

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Revision No. 20 of 2015

Haroon ur Rashid Abbasi

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.11.2022	Mr. Waseem Ahmed Abbasi, Advocate for petitioner. Raja Ansar Abbas, Advocate for respondent/complainant. Mian Zain Qureshi, State Counsel. Riaz ASI.

ARBAB MUHAMMAD TAHIR J: Through the instant revision petition in terms of Section 439 read with Section 435 of the Code of Criminal Procedure, 1898, petitioner namely *Haroon ur Rasheed* impugns Judgment dated 29.09.2014 & 16.03.2015 passed by the learned Judicial Magistrate and the learned Addl. Sessions Judge-IV, Islamabad-West respectively, whereby he was convicted and sentenced to undergo 10 months with fine of Rs. 10,000/-, in default to pay the fine to further undergo 20 days S.I with benefit of section 382-B, Cr.P.C in case FIR No. 368, dated 20.07.2011 under section 489-F PPC P.S. Kohsar, Islamabad.

2- Tersely, the subject FIR Ex. PC stood registered on the application of the complainant (respondent No. 2) wherein it was alleged that:-

“ I am submitting a complaint against Mr. *Haroon ur Rasheed* for dishonoring/issue of fake cheque for Rs. 623,673/- dated 10.03.2011. Mr. *Haroon ur Rasheed* and his son visited my house on 09.03.2009 and issued purchases order to obtain supply of steel bars and Cement etc for their projects after signing credit request form”

ii. His first cheque 41099041 of My-Bank was dishonored on 04.01.2010. he signed three agreements to make payments in June, 2010. August 2010 and on February, 2011 but he failed to

make payment. His new cheque for Rs. 600,000/- was also dismissed.....

I request your good office to register Fir against Managing Director Mr. *Haroon ur Rasheed Abbasi* for cheque of Rs. 623673/-.”

3. At the trial complainant/respondent No. 2 appeared as PW-1 and also tendered dishonored slip Ex. PA and agreement Mark-A. PW-2 Abrar Hussain, the bank official, deposed to prove the fact that the cheque in question was dishonored due to “stop payment”. PW-3 Abdul Ghaffar ASI deposed to prove the recovery of photocopy of cheque along with dishonored slip through the recovery memo PB. PW-4 Fazal-e-Haq registered formal FIR, EX. PC, on the complaint of the respondent No. 3 and PW-5 Muhammad Riaz HC is witness of recovery memo Ex. PB whereby the cheque and dishonor slip were taken into possession by PW-3 Abdul Ghaffar ASI. On conclusion of the prosecution evidence, petitioner was examined under section 342 Cr.P.C wherein he denied the prosecution evidence and had taken the plea *that nothing is due to him towards the complainant, the cheque was obtained forcibly by the complainant and that the actual amount already paid and the amount claimed on the basis of present cheque is self-concocted interest which is not due to him*. The learned trial Court after hearing the parties, convicted and sentenced the petitioner in terms noted in para 1 *ibid*, while his appeal was dismissed, hence instant revision petition.

4. The learned counsel argued that the petitioner had already cleared outstanding amount, payable pursuant to sale purchase transaction and nothing was outstanding; that the respondent No. 2 in order to get interest against the principal amount, forcibly obtained the cheque in question and that the evidence on record amply established the fact that the element of dishonesty on the part of the petitioner remained unsubstantiated therefore, impugned judgments being against the law on the subject besides the evidence on record are liable to be set aside. Reliance is placed upon case law reported as 2013 SCMR 51, 2020 CLC 780 Lahore & 2018 YLR 2490.

5. On the other hand, learned state Counsel assisted by learned counsel for the complainant repelled the above submissions by contending that the issuance of cheque, its dishonoring, the business transactions and the fact of outstanding amount on the part of the petitioner are admitted facts which were substantiated through the evidence and that the concurrent findings arrived at by the two learned Courts are not open to any exception, therefore, petition is liable to be dismissed.

