# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Criminal Revision Application No. S-73 of 2023.***
***(Jamait Ali Shar vs The State).***

***Before:-***
***Mr. Justice Ali Haider 'Ada'.***

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| Applicant | : | Jamait Ali Shar, *through* Mr. Ghulam Shabbir Shar, Advocate. |
| The State | : | Mr. Muhammad Raza Katohar, Deputy Prosecutor General. |
| Complainant | : | Ghulam Hussain *through* Mr. Abdul Ghafoor Janwari, Advocate. |
| Date of Hearing | : | 06.04.2026. |
| Date of Short Order | | 06.04.2026. |
| Date of Reasons | : | 20.04.2026. |

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## ***JUDGMENT***

***Ali Haider 'Ada' J;-*** Through the instant Criminal Revision, the applicant/accused has assailed the impugned judgment dated 29.05.2023 passed by the learned Judicial Magistrate-I, Thari Mirwah (trial Court), in Criminal Case No. 133 of 2021, whereby the applicant was convicted and sentenced to imprisonment for two and a half years along with a fine of Rs. 30,000/- (Rupees Thirty Thousand only), and in default thereof, to undergo simple imprisonment for two months. The benefit of Section 382-B Cr.P.C. was also extended to the applicant. Being aggrieved, the applicant preferred an appeal No. 12 of 2023 before the learned Additional Sessions Judge, Mirwah, who, vide judgment dated 22.08.2023, dismissed the appeal and maintained the conviction and sentence awarded by the trial Court. Hence, the applicant has filed the present Criminal Revision challenging both the aforesaid judgments.

2. The prosecution case, in brief, is that the complainant, on 18.06.2021, lodged FIR No. 149 of 2021 at Police Station Thari Mirwah against the applicant for an offence punishable under Section 489-F PPC. It was alleged that the applicant purchased a piece of land from the complainant for a total consideration of Rs. 34,00,000/-. The complainant accordingly mutated the record of rights in favour of the applicant. In respect of payment, an agreement dated 04.12.2020 was executed, whereby part of the consideration was paid in cash and partly through the sale of a vehicle, while an amount of Rs. 2,00,000/- remained outstanding. For the said remaining amount, the applicant issued a cheque dated 15.05.2021, which, upon presentation, was dishonoured on 24.05.2021. Consequently, the FIR was registered. After usual investigation, the Investigating Officer submitted the challan against the applicant.

3. Upon taking cognizance, the trial Court supplied copies of relevant documents to the applicant and, on 14.07.2021, framed charge, to which the applicant pleaded not guilty and claimed trial. In order to substantiate its case, the prosecution examined PW-1 (complainant), who produced the order passed by the Justice of Peace directing registration of FIR under Section 154 Cr.P.C. dated 14.06.2021, along with the copy of FIR and the agreement executed between the parties. PW-2, Muhammad Azeem, was examined as a witness to the agreement. PW-3, Abdul Razak, was examined regarding inspection of the place of occurrence. PW-4, the Investigating Officer, produced the relevant Roznamcha entries, memo of presentation of cheque, copy of cheque dated 15.05.2021, its return memo dated 24.05.2021, correspondence with the concerned Bank Manager, and the reply confirming dishonour of the cheque. Thereafter, the prosecution closed its side. The statement of the applicant was recorded under Section 342 Cr.P.C., wherein he denied the allegations and professed his innocence. However, he

neither examined himself on oath under Section 340(2) Cr.P.C. nor produced any defence evidence.

4. After hearing the learned counsel for the parties, the trial Court convicted the applicant, and the appellate Court subsequently upheld the same.

5. Learned counsel for the applicant contended that although issuance of a cheque is a requirement under Section 489-F PPC, the prosecution failed to establish that the cheque was issued in discharge of any legally enforceable obligation. He further argued that the prosecution case suffers from material discrepancies. It was also contended that neither the bank official was examined nor was the agreement properly proved in accordance with law, as the witness to the agreement failed to confirm its execution or contents. He submitted that both the Courts below misread and failed to properly appreciate the evidence, and did not extend the benefit of doubt to the applicant. Therefore, he prayed for acquittal by setting aside the impugned judgments.

