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**JUDGMENT SHEET**  
**LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Writ Petition No. 68498/2022**

**Tariq Mehmood**

**Vs.**

**Additional Sessions Judge/Ex-officio Justice of Peace and others**

**JUDGMENT**

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| <b>Date of hearing:</b>              | <b>15.12.2023</b>   |
| <b>For the Petitioner:</b>           | Mr Muhammad Waqas Mirza, Advocate.  |
| <b>For Respondents No.1 &amp; 2:</b> | Ms Khalida Parveen, Additional Advocate General with Muhammad Mansha/ASI. |
| <b>For Respondent No.3:</b>          | Rana Waqar Ahmad Khan, Advocate.  |

**Tariq Saleem Sheikh, J.** – Respondent No. 3 filed an application under section 22-A of the Cr.P.C. with the Ex-officio Justice of Peace, Kamoke, stating that Tariq Mehmood (Petitioner herein) was a close friend. On 02.02.2022, the Petitioner borrowed Rs. 400,000/- from him and issued Cheque No. 57628358 post-dated 04.07.2022 for its repayment, but it was dishonoured upon presentation due to insufficient funds. Respondent No. 3 alleged that the Petitioner had dishonestly given him a bad cheque and had thereby committed a cognizable offence under section 489-F PPC. He prayed that a direction be issued to the Respondent SHO to register an FIR against him. The Ex-officio Justice of Peace accepted his application vide order dated 31.10.2022 (the “Impugned Order”). The Petitioner has assailed that order before this Court through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Mr Muhammad Waqas Mirza, Advocate, submits that Cheque No.57628358 on the basis of which Respondent No.3 seeks to get a criminal case registered against the Petitioner is a “self-cheque,” i.e. a cheque issued by the account holder to “himself”. He contends that

criminal liability under section 489-F PPC cannot arise for such a cheque because it does not meet the essential elements of the offence.

3. On merits, Mr Mirza contends that the Petitioner manufactures leather gloves, and the sister of Respondent No.3, Gul-e-Hina, invested money with him on a profit-and-loss basis. According to him, the Petitioner gave her Cheque Nos. 57628356 and 57628358 for comfort. However, he suffered huge losses due to the Covid-19 pandemic and eventually closed his business. Gul-e-Hina passed over Cheque No.57628358 to Respondent No.3, who concocted a false story and filed an application under section 22-A Cr.P.C. for registration of FIR as aforesaid and procured the Impugned Order. Mr Mirza contends that he never obtained any loan from Respondent No.3.

4. Ms Khalida Parveen, Additional Advocate General, has vehemently opposed this petition. She argues that Cheque No. 57628358 is payable to “self or bearer.” The Petitioner's claim that section 489-F PPC does not apply to such instruments is based on a misconception.

5. Rana Waqar Ahmad Khan, Advocate, has supported the Assistant Advocate General, adding that the application of Respondent No.3 under section 22-A of the Cr.P.C. discloses the commission of a cognizable offence. Hence, the Ex-officio Justice of Peace was justified in directing the registration of an FIR. Mr Khan contends that the defence plea is unfounded, as the Petitioner issued Cheque No. 57628358 to settle a debt with Respondent No. 3. He points out that conflicting claims exist, and the truth can only be determined through an investigation initiated after the registration of the FIR. This Court cannot adjudicate on the correctness of either plea in the current proceedings.

6. Heard. Respondent No.3 seeks to prosecute the Petitioner under section 489-F PPC which provides:

**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 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.

7. The purpose of enacting section 489-F PPC was to foster confidence in the banking system and trustworthiness in conducting

business through cheques. This provision was designed to proactively deter individuals from engaging in dishonest practices – specifically, drawing cheques without sufficient funds in their bank accounts, thereby inducing the payee to act upon the transaction with a false sense of security.

8. The canons for the interpretation of penal statutes are well settled. In **Mirza Shaukat Baig and others v. Shahid Jamil and others** (PLD 2005 SC 530), the Supreme Court of Pakistan held:

“(1) All penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip, that there has been a *casus omisus*, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit there a penal enactment is to be construed like any other instrument according to the fair common sense meaning of the language used, and the court is not to find or make any doubt or ambiguity to the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instruments.<sup>1</sup>

“(2) Criminal enactments are not to be extended by construction. When an offence against the law is alleged, and when the court has to consider whether that alleged offence falls within the language of a criminal statute, the court must be satisfied, not only that the spirit of the legislative enactment has been violated, but also that the language used by the legislature includes the offence in question, and makes it criminal.<sup>2</sup>

“(3) Nothing is to be regarded as within the meaning of the statute which is not within the letter – which is not clearly and intelligibly described in the very words of the statute itself.<sup>3</sup>

