

JUDGEMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.71-B of 2012

Abu Bakar
Versus
The State etc.

<i>Petitioner :</i>	Nemo.
<i>State by:</i>	Mr. Rehan-ud-Din Khan, standing counsel
	Mumtaz, A.S.I.
<i>Respondent No.2 by:</i>	Mr. Umer Aslam, Advocate
<i>Date of decision:</i>	20-02-2012

SHAUKAT AZIZ SIDDIQUI; J: Petitioner Abu Bakar seeks bail in case registered vide F.I.R No.570, dated.19-08-2011, offence u/s 489-F PPC at Police Station Shalimar, Islamabad.

2. Briefly, the prosecution story as gleans out from the FIR is that complainant of the case namely, Zeshan Qasim moved an application to the SHO, P.S Shalimar, Islamabad with the assertion that he is running the business of Travel & Tours known as AL-DOHA Travel & Tours, F-8, Islamabad. Petitioner/accused Abu Bakar Naveed got executed work worth of Rs.49,92,000/- through the office of complainant and paid an amount of Rs.17,55,000/- in presence of one Naveed Qasim, whereas for remaining amount, issued postdated cheques, detail given in the FIR is as under:-

- i) Cheque No.0360456, amounting to Rs:500,000/-
- ii) Cheque No.0360457, amounting to Rs:50000/-
- iii) Cheque No.0360458, amounting to Rs:500,000/-
- iv) Cheque No.0360461, amounting to Rs:20,87,000/-
- v) Cheque No.0360462, amounting to Rs:100,000/-

All cheques were to be drawn at Bank-Alfalah, Jamroad Road, Peshawar but same were dishonoured on presentation.

3. Petitioner approached the "Allaqa Judicial Magistrate" for grant of bail but his request was declined vide order dated.15-12-2011. Feeling aggrieved, petitioner approached learned Sessions Judge, Islamabad who entrusted his bail petition to the learned Additional Sessions Judge,

Islamabad but petition met the same fate, vide impugned order dated.05-01-2012. Resultantly, petitioner approached this court for grant of bail after arrest.

4. As per contents of the petition, petitioner has been implicated falsely, cheques were neither issued dishonestly, nor same were issued in fulfillment of any obligation, rather were issued in a business deal, just as a guarantee, therefore, section 489-F PPC, does not attract and that case of petitioner is one of further inquiry.

5. Conversely, the learned counsel for complainant assisted by the learned standing counsel, opposed bail petition, mainly on the ground that petitioner is also involved in another case of similar nature, registered at P.S Ghazni, Peshawar, vide FIR No.539 of 2011. He further submits that issuance of cheques is admitted and amount of cheques is heavy, therefore, petition is liable to be dismissed.

6. I have heard the learned counsel for the parties and have perused the record. The plain reading of Section 489-F PPC which is being reproduced herein below, makes it abundantly clear that, three different punishments are provided, which obviously in the facts and circumstances of the case can be inflicted as punishment upon any accused, obviously on the strength of evidence and data available on the record.

“489-F: 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”.

7. As is evident from above,

- i) ***Imprisonment which may extend to 03 years.***
- OR***
- ii) ***with fine***
- OR***
- iii) ***with both.***

The provision itself provides a right to an accused to get himself absolved, from the charge by adducing evidence that he made arrangements with his bank to ensure that cheque was to be honoured and it was fault of the bank not honouring the cheque.

8. In my estimation, on the conclusion of trial despite finding any accused guilty of an offence, there is every likelihood/probability/possibility that trial court may impose fine of a meager amount of Rs:50/- only, as punishment. When asked from the learned counsel of complainant that whether above said possibility emerges from this provision itself or not? The learned counsel very frankly answered in affirmative. In such an eventuality, to deprive any person from the concession of bail is simply harsh and unjust.

