

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Revision Application No. 142 of 2022

[Faisal Sardarv..... The State]

Date of Hearing : 02.08.2023
Applicant through : Mr. Israr Ahmed, Advocate.
Respondents through : Mr. Khadim Hussain Khuharo, Addl. P.G.

ORDER

Zulfiqar Ahmad Khan, J:- Through instant Criminal Revision Application, the applicant has impugned the concurrent findings recorded by the courts below whereby the Court of first instant i.e. learned Judicial Magistrate-IX, Malir Karachi through judgment dated 06.04.2022 convicted the applicant for the offence punishable under Section 489-F PPC and sentenced him to undergo SI.R for three years and fine of Rs.25000/-, the benefit of Section 382-B Cr.P.C was also extended to the applicant. The applicant impugned the said findings of the learned trial Court before the First Appellate Court by filing Criminal Appeal No.08 of 2022 but the learned Appellate Court i.e. Additional Sessions Judge-IV Malir, Karachi vide Judgment dated 16.05.2022 declined to interfere in the judgment of the learned trial Court and dismissed the Appeal preferred by the applicant, hence the applicant before this court against the concurrent findings.

2. The allegation against the applicant is that he issued a cheque bearing No.00000159 amounting to Rs.19,40,00/- in the name of Chaudhary Rice Traders in respect of business transaction which was dishonoured on its presentation.

3. After framing of charge, the prosecution has examined as many as Five (05) witnesses. PW-01 Muhammad Qadeer at Exh. 3, PW-02, Syed Amanullah at Exh. 5, PW-03 Muhammad Akhtar at Exh. 6, PW-04 Shabbir Ahmed at Exh. 9, PW-05 Mian Ahmed at Exh. 10, Thereafter prosecution side was closed vide Ex:15 and statement of applicant under section 342, Cr.P.C. was recorded at Exh. 16, who claimed his innocence, however, neither examined himself on oath nor led defense witnesses in support of their claim.

4. After observing all formalities and hearing the parties, the learned trial Court convicted the applicant through impugned judgment in the manner described in the operative part of this edict.

5. Learned counsel for the applicant, at the very outset, submits that though the applicant has a good case on merit but since he is aged about 60 years and is suffering from multiple diseases and has served out the major partition of sentence i.e. 1 year 9 months and 27 days. He further submits that applicant has already served out major portion of his sentence; therefore, under the circumstances he would be satisfied and shall not press this Criminal Revision if the sentence awarded to the applicant is reduced to one as already undergone.

6. Learned Addl. P.G. has opposed this appeal on merit.

7. It would be appropriate to reproduce Section 489-F, P.P.C., which is as under;

“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.”

8. To constitute an offence, dishonesty on the part of person issuing the cheque is pre-condition towards the repayment of amount or fulfillment of an obligation. The word “whoever dishonestly issued cheques” used in the section clearly indicates to constitute an offence, it must be proved that the cheques have been issued dishonestly.

9. Dishonestly means a fraudulent act or intent to defraud others, it is also a pre-condition that the cheque should be dishonored on “Presentation”. The basic ingredients for attracting the Section 489-F, P.P.C are as under;

- (i) Dishonestly issuing.
- (ii) Towards re-payment of loan.
- (iii) Fulfillment of an obligation.
- (iv) Dishonored on presentation.

10. Mere issuance of cheque and its dishonor by itself is not an offence unless the aforementioned ingredients are fulfilled. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as “Allah Ditta v. The State” (2013 SCMR 51), that:

“Every transaction where a cheque is dishonored may not constitute an offence. The foundational elements to constitute an offence under this provision are issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation and lastly that the cheque in question is dishonored.”

11. That the preconditions to make out an offence under Section 489-F, P.P.C have also been elaborated by the Hon'ble Supreme Court

Pakistan while deciding Criminal Appeal titled as “Muhammad Sultan v. The State” (2010 SCMR 806), wherein it has been held that:

“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 cheque;*
- (ii) such issuance was with dishonest intention;*
- (iii) the purpose of issuance of cheques should be:-*

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- (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 person to some performance).*

(iv) on presentation, the cheque is dishonoured. 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. If the 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”.*

