

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Crl Misc 196-Bc-2012-200

Titled Bad Shah Jan Vs Allah Ditta sethi and other

(a) Judgment approved for reporting

✓
Yes / ~~No~~

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes / No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL. MISC NO: 196-BC/2012

BAD SHAH JAN
VERSUS
ALLAH DITTA SETHI & OTHER

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

10.12.2012:

Mr. Sher Afzel Khan, Advocate for petitioner,
Qazi Rafi-ud-Din Babar, learned D.A-G with Saleem
ASI.

ORDER

This petition under section 497(5) of Cr. PC is preferred by one Badshan Jan s/o Khawas Noor petitioner/complainant, seeking cancellation of post-arrest bail granted to respondent No.1/accused Allah Ditta, by learned Addl. Sessions Judge, Islamabad vide order dated 06.04.2012 in connection with FIR No. 58, dated 16.02.2012, under Section 489-F PPC of Police Station Margalla Islamabad.

2- It is submitted by the learned counsel that respondent No.1 is specifically nominated in the FIR with the role of issuing a cheque for Rs.14,80,000/-with malafide intention to defraud the petitioner because it was dishonoured on presentation.

3- It is next submitted that the bail order is not a speaking order, the parties were not doing any business transaction and the amount was given as loan, which was returnable and in token of that post-dated cheque was issued.

4- It is further submitted that the affidavits of witnesses Gul Taj Ali and Maliq Khan establish the fact that the amount was loaned by the respondent No.1, against the cheque for Rs.1,480,000/-.

5- Learned Deputy Attorney-General, on the other hand, supported the bail granting order by maintaining that as a matter of fact, the amount in question, in stricto sensu, was not loan rather the same was "Qarz-e-Hasna", returnable by the respondent No.1, on his acquisition of the ability to repay the debt amount, therefore, there was no malafide intention for the issuance of cheque.

6- According to the FIR, the complainant had given Rs.1,480,000/-as "Qarz-e-Hasna" to the respondent No.1,

(Allah Ditta Sethi Wahi) against cheque No. A-2528081 of JS Bank, F-8 Markaz Islamabad, which on presentation was dishonoured.

7- As per Ground-b of the petition there was an agreement between the parties dated 27.09.2010 and affidavits of arbitrators/witnesses clearly prove that the amount was taken by the respondent No.1 as loan and there was no business transaction between the petitioner and respondent No.1 in any manner. The contents of FIR clearly indicates that the petitioner advanced Rs. 14,80,000/- as "Qarz-e-Hasan" to respondent No.1. It is, therefore, an admitted fact that the loan was of a special kind.

8- According to Tafheem-ul-Quar'an, Volume I by Maulana Abu-ul-Ala Modoodi, Qarz-e-Hasna is that kind of loan, which is given for the purpose of helping another with an object that it should be payable only when the borrower is in a position to pay. Guidance in this respect may be solicited from case law "Habib Bank V. Messrs Qayyum Spinning Ltd. 2001 MLD 1351 and Dr. M. Aslam Khaki V. Syed Muhammad Hussain and 2 others PLD 2000 SC 255 wherein it was held that Qarz-e-Hasna is that kind of loan, given on compassionate ground, free from interest/mark-up or service charges and re-payable if and when the borrower is able to pay.

9- With above background, in my view, where the disputed amount is alleged to have been advanced as Qarz-e-Hasna, no criminal liability thus could be constituted.

10- All the allegations and facts shall be determined at the trial stage after appreciation of evidence. At present, the matter falls under the scope of further inquiry, where the maximum punishment is three years and, therefore, the bail granting order does not seem to be suffering from any illegality.

11- In view of above, I find no force in this petition which is hereby dismissed but with observation that above assessment shall have no bearing upon the merits of the case.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

M. Suhail
10-12-2012

APPROVED FOR REPORTING