**JUDGMENT SHEET**

# IN THE ISLAMABAD HIGH COURT, ISLAMABAD

**(JUDICIAL DEPARTMENT)**

**CRL. APPEAL NO. 362 /2019**

**Shahid Mehmood Vs. The State & another**

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| Appellant By: | Raja Gul Nawaz, Advocate. |
| Respondent No.2 By: | Ch. Abdur Rehman Hur Bajwa Advocate |
| State by: | Mr. Zohaib Hassan Gondal, State Counsel with Shah Nazar S.I. |
| Date of Hearing: | 03.02.2020 |

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**GHULAM AZAM QAMBRANI, J.** Appellant (Shahid Mehmood) seeks setting aside of impugned judgment dated 18.07.2019 passed by the learned Judicial Magistrate, Section 30-West, Islamabad, whereby respondent No.2 was acquitted under Section 249-A, Cr.P.C.

2. Briefly the allegation against the accused/respondent is that he owed an amount of Rs. 45,00,000/- on account of some business and for repayment of the same, he issued cheque bearing No. 802636 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, while placing the accused Ansar Mehmood Gondal in column No.03 of the same. After fulfilling codal formalities, charge was framed against the accused/ respondent on 07.12.2017 to which he pleaded not guilty and claimed trial.

4. In order to prove the case against the accused/respondent the prosecution examined the following witnesses;-

1. Shahid Mehmood complainant PW.1,
2. Ziaullah Khan, Manager Operation,PW.2,
3. Zulfiqar Ahmad SI, PW.3,
4. Munir Khan SI, PW.4.

After closure of the prosecution evidence, the accused was examined under section 342 Cr.P.C, he did not opt to appear as his own witness under section 340 (2) Cr.P.C and also did not produce any defence evidence. The learned Trial Court vide judgment dated 18.07.2019 acquitted the accused/respondent No. 2 from the charge, hence, the instant appeal.

5. Learned counsel for appellant contended that the impugned judgment is glaring example of misreading and non-reading of the evidence on record, therefore, the same is liable to be set aside. That the impugned judgment is based on erroneous inferences, surmises and conjectures resulting into miscarriage of justice. 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.

6. On the other hand, learned counsel for the respondent/accused assisted by the learned State Counsel contended that the accused is totally innocent and falsely involved in the instant case; that the prosecution has failed to prove any financial liability of the accused, therefore, the ingredients of Section 489-F PPC are not attracted in the instant case; that there are material contradictions in the story of the complainant. As such the learned Trial Court has rightly acquitted the accused/respondent in the instant case while giving him benefit of doubt.

7. Arguments heard, record perused.

8. A careful perusal of the record reveals that the complainant issued a cheque to the appellant/ complainant amounting to

Rs.45,00,000/- which was dishonoured on presentation. It is quite unbelievable that the appellant gave heavy amount of Rs.45,00,000/- to the accused/ respondent without reducing into writing any agreement in this regard and without the presence of any witness, only on account that his cousin Raja Arshad had some business relations with the accused. The appellant/ complainant in his evidence has submitted that the accused won his trust and obtained an amount of Rs.45,00,000/- from him. Bare perusal of the prosecution evidence reflects that in complaint Ex.PC the appellant/ complainant maintained that the accused/ respondent Ansar Mehmood Gondal owed an amount of Rs.45,00,000/- to him on account of some transaction between the parties ( ), however, as PW-1, he stated that he lent an amount of Rs.45,00,000/- to the accused Ansar Mehmood Gondal, whereas the stance of the complainant that the accused owed him an amount of Rs.45,00,000/- on account of some ( ) is absolutely vague because the complainant has failed to bring on record and specification and detail of the said ( ). As such, the complainant has failed to prove the existence of any liability of the accused to pay back to the complainant. On the other hand, the stance of the accused that he had business relations with the cousin of the complainant namely Raja Arshad Mehmood and he has settled the account with the said Arshad Mehmood as per agreement mark-A, which is an admitted document and clause-II of the said agreement is reproduced here under:-

The complainant admitted the fact of compromise effected between the accused and his cousin Arshad Mehmood. However, the deposition of the complainant is that he did not effect compromise with the accused, but his statement recorded at the time of pre-

arrest bail is suggesting otherwise wherein, he had deposed that he had effected compromise with the accused and he had no objection on the acquittal of the accused. In view of these circumstances, it can be gathered that there are contradictions in the prosecution evidence.

9. The considerations for interference in an appeal against acquittal and in an appeal against conviction are altogether different because presumption of double innocence is attached with the former case. The well settled principles for the appreciation of appeals against acquittal are;-

(i) That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his trial a Court below has confirmed the assumption of innocence;

(ii) That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;

(iii) That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;

(iv) That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and

(v) That the Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose.

10. In the instant case, the disputed cheque is not of the account of the accused, whereas the account title on the cheque EX-PA is

"Tarnol Filling Station" and this fact has been admitted by the complainant during his cross examination. It is also worth mentioning here that whether the cheque in question contains the signature of Ansar Mehmood Gondal or not, is a question about which the prosecution evidence is also silent, therefore, it can safely be said that the prosecution has failed to prove the issuance of cheque by the accused in favour of the appellant/ complainant.

11. 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. The element of *mense rea* and dishonestly issuance of cheque is missing in the instant case.

12. 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 giving him a benefit of doubt.

13. 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 lied 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."*

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

**(GHULAM AZAM QAMBRANI)**
**JUDGE**

**Announced in open Court on _____/2020.**

**JUDGE**

**Approved for reporting**

**S.Akhtar**