

JUDGMENT SHEET  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 252 of 2019

Muhammad Adnan Sadiq  
Versus  
Sardar Sajid Khan & another

**Appellant by:** Nabeel Tahir Mirza, Advocate  
**Respondent No.1 by:** Mr. Shahzad Yousaf, Advocate  
**State by** Mr. Hammad Saeed Dar, State counsel  
along with Akhtar S.I.  
  
**Date of Hearing:** 09.09.2020

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**Ghulam Azam Qambrani, J.:-** Appellant/complainant (*Muhammad Adnan Sadiq*) seeks setting aside of impugned order dated 25.06.2019, passed by the learned Judicial Magistrate Section-30, Islamabad, whereby respondent No.1 (hereafter be called as "**respondent** ") was acquitted in case F.I.R No.97/2018 dated 25.02.2018 under Section 489-F P.P.C registered at Police Station Industrial Area, Islamabad.

2. Briefly stated facts of the appeal are that, on the application of appellant/complainant above F.I.R was registered, with the allegations that complainant sold the iron rod/saryia to Sardar Sajid Khan valuing Rs.37,14,000/- and two cheques were issued by the respondent/accused from which a cheque of Rs.900,000/- was encashed and another cheque No. CA 43717642 dated 31.10.2017 of Rs.10,30,000/- of NIB Bank Bahria Town Branch, Rawalpindi was dishonoured upon its representation. The appellant/complainant reported the matter to the Police Station Industrial Area upon which the instant FIR No. 97 was registered on 25.02.2018, under Section 489-F PPC at Police Station Industrial Area, Islamabad.

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/accused, 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, | Muhammad Adnan Sadiq (complainant), |
| ii.  | PW-2, | Qaiser Manzoor, Operation Manager,  |
| iii. | PW-3, | Muhammad Rafique Inspector/I.O,     |
| iv.  | PW-4, | Ghulam Rasool No. 7783/C.           |

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 impugned judgment dated 25.06.2019, whereby the appellant was acquitted from the charge, hence, the instant appeal against acquittal.

5. Learned counsel for the appellant contended that the impugned judgment passed by the learned Judicial Magistrate is against the law and facts of the case; that the reasons given by learned Trial Court for acquittal are very perverse and does not bear from record; that the impugned judgment is based upon conjectures and surmises as the learned Trial Court ignored the material evidence produced by the appellant/complainant; that the impugned judgment has resulted in great miscarriage of justice. Next contended that the impugned judgment suffers from legal perversity and totally untenable in the eyes of law; that the learned Trial Court has also ignored that the case of prosecution was fully proved on each and every point and there was no justification with the Court to pass the impugned judgment. Lastly, prayed for setting aside of the impugned judgment and that the accused be convicted according to law.

6. Conversely, learned counsel for the accused/respondent submitted that the prosecution miserably failed to prove the case

beyond reasonable shadow of doubt against the respondent; that the Civil suit filed by the appellant was also dismissed and no appeal is pending against the respondent/accused. Further contended that a false story has been narrated by the appellant and the appellant has failed to prove any financial liability against the respondent, therefore, the offence under Section 489-F P.P.C is not attracted against the respondent. The learned State counsel supported the impugned judgment.

7. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

8. The appellant while appearing as PW-1 has recorded his statement by narrating the contents of complaint and submitted cheque, dishonor slip, copy of complaint, recovery memo through which cheque and dishonor slip were taken into custody. Qaiser Manzoor, Operation Manager appeared as PW.2 who submitted his report on application submitted by the I.O. Muhammad Rafique Inspector/I.O of the case appeared as PW.3 who narrated the steps taken during investigation, got exhibited FIR, un-scaled map, application for verification of cheque. Lastly, Ghulam Rasool No.7783/C who is witness of recovery memo appeared as PW.4 and recorded his statement.

9. Perusal of the record reveals that the appellant/complainant has stated in his complaint that he is engaged in the business of steel with the name and style of Noor Steel Re-Rolling Mill and the same stance was taken in his application submitted to the Inspector General of Police, Islamabad, but while appearing as PW.1, the appellant/complainant during cross-examination contradicted his stance rather improved his stance dishonestly by deposing that the steel business is owned by Ch. Akhtar Hussain, whereas he is employee of Noor Steel Mills. It is a case under Section 489-F PPC. It was the duty of the prosecution, firstly to prove that the liability or for discharge of which obligation the cheque was issued. For this, the appellant/complainant alleged that the respondent/accused

purchased steel from the appellant/complainant against which the cheque was issued, but neither any record of said sale/ purchase of steel, nor receipt or any other document has been brought on record and not even a single witness of the said purchase of iron has either been either produced before I.O or before the trial Court.

10. Perusal of the record further depicts that the appellant/complainant did not produce even a single document to prove his employment or to show that he was ever authorized by the said Ch. Akhtar Hussain or by Noor Steel Mill to get register the FIR or to record his statement before the Court.

11. 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.*

12. Admittedly the person who is allegedly the owner of mill i. Noor Steel Re-Rolling Mill neither himself got registered the FIR nor appeared before the Court. The appellant/complainant clearly admitted during cross-examination that the respondent/accused issued cheque without any name and he himself entered the name of Noor Steel Re-Rolling Mill, hence it cannot be said that the cheque was issued in the name of Noor Steel Re-rolling Mill or in the name of appellant/complainant. The other ingredient is dishonest issuance of cheque, but record shows that the respondent/accused in order to show his bonafide deposited the entire amount of cheque in the Court at the time of pre-arrest bail, as is evident from the order dated 05.04.2018 passed by the learned Additional Sessions Judge in the pre-arrest bail of the respondent/accused.

13. To constitute an offence under Section 489-F PPC, 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. 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."*

14. The appellant/complainant has failed to produce a single evidence to prove dishonest intention of the respondent/accused nor did he utter a single word to show his disgrace or feeling of shame due to dishonoring of the cheques. The evidence and the material available on record, do not constitute an offence under section 489-F P.P.C against the respondent/accused.

15. 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.*

16. 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, while appearing as PW-1, stated that the respondent/accused had issued cheque without any name and he himself entered the name of Noor Steel Re-rolling Mill. As such, the learned trial Court has rightly acquitted the respondent/accused of the charge by giving him the benefit of doubt holding that the prosecution has miserably failed to prove the offence under Section 489-F P.P.C.

17. I have found no illegality or irregularity in the impugned judgment dated 25.06.2019 passed by the learned Judicial Magistrate

Section-30, Islamabad-West, nor the same is suffering from any misreading or non-reading or miss-appreciation of evidence, warranting interference by this Court.

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

(GHULAM AZAM QAMBRANI)  
JUDGE

Announced in open Court on this day 28<sup>th</sup> <sup>day</sup> of September, 2020.

JUDGE

S.Akhtar