

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P No. 1269/2020**

Col. (R) Javed Iqbal Gondal

Versus

Sessions Judge (West), Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(02)	03.06.2020	Mr. Irfan Hussain, Advocate for the petitioner.

**MOHSIN AKHTAR KAYANI J.** Through this writ petition, the petitioner has called in question the judgment dated 31.03.2017, passed by learned Judicial Magistrate, Section 30, (West), Islamabad and judgment dated 28.11.2019, passed by learned Sessions Judge (West), Islamabad and has also prayed that respondent No.2 be convicted U/s 467, 468, 471 PPC and sentence awarded to him U/s 420 PPC may be enhanced.

2. Learned counsel for the petitioner contends that petitioner had got lodged the F.I.R No. 104, dated 04.05.2015, U/s 406, 468, 471 PPC, P.S Tarnol, Islamabad against respondent No.2 with the allegation that the respondent No.2 entered into an agreement to sell dated 17.04.2013 by claiming himself to be the owner of shop No. 04 situated in Commercial Plot No. 07, Sector G-15, Jammu and Kashmir Housing Society, Islamabad against the total sale consideration of Rs. 36,00,000/- with wife of the petitioner Mst. Shareen Parveen and received Rs. 16,000,00/-, but

subsequently failed to transfer the property and in this regard the respondent has received Rs. 27,20,000/- and failed to honor the agreement; that respondent No.2 was convicted by the learned Trial Court vide judgment dated 31.03.2017, passed by learned Judicial Magistrate, Section 30, (West), Islamabad in terms of Section 420 PPC and sentenced to rigorous imprisonment for three (03) years with fine of Rs. 50,000/-. However, respondent No.2 was acquitted from the charges U/s 467, 468, 471 PPC. The petitioner feeling aggrieved with the said judgment, filed criminal revision for enhancement of the sentence and simultaneously the respondent No.2 has also filed an appeal against conviction, whereby the learned appellate Court separately decided the criminal appeal as well as the criminal revision vide judgment dated 28.11.2019 and dismissed the appeal as well as criminal revision; that petitioner had filed the instant writ petition, whereas respondent has filed Criminal Revision No. 09/2020, which was earlier fixed before this Court and petitioner is claiming the enhancement of the sentence, which was not properly awarded to the respondent.

3. Learned counsel for the petitioner further contends that the respondent accused has admitted his liability and handed over two post dated cheques for return of the amount to the petitioner, which were also dishonored on their presentation and as a result of the same, two FIRs were lodged against respondent No.2, who has been convicted by the learned Trial Court U/s 489-F PPC; that a civil suit for specific

performance was also filed against the respondent, which was dismissed on the conceding statement of the respondent that he has issued two post dated cheques for return of the amount and as such the learned Trial Court has not appreciated all these facts, whereby respondent No. 2 deserves the sentence of seven (07) years in terms of Section 420 PPC.

4. Arguments heard and record perused.

5. Perusal of record reveals that respondent No.2/Muhammad Ijaz Aziz had entered into an agreement to sell regarding Shop No. 04 Sector G-15, Jammu and Kashmir Housing Society, Islamabad vide agreement dated 17.04.2013 against the sale consideration of Rs. 36,00,000/- and received Rs. 16,000,00/- as earnest money from Mst. Shareen Parveen wife of the petitioner, however, as per allegation, the respondent No.2 has failed to deliver the possession and in this process, he has received an additional amount from wife of the petitioner, which comes up to Rs. 27,20,000/-, the petitioner had lodged F.I.R No. 104, dated 04.05.2015, U/s 406, 468, 471 PPC, P.S Tarnol, Islamabad, whereby the charge has been framed under the said offences vide order dated 27.04.2016 and the petitioner has recorded his testimony as PW-1 and reiterated his stance, however, during the course of cross-examination, he acknowledged that the agreement was executed with the respondent accused by Mst. Shareen Parveen wife of the petitioner, who has neither joined the investigation nor ever recorded her statement before the police and she has not paid their balance sale

consideration to the respondent No.2, but it has been admitted in the cross-examination that possession of the disputed shop was handed over to the petitioner, same was further rented out to another party. He also acknowledged that suit was also filed by his wife Mst. Shareen Parveen in terms of Order XXXVII CPC and shop could only be transferred after the complete payment to the respondent No.2. The evidence further reveals that the parties have entered into compromise and affidavit Ex.DA was submitted in the Court and petitioner has received post dated cheques of Rs. 27,00,000/-, similarly the star witness Munir Hussain Jaffari/PW-2 also acknowledges that he never called Mst. Shareen Parveen in the investigation, but he acknowledges that the cheques were issued by the accused in favour of complainant.

6. While considering this background, the learned Trial Court convicted respondent No. 2 vide judgment dated 31.03.2017 and sentenced him U/s 420 PPC to undergo three (03) years rigorous imprisonment with fine of Rs. 50,000/-. The appeal filed by the respondent No.2 as well as criminal revision for enhancement filed by the petitioner was dismissed vide separate judgment dated 28.11.2019, passed by learned Sessions Judge (West), Islamabad. The respondent filed Criminal Revision No. 09/2020 before this Courts, which was heard on merit on 31.01.2020, 02.03.2020, 17.04.2020, 23.04.2020, 27.04.2020 and even petitioner has argued his case on different dates, but on the final date of hearing i.e. 18.05.2020, petitioner has failed to put his appearance, despite

clear direction of this Court and this factum was recorded by this Court in the judgment dated 18.05.2020.

