

JUDGMENTSHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 11 of 2018

Ch. Muhammad Bakhsheesh
Versus
Raja Muhammad Shafiq and another

Appellant by: Mr. Imran Feroz, Advocate.
Respondent by: Mr. Jan Muhammad Khan, Advocate
State by Mr. Hammad Saeed Dar, State counsel along with
G.Abbas Khan- A.S.I. Police Station Shalimar,
Islamabad.
Date of Hearing: 07.08.2020.

Ghulam Azam Qambrani, J.:- Appellant (*Ch Muhammad Bakhsheesh*) seeks setting aside of impugned order dated 31.01.2018, passed by the learned Additional Sessions Judge-IX, Islamabad-West, whereby respondent was acquitted in case F.I.R No.217/2016 dated 25.07.2016 under Section 489-F P.P.C register at Police Station Shalimar, Islamabad.

2. Briefly stated facts of the appeal are that on 25.07.2016, on the application of appellant/complainant above F.I.R was registered, with the averments that he deals with the business of Poultry Medicine. The respondent No.2/ accused (hereinafter referred to as "**respondent**") was introduced to him by Dr. Ashfaq Bajwa and one Dr. Bilal and on their assurance, the appellant started business of the Poultry Medicine with the respondent/ accused and delivered him Poultry Medicine worth of Rs.60,00,000/-. Against the said amount, the respondent issued four cheques and the said amount was to be paid by the respondent within the period of five months. The respondent issued following cheques (i) bearing No.69611212, dated 15.11.2015 amounting to Rs.2,00,000/-, (ii) bearing No.69611213, dated 15.12.2015 amounting to Rs.2,00,000/-, (iii) bearing No.69611214, dated 15.01.2016 amounting to Rs.2,00,000/- and (iv) bearing No.69611217, dated 15.01.2016 amounting to Rs.50,00,000/-

all of bank Al-Falah Limited. The said cheques when presented in the Meezan Bank Ltd, F-11 Markaz branch, Islamabad, the same were dishonored due to insufficient fund. It has been further alleged that the respondent dishonestly issued the cheques.

3. After registration of F.I.R, the investigation was completed and report under Section 173 Cr.P.C was submitted. After fulfilling the codal formalities by the learned trial Court, charge was framed against the respondent to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined the following witnesses:-

- i. PW-1, Ch. Muhammad Bakhsheesh (complainant),
- ii. PW-2, Mr. Muhammad Anees Tarar, Operation manager Bank, Al-Mezan bank,
- iii. PW-3, Saleem Raza, A.S.I,
- iv. PW-4, Rasheed Ahmed- S.I/ I.O,
- v. PW-5, Shafqat Ali- S.I,
- vi. PW-6, Badar Karim- deposed that accused presented an application and bank has stopped payments of cheques;
- vii. PW-7, Jasim Waheed, presented returned memos/ dishonoured slips;
- viii. CW-1, Umer Ilayas- deposed that accused presented an application for stop payment;
- ix. CW-2, Mst. Amna Shabbir- deposed that accused presented an application for stop payment.

After closure of the prosecution evidence, the accused/respondent was examined under Section 342 Cr.P.C wherein he denied the allegations leveled against him. The accused did not opt to record statement on oath as envisaged under Section 340 (2) Cr.P.C. The learned trial Court, after hearing the arguments of the learned counsel for the parties, passed the judgment dated 10.01.2018, whereby the appellant was convicted under Section 489-F P.P.C and sentenced to undergo one year and six months Simple Imprisonment with fine of Rs.30,000/-, in default whereof, to further undergo Simple Imprisonment of ten days. The appellant was also given benefit of Section 382-B Cr.P.C. Being aggrieved, the respondent preferred an appeal before the learned Additional Session Judge, Islamabad-

West, which was accepted vide judgment dated 31.01.2018, whereby the appellant was acquitted from the charge, hence, the instant appeal against acquittal.

5. Learned counsel for the appellant contended that the respondent admitted the issuance of cheques, the business in between the parties and also during his statement on oath, under Section 340 (2)Cr.P.C, the respondent has admitted all the facts thus the burden has shifted upon the shoulders of the accused/respondent; that the prosecution has proved the guilt against the respondent through reliable oral and documentary evidence on the basis whereof the learned trial Court convicted him whereas the learned Appellate Court, while hearing the appeal, failed to consider the material evidence and came to a wrong conclusion by acquitting the respondent. The learned appellate Court passed the impugned acquittal order in hasty and haphazard manner without going through the overwhelming incriminating material available on record rather acquitted the accused on self-styled and labored assertions; that the learned First Appellate Court also ignored the available data on record and extended undue and extraordinary favour to the respondent. Further contended that impugned order per-se reveals that same is bad in law, not tenable in law, ex-facie based upon whims and caprice and is devoid of reasoning. Next contended that prosecution story is corroborated by independent evidence; that the prosecution has a strong case to bring home the guilt of the accused person and extraordinary circumstances are existing to warrant the interference of this Court.

6. Conversely, learned counsel for the accused/respondent submitted that there was a business transaction in between the parties; that no money was owed by the respondent, the prosecution miserably failed to prove the case beyond reasonable shadow of doubt against the respondent; that the appellant originally invested an amount of Rs.50,00,000/- for which the respondents have been paying profit to the appellant till 04.09.2015; that thereafter the respondent could not pay profit to the appellant due to slump in the

business; that there was no dishonesty in issuing the cheque to the appellant which is an essential ingredients to attract Section 489-F P.P.C, as such, the learned Additional Sessions Judge after appraisal of the evidence has rightly acquitted him from the charge. The learned State counsel does not support the impugned order and submitted that the judgment passed by the learned trial Court may be upheld.