12. The learned trial Court is a fact finding body and having examined the prosecution evidence as well as documents produced before it by the prosecution reached to the conclusion that the applicant has business relations with the complainant and towards business relations he issued the subject cheque towards the fulfillment of business obligations but the same was dishonored on its presentation. The learned First Appellate Court also reached the said conclusion and it is considered pertinent to reproduce the pertinent excerpt of the learned First Appellate Court which is delineated hereunder:-

“Perusal of evidence available on record shows that the complainant/ PW No.1 and PW No.3 Muhammad Akhtar have remained consistent on point of issuance of cheque by the applicant to the complainant in favour of Chaudhary Rice Traders

and the cheque amounting to Rs.19,40,000/- was issued by the applicant in lieu of clearance of amount outstanding towards absconding accused Malik Muhammad Asghar. The defense has remained unable to shake veracity of testimonies of both the above named PWs during course of cross examination. The original cheque No.00000159 dated 05.04.2021 issued by the applicant, has been produced at trial at Exh. No.3/H and name of applicant Faisal Sardar is printed on the cheque and the cheque pertains to Habib Bank Ltd, Ibrahim Hyderi Goth Branch, Karachi. Thus, it stands proved that the cheque in question was pertaining to bank account of the applicant. The memoranda issued by the bank dated 21.04.2021 and 26.04.2021 produced at Exh. No. 3/I & 3/J respectively show that the cheque in question was twice bounced and the only reasons assigned for dishonourment of the cheque has been non-availability of funds in the bank account of applicant.

13. It is gleaned from appraisal of the foregoing that the complainant/ PW No.1 and PW No.3 Muhammad Akhtar have remained consistent on point of issuance of cheque by the applicant to the complainant in favour of Chaudhary Rice Traders and the cheque amounting to Rs.19,40,000/- was issued by the applicant in lieu of clearance of amount outstanding towards absconding accused Malik Muhammad Asghar. The defense has remained unable to shake veracity of testimonies of both the above named PWs during course of cross examination. The original cheque No.00000159 dated 05.04.2021 issued by the applicant, has been produced at trial at Exh. No.3/H and name of applicant is printed on the cheque and the cheque pertains to Habib Bank Ltd, Ibrahim Hyderi Goth Branch, Karachi. Thus, it stands proved that the cheque in question was pertaining to bank account of the applicant. The memoranda issued by the bank dated 21.04.2021 and 26.04.2021 produced at Exh. No. 3/I & 3/J respectively show that the cheque in question was twice

bounced and the only reasons assigned for dishonourment of the cheque has been non-availability of funds in the bank account of applicant.

14. Apart from above, as far as revisional powers vested under Section 435 Read with Section 439, Cr.P.C. are concerned, I found no jurisdictional error or material illegality and irregularity in the impugned order which may warrant interference of this Court. It is settled law that Revisional jurisdiction cannot be used for interrupting or subverting the normal and irregularity in the impugned order which may warrant interference of this Court. It is settled law that Revisional jurisdiction cannot be used for subverting or interrupting the normal criminal proceedings unless an order under reference is found tainted with miscarriage of justice, same cannot be interfered with¹.

15. It is noted that applicant was convicted and sentenced to suffer S.I. for three (03) years with fine of Rs.25,000/-. Perusal of Jail Roll dated 31.05.2022 shows that the applicant had served out sent of 1 years, 9 months and 27 days and vide order dated 06.06.2022 the applicant was enlarged on bail. It appears from the record that the sentence awarded by the trial Court to applicant is in line with the sentencing policy as laid down in the case of Ghulam Murtaza and another v. The State reported in PLD 2009 Lahore page 362; however, while considering the aforementioned circumstances, where the applicant chose to take over liability of the actual perpetrators, not all of them could be sentenced to the maximum term. It would thus meet the ends of justice if sentence of the applicant is reduced to one as already undergone including the period

¹¹ Mir Shakil ur Rehman v. Rai Muhammad Asad Khan (2019 YLR 157)

of imprisonment in lieu of non-payment of fine i.e. Rs.25,000/- imposed upon the applicant. In this context I am fortified by the case of Ghulam Murtaza (Supra), wherein it was held as under:--

“10. It goes without saying that in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure”.

16. In view of the above, this Criminal Revision Application is hereby dismissed, and the impugned judgments are maintained. However, the conviction and sentence awarded to the applicant is reduced to one as already undergone. Applicant is present on bail, his bail bond stands cancelled and surety is discharged.

Karachi
Dated: 02.08.2023

JUDGE

Aadil Arab.