ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Acquittal Appeal No.491 of 2023

Date	Order with signature of Judge

For hearing of main case

02.11.2023

Mr. Zahoor Ahmed advocate for the appellant
Syed Meeral Shah Bukhari, Additional PG alongwith SI Muhammad Sarwar Chohan PS Shah Faisal Colony Karachi

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Through instant appeal filed under Section 417, Cr.P.C. acquittal of respondent No.2 through impugned judgment pronounced by learned Judicial Magistrate Karachi East has been challenged. Respondent No.1 was tried and acquitted in FIR No.43/2015, dated 24.8.2023, for the offense under Section 489-F, PPC, registered with Police Station Shah Faisal Colony, Karachi.

2. The main arguments of the learned counsel for the appellant is that the accused dishonestly issued two cheques to the complainant for the fulfillment of the obligation which was dishonored by the concerned Bank as such the trial Court did not have to acquit the accused due to his admission in 342 Cr. P.C. statement as well as in agreement dated 19.12.2008 and Affidavit dated 28.10.2008. Per learned counsel, the prosecution proved the case based on the documentary evidence however the trial Court relied upon the statement of the accused under Section 342 Cr. P.C. discarded the evidence and erroneously acquitted respondent No.2. He prayed for allowing the acquittal appeal and that respondent No.2 may be convicted of the aforesaid crime.

3. A perusal of the record available on the file reveals that the complainant lent an amount of Rs.45,00,000/- to the accused persons for their business investment and promised to pay profit to the complainant and principal amount after three years. On demand, the accused Fozia Sharif delivered cheque No. (1) 106235329 of Rs.25 Lac (2) cheque No.106235327 of Rs.20 Lac issued from the bank account of co-accused Varisha Urooj. On presentation both the cheques were dishonored by the concerned bank due to a dormant account. Such a report of the incident was given to Police Station Shah Faisal Colony, Karachi, who registered the F.I.R 43/2015, under section 489 F PPC. After the usual investigation, challan was submitted before the learned trial Court.

4. The charge was framed against the accused persons who pleaded not guilty and claimed to be tried. The prosecution examined the following witnesses: -

> ***PW-ASI Asad Ali Chattha (Author of FIR) at Exh.3, produced copy of the letter and copies of the cheque with return memo at Mark-B/1 to Mark-B/4, copy of Order under section 22-A Cr.P.C. at Exh.3/A, statement and FIR at Exh.3/B and Exh.3/C, qaimi No.24 at Exh.3/D.***
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> ***PW-Aijaz ul Hassan (Complainant) at Exh.4, he produced receipt / mohida and mohida for loan at Exh.4/A and Exh.4/B, applications at Exh.4/C and Exh.4/D, memo of inspection at Exh.4/E, cheque and return memo and envelope at Exh.4/F to Exh.4/J.***
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> ***PW-Akbar Ali (Branch Manager at UBL PECHS Branch) at Exh.5, produced a letter and bank reply at Exh.5/A.***
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> ***PW- SIP Syed Muhammad Moazam Kazmi (Investigation Officer) at Exh.6, he produced entry No.16 at Exh.6/A, entry No.26 at Exh.6/B***

5. The statement of the accused was recorded under section 342 Cr. P.C., wherein they denied all the allegations leveled against them. The learned trial court after hearing the parties acquitted the private respondents/accused vide judgment dated 22.3.2023, an excerpt whereof is reproduced as under:-

> ***<u>Point No.2</u>.***
> ***21. In view of above facts and circumstances as discussed in Point No.1 supra, the prosecution has miserably failed to prove its case against the accused persons namely 1. Mst. Fozia W/o Muhammad Sharif, 2. Varisha Urooj D/o Muhammad Sharif and 3. Mubin Sharif S/o Muhammad Sharif beyond a reasonable shadow of a doubt, therefore, the accused persons are hereby acquitted under Section 245(i) Cr.P.C. The accused persons are present on bail, their bail bonds stand canceled and surety discharged."***

6. It is well settled that once a charge for an offense, duly tried, results in acquittal, the accused person acquires a very right and he should not therefore be put in jeopardy of his life again. It would be advantageous to summarize the principles governing the appeal against acquittal under section 417 Cr.P.C.