6. Conversely, learned counsel for the complainant argued that the prosecution successfully proved its case beyond reasonable doubt. He submitted that the issuance of the cheque was admitted, and the same was dishonoured, which clearly established that it was issued to discharge the remaining liability. He supported the findings of the trial and appellate Courts and prayed for dismissal of the revision.

7. Similarly, the learned Deputy Prosecutor General supported the impugned judgments, contending that minor discrepancies in the prosecution case are not fatal. He argued that the agreement itself sufficiently establishes the liability of the applicant, and therefore, the conviction was rightly recorded. He prayed for dismissal of the instant Criminal Revision.

8. Heard the learned counsel for the parties and perused the record.

9. First and foremost, what are the basic ingredients of **Section 489-F PPC.** For ready reference, the same is reproduced as under:

> *[489F. Dishonestly issuing a cheque. Whoever dishonestly issues a cheque towards re-payment of a loan or fulfillment of an obligation which is dishonoured on presentation, shall be punishable 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.]*

10. In this context, it is the primary duty of the prosecution to establish, through cogent and reliable evidence, the fulfillment of the obligation in its entirety, without any missing link in the chain. In the present case, the prosecution has alleged that a piece of land was sold to the accused/applicant by the complainant and that the record of rights was duly mutated in his favour. However, the complainant has failed to produce even a single piece of evidence to substantiate that any land was ever transferred or mutated in favour of the accused/applicant in discharge of the alleged obligation. Moreover, no record of rights was produced, nor was any witness from the revenue authorities examined to corroborate this assertion. Even the Investigating Officer failed to examine any official from the revenue department to support the complainant's version. Thus, this crucial aspect remains entirely unsubstantiated.

11. Secondly, the complainant has asserted that part of the amount was paid in cash by the accused, while the remaining amount was adjusted through the transfer of a vehicle. However, this assertion is equally unsupported by evidence, as no witness has affirmed such a version, and no documentary proof has been produced to demonstrate the transfer of any vehicle in favour of the complainant. In support of this contention, reliance is placed upon

the case of ***Muhammad Sohail Haroon v. Shoukat Ali and others*** **(2024 YLR 2804).**

12. The foundational ingredients to constitute an offence under Section 489-F, P.P.C are that the cheque must have been issued with dishonest intention, that it must have been issued in discharge of a loan or for the fulfilment of a legal obligation. Mere issuance of a cheque and its subsequent dishonour, by itself, does not ipso facto constitute an offence under Section 489-F, P.P.C. Reliance in this regard is placed on the cases of *Mir Ahmed Khan vs The State* **(2025 PCr.L.J 1102),** *Muhammad Atif v. The State* **(2025 PCr.LJ 1762),** *Raja Abdul Hameed v. Mashooq Ali Rajpar* **(2022 YLR-Notes 54),** *Muhammad Ashraf v. The State* **(2021 PCrLJ 586),** *Muhammad Asif v. Tanveer Iqbal* **(2021 YLR 324),** *Anwaar-ul-Haq v. The Judicial Magistrate, P.S. Ramna, Islamabad* **(2021 PCrLJ 669),** *Toor Jan v. The State* **(2020 YLR 1099),** *Abdul Khaliq v. Shahbaz Ahmed* **(2020 MLD 1803),** *Rashid Ahmed v. Muhammad Masood* **(2020 PCrLJ 1126),** *Nazar Muhammad v. The State* **(2018 PCrLN 106), and** *Naseeb Gul v. Amir Jan* **(2013 PCrLJ 175).**

