

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Rev. Application No. 247 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

1. For hearing of min case
2. For hearing of MA No.11672/2021

10-04-2023

Mr. Zahid Hussain advocate holds brief for Mr. Ahmed Nawaz,
Advocate a/w applicant.
Mr. Zahoor Shah, D.P.G.

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Omar Sial, J: The applicant Syeda Shumaila was accused of issuing a cheque of Rs. 700,000 to Mohammad Asif, which cheque bounced when presented at the bank's counters for clearance. F.I.R. No. 241 of 2016 was registered under section 489-F P.P.C. at the Arambagh police station in Karachi.

2. Shumaila pleaded not guilty and claimed trial. At trial the prosecution examined **PW-1 Mohammad Asif**, the complainant, of the case. **PW-2 S.I. Sawan Khan**, the investigating officer of the case. **PW-3 M. Farrukh Irfan Khan**, a representative of the Habib Metropolitan Bank. **PW-4 Haya Noor** was a transporter to whom the complainant side owed money and **PW-5 Ahmed Ali**, an accountant at the office of the complainant. In her section 342 Cr.P.C statement, Shumaila gave her version of how events unfolded. The statement forms part of the record and is therefore not being reproduced.

3. At the end of the trial, on 09.01.2018, the learned 12th Judicial Magistrate, Karachi South found Shumaila guilty as charged and sentenced her to one year imprisonment and a fine of Rs. 20,000. If she did not pay the fine, she would have to remain in prison for a further two months period. Shumaila appealed against the decision to the learned 8th Additional sessions Judge, Karachi South, who on 21.10.2021 upheld the conviction but reduced the sentence to 2 months imprisonment and a fine of Rs.

10,000. If she did not pay the fine she would have to remain in prison for a further period of one week.

4. I have heard the applicant in person and the learned DPG. None effected an appearance on behalf of the complainant. My observations and findings are as follows.

5. The story very broadly is that Shumaila was in the business of clearing of cargo. She would get clients who wanted their goods cleared from the port and then she would out-source the clearance to different entities. In this particular case, she outsourced the clearance of some containers to a man called Suleman Durrani, who ostensibly had something to do with a company by the name of Etehad (Private) Limited. 2 containers out of total number of containers were not cleared and Suleman Durrani asked Shumaila for the money. Shumaila told him that let the containers be where they were and that she would contact her client for further instructions. In the meantime, she sent the disputed cheque to Suleman Durrani allegedly as a security in the interim if her client failed to pay the requisite clearance dues. It seems from the record, that the containers were released and the cheque, which according to Shumaila was a security was deposited in the bank by Suleman Durrani.

6. Throughout the trial, it could not be determined as to how Mohammad Asif was aggrieved. Business transactions, if any, were between Shumaila and one Suleman Durrani. No authorisation for Mohammad Asif to appear on behalf of Durrani or the private limited company, Asif was ostensibly an employee of, was produced at trial. In fact conspicuous by his absence throughout the trial was Suleman Durrani himself. Nowhere in the record it is revealed that the containers were released due to payment made by Suleman Durrani. No where in trial was any evidence produced to show the nexus of Suleman Durrani with Etehad Private Limited.

7. S.I. Sawan Khan admitted at trial that he did not find any evidence of Shumaila cheating the complainant and hence he had dropped a charge of

section 420 P.P.C. He acknowledged that the disputed cheque was not in the name of the complainant; the complainant did not produce any documentation in the investigation which would show evidence the transaction that allegedly gave rise to the disputed cheque being issued nor did he give any calculations as to how the outstanding figure was determined nor any documentary evidence to show that any payment was due from Shumaila to the complainant.

8. The manner in which the learned trial court recorded the section 342 Cr.P.C. statement leaves a lot to be desired. The disputed cheque, the return memo nor the various documents exhibited by Mohammad Asif were put to the applicant instead one generalized, all encompassing and vague question was asked for her.

9. Important ingredients for an offence under section 489-F P.P.C. are that (i) the cheque is issued dishonestly (ii) for the fulfilment of an obligation or satisfaction of a loan (iii) the cheque bounces upon presentation and (iv) the accused had not made alternative arrangements for the encashment of the cheque. In the current case, the purpose for which the cheque was issued was not conclusively decided due to lack of evidence. Similarly, whether the cheque was issued dishonestly could also not be determined at trial. It would not be out of place to mention that the complainant himself at trial recorded that Shumaila had told him that he should not deposit the cheque in the bank as she had no income.

10. In view of the above, I am of the view that neither was dishonesty in the issuance of the cheque was proved at trial nor was the purpose for issuing the cheque. The revision application is therefore allowed and the applicant is acquitted of the charge. She is on bail. Her bail bonds stand cancelled and surety discharged.

JUDGE