

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Misc. No.131-M/ 2020

Muhammad Asif
Vs.
The State and another.

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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03.07.2020	Mr. Zahid Asif Chaudhry, Advocate alongwith petitioner in person. Raja Muhammad Mehtab, Advocate alongwith respondent No.2/ complainant. Mr.Zohaib Hassan Gondal, State counsel. Mukhtar Ahmed, A.S.I.
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GHULAM AZAM QAMBRANI, J.:- The petitioner namely, Muhammad Asif S/o Fida Muhammad, through this petition under Section 561-A Cr.P.C seeks setting aside of the order dated 13.02.2020, passed by learned Additional Sessions Judge, Islamabad- West, whereby order dated 20.12.2019 was set-aside and bail granted to the petitioner vide order dated 09.08.2019 was recalled.

2. Briefly stated facts of the prosecution case are that on 20.06.2019, on the report of Muhammad Aslam/ respondent No.2, F.I.R No.235 was lodged under Section 489-F of P.P.C with Police Station Karachi Company, Islamabad, against the petitioner; the petitioner applied for post arrest bail which was dismissed vide order dated 07.08.2019 by the

learned Judicial Magistrate, Section-30, Islamabad-West. During this period, the matter was settled between the complainant and brother of the petitioner. As a result of that compromise, a cheque No.0091233193, of Rs.40 Million was given by the brother of petitioner to the complainant as guarantee cheque, and the said cheque was subsequently substituted with another cheque No.CA0081310192 dated 14.11.2019, of Rs.42.5 Million whereupon on the backside of this cheque, it was specifically mentioned that ***“this cheque is guarantee cheque of previous cheque No.20910202.”*** As a result of the said compromise, the petitioner moved second post arrest bail before the learned Judicial Magistrate, Section 30, Islamabad –West, where the complainant/ respondent No.2 made statement that the matter has been compromised and he has no objection if the accused is released on bail and the accused will observe the conditions mentioned in Affidavit. As a result of the said statement, the petitioner was granted bail vide order dated 09.08.2019. It is further stated that thereafter, the complainant moved petition under Section 497 (5) of Cr.P.C for cancellation of post arrest bail granted to the petitioner and the complainant also moved an application for registration of another case to Police

Station Bani Gala, Islamabad, against the petitioner in respect of dishonoring of guarantee cheque No.CA0081310192 and another F.I.R No.407 dated 18.12.2019 was lodged against the petitioner under Section 489-F P.P.C with Police Station Bani Gala, Islamabad, regarding the same and one disputed amount by concealing the facts; that after registration of second F.I.R bail cancellation petition of the complainant/ respondent No.2 was dismissed by the learned Judicial Magistrate vide order dated 20.12.2019. It is also stated that the petitioner applied for pre-arrest bail in second F.I.R No.407 which was confirmed on 21.01.2020 by the learned Additional Sessions Judge, Islamabad- East. Being aggrieved of the said order, the complainant filed a criminal revision petition before the learned Additional Sessions Judge, Islamabad-West, which was accepted vide judgment dated 13.02.2020 and bail granted to the petitioner vide order dated 09.08.2019 was recalled, hence the instant petition.

3. Learned counsel for the petitioner contended that the learned Additional Sessions Judge, Islamabad has not considered the fact that the complainant got registered second F.I.R No.407 with Police Station Bani Gala, regarding the same disputed amount and also ignored the writing on the

back side of cheque. No.CA0081310192, where it has been specifically mentioned that ***“this cheque is guarantee cheque of previous cheque No.20910202”***. Further contended that the learned Addl. Sessions Judge, Islamabad, has failed to appreciate the principles of the Superior Courts that a person cannot be vexed twice regarding the same occurrence or dispute and no person can be allowed to choose any remedy or forums as per his convenience or choice; that the learned Additional Sessions Judge, Islamabad, has not considered that said criminal revision petition was filed on 22.01.2020 after confirmation of pre-arrest bail of petitioner in second F.I.R No.407/ 2019. Further contended that the investigation has been completed in the instant case, challan has already been submitted before the learned trial Court; charge has been framed on 15.10.2019, but respondent/ complainant is not appearing before the the learned trial Court for recording of his statement. Lastly, contended that the order dated 09.08.2019, was not a conditional bail granting order, therefore, the impugned order dated 13.02.2020 is perverse and is not sustainable in the eye of law, as such, the same is liable to be set-aside.

4. Conversely, the learned State counsel assisted

by the learned counsel for the complainant contended that the petitioner is habitual offender and so many other F.I.Rs have been registered against him; that as per clause 3 of the agreement, the petitioner was bound to pay an amount of Rs.4,00,00,000/- (four cror) after his release from jail, therefore, it was a conditional order on the basis of compromise; that the cheques are admitted by the petitioner; that an amount of Rs.36,00,00,000/- (thirty six cror) is due against the petitioner, therefore, he is not entitled for the grant of bail.

5. I have heard the learned counsels for the parties and have perused record with their able assistance.

6. Perusal of the record reveals that the petitioner was allowed bail vide order dated 09.08.2019, against the said order the complainant/ respondent moved petition for cancellation of bail, which was dismissed vide order dated 20.12.2019, thereafter, a criminal revision petition was filed by the complainant before the learned Additional Sessions Judge, Islamabad, which was accepted vide judgment dated 13.02.2020, resultantly bail granting order dated 09.08.2019, was recalled. Perusal of the record reveals that the alleged compromise deed "Mark-A"

was executed between the brother of the petitioner and the complainant, whereas the petitioner is not a party to that agreement, as such, he was not bound by the terms and conditions of the said agreement. It is also not mentioned in the order dated 09.08.2019 that it is a conditional order on the basis of the agreement "Mark-A". The complainant lodged F.I.R No.407/2019 under Section 489-F P.P.C with Police Station Bani Gala, Islamabad, on the basis of cheque No.CA0081310192 which was a guarantee cheque of the original cheque, in respect of which F.I.R No.235 dated 20.06.2019 was lodged against the petitioner. Perusal of the record further transpires that in pursuance of the bail of the petitioner, he issued second cheque dated 14.12.2019 on the basis of which F.I.R No. 407 has already been lodged by the respondent No.2/ complainant.

7. Investigation has been completed; challan has already been submitted before the learned trial Court. The maximum punishment provided for the offence under Section 489-F P.P.C is three years, which does not fall within the prohibitory clause of Section 497 Cr.P.C.

8. For what has been discussed above, this petition is **accepted**. Impugned judgment dated

13.02.2020, passed by learned Additional Sessions Judge, Islamabad- West is set-aside and order dated 09.08.2020 passed by the learned Judicial Magistrate, Section -30, Islamabad-West, is restored

9. Needless to mention here that the observations made hereinabove are tentative in nature and are not designed to influence the trial.

~~-(GHULAM AZAM QAMBRANI)-~~
JUDGE

*Rana M. Iqbal**