

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

**Criminal Revision No.53/2019**

Abdul Waheed Awan

*versus*

The State & another.

Petitioner by: Mr. Zahid Farooq Cheema, Advocate.

Respondents by: Mr. Fareed Khan Jadoon, Advocate.  
Ms. Saima Naqvi, State Counsel.  
Yasir, ASI, P.S. Margalla, Islamabad.

Date of Hearing: 17.09.2019.

**MOHSIN AKHTAR KAYANI, J:** Through the instant criminal revision petition, the petitioner has called in question the concurrent findings of Courts below, whereby the petitioner has been convicted in case FIR No.147, dated 18.07.2017, under Section 489-F PPC, P.S. Margalla, Islamabad and sentenced to 01 year and 06 months rigorous imprisonment. Benefit of Section 382-B, Cr.P.C was also extended to the petitioner.

2. Brief facts referred in the instant case are that Abdul Hameed Nasir (*hereinafter referred to as "complainant"*) with view to purchase a plot and house from Abdul Waheed Awan (*hereinafter referred to as "petitioner"*) had paid him Rs.4,000,000/- and Rs.5,000,000/-, respectively, however, the petitioner had failed to transfer the said properties in the name of complainant. On persistence of complainant, petitioner issued him a cheque amounting to Rs.9,000,000/- (Exh.PA), which dishonored on its presentation in the bank vide dishonor slips Exh.PB to Exh.PD. Consequently, case FIR No.147, dated 18.07.2017, under Section 489-F PPC, P.S. Margalla, Islamabad was registered

against the petitioner. Pursuant to investigation and submission of challan under Section 173 Cr.P.C. against the petitioner, the learned trial Court vide impugned judgment dated 19.03.2019 has convicted the appellant under Section 489-F PPC and sentenced him to undergo 01 year and 06 months rigorous imprisonment, however benefit of Section 382-B Cr.P.C. was also extended to the petitioner. Feeling aggrieved thereby, the petitioner filed appeal before the learned Additional District Judge-V, Islamabad (West), which was dismissed vide impugned judgment dated 17.04.2019. Hence, the instant criminal revision.

3. Learned counsel for petitioner contended that the prosecution case is a result of deliberations and consultations and the FIR was lodged at a belated stage after concocting a false story; that the learned trial Court had not considered the stance taken by the petitioner in his statement under Section 342 Cr.P.C.; that there are glaring discrepancies in the prosecution evidence, which have been ignored by the learned Trial Court while passing the impugned judgment; that the prosecution witnesses are interested witnesses, whose statements have not been corroborated by independent witnesses; that the amount of the cheque differs from the amount paid; that the concurrent findings of both the Courts below are based on misreading and non-reading of evidence, therefore, the same may kindly be set-aside.

4. Conversely, learned State Counsel as well as learned counsel for complainant opposed the instant criminal revision petition and contended that issuance of cheque has not been disputed by the petitioner; that the prosecution has successfully proved the case against the petitioner in terms of Section 489-F PPC, on the basis of which both

the Courts below have rightly passed their findings; that the petitioner has dishonestly issued the cheque as the petitioner committed repeated defaults in paying back the complainant's hard earned money; that the concurrent findings of both the Courts below are based on solid reasons and suffer from no illegalities, therefore, the instant criminal revision petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that complainant /respondent No.2/Abdul Hameed Nasir got lodged the complaint Ex.PE on 02.06.2017 with the allegation that he was retired from Government service as Inspector of Intelligence Bureau and petitioner Abdul Waheed Awan contacted him and offered to sell Plot No. 848, Street No. 26, Sector G-9/1, Islamabad and one House No. 375, Street No. 166, Sector G-11/1, Islamabad belonging to one person, who was allegedly facing financial issues and was selling out the properties. The sale consideration of house was fixed at Rs. 40,00,000/- and agreement dated 24.06.2014 was executed in presence of witnesses, whereby the amount was paid in cash, however, property could not be transferred and the respondent No.2/complainant insisted for return of amount, whereupon the petitioner issued the post dated cheque No. 11061130073, dated 30.08.2016, Bank of Punjab, F-8 Markaz Branch, Islamabad amounting to Rs. 90,00,000/- as of Rs. 40,00,000/- against house and Rs. 50,00,000/- against plot, however, the cheque was dishonoured on its presentation, therefore, FIR No.147, dated 18.07.2017, U/s 489-F, PPC, P.S Margalla, Islamabad (Ex.PU) was lodged. The complainant has submitted the cheque of Rs. 90,00,000/- as Ex.PA and dishonoured slips as Ex.PB to

Ex.PD in his evidence as PW-1, whereby the details of Bank receipt have been verified through PW-3 Nusrat Tariq, Manager, Bank of Punjab, F-8 Markaz Branch, Islamabad in her report Ex.PT. The investigation was conducted by PW-4 Ghulam Abbas, S.I, who chalked out the FIR (Ex.PU) and prepared site plan (Ex.PV), whereas PW-5 Dariya Khan, S.I, i.e. second Investigation Officer of the case conducted partial investigation. The challan has been submitted in the Court and after completion of trial, the petitioner has recorded his version U/s 342, Cr.P.C. and denied the charges together with the factum of issuance of cheque and took the plea that the cheque in question was forcibly received from him by extending life threats to him and his family.