“(4) Also, in the interpretation of Acts, the elementary rule is to give full and accurate effect to every word used in them. The courts in the exposition of penal statutes, are not to narrow the construction. They are to look at the words in the first instance, and where the words are plain, they are to decide on them. If the words be doubtful, they are then to have recourse to the subject matter, but at all events, it is only a secondary rule. It is not the province of a judge to disregard or go outside the letter of the enactment according to its true construction.<sup>4</sup>”

9. Section 489-F PPC should be interpreted following the principles outlined above. This provision does not apply to every instance of a dishonoured cheque. The foundational elements to constitute the offence are: (i) the cheque was duly issued; (ii) it was issued with dishonest

<sup>1</sup> (1872) L.R. 4 PC 184; 191 (1823) I B & C. 297, 299; (1933) 60 Cal. 742; (1945) Nag.382.

<sup>2</sup> (1870) LR 5 CP 503, 513, 514.

<sup>3</sup> (1881) 8 Cal. 214; (1918) 4 PLJ 74; 20 Cr.L.J. 161; (1919) AIR (P) 27, FB.

<sup>4</sup> (1896) 18 All. 364, 365; (1786) 1 TR 96.101; (1902) 29 I. A. 196,29; Cal 707, 715; 4 Bom. LR. 793, 796.

intent; (iii) it was issued towards repayment of a loan or fulfilment of an obligation; and (iv) it was dishonoured on presentation. In **Muhammad Sultan v. The State** (2010 SCMR 806), the Supreme Court of Pakistan held that “fulfillment of an obligation” is a broad term and is, *inter alia*, applicable to all lawful agreements and contracts.

10. Section 489-F PPC is not a strict liability offence, which is evident from the word “dishonestly” used therein. Section 24 of the PPC defines the term “dishonestly” to mean anything done with the intention of causing wrongful gain to one person or wrongful loss to another. Whether the issuer/drawer of a cheque has issued it dishonestly is a question of fact that the prosecution must establish in every case.

11. In the present case, Cheque No.57628358 specifies: “*Pay Self or bearer*”. The word “self” is handwritten while “or bearer” is printed. The first question that needs determination is whether criminal proceedings under section 489-F PPC can be initiated against the issuer of a cheque made out to oneself in the event of dishonour. To answer this query, we must delve into the definition of a cheque.

12. Section 6 of the NIA defines a “cheque” as “a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.” Section 5 of the Act defines “bill of exchange”<sup>5</sup> and explains that a bill of exchange may be drawn in the name of a particular person, or payable to his order or bearer. Section 3(c) of the NIA states, “ ‘bearer’ means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer.” Negotiation can be by

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<sup>5</sup> Section 5 of the Negotiable Instruments Act, 1881, in relevant part reads as follows:

**5. “Bill of exchange”.**— A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

...

Where the person intended can reasonably be ascertained from the promissory note or the bill of exchange, he is a ‘certain person’ within the meaning of this section and section 4, although he is misnamed or designated by description only.

...

Where the payee is a fictitious or non-existing person the bill of exchange may be treated as payable to bearer.

delivery (section 47)<sup>6</sup> or endorsement (section 48).<sup>7</sup> A cheque payable to the bearer can be negotiated through simple delivery, whereas one payable to order requires endorsement. Thus, a bearer cheque has an independent legal standing and identity and does not depend on any endorsement for its validity. Linking its validity and independent status with any positive endorsement is inappropriate.

13. A review of the above provisions shows that a cheque is a kind of bill of exchange with certain peculiarities. In view of section 5, *ibid*, where the payee is a fictitious or non-existing person, it may be treated as payable to the bearer.

14. A “self-cheque” has neither been defined by the Pakistan Penal Code nor the Negotiable Instruments Act 1881 (the “NIA”). Essentially, it refers to a cheque where the drawer is also the payee.

15. Section 489-F PPC does not stipulate that the cheque must be in the name of a specific individual. It simply requires that the person drawing the cheque does so from his own account, and the purpose should be for loan repayment or fulfilling a legal obligation. If the cheque is made to “self” only, no offence is committed. Firstly, a person cannot dishonestly issue a cheque to pay money to himself, and secondly, a person cannot give a cheque for the payment of a loan or to fulfil an obligation that one has towards oneself.

16. When a cheque is addressed as payable to “self or bearer” (and the word “bearer” is not scored off), any person who qualifies as a “holder in due course” under section 9 of NIA can initiate legal action under section 489-F PPC, provided they satisfy the elements of the offence described in paragraph 9 above. An individual asserting the status of a holder in due course must also substantiate their claim if challenged.

17. Section 118 of the NIA outlines certain presumptions about negotiable instruments, but these do not extend to section 489-F PPC. The latter provision exclusively governs the prosecution of the offence.

