

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

Crl. Misc. No.80-M of 2020

Sohail Muhammad

*Versus*

The State, Etc..

Petitioner by: Malik Waqar Mehmood Awan,  
Advocate.

Respondent No.3 by: Mr. Zahid Ullah, Advocate.

State by: Mr. Zohaib Hassan Gondal, State  
Counsel with Tanveer Hussain Shah,  
A.S.I.

Date of hearing: 16.09.2020

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**Ghulam Azam Qambrani, J:** This petition has been filed under Section 561-A Cr.P.C, with the following prayer;-

*" Under the circumstances stated above it is humbly prayed that by accepting this petition the order dated 14.11.2019 passed by learned Magistrate Section 30 East Islamabad and order dated 08.01.2020 passed by ADJ (V) East, Islamabad may kindly be declared null and void and the petitioner may kindly be acquitted from the false and groundless case."*

2. Brief facts of the prosecution case are that on 27.01.2018, on the application of respondent No.3/complainant, F.I.R No.42 dated 27.01.2018, under Section 489-F P.P.C was registered at Police Station Bhara Kahu, Islamabad, alleging therein that in February 2015, petitioner/ Sohail Muhammad offered construction project of Warid Tower at complainant's native town i.e. Jani Khel, Banu, deal was done in the amount of Rs.17,50,000/-. In this regard, petitioner paid Rs.3,00,000/- in cash and issued a cheque amounting to Rs.10,00,000/- dated 14.08.2015 and another cheque amounting to Rs.4,50,000/- dated 25.06.2016 for start of construction work; that respondent No.3 started construction work and ended according to

the map/ civil work and the said tower is in running position, now. On the date mentioned on the cheques, he presented the same in Bank Al-Falah, Bhara Kahu, which was got dishonoured on presentation. On contacting the petitioner, he delayed the matter on one pretext or the other and lastly, got his phone switched off.

3. After completion of investigation, challan was submitted before the learned trial Court on 29.10.2018. In the meanwhile, the petitioner filed an application under Section 249-A, Cr.P.C. before the learned Judicial Magistrate, which was dismissed vide order dated 14.11.2019. Feeling aggrieved, the petitioner filed a Revision Petition before learned Additional Sessions Judge-V-East, Islamabad, which was also dismissed vide order dated 08.01.2020, hence this petition.

4. Learned counsel for the petitioner contended that both the courts below have passed the impugned order without considering the material available on record; that the complainant has also filed a suit under Order XXXVII of CPC, which is also pending adjudication before the learned Additional District Judge, East, Islamabad; that in the report under Section 173 Cr.P.C, the complainant has taken the stance that the cheques were dishonoured from MCB Bank Banu Road, Kohat, whereas, the cheques and dishonour slips enclosed with the report under Section 173 Cr.P.C are of Bank Al-Habib, Bhara Kahu Branch, Islamabad, and according to the recovery memo prepared by the S.H.O the dishonour cheques are of Allied Bank, Banu; that the occurrence took place in February, 2015, whereas, the F.I.R was lodged on 27.01.2018 after a delay of about three (03) years. Lastly, prayed for his acquittal by setting aside of impugned orders passed by the learned Courts below.

5. Conversely, learned counsel for respondent No.3 supported the impugned orders passed by the learned Courts below; that the cheques were issued by the petitioner dishonestly; that on presentation, cheques were dishonoured; that cheques were taken

into possession through recovery memo; that sufficient incriminating evidence is available on record to connect the petitioner with the commission of the offence; that the charge in the instant case has been framed and fixed for evidence of the complainant, therefore, the instant petition is liable to be dismissed.

6. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

7. Bare perusal of the record reveals that it is a case of issuance of two cheques by the petitioner, one cheque bearing No.5718684 dated 14.08.2015 amounting to Rs.10,00,000/- was of MCB, Banu Road Kohat Branch, Kohat, and the second cheque No.1331851823 dated 25.06.2016 amounting to Rs.4,50,000/- is of Allied Bank, Banu Road, Kohat. Both these cheques were dishonoured on presentation for encashment and this fact is also confirmed by the statement of the Manager of the said bank. From perusal of report under Section 173 Cr.P.C., it reveals that photocopies of the cheques i.e. cheque No. 10219396 dated 07.06.2018 amounting to Rs.4,15,000/- and cheque No.10219395 dated 12.03.2018 amounting to Rs. 1,10,000/- of Bank Al-Habib Limited, Bhara Kahu Branch, Islamabad, of the account of one Muhammad Waqas Sarwar, are attached with the said report whereas, as per the complainant, the petitioner issued him cheques of Rs.10,00,000/- dated 14.08.2015 and the other cheque of Rs.4,50,000/- dated 25.06.2016, which were dishonoured on presentation. The matter involved pertains to disputed questions of facts, which cannot be resolved without recording of evidence by the learned trial Court. Charge has been framed in the instant case on 04.09.2019 and the case has been fixed for prosecution evidence, as such, both the courts below were justified while passing the impugned orders.

8. Keeping in view the above facts and circumstances of the instant case, I find no illegality or irregularity in the impugned orders dated 08.01.2020 & 14.11.2019, passed by the learned Courts

below, calling for interference by this Court. This petition being devoid of force, is hereby, **dismissed**.

~~Ghulam Azam Qambran~~  
Judge

Announced in Open Court, on this 23rd Sept. 2020.

Judge

S.Akhtar