9. It is being observed that ever since assertion of Section 489-F PPC in the statue by Ordinance LXXXV of 2002, dated.25.10.2002 recovery proceedings by way of filing suits of summary procedure on negotiable instruments, provided under order 37 CPC, almost have become alien. Cheque, which admittedly is a negotiable instrument, invariably being used for exerting pressure, through device of criminal cases, although there is no mechanism provided by the provision itself, to make it a recovery mode. In most of the cases relating to cheques, criminal proceeding are being used as a tool to compel the family members of an accused to arrange the amount, which results into penalizing the entire family for the wrong, if any of one person. There is no doubt that when allegation of fraud, conclude in to the guilt of any accused person, he can be awarded punishment for the same, but to punish the entire family before finding of guilt is recorded and that too for an offence, which provides alternate punishment of fine only, to my mind is against all cannons of justice and golden principle of "عزل واحسان".

10. It is well settled law with the mandate of the dictums of the Superior Courts of the country that law has to be stretched in favour of accused and

beneficial interpretation has to be made in his favour. When there is remoter possibility, that an accused may not be awarded imprisonment of even one month then propriety demands that discretion has to be exercised in his favour. Now, coming to the other extreme that, maximum punishment for offence provided is up to 03 years, which does not fall within the prohibitory clause of Section 497(1) Cr.P.C. The Honorable Supreme Court of Pakistan through different authoritative pronouncements time and again held that when an offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C, bail is a rule and refusal an exception. In this regard, I sought guidance from 2009 SCMR, page 1488, Zafar Iqbal Vs. Muhammad Anwar and others, 2009 SCMR Page 174, Shameel Vs. the State etc. 2011 SCMR, Page 1708, Riaz Jaffar Natiq Vs. Muhammad Nadeem Dar and others and 2011 SCMR, page 870, Sikandar Zaman Vs. The State etc.

11. Another very important aspect with regard to provision of section 489-F PPC is that it does not differentiate between cheque in accordance with their pecuniary value. Till today punishment for cheque valuing Rs.5000/- and Rs.500:00 million and above is same. In my humble estimation, proviso to this section are required to be added, which obviously is domain of the legislature. It is worth to mention here that with regard to Narcotic Substances, categorization has been provided u/s 9 of Control of Narcotic Substances Act, 1997 which reads as under:-

9. Punishment for contravention of Sections 6,7 and 8.----
Whoever contravenes the provisions of Section 6,7 or 8 shall be punishable with:

- (a) imprisonment which may extend to two years, or with fine, or with both, if the quantity of the narcotic drug, psychotropic substance or controlled substance is one hundred grams or less;
- (b) imprisonment which may extend to seven years and shall also be liable to fine, if the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds one hundred grams but does not exceed one kilogram;
- (c) death, or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may

be up to one million rupees, if the quantity of narcotics drug, psychotropic substance or controlled substance exceeds the limits specified in clause (b):-

Provided that, if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life.

12. Admittedly, all type of narcotics are injurious to human life but effects of heroin are like administering poison to human body. On the contrary, offence u/s 489-F is a white color crime, which in most of the cases surface from business transactions or repayment of loan etc. and unfortunately trend of registration of FIRs under this provision is increasing, alarmingly. This is the right time to bring the categorization about quantum of sentence corresponding to the amount of cheque. It can be like this, that for cheque up to Rs.1:00 million, same punishment as already provided in the statute and for cheque above Rs.1:00 to Rs.5:00 million, quantum of punishment of imprisonment may be enhanced to 05 years and amount of fine at least 10% of the amount of cheque, similarly cheque having value of more than Rs.05 to Rs.50 millions, punishment of imprisonment, up to 07 years, and for cheque having value more than Rs.50 million, punishment of imprisonment, up to 10 years.

13. Since courts of law are required to remain within the statutory provision, and, section 489-F PPC as it stands, does not prevent exercise of discretion in favour of accused. On enquiry, the I.O informed the court that present petitioner is previously non-convict, as such there is no exceptional circumstance on the basis of which petitioner's request of bail may be declined. Huge amount of cheque does not expand the provision and bring change in the statute.

Thus for the foregoing reasons, this petition is allowed. The petitioner is granted bail, subject to furnishing of bail bond of Rs:500,000/- (Five lac) with two sureties of like amount, to the satisfaction of the trial court.

Office is directed to send copy of this order to the Secretary, Ministry of Law, Justice & Parliamentary Affairs, Islamabad, to explore the possibilities with regard to observation made in para-11 and 12 of instant order.

(SHAUKAT AZIZ SIDDIQUI)
Judge

Approved for Reporting.

"Waqar Ahmed"

Blue Slip added.