7. Heard arguments of the learned counsel for the parties and perused the available record.

8. In the instant case, provisions of Section 489-F PPC will only be attracted if the following essential ingredients are fulfilled and proved by the prosecution:-

- i. Issuance of cheque;*
- ii. Such issuance was with dishonest intention;*
- iii. The purpose of issuance of cheque should be:*
 - a) To re-pay a loan; or*
 - b) To fulfill an obligation (which is wide term, inter-alia, applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a persons to some performance).*
- iv. On presentation, the cheque is dishonored.*

As per contents of the F.I.R, the appellant entered into a business deal with the respondent Raja Muhammad Shafique and in this regard he supplied Poultry Medicine amounting to Rs.60,00,000/- to the respondent. Perusal of the record reveals that the appellant, during his cross-examination admitted that he had paid an amount of Rs.56,00,000/- to Muhammad Shafique for business purposes whereas the respondent while appearing as DW.1 stated that the original investment amount was Rs.50,00,000/- and he had been paying profit of Rs.2,00,000/- to the appellant since March, 2015 and he made last payment of Rs.50,000/- on 14.09.2015, thereafter, he could not pay any amount to the appellant due to business slump due to which differences arose between the parties. Contrary to this statement, the prosecution failed to put any suggestion to the respondent/ accused, as such, the version of the respondent is

substantiated with regard to the exact invested amount of Rs.50,00,000/- by the appellant with the respondent. Further during cross-examination, DW-1 replied in the affirmative that the amount transferred in the account of complainant was related to profit on investment. During his cross-examination, the respondent further admitted that earlier an amount of Rs.27,82,500/- was paid by the appellant but thereafter, another amount of Rs.22,17,500/- was paid to him by the complainant for investment purposes. As such, the elements of *mens-rea* and dishonestly issuance of cheque are missing in the instant case. Perusal of the record further reveals that there was no dishonesty in issuance of cheques which is an essential ingredient to attract Section 489-F P.P.C. The respondent had been paying profit to the appellant/ complainant on his original investment. As such, the prosecution has failed to prove dishonesty against the respondent in issuing the cheques to the appellant.

9. To constitute an offence under this section, dishonesty on the part of the payer is a condition precedent in issuance of a cheque towards re-payment of loan or fulfillment of an obligation. Thus, it is for the Court to consider that under what circumstances, the cheque was issued and what was the intention of the person, issuing it. The words "*whoever dishonestly issues a cheque*" used in this section shows the intention of the legislature that to constitute an offence, it must be proved that the cheque has been issued dishonestly. Dishonesty means a fraudulent act or intent to defraud others, especially creditors and lien holders. Similarly, the word "*dishonor*" used in this section means failure to honour a cheque with an intent to defraud and befool a payee towards re-payment of a loan or fulfillment of an obligation just to disgrace or put him in a state of shame. Hence, mere issuance of a cheque and it being dishonored by itself is not an offence, unless and until dishonesty on the part of a payer is proved.

10. Reliance is placed on the judgment of the Hon'ble Supreme Court of Pakistan reported as "Mian Allah Ditta Vs The State and others" [2013 SCMR 51] wherein it has been held as under:-

"Every transaction where a cheque is dishonoured 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 dishonoured.

11. The complainant has failed to produce a single evidence to prove dishonest intention of the respondent nor did he utter a single word to show his disgrace or feeling of shame due to dishonoring of the cheque rather in cross-examination he has admitted that the respondent did not issued the cheques with intention not be cashed therefore, the evidence and the material available on record, do not constitute an offence under section 489-F P.P.C against the respondent.

12. It is pertinent to mention here that considerations for interference in an appeal against acquittal and an appeal against conviction are altogether different because presumption of double innocence is attached with the former case. The well settled principles for appreciation of appeal against acquittal, as have been held by the Hon'ble Supreme Court of Pakistan in the judgment reported as Muhammad Iqbal Vs. Abid Hussain alias Mithu and six others(1994 SCMR 1928), are as under:-

- i. *That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his Trial a Court below has confirmed the assumption of innocence;*
- ii. *That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;*
- iii. *That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;*
- iv. *That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and*

- v. *That the Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose.*

13. Keeping in view the above principles, it transpires from the record that the important witness of the prosecution case, i.e. the complainant/ appellant himself admitted during cross examination that he paid an amount of Rs.56,00,000/- to Muhammad Shafique for business purposes. Therefore, the element of *mensrea*, and dishonestly issuance of cheque, fulfillment of obligation or repayment of loan are missing in the instant case. As such, the learned First Appellate Court has rightly acquitted the accused person/ respondent of the charge by giving him the benefit of doubt holding that the prosecution could not prove its case beyond any shadow of doubt. Reliance in this regard is placed upon the cases reported as Muhammad Karim Vs. The State (2009 SCMR 230), Ghulam Akbar and another Vs. The State (2008 SCMR 1064), Sanaullah Vs. The State through Prosecutor General (2015 P.Cr.L.J. 382 (Balochistan)), and Raheel and others Vs. The State and others (2015 P.Cr.L.J. 470).

14. I have found no illegality or irregularity in the impugned order dated 31.01.2018 passed by the learned Additional Sessions Judge-IX, Islamabad-West, nor the same is suffering from any misreading or non-reading or miss-appreciation of evidence, warranting interference by this Court.

15. Resultantly, the instant appeal having no force is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

Announced In open Court on this day 12th of August, 2020.

JUDGE