

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Crl. Appeal No.225/2018.

Shahid Ehsan Ullah **Vs.** **Khushnood Ahmed etc.**

Appellant by: Nemo.

Respondent No.1 by: Mr. Muhammad Safdar Janjua, Advocate.

Respondent No.2 by: Ms. Ramsha Izhar, State Counsel.

Date of Decision: **21.02.2020.**

MOHSIN AKHTAR KAYANI:- Through the instant appeal, the appellant has assailed the order dated 20.11.2018, passed by learned Judicial Magistrate Section 30, Islamabad, whereby petition U/s 249-A, Cr.P.C filed by respondent No.1 was accepted and he was acquitted from case FIR No.125/2015, dated 05.05.2015, U/S 489-F PPC, P.S Shalimar, Islamabad.

2. The contents of the appeal as well as record reflects that the appellant got registered the case against respondent No.1 with the allegations that respondent No.1 was his tenant in House No.13, Street No.62, Sector G-6/4, Islamabad against monthly rent of Rs.1,30,000/-in August, 2011 and paid Rs.20,000/- cash and handed over cheque of Rs.5,00,000/- dated 01.09.2011, bearing No.0448867 as advance rent but the said cheque was dishonoured on 06.09.2011 due to insufficient balance. The I.O after completion of investigation submitted report U/S 173, Cr.P.C against respondent No.1 on 22.10.2015 before learned Trial Court, even charge was framed but evidence was not recorded, as a result whereof respondent No.1 was acquitted in terms of section 249-A, Cr.P.C vide impugned order dated 20.11.2018.

3. The instant appeal was filed on 18.12.2018 and it was fixed before this Bench for the first time on 09.01.2019, on which date no one appeared on behalf of the appellant and the matter was adjourned to 21.01.2019. On the said date notice was issued to respondent No.1 for 26.02.2019, where-after the matter was fixed for 13.05.2019, 24.09.2019 and 19.02.2020 as well as for today i.e. 21.02.2020 but

neither the appellant nor his counsel has put appearance to argue the case and on previous different dates learned proxy counsel sought adjournments on behalf of the appellant. On last date of hearing 19.02.2020, learned proxy counsel contended that the appellant intends to withdraw instant appeal and he will appear on next date of hearing but today he has not appeared before the Court, therefore, this Court has left with no other option but to decide the matter after hearing learned counsel for respondent No.1 and after going through the record.

4. Learned counsel for respondent No.1 contends that entire issue revolves around civil liability, which has been paid in the shape of rent through negotiable instrument, which was not returned by the appellant; that the cheque was used by the appellant and FIR was lodged; that respondent No.1 at bail stage deposited Rs.5,00,000/- in the Court to show his bonafide but the appellant has not turned up to resolve the controversy, even police recommended cancellation of the FIR; that the appellant did not appear before learned Trial Court for recording of his evidence and as a result of the said conduct, respondent No.1 has been acquitted due to non-probability of conviction apparent from record in terms of section 249-A, Cr.P.C.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the appellant got lodged FIR No.125/2015, dated 05.05.2015, U/S 489-F PPC, P.S Shalimar, Islamabad against respondent No.1 for dishonor of cheque No.0448867, dated 01.09.2011, SME Bank Blue Area, amounting to Rs.5,00,000/-, which was issued to the appellant by respondent No.1 as advance rent of House No. No.13, Street No.62, Sector G-6/4, Islamabad, which was dishonoured on 06.11.2011.

7. The record appended with instant appeal reveals that the cheque was dishonoured on 06.09.2011 and the FIR has been lodged on the complaint of appellant on 05.05.2015 approximately after four years and as such no legal justification has been brought on record for such delay.

8. Besides the above referred position, it is case of the appellant that respondent No.1 was his tenant and the cheque was issued against liability of rent

but surprisingly no such record was appended or handed over to the I.O in this case. Respondent No.1 while seeking his pre-arrest bail from the Court of Additional Sessions Judge deposited Rs.5,00,000/- to show his bonafide and took specific stance that he has already paid the amount and the cheque is without any liability, which has been misused by the appellant in order to extract money.

9. Perusal of record further reveals that after submission of challan, charge was framed on 26.07.2017 and the matter was adjourned to 28.09.2018, 07.11.2017, 18.12.2017, 18.01.2018, 03.03.2018, 16.04.2018, 02.05.2018, 26.05.2018, 28.06.2018 but the appellant never put appearance before the learned Trial Court and did not make any effort to record his evidence, even after filing of application U/S 249-A, Cr.P.C numerous opportunities were granted to the appellant as such the prosecution failed to produce the witnesses, which was required in this case and learned Trial Court has rightly appreciated that there is no probability of conviction when complainant/appellant is himself not interested to appear before the Court to record his testimony. I have gone through each and every aspect of this case from diverse angles as such no illegality has been observed in the impugned order. Even otherwise, the appellant has been given number of opportunities by this Court to appear before this Court but he has not appeared on a single date. This conduct of the appellant shows lack of interest for prosecution of respondent No.1.

10. In view of above discussion, the instant appeal bears no merits, therefore, the same is hereby dismissed.

(MOHSIN AKHTAR KAKHANI)
JUDGE

R.Anjam