

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**Writ Petition No.694/2020.**

Mir Imran Taj

Versus

State and another

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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<b>01.</b>	<b>02.03.2020</b>	Khawaja Azhar Rasheed and Mr. Komal Malik, Advocates for the petitioner.
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Through the instant writ petition, the petitioner has prayed for quashing of FIR No.138, dated 25.04.2019, U/S 489-F PPC, P.S Kohsar, Islamabad, whereby respondent No.2 lodged the complaint for dishonestly issuance of cheque amounting to Rs. 3,85,00,000/- drawn at Silk Bank, which has been dishonoured on its presentation.

2. Learned counsel for the petitioner inter-alia contends that the minimum requirement of law in terms of section 489-F PPC is not visible from the record; that ingredients of repayment of loan or financial obligation are missing, therefore, there is no probability of conviction in future and on this score the FIR is liable to be quashed; that bare reading of the FIR spells out that no valid justification is on record regarding the claim of respondent No.2.

3. I have heard learned counsel for the petitioner and perused the record.

4. Perusal of the record reveals that the petitioner is nominated accused in FIR No.138, dated 25.04.2019, U/S 489-F PPC, P.S Kohsar, Islamabad lodged on the complaint of respondent No.2, who contends that the petitioner is his close

friend and received different amounts in different intervals of time and some of amount was returned and the remaining amount was to be paid through cheque No.10201147, dated 29.10.2018, drawn at Silk Bank, the same was deposited by respondent No.2 in his account in Allied Bank but the same was dishonoured due to insufficient balance.

5. Learned counsel for the petitioner contended that there are four ingredients of section 489-F PPC and when any of the ingredient is missing, the accused cannot not be convicted by the Trial Court and as such repayment of loan and financial obligation as claimed by respondent No.2 is not justified from the record, therefore, the FIR is liable to be quashed, even though the cheque was admittedly of the petitioner's bank account. I have attended the proposition from diverse angles and there is no cavil to the proposition that probability of conviction can be looked into by Trial Court in the light of evidence and such powers can only be exercised by Trial Court, whereas in this case the petitioner has exercised jurisdiction of this Court in terms of Article 199 of the Constitution of Islamic Republic of Pakistan 1973 read with powers U/S 561-A, Cr.P.C, which can only be invoked in extra ordinary circumstances although there is no bar against this Court from entertaining the petition in terms of section 561-A, Cr.P.C directly. Reliance is placed upon 1985 SCMR 257 (Munir Ahmad vs. State) & 1994 SCMR 798 (State vs. Asif Ali Zardari). Similarly, the petitioner is also under obligation to demonstrate the extra ordinary circumstances to quash the FIR as held in PLD 1997 SC 275 (Muhammad Khalid Mukhtar vs. The State) & 2008 SCMR 76 (Dr. Ghulam Mustafa vs. State) but in those cases extra ordinary circumstances were available whereas in instant case, the petitioner acknowledged before this Court that cheque in

question belongs to him but he is not liable to pay or return any amount, however, this question falls within parameter of disputed facts, which could only be resolved by Trial Court after recording of evidence. The petitioner has failed to demonstrate any extra-ordinary circumstances for quashing of the FIR. Moreover, the petitioner has conceded before this Court that challan has already been submitted before Trial Court as such the petitioner can avail alternate remedy in terms of section 249-A, Cr.P.C and the instant writ petition is not maintainable.

6. In view of the above reasons, the instant writ petition is **dismissed in limine.**

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

R.Anjam