6. Heard, record perused.

7. It is settled principle of criminal jurisprudence that in order to establish a charge, it is obligatory for the prosecution to prove its case by producing evidence of unimpeachable character while any loophole or ill defence of an accused cannot be made basis to substantiate the charge against him or even to take any inference from it until and unless the prosecution establishes its case.

8. In the case of dishonoring of a cheque, one of the pre-requisites is to explore that the cheque was issued in order to fulfill an obligation and that, as a matter of fact, it was not issued for the same purpose rather issued with dishonest intention to frustrate the payment. In order to see as to whether the respondent No. 2 (complainant) has successfully discharged the burden of proof, it is imperative to go through the evidence on record, more significantly the statement of respondent No. 2 and the documents, made part of the record to establish the business dealing between the petitioner and respondent No. 2.

9. As per the statement of respondent No. 2/PW-1, the agreement for supply of construction material was made on 09.03.2009, the first cheque issued by the petitioner worth Rs. 10 lac stood dishonored on 04.01.2010, thereafter a Jirgah was held on 25.02.2011, and pursuant thereto, the petitioner issued three cheques worth Rs. 1823673/- which were subsequently dishonored. According to the complainant/PW-1 the first FIR was got registered by him in May, 2011 due to which the respondent No. 2 paid him Rs. 6 lac in the Court and he has withdrawn that case. Subsequently the respondent No. 2 paid Rs. 6 lac in the police station. The witness/complainant further asserted that for rest of the outstanding amount of Rs. 623673/- he got registered FIR in July.

2011 wherein the petitioner was admitted to pre- arrest bail but that cheque, too, stood dishonored.

11. In cross-examination, the witness admitted that he had no proof about the outstanding amount or that of an actual amount. He further admitted that in Iqrar Nama there is no mention as to whether the outstanding amount is the actual amount.

12. It is significant to note that for the recovery of the cheque amount, on the basis of which the petitioner was convicted respondent No. 2 also filed a suit under order XXXVII CPC but the same was dismissed vide judgment and decree dated 14.05.2018 on account of it being hopelessly time barred.

13. Under the principle on the subject, every transaction where a cheque is dishonored may not constitute an offence, the foundational elements to constitute an offence under the provision are issuance of cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and lastly the cheque in question is dishonored. Reliance in this respect is placed upon a case of **Allah Ditta (2013 SCMR 51 & Muhammad Sultan (2010 SCMR 806).**

14. The careful perusal of the prosecution evidence reveals that according to respondent No.2's own stance he had already received Rs. 10 lac out of the stated amount of Rs. 1823673/-, while the agreement dated 09.03.2009 and that of the settlement arrived at in Jirgah proceedings were not tendered in evidence to substantiate the plea of issuance of the cheque-in-question for fulfillment of the obligation. It is significant to note that the as per the evidence on record, the cheque stood dishonored on account of "payment stop" and not due to insufficient funds. The summary suit under order XXXVII for the recovery of the disputed amount filed by the respondent no. 2 was dismissed being hopelessly time barred. In such state of affairs, when the allegation of issuance of cheque with dishonest intention is not supported by any documentary evidence, the fact that the petitioner admittedly had paid an amount of Rs. 12 lac, the parties had been in business terms for quite sufficient time, the filing of suit by the respondent No. 2 with inordinate delay to get recover the cheque amount, dishonoring of the cheque on account of payment stop and not

due to want of funds, it can safely be held that the prosecution had not been able to substantiate the charge against the petitioner by producing trustworthy, credible and confidence inspiring evidence therefore, the impugned conviction and sentence, are not legally sustainable.

15. In view of above, the instant Crl. Revision Petition is **allowed**, impugned Judgments dated 29.09.2014 & 16.03.2015 passed by the learned Judicial Magistrate and the learned Addl. Sessions Judge-IV, Islamabad-West, respectively are set aside. Consequently, by extending him the benefit of doubt, the petitioner is acquitted from the charge in case FIR No. 368, dated 20.07.2011 under section 489-F PPC P.S. Kohsar, Islamabad,

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court 15- 12.2022

JUDGE

****//Kamran//****