7. The Learned Trial Court has convicted the petitioner U/s 489-F, PPC and awarded the sentence of one year and six months with benefit of Section 382-B, Cr.P.C.

8. The entire case is based upon the testimony of the complainant/PW-1 being a star witness of this case, who had not produced the agreement to sell the properties, which is the basic document to establish the relationship between complainant and petitioner, rather the complainant/PW-1 has relied upon document called as Ex.PF, which is a subsequent agreement for settlement of claim in shape of cheques, which was executed at pre-arrest bail stage, although the presentation of said document has been objected by the defence side, but their request has been turned down. Similarly, the complainant/PW-1 has submitted three (03) different cheques Ex.PG to Ex-PJ to substantiate his claim that the petitioner agreed to pay the amount, although the said cheques were also dishonoured vide

dishonoured slips Ex.PK to Ex.PS. During the course of cross-examination, the complainant acknowledged the agreement dated 24.06.2014 Ex.DA executed between Abdul Waheed Awan/petitioner and Abdul Hameed Nasir/complainant, whereby possession of House/Plot No. 848, Street No. 26, Sector G-9/1, Islamabad was delivered to the complainant/PW-1 against the consideration of Rs. 40,00,000/-. Similarly, the complainant/PW-1 has also acknowledged the affidavit Ex.DB executed by him regarding receiving of amount of Rs. 45,50,000/- by him, whereby it has specifically been stated as under:-

اور یہ طے ہوا تھا کہ من محلف مسمی عبدالحمید ناصر کو پلاٹ کا قبضہ و کورٹ میں ڈگری کیس کی مکمل پیروی اور CDA کے امور دو ماہ میں مکمل کر کے دے گا۔ اور یہ کہ من محلف مندرجہ بالا کام کرنے میں ناکام رہا ہے۔ اب من محلف مسمی عبدالحمید ناصر سے دو ماہ یعنی 30 اپریل 2015 تک کی مہلت مانگ رہا ہوں تاکہ تمام امور مکمل کر سکوں۔ من محلف اگر کام طے شدہ امور کے سر انجام نہ دے سکا تو من محلف مسمی عبدالحمید ناصر کو وصول شدہ رقم کا ڈبل یعنی دو گنا مبلغ اکانو ے لاکھ روپے (Rs. 91,00,000/-) دینے کا پابند ہوں گا۔

9. The above referred undertaking and contents of previous agreement Ex.DB disclose the relationship among the parties for possession and settlement of the civil suit qua the property in dispute and acknowledgement of amount of Rs. 45,50,000/-. Conversely, the petitioner took the stance while answering question No. 2 that:-

*"At that time consideration of the possession was settled as Rs. 40,00,000/- (Four million) (whereas at that time price of such like house/plot was about Rs. 350,00,000/- and above), the all amount was gone to the Shah Nawaz through me and I got only commission fee Rs.200,000/- and nothing else. It is appraisal to mention here that the complainant remain in possession of the said house later on he further sold the house to one Mr. Altaf etc."*

10. Similarly, the petitioner has answered question No. 3 regarding compromise deed Ex.PF and post dated cheques Ex.PG to Ex.PJ alongwith dishonoured slips Ex.PK to Ex.PS that he has executed the agreement under coercion, therefore, the said document has no

relevancy with the case. He has also taken the stance that the said document was written with reference to clause-3, whereby he has withdrawn the suit for cancellation of cheque amounting to Rs. 90,00,000/- against the complainant.