> ***i) Parameters to deal with the appeal against conviction and appeal against acquittal are different because the acquittal carries a double presumption of innocence and the same can be reversed only when found blatantly perverse, illegal, arbitrary, capricious, speculative, shocking, or rests upon impossibility.***
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> ***ii) It is well settled law by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are***

required to dislodge such a double presumption of innocence.

iii) Acquittal recorded by the trial court based on cogent reasons and not perverse would not be interfered. The appellate court should not lightly interfere with the judgment of acquittal unless it arrives at a definite conclusion that evidence has not been properly analyzed and the court below acted on surmises or conjectures.

iv) Acquittal cannot be reversed merely because a contra view is possible, where the findings of the trial court are not unreasonable, improbable, perverse, or patently illegal. Where based on evidence on record two views are reasonably possible, the appellate Court should not substitute its view in the place of that of the trial Court.

v) The presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.

vi) Judgment of acquittal can be reversed where the trial Court committed glaring misreading or non-reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on record.

vii) The appellate Court, while dealing with an appeal against acquittal, must proceed with the matter more cautiously and only if there is absolute certainty regarding the guilt of the accused considering the evidence on record, acquittal can be interfered with or disturbed.

7. A perusal of Section 489-F, P.P.C. reveals that the provision will be attracted if the following conditions are fulfilled and proved by the prosecution:-

(i) issuance of the 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 is bound or an act which binds a 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.

8. The law on the aforesaid proposition is very clear that if the applicant/accused establishes the above two facts through tangible evidence and that too after the prosecution proves the ingredients of the offence then he would be absolved from the punishment. Section 489-F, P.P.C. was originally inserted in Pakistan Penal Code, 1860 by Ordinance LXXII of 1995, providing conviction for counterfeiting or using documents resembling National Prize Bonds or unauthorized sale thereof and while the same was part of the statute, again under Ordinance LXXXV of 2002, another Section under the same number viz. 489-F of P.P.C. was inserted on 25-10-2002 providing conviction and sentence for

the persons guilty of dishonestly issuing a cheque towards repayment of loan or fulfillment of an obligation, which is dishonored on its presentation. In that newly inserted Section 489-F of P.P.C., the maximum relief for the complainant of the case is the conviction of the responsible person and punishment as a result thereof, which may extend to 3 years or with a fine or with both. The cheque amount involved in the offense under such Section is never considered as stolen property. Had this been treated as stolen property, the Investigating Agency would certainly have been equipped with the power to recover the amount also as is provided in Chapter XVII of P.P.C. relating to offenses against property. The offense under Section 489-F, P.P.C. is not made out on the part of the said Chapter providing the offenses and punishments of offenses against property, rather in fact the same has been inserted in Chapter XVIII of P.P.C., regarding offenses relating to documents and to trade of property marks.

9. When on 25-10-2002, Section 489-F, P.P.C. was inserted in P.P.C., Order XXXVII, C.P.C. was already a part of the statute book providing the mode of recovery of the amounts on the subject matter of negotiable instruments, and a complete trial is available for the person interested in the recovery of the amounts of a dishonored cheque, therefore, not only that the complainant in a criminal case under Section 489- F, P.P.C. cannot ask a Criminal Court to effect any recovery of the amount involved in the cheque, but also the amount whatsoever high it is, would not increase the volume and gravity of the offense. However, in the present case, it has come on record that the Complainant has failed to produce any supportive evidence which could show that Cheques were issued by the accused with any dishonest intention. There is no witness of the issuance of the Cheque. No date time and place for payment of the amount and issuance of cheques have been stated by the complainant except the year 2018 in his statement. The complainant claims that he paid the amount, but surprisingly, he did not opt to make the payment with any receiving of the accused. The complainant has failed to produce any statement, voucher, invoice, or slip in respect of the arrangement of the huge amount of Rs.45 Lacs which was delivered to the accused persons for investment purposes. In the absence of dishonest intention, and missing ingredients of the offense then the accused would be absolved from the punishment of Section 489-F, P.P.C.

10. In view of the above-stated facts and circumstances, the learned trial court was well within the remit of settled law to acquit respondents. Learned counsel for the appellant has failed to point out any misreading or non-reading of evidence, glaring illegality, perversity, unreasonableness, or arbitrariness in the impugned judgment.

11. In the light of principles as summarized in the preceding paragraphs we are persuaded to hold that no grounds are available warranting interference with the impugned judgment. The impugned judgment rendered by the trial court is well-reasoned and based on judicial prescriptions laid down in various judgments of the Supreme Court.

12. There is no finding contained in the impugned judgment inviting interference by this Court. The instant appeal is squarely devoid of any merits, which is accordingly dismissed.

JUDGE