

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. CS/P/2202 2002

Titled ABid Mahmood Vs S Ho Magalkh
Malik

- (a) Judgment approved for reporting Yes / No
- (b) Judgment any comment upon the Conduct of the Yes / No
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

(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. 22-Q/2012

ABID MAHMOOD MALIK- VS-SHO, P.S MARGALLA, ETC

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

02. 29.01.2013: Mr. Yasir Tanveer Awan, Advocate for petitioner,
Mr. Shabbir Ahmad Abbasi learned Standing-
Counsel with Mr. Imran Ali Khan, Advocate for
complainant-respondent No.3.
Ishtiaq Ahmad ASI with record.

ORDER

The petitioner seeks quashment of FIR No.588, dated 28.11.2012, under section 489-F PPC of P.S Margalla Islamabad, on the ground that the cheque was issued in bona-fide good faith for repayment of the loan-amount to the Bank and since the dispute had arisen between Financial Institution & customer, the sole jurisdiction vests with the Banking Court under the Financial Institutions (Recovery of Finance) Ordinance 2001 [hereinafter to be referred as the Ordinance 2001] and under Section 7 of the Ordinance, learned Judge Banking Court in exercise of its criminal jurisdiction shall try offences punishable under the Ordinance.

2- It is further contended that the Banks are debarred from taking advantage of Section 489-F PPC through initiation of proceedings against the defaulter merely on the dishonouring of any cheque issued by the debtor, who had availed any finance facility.

3- In support of his submissions, learned counsel for petitioner placed reliance upon following case laws:-

- | | |
|---------------------------|---------------------------------|
| i. PLD 2009 Lahore 541 | ii. 2009 P.Crl.LJ 325(D.B) |
| iii. 2010 YLR 547 | iv. 2009 CLD 1422 |
| v. 2010 CLD 344 | vi. 2010 P.Crl.LJ 412 |
| vi. 2009 CLD 1149 | vii. 2011 CLD Lahore 1539 |
| viii. 2012 MLD Sindh 1551 | vii. 2012 P. Crl. LJ Sindh 1890 |

3- The case laws are on the point that the Ordinance 2001 is a complete code providing procedure of the Banking Courts and in case of a financial dispute, a complaint in writing has to be filed before the Banking Courts.

4- Conversely, learned Standing Counsel assisted by learned counsel for the respondent No.3-complainant opposed the petition by stating that the cheque was issued for the payment of loan, which was dishonoured, and, therefore, the provisions of Section 489-F PPC are attracted in the case and since it is a cognizable offence, the police rightly lodged the FIR.

5- It is further contended that the purpose of law is to bring the facts into light through investigation; while quashment of FIR at the earlier stage would be an attempt to burry the factual issues between the parties and such practice shall encourage the offenders. In this regard, reliance is placed upon case laws reported as **2006 CLD 625 and 2010 CLD 10.**

6- Heard & record perused.

7- Admittedly, the respondent No.3-complainant is a financial institution and the dispute between the parties is a finance facility, which was granted in routine as a Bank Policy. The said cheque, if any, was regarding the re-payment of finance facility and the financial institutions have all the remedies available under the Financial Institutions (Recovery of Finances) Ordinance, 2001.

8- Section 20 (4) of the Ordinance, 2001 provides that **whoever dishonestly issues a cheque towards re-payment of a finance or fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may**



extend to 1 year, or with fine or with both, unless he can establish, for which the burden of proof shall rest on him, that he made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque.

9- The Ordinance being special enactment has also an overriding effect on the ordinary law, therefore, in my view, petitioner cannot be proceeded with under the provision of Pakistan Penal Code and only remedy available for the Bank and financial institution is to invoke the provisions of Section 20 by filing a direct complaint under Section 7(1)(b) of the Ordinance and the prosecution of the petitioner under Section 489-F PPC is abuse of process of the court and without lawful authority.

10- The dictum laid down by the superior courts is very exhaustive and very unambiguously states that the banks are debarred from taking advantage of Section 489-F PPC.

11- In view of above, this petition is allowed and in consequence thereof, FIR bearing No.588, dated 28.11.2012, under section 489-F PPC of P.S Margalla Islamabad is quashed. No orders as to costs.

12- Petition allowed. FIR quashed.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

M. Suhail
29-01-2013

APPROVED FOR REPORTING