13. Furthermore, there is an unexplained delay in the registration of the FIR. The order of the learned Justice of Peace was passed on 14.06.2021, whereas the FIR was lodged on 18.06.2021. The record reflects that the complainant received a copy of the said order on 15.06.2021; however, despite having knowledge thereof, the FIR was not lodged promptly, which casts serious doubt on the veracity of the prosecution case. Moreover, there is nothing on record to indicate as to when the complainant initially approached the learned Justice of Peace. It is further pertinent to note that the cheque in question was allegedly dishonoured on 24.05.2021, yet no satisfactory explanation has been furnished for the delay in initiating proceedings. Reliance in this regard is placed upon the cases of *Iqbal Ahmed v. Syed Danish Hussain Zaidi and others* **(2022 YLR Note 202) and** *Ali Sher v. The State* **(2022 YLR Notes 138).**

14. The witness namely Muhammad Azeem was produced as a witness to the agreement; however, in his entire deposition, he neither stated that he had personally seen the said agreement nor properly proved its contents. Although the agreement was already exhibited on record, the witness failed to corroborate or affirm its contents in accordance with law. Likewise, the complainant relied upon another witness, namely Aftab Ahmed Shar, who was also not examined by the prosecution. It is a settled principle that the contents of a document must be proved through competent and admissible evidence in accordance with law; mere production of a document is not sufficient proof of its contents. In this regard, **Article 79 of the Qanun-e-Shahadat** Order is relevant, which is reproduced as under:

> *79. Proof of execution of document required by law to be attested.– If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses of least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given evidence:*
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> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.*

15. Upon perusal of the aforesaid provision, it is quite clear that under Article 79 of the Qanun-e-Shahadat Order, 1984, at least two attesting witnesses are required to be produced to establish the execution of financial documents or documents relating to future obligations. Reliance in this regard is placed upon the case of ***Mushtaq and others v.*** *Mst. Fatima and others* **(PLD 2025 Supreme Court 434).**

16. Moreover, the Bank Manager, who allegedly endorsed the confirmation of the memorandum, was not produced in evidence. Since the said document was purportedly endorsed by a bank official, it was imperative that the same be proved through the

testimony of the concerned witness. In the absence of the Bank Manager's examination, there is no reliable evidence on record to establish that the accused was operating the relevant bank account, nor is there any proof that the signatures on the alleged cheque belonged to the accused. The non-examination of the Bank Manager, therefore, creates a serious lacuna in the prosecution case. Reliance in this regard is placed upon the case of *Muhammad Asif v. Tanveer Iqbal* **(2021 YLR 324).**

17. The principle laid down in *Laiq Shah v. The State* **(2026 SCMR 257)** is that the prosecution in a criminal case is required to prove its case beyond reasonable doubt, and if even a single circumstance arising from the evidence creates doubt in the prosecution version, the benefit of that doubt must necessarily be extended to the accused. It is a settled principle of criminal jurisprudence that conviction must be based on an unbroken chain of trustworthy and reliable evidence, and if any link in that chain is found missing, doubtful, or not satisfactorily proved; the entire prosecution case becomes doubtful. Such doubt need not be multiple; even one material circumstance which shakes the confidence of the Court in the prosecution story is sufficient to disentitle the prosecution from securing conviction. The rationale behind this rule is that it is better for the guilty to escape than for an innocent person to be convicted on doubtful evidence, and therefore Courts are under a legal obligation to resolve all reasonable doubts in favour of the accused.

18. Keeping in view the foregoing discussion, the relevant facts and circumstances of the case, and upon perusal of the entire material available on record, it is concluded that the prosecution has failed to establish the guilt of the applicant/accused beyond reasonable doubt. Accordingly, the instant criminal revision is allowed. The impugned judgment whereby the applicant was convicted and sentenced by the learned trial Court, as well as the judgment passed by the learned appellate Court, are hereby set

aside, and the applicant is acquitted of the charge. The applicant, who is already on bail, his bail bonds are cancelled and surety stands discharged after due verification. These are the detailed reasons for the short order dated 06.04.2026.

***JUDGE***