# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Cr. Acq. Appeal No.S-41 of 2023**
**[**Karim Bux v. The State and another**]**

Mr. Ghulam Mustafa Abro, Advocate for appellant

Date of hearing & decision: 10.04.2023

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**ADNAN-UL-KARIM MEMON, J.** Through captioned acquittal appeal, appellant/complainant has impugned the judgment dated 26.01.2023 passed by learned Judicial Magistrate-III Nawabshah / Model Criminal Trial Magistrate Court Shaheed Benazirabad in FIR No.93 of 2022 registered at police station A-Section Nawabshah for offence punishable under Section 489-F PPC, whereby respondent No.2 has been acquitted of the charge.

2. Facts of the case in brief are that on 01.10.2021 respondent No.2 asked the Complainant for loan who handed over to him his GLI Corolla Car Model 2020 white coloured having value of Rs. 36,00,000/- for a period of two months; as a guarantee accused gave him a Cheque bearing No. 75850831 dated 01.12.2021 for an amount of Rs. 36,00,000/- of Meezan Bank Kacheri Road Branch Nawabshah, which on presentation before the Bank was returned as dishonored, hence the above FIR was lodged against respondent No.2/ accused resultantly he was arrested.

3. After completion of usual formalities, charge was framed against respondent No.2 to which he pleaded not guilty and claimed trial.

4. To prove the charge against the accused, prosecution examined three witnesses, however, he denied to be examined on oath under Section 340(2) Cr.P.C. and his statement was recorded under section 342 Cr. PC by pleading his innocence.

5. Learned trial Court after hearing the counsel for the parties and evaluating the evidence, acquitted the accused vide impugned judgment dated 26.01.2023.

6. The complainant has admitted in his cross examination that no agreement was made between the parties with regard to car. It is only stated by the complainant in his evidence that the car was sold by him to accused and he handed over entire documents to him viz. sale letter and receipt; however no other documentary evidence was produced in court. The man from whom complainant had purchased the car was not examined.

7. The trial court dilated upon the subject issue and opined that two ink pens were used while filling up the subject cheque. It is observed that if the cheque was filled-up in presence of complainant and his witnesses, then they were under obligation to give justifiable reason for using two ink pens. The same fact had also been admitted by the complainant in his cross examination i.e. "The accused mentioned my name in my presence with different pens." It is admitted by the complainant in his cross examination i.e. "It is correct to suggest that accused filed F.C Suit No. 354 of 2021 which is pending before 2nd Senior Civil Judge, Shaheed Benazirabad in respect of shop against me". This piece of evidence shows that there was a civil dispute between the parties which factum has been discussed. The Bank Manager also deposed in his evidence that the account of accused was dormant and his signature also slightly differed as per specific card. The aforesaid piece of evidence could not be brushed aside.

8. Mr. Ghulam Mustafa, learned counsel for appellant urged that the impugned judgment is against the law and facts and the same is not based upon sound reasoning; that the impugned judgment is perverse and against the ocular as well as documentary evidence; that the impugned judgment is a result of misreading and non-reading of evidence brought on record; that the trial Court has failed to appreciate that the cheque was issued by respondent No.2 with his own signature; that issuance of cheque was not denied by the respondent No.2; that cheque in question is negotiable instrument and respondent No.2 is duty bound to honor the same by way of encashment; that the prosecution has established the case against respondent No.2 beyond reasonable doubt; that all the prosecution witness supported the case of complainant; that on the basis of minor contradictions respondent No.2 was acquitted; that oral evidence was supported by the documentary evidence; that the evidence produced by the prosecution was sufficient to convict the respondent but the trial court acquitted him hence it is a clear case of misreading and non-reading of evidence. He lastly prayed that the impugned

judgment may be set aside and respondent No.2 may be awarded sentence accordingly.

9. I have heard learned counsel for the appellant and also perused the material available on record.

10. Perusal of impugned judgment reveals that the trial court has given significant and sound reasoning wile acquitting the respondent No.2. The complainant before the trial court has neither established that under what circumstances, date and time he handed over GLI Corolla Car to respondent No.2 nor there is any evidence with regard to agreement between the parties on the issue of handing over and taking over the purported vehicle and consequent whereof the alleged cheque was issued and in absence of such material, conviction cannot be awarded until and unless it is proved beyond shadow of doubt which factum is missing in the present case.

11. A perusal of Section 489-F, P.P.C. reveals that the said provision will be attracted if all the three conditions are fulfilled and proved by the prosecution: (i) issuance of cheque; (ii) such issuance was with dishonest intention; (iii) the purpose of issuance of cheques should be:(a) to repay a loan; or (b) to fulfill an obligation (which in wide term inter alia applicable to lawful agreements, contracts, services, promises by which one bound or an act which binds person to some performance), (iv) On presentation, the cheques are dishonored. However, a valid defence can be taken by the accused, if he proves that: (i) he had made arrangements with his bank to ensure that the cheques would be honoured, and (ii) that the bank was at fault in dishonoring the cheque. Section 489-F is therefore reproduced as under:-

> "**S. 489-F: Dishonestly issuing a cheque:** Whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation which is dishonoured on presentation, shall be punished with imprisonment which may extend to three years or with fine, or with both, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque."

12. It is well settled law that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by Hon'ble Supreme Court in the cases of *State*

*Versus Abdul Khaliq and others (PLD 2011 SC 554).* From the ratio of above judgment, it can be deduced that the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse and passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned on account of his acquittal. It has been categorically held in plethora of judgments that interference in judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and facts committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; and it is to be shown that the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn which is not the case in hand. Moreover, such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous The Court of appeal should not interfere simply for the reason that on the re-appraisal of evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.

13. Based on the above discussion and principle of law, I have found that the acquittal of the respondent No.2 does not suffer from any illegality to call for interference by this court under Section 417(2) Cr.P.C. as the trial court has advanced valid and cogent reasons for passing a Judgment of acquittal in favor of respondent No.2 as such the instant appeal against acquittal is dismissed in limine along with pending applications.

JUDGE

Sajjad Ali Jessar