.10.2021 to date none has been appearing to pursue this appeal. However, I have heard learned Assistant P.G appearing for the State and have gone through the impugned judgment as well evidence brought on record by the prosecution. Learned Assistant P.G submits that F.I.R was delayed for about 20 days and no explanation has been furnished by the prosecution. In support of her contention, she places reliance upon the case of MEHMOOD AHMED and 3 others v. The STATE and another (1995 SCMR 127); and by opposing the appeal has drawn attention of the Court to the relevant Paragraphs No.17 & 18 of the impugned judgment which reads as under:-

“17. PW SIP Syed Maqsood Ali investigation officer of this case admitted that complainant did not produce any proof which shows that accused doing work in FBR, further investigation officer admitted complainant registered FIR No.45 of 2019 at PS GOR Hyderabad against accused persons and not mentioned about payment of FBR. It is by well established that to bring case within

ambit of under section 489-F PPC two ingredients are essential i.e. dishonoring of a Cheque, which should be towards fulfillment of an obligation or re-payment of loan, as the case may be. The complainant has filed his case on the basis of alleged Cheque but he has not brought forward any proof which would substantiate that the said Cheque was for fulfillment of any obligation, on the contrary he has completely denied sort of record regarding alleged transaction. The Honourable Supreme Court has also held in the various judgments that mere possession/issuance of a cheque is insufficient for convicting the accused persons but the said Cheque is to be backed by certain obligation or a loan which is missing in the instant case. Therefore, in view of above said evidence, available documentary material, prosecution failed to prove the case that above said accused issued above said cheques dishonestly. Thus, prosecution failed to prove clarification about cheques in respect of amount given by complainant to accused Saqib Iqbal and dishonestly issuance of cheques in favour of complainant, transaction of payment or deal between accused complainant which are basic ingredients of section 489-F PPC. Hence in view of that prosecution failed to prove financial obligation against accused persons which is the basic ingredient to prove case under section 489-F PPC against accused.

18. This case is rather more complicated for prosecution to prove; prosecution firstly was required to prove the transaction which took place between complainant and accused persons, secondly to prove that whether accused had issued cheque to complainant with dishonest intension or not and as per record and evidence of complainant that he has not produce any documentary evidence or any private witness regard with dealing of plots. Prosecution failed to prove whether there were transaction held between accused and complainant. So also, prosecution has failed to prove any obligation between accused and Complainant, Complainant also miserably failed to prove that accused has issued said cheque to him and complainant failed to produce written agreement or any proof before this court whether he has gave said amount to accused or not. Further it is seems that the complainant did not bother to keep any documentary proof against the accused whether he has supplied material to accused and accused issued cheque or not. I may refer here to Article 17, Qanun-e-Shahadat Order, 1984 which provides as follows:-

**“17. Competence and number of witnesses—(1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.**

**(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law,**

**(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be**

**attested by two men, or one man and two women, so that one may remind the other, if necessary and evidence shall be led accordingly.**

**(b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman, or such other evidence as the circumstances of the case may warrant.”**

19. Whereby the faithful have been enjoined to reduce into writing transactions involving financial or future obligations but despite that the complainant either trusted accused blindly or deliberately ignored the importance of keeping the things in black and white. This Court is not deciding rights and liabilities of the parties involved as it is the job of the Civil Court seized with the matter but it cannot be unmindful of an essential ingredient to prove the alleged offence and complainant have remedy to file suit for recovery of amount before the competent court having jurisdiction. The standard of proof in civil and criminal cases is different. In a civil case, the Court has to see only probability of truth whereas in criminal proceedings, the prosecution has to prove the alleged offence beyond any reasonable doubt and if there is any doubt, the accused is entitled to it not as a matter of grace or concession but as of right. Reference may be made to the case of **TARIQ PERVEZ v. THE STATE (1995 S.C.M.R. 1345)**. In the instant case, though the accused has taken contradictory defence regarding issuance of the cheque in question, the prosecution has not discharged its burden of proving liability/obligation of the accused beyond any reasonable doubt and the accused is entitled to benefit of doubt.

3. After having examination of the afore-referred evidence, I am of the considered view that the evidence as brought on record was not proved by the prosecution; therefore, does not inspire confidence; hence, no illegality and infirmity has been committed by the trial Court in the impugned judgment while acquitting the respondents, which may warrant interference by this Court. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his innocence and Superior Courts have avoided to interfere with such acquittal findings. There is no cavil with the legal proposition that an acquittal appeal stands on a different footings than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. Reliance can be placed upon case of **MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301)**.

4. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Honourable Supreme Court of Pakistan in the case of **GHULAM SIKANDAR and another v. MUMARAZ KHAN and others (PLD 1985 Supreme Court 11)**, are also lacking in this case. Accordingly, instant appeal against acquittal is dismissed alongwith pending application, if any.

JUDGE

Shahid