11. The entire scenario referred above gives rise to the proposition that the complainant had entered into agreement for delivery of possession of the house against Rs. 40,00,000/- through Ex.DA only and subsequently through Ex.DB, amount of Rs. 550,000/- was paid for settlement of CDA issues as well as of civil suit. The available document clearly spells out that it is meant for possession of the house only and, not for transfer of the property as petitioner is not the owner of the property, therefore, the cheque in question of Rs. 90,00,000/- Ex.PA dated 30.08.2016 drawn on Bank of Punjab, F-8 Markaz Branch, Islamabad and its dishonoured slips Ex.PB to Ex.PD are without valuable consideration as the petitioner has only received commission fee amounting to Rs. 200,000/- only, which has been referred in the statement under Section 342 Cr.P.C. of the petitioner, therefore, dishonestly issuance of cheques to the extent of Rs.90,00,000/- is not visible, which does not commensurate with due liability of Rs.45,50,000/-. By comparing the entire evidence of the prosecution witnesses, the ingredients of Section 489-F PPC for dishonestly issuing a cheque are not proved as total liability of petitioner is of Rs. 45,50,000/-, although the same was only meant for possession of the house.

12. The complainant has managed the registration of criminal cases U/s 489-F PPC and even high-handedness on the part of complainant is visible, who exerted pressure upon the petitioner and got additional

three cheques of Rs. 90,00,000/- through a subsequent document, which were dishonoured, although the original claim is only to the extent of Rs.45,50,000/-, and as such prosecution has failed to prove the case, however, learned Trial Court has not considered these technical aspects of the case, where consideration of agreement, referred in Ex.DA and Ex.DB was for possession of the property only and not for transfer of the rights of the property, which is the key factor in the entire case.

13. As such doubt emerges on record regarding dishonestly issuing cheque of Rs. 90,00,000/- by petitioner, in order to clear his financial liability, the prosecution has failed to prove that the petitioner had received an amount of Rs. 90,00,000/- from complainant, rather there was dispute of payment of Rs. 45,50,000/- that too was in respect of delivery of possession of House No. 848, Street No. 26, Sector G-9/1, Islamabad.

14. I have gone through the judgment dated 19.03.2019, passed by learned Judicial Magistrate, Section 30, (West), Islamabad as well as judgment dated 17.04.2019, passed by learned Additional District & Sessions Judge-V (West), Islamabad in appeal, whereby the evidence has been discussed by the Appellate Court in the following manner.

*“Issuance of cheque is admitted. Signature of petitioner on disputed cheque is admitted. Compromise between the parties is admitted. Wherein he admitted his liability and also admitted receipt of amount in question. After FIR petitioner also executed another compromise deed and issued three other cheques. The complainant placed various proof in shape of documents to support his version. Petitioner has failed to point out any circumstances, to disprove the version of complainant. It is proved that the accused received amount but failed to fulfill his obligation/liability and for repayment he issued disputed cheque and for the offence under Section 489-F, PPC liability/repayment and issuance of cheque and dishonour is sufficient to prove the criminal intention and commission of offence, so, the learned trial court has rightly appreciated the record and evidence. There is no mis-reading or non-reading of evidence. There is no*

*illegality and no need to interfere in the findings of learned trial court."*

15. The above referred view is not up to the mark and Appellate Court lacks the basic quality to write down the judgment, even para-6 of the judgment is without logical explanation where no evidence has been discussed as required in such type of cases. The learned first Appellate Court has not discussed the basic ingredients of Section 489-F PPC, even otherwise, the settlement deed being contrary to the statement of complainant and his witnesses was unreliable and insignificant, but this fact has not been taken into consideration by the Appellate Court. Reliance is placed upon 2017 P.Cr.LJ 1305 (Mehmood Khan vs. Sohail Khan).

16. Besides the above referred background, it is obligatory upon the Court to go through minimum requirements of Section 489-F PPC, which has specific conditions to be fulfilled before passing the judgment of conviction. Such conditionalities have been explained in details in case reported as 2010 SCMR 806 (Muhammad Sultan vs. The State), wherein it has been held as under:

*"A perusal of Section 489-F PPC reveals that the provision will be attracted if the following conditions are fulfilled and proved by the prosecution:---*

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



17. Likewise, the other important element which has not properly been appreciated is the dishonest intention to defraud the complainant while issuing the check without any intent to pay or return the amount. In absence of all these ingredients, the appellate Court is bound to appreciate the evidence in such a manner whereby the requirements of Section 423 Cr.P.C. are strictly observed. The legislature has used the terms in the said provision that “*after perusing such record*” and “*there is no sufficient ground for interfering, dismissed the appeal.*” These two concepts cast certain duties upon the Appellate Court to write down the judgment after discussing every incriminating piece of evidence against the petitioner as the Appellate Court is to reappraise the evidence of controversy afresh and non appraisal of evidence amounts to a substantial and grave injustice, especially when the statutory right of appeal confers a right of rehearing of whole dispute unless expressly restricted in scope and the appellate court is not confined to the reasons which have been given by the Court below as the ground of its decision. The learned first Appellate Court has to consider the controversy entirely afresh, both as regards to facts and law, and can substitute its own opinion in place of the decision taken by the lower court. Reliance is placed upon PLD 1954 Federal Court 123 (Appellate Jurisdiction) (Imran Ullah vs. The Crown).