7. The entire background was considered in the criminal revision No.09/2020, whereby the respondent No.2 was acquitted by this Court in the light of the evidence brought on record with the following reasons:-

*"While considering the above evidence, I have gone through the statement of the petitioner U/S 342, Cr.P.C, wherein he has acknowledged execution of the agreement/Exh.PA with wife of the complainant/P.W1 on 17.04.2013 regarding shop in question, even receipts Exh.PB to Exh.PD were admitted and receiving of payment of Rs.16,00,000/- was admitted while answers to questions No.2 & 3. The entire background of this case as well as evidence brought on record by the prosecution reflects that charge U/S 420 PPC was not framed by Trial Court and the offences with which the petitioner was charged are sections 468, 467 and 406 PPC were not made out and he was acquitted from the said charges, however, Trial Court convicted the petitioner U/S 420 PPC, which discloses minimum requirement of cheating and dishonestly inducing delivery of property, however, in this case complainant/P.W.1 acknowledged that an agreement was executed between his wife and the petitioner, who received Rs.16,00,000/- but failed to transfer the property, whereas the possession was delivered to the complainant, who further leased out the property in question for quite a long time and received benefits of rent. Even during hearing of this petition, learned counsel for the petitioner took categorical stance that if complainant returns possession of the shop, his amount will also be returned but the complainant refused to acknowledge this stance and contended that possession has already been taken over by the actual owner of the shop in question. This entire background establishes that there is no dishonest inducement on part of the petitioner, who admittedly entered into an agreement Exh.PA with wife of the complainant. There is no cavil to the proposition that inducement and deception are key factors U/S 420 PPC, which are lacking in this case. Trial Court did not make any effort to justify this aspect through*

evidence, even Appellate Court has not appreciated all these discrepancies.

Second important point raised by the petitioner is settlement of the dispute during the trial on the basis of affidavit given by the complainant through which two post dated cheques amounting to Rs.14,00,000/- and Rs.13,20,000/- were given to the complainant for settlement of case FIR No.104/2014 and the words used in the said affidavit confirm the stance of the petitioner, which are reproduced as under:-

"یہ کہ من مخلص حلفا بیان کرتا ہے کہ مائین مخلص اور ملزم میجر ریٹائرڈ اعجاز عزیز مقدمہ نمبر 04/14 جرم 406, 468, 471 ت پ تھانہ ترنول راضی نامہ ہو گیا ہے۔ ملزم محمد اعجاز عزیز نے من مخلص کو دو عدد post dated چیک نمبر 21276869 تعدادی 14 لاکھ (-/1400000) مورخہ 06-10-15 اور چیک نمبر 21276870 تعدادی تیرہ لاکھ (-/1320000) مورخہ 06-01-16 از اس Allied Bank سیلٹر جی پندرہ مرکز برانچ اسلام آباد دے دیے ہیں۔ ملزم کی ضمانت ہونے پر اعتراض نہ ہے۔ لیکن چیک ہائے مذکورہ بالا کیش نہ ہونے کی صورت میں ملزم کی ضمانت منسوخ کروانے کا حق محفوظ رکھتا ہوں۔ علاوہ ازیں چیک ہائے مذکورہ بالا کی ہایت فوجداری و دیوانی کاروائی کا حق محفوظ ہوں۔ اقرار نامہ مورخہ 13-4-17 کی بنیاد پر بھی دیوانی کاروائی کا حق محفوظ رکھتا ہوں۔"

This aspect has been acknowledged by the complainant during the hearing before this Court. The complainant received two cheques of Rs.27,20,000/- for settlement of his accounts with the petitioner and even lodged another FIR No.99/2016, dated 10.03.2016, U/S 489-F PPC, P.S Kohsar, Islamabad, in which the petitioner was sentenced to 03 years R.I with fine of Rs.1,00,000/-, however, the said judgment was assailed by the petitioner before the Court of learned Additional Sessions Judge-V (West) Islamabad and the petitioner was acquitted from the said case vide judgment dated 27.02.2017.

This Court has taken judicial notice of the said judgment, in which each and every aspect of compromise executed between the parties has been discussed in detail, therefore, at this stage, the complainant cannot take summons as he was precluded to prosecute the petitioner in terms of Article 114 of Qanun-e-Shahadat Order, 1984, whereby principle of estoppel comes into play as he adopted alternate mode of compromise while receiving two cheques from the petitioner and later on continued to prosecute the petitioner in violation of his own commitment."

8. All the grounds raised by the petitioner have already been considered on merit and judgment of acquittal is in field.

9. For what has been discussed above, instant writ petition is not maintainable, especially, when detailed view rendered by this Court in criminal revision has been given, therefore, same is hereby **dismissed in limine.**

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

RAMZAN