

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)
CRL. APPEAL NO. 178/2018

Munir Ahmad
Vs
Aamir Saleem etc

Appellant By:	M/S Shahid Riaz & Usman Riaz, Advocates.
Respondent No.1 By:	Sardar Abdur Razzaq, Advocate
State by:	Mr. Zohaib Hassan Gondal, State Counsel with Tariq ASI.
Date of Hearing:	28.08.2020

GHULAM AZAM QAMBRANI, J. This appeal has been filed against the impugned judgment dated 13.06.2018, passed by the learned Judicial Magistrate 1st Class, Islamabad- West, in case F.I.R No. 421 dated 30.11.2016 under Sections 489-F PPC registered at Police Station Kohsar, Islamabad, whereby respondent No.1 was acquitted under Section 249-A Cr.PC.

2. Briefly the allegation against the accused/respondent is that he owed an amount of Rs. 8888246/- on account of some business articles and for repayment of the same, he issued cheque bearing No. 6656768 of HBL Pakistan Mankiala Railway Station, Rawalpindi and on presentation, it was dishonoured due to insufficient balance.

3. After registration of FIR, investigation was carried out and thereafter report under section 173 Cr.P.C. was submitted before the learned Trial Court. After fulfilling codal formalities, charge was framed against the accused/respondent, to which he pleaded not guilty and claimed trial. The learned Trial Court vide judgment dated 13.06.2018 acquitted the respondent No.1/accused from the charge, hence, the instant appeal.

4. Learned counsel for the appellant contended that the documentary evidence in the shape of cheque and dishonour slip is available on record against the respondent/accused; that the learned Trial Court has committed a gross illegality while acquitting respondent /accused. Further contended that all constituents of the offence are duly established through concrete and credible evidence, but the learned Trial Court erred in appraising the same. Lastly, argued that impugned judgment is not sustainable and is liable to be set aside.

5. On the other hand, learned counsel for the respondent/accused assisted by the learned State Counsel contended that he issued a guarantee cheque to the appellant; that the blank cheque was given in advance as guarantee so that if the default is made in the payment of the goods obtained by the distributor then it can be encashed; that nothing is against him; that he is under no liability because mere issuance of cheque does not constitute an offence under Section 489-F PPC; that he is innocent and has falsely been involved in the instant case. Further contended that the ingredients of Section 489-F PPC are not attracted in the instant case; as such the learned Trial Court has rightly acquitted him in the instant case, by accepting his application under Section 249-A Cr.PC.

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

7. Perusal of the record reveals that the respondent/accused is under no liability as shown from the contents of application for registration of FIR. It is clear that all the articles in the shape of soft drinks were obtained by Muhammad Saleem, who was under obligation to pay the amount to the company whereas the respondent/accused was under no liability to pay the amount.

8. Further, provisions of Section 489-F will only be attracted if the following conditions 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 fulfil 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 person to some performance).
- (iv) On presentation, the cheque is dishonoured.

All the above ingredients are imperative to attract the provisions of Section 489-F PPC which are not complete.

9. The third essential ingredient of the offence under Section 489-F PPC that the cheque was issued in repayment of loan or fulfilment of the obligation is missing, as the respondent/accused Aamir Saleem was not under any liability to pay to the appellant's company. The appellant also admitted in the application for registration of FIR that all the liability was of Muhammad Saleem to pay an amount of Rs.8888246/-, who gave the cheque of his son namely Aamir Saleem. The respondent/accused has not issued cheque for the repayment of any loan nor for the fulfilment of any obligation.

10. It is important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached, in the latter case. Reliance in this regard is placed upon the case of "Inayatullah Butt v. Muhammad Javed and 2 others" [PLD 2003 SC 562]. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence, no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417, Cr.P.C.

11. In view of what has been discussed above, the appellant has failed to establish extra-ordinary reasons and circumstances, whereby the acquittal order recorded by the learned trial Court can

be interfered with by this Court. Thus, the learned Trial Court has rightly acquitted the respondent through a well reasoned order.

12. The Hon'ble Supreme Court of Pakistan has held in the case reported as **Muhammad Karim Vs. The State** (2009 SCMR 230) as under:-

"in case of doubt, the benefit thereof must be given to accused as a matter of right and not as a matter of grace, for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts, single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to benefit, not as matter of grace and concessions, but as matter of rights."

In the case of **Ghulam Akbar and another Vs. The State** (2008 SCMR 1064), it has been held as under:-

"It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the accused securely relied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof."

In the case reported as **Raheel and others Vs. The State and others** (2015 P.Cr.L.J 470), it has been held that:-

"If any doubt would arise from the prosecution evidence, benefit of same was to be extended to accused."

13. In view of what has been discussed above, I find no illegality or irregularity in the impugned order warranting interference by this Court. Hence, the instant appeal against acquittal, being devoid of any force, is **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 09th day of September, 2020.

JUDGE

S.Akhtar