18. While considering the principles settled by the superior Courts in cases reported as 1971 SCMR 628 (Abdul Saddique vs. The State), 2002 SCMR 1806 (Arshad Ali alias Achhu Vs. The State), 1986 SCMR 59 (Muhammad Bakhsh Vs. The State), 2011 PCr.LJ [Lahore] 344 (Zahid Hussain Vs. The State and others), 2012 YLR 474 [Balochistan] (Lal

Muhammad Vs. Abdullah and others), 2011 PCr.LJ 856 Federal Shariat Court] (Mst. Salma Bibi Vs. Niaz alias Billa and 2 others), 2013 PCr.LJ 374 [Sindh] (Fateh Muhammad Kobhar Vs. Sabzal and 4 others) it is necessary to highlight the principles of appraisal by the Appellate Court for future guidance of the lower court in criminal cases.

- (a) While hearing criminal appeal against conviction, the Appellate Court has to reconsider the case afresh.
- (b) Evidence of the prosecution and defence has to be discussed.
- (c) Status of documentary evidence in terms of Qanun-e-Shahadat Order, 1984 be considered for the purpose of admissibility or inadmissibility.
- (d) The judgment should contain an elaborated view of entire case.
- (e) Question of law should be answered after appraisal of evidence while considering the ingredients of offence.
- (f) No appeal shall be decided without referring to record and proceedings of the learned Trial Court.
- (g) Appellate Court has to apply its judicial mind and in case the evidence has not been discussed, the requirement of Section 423 Cr.P.C. stands negated.
- (h) Efforts should be shown to explore sufficient grounds for interfering in the findings of the Trial Court, whereafter a view is to be rendered.
- (i) While hearing the appeal the learned first Appellate Court is bound to dispose of the appeal on merits after examining

the evidence despite the fact that counsel for appellant had not pressed the appeal on merits.

- (j) In case the counsel or advocate for the appellant failed to argue the case on merits, even then the Appellate Court is bound to reappraise the entire evidence and the Court is not relieved of its duty to peruse the record and to find out whether there is ample evidence against the appellant to convict him for which he has been charged.
- (k) After admission of criminal appeal, it could not be dismissed without adverting to the merits, even in case of non-appearance of appellant or his counsel as Appellate Court is duty bound to consider the factual and legal aspect as contemplated under Section 423 Cr.P.C.
- (l) The Appellate Court shall conclude the judgment by elaborating the sentence whether the Court agrees with the findings of the Trial Court or reduce or modify the sentence, however in such eventuality, separate reason has to be recorded.
- (m) While considering judgment of acquittal, extra caution should be extended as the standards for assessing the evidence in appeal against acquittal are quite different from those laid down in appeal against conviction. Appraisal of evidence is done strictly against conviction, whereas in appeal against acquittal, such rigid method of appraisal was not to be applied.

- (n) The Appellate Court would not exercise jurisdiction under Section 417 Cr.P.C., unless the acquittal judgment of the Trial Court was perverse or there was complete misreading or non-reading of evidence resulting in miscarriage of justice.

19. This Court while exercising the revisional jurisdiction in terms of Section 435 Cr.P.C. has to examine the record for the purpose of satisfying its conscience to check the correctness, legality or propriety of any findings/sentence or order recorded or passed by the lower Courts, therefore, the duty casted upon the High Court on its revisional side compels it to reappraise the entire evidence on the touchstone of principles of fair trial as referred in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. If the first Appellate Court in disposing of the appeal did not discuss the evidence at all, the findings could not be considered valid, rather such decision amounts to failure on the part of the first Appellate Court, who was bound to render independent findings on the points involved, therefore, such kind of practice is deprecated.

20. In view of above discussion, by extending the benefit of doubt to the petitioner, judgment dated 19.03.2019, passed by learned Judicial Magistrate, Section 30, Islamabad and the Judgment dated 17.04.2019, passed by learned Additional Sessions Judge-V (West), Islamabad are hereby SET-ASIDE, the petitioner is ACQUITTED from the charges in case FIR No.147, dated 18.07.2017, U/s 489-F, PPC, P.S

Margalla, Islamabad. The petitioner be released forthwith, if not required in any other criminal case.

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

Announced in open Court on: 9<sup>th</sup> October, 2019.

**JUDGE**

**APPROVED FOR REPORTING.**

Ramzan

Uploaded By: Engr. Umer Rasheed Dar