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<sup>6</sup> 47. **Negotiation by delivery.**— Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

**Exception.** A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

<sup>7</sup> 48. **Negotiation by indorsement.**— Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Significantly, it does not raise any statutory presumption in favour of the holder of a cheque.

18. India has criminalized the dishonour of cheques by inserting section 138 in the Indian Negotiable of Instruments Act 1881 (the “Indian Act”), which shares some similarities with Pakistan’s section 489-F PPC. The Indian courts have considered the issue of criminal liability of a self-cheque in a catena of cases. In **Mahesh Goyal v. S.K. Sharma** (1997 CriLJ 2868 (P & H)), the Punjab and Haryana High Court held that if other conditions are met, merely because the cheque is addressed to self does not exempt it from the applicability of section 138 of the Indian Act. Once the cheque has been given for valid consideration, the respondent must be considered a holder in due course. The Kerala High Court, in **Michael Kuruvilla v. Joseph J Kondody**, [1998(2) Andh. LD (Cri) 957) (Ker)], following the judgment of the same Court in *A.K. Hameed v. Appakutty* (AIR 1969 Ker. 189), and considering the definition of “holder in due course” under section 9 of the Indian Act (analogous to section 9 of the NIA), held that even if the cheque lacks the payee’s name, the printed words “or bearer” are struck off, and it is written “pay to cash,” it remains a legal and valid negotiable instrument. It must be implied that the direction is to pay to the bearer, and there is no evidence to suggest that the appellant cannot be treated as a holder in due course under section 9 of the Indian Act. With these observations, the learned Judge overturned the trial court’s judgment, finding the accused guilty of the offence under section 138 of the Indian Act, and convicted him accordingly. In **Intech Net Limited and others v. State and another**, (2007 Cri.LJ 216), Andhra High Court held:

“Once the issuance of the cheques is admitted and as the words “or bearer” have not been struck off, the complainant is held to be the holder of the said cheques in due course though it was written as self and thus he is entitled to receive the cash and on dishonouring of the said cheques, he can very well file the complaint. The contention of the petitioners that the said cheques was issued in the process of transaction between the first petitioner and the complainant for supply of goods has to be substantiated during the course of trial by the petitioners by leading evidence. Under these circumstances, I see no ground to quash the impugned proceedings at this stage.”

19. In *Dr. Shreeyansh Rayappa Nandeshwar v. Dr. Prakash Ponde*,<sup>8</sup> the Karnataka High Court held:

“Having perused the principles laid down in the Judgment, the very contention that there is no endorsement and the self cheque does not attract Section 138 of the [Indian Act], cannot be accepted at this juncture.”

Further reference can be made to *Farhat Hussain Siddiqui v. State of U.P. and another* (2010 Cri.LJ 1213), *B. Sarvothama v. S.M. Haneef* (2013 SCC OnLine Ker 5328), *Adigear International v. State* (2013 SCC OnLine Del. 4938), and *Sarafudheen v. T. Muhammed Ashraf* [2016 (3) ILR (Kerala) 645].

20. While there are similarities between Pakistan’s section 489-F PPC and section 138 of the Indian Act, they differ substantively. As adumbrated, the most crucial distinction is that the vital ingredient of the section 489-F PPC is the dishonest issuance of a cheque, a requirement that every holder of a cheque, including the bearer of a self-cheque, must establish.

21. In the present case, Cheque No. 57628358 is made payable to “self,” and the words “or bearer” remain uncrossed. According to Respondent No.3, the Petitioner handed it over to him in the presence of two witnesses, Muhammad Ashraf and Majid Ali, to repay a loan. Therefore, he was a holder in due course. The cheque was dishonoured due to insufficient funds in the Petitioner’s account, and the bank issued a memo to Respondent No.3 confirming this fact.

22. The Petitioner neither disputes his signature on Cheque No. 57628358 nor that it is drawn on his account. Instead, he challenges its validity by claiming it does not fulfil the requirements of section 5 of the NIA. In view of the law discussed above, this contention is repelled.

23. Section 154 Cr.P.C. mandates the officer in charge of a police station to register an FIR when informed about the commission of a cognizable offence. It is a settled law that he cannot determine the veracity of the information/allegations at that stage. The application under section 22-A Cr.P.C. submitted by Respondent No.3 *prima facie* indicates the commission of a cognizable offence. Therefore, the Respondent SHO must

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<sup>8</sup> <https://indiankanoon.org/doc/14604622>

proceed under section 154 Cr.P.C. and investigate the various aspects of the case in light of this judgment.

24. The Impugned Order does not require interference by this Court. This petition has no merit and is, therefore, **dismissed**.

**(Tariq Saleem Sheikh)**  
**Judge**

*Naeem*

Approved for reporting

Judge