ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No. 03 of 2022

WaliUllah
v.
Muhammad Nauman Munawar, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.02.2023	Muhammad Saeed Khan Niazi, Advocate for appellant. Mr. Waqar Ahmed, Advocate for respondent. Mian Zain\-ul-Abdin Qureshi, State Counsel. Zulfiqar Ali, ASI and Abbas, ASI.

ARBAB MUHAMMAD TAHIR J. Through the instant appeal in terms of Section 417(2-A) of the Code of Criminal Procedure 1898, '**appellant**' namely *Wali Ullah (*complainant in main case*)* impugns Judgment dated 30.11.2021, passed by the learned Judicial Magistrate Section-30 Islamabad (West) whereby *Muhammad Nauman Munawar* ('**respondent**') was acquitted in case FIR No.210, dated 05.07.2017, under Section 489-F PPC, registered at Police Station, Aabpara, Islamabad.

2. The learned trial court acquitted the respondent, *inter alia,* observing as under:-

> "*It further revealed from the record that new cheque No. 07579902 issued by father of the accused, in replacement with other cheques including the subject cheque of this FIR, was also dishonoured, regarding which an FIR No. 69/2017, Police Station Kohsar was got registered and the criminal case was decided by the magisterial court vide its judgment dated 25.03.2019.*
> *Since the fresh cheque was issued in replacement with the impugned cheque, it discharged the obligation of accused regarding the impugned cheque. Further, registration of instant FIR after registration of FIR No. 60/2017 against father of the accused, while concealing such fact, also shows fast forwarding of the complainant, which was not warranted under the law.*
> *It is trite law that co-existence of all ingredients to make out a criminal case is needed, whereas the existence of preceding financial obligation is substantial thereof, which in view of above discussion is not found out, thus other essentials to constitute the offence are not required to be looked into, due to the reason that even if, those are established the matter may not result in conviction of the accused.* "

3. The learned counsel argued that the impugned judgment is result of misreading and non-reading of the evidence on record; that sufficient evidence is available on record which, *prima facie,* connects the respondent with the commission of alleged offence; that the impugned judgment is based on surmises and conjunctures; that the learned Trial Court has wrongly interpreted section 489-F PPC; that the respondent in order to discharge his obligation issued the cheque which on presentation stood dishonored while the interpretation, so made by the learned Trial Court with regard to fulfillment of an obligation is contrary to the law on the subject; that the observation that there was no direct financial obligation on the part of the respondent is contrary to law on the subject and that the evidence on record establishes the guilt of the respondent, therefore, impugned judgment is liable to be set aside.

4. On the other hand, learned counsel for the respondent, repelled the above submission by arguing that it was a guarantee cheque while in order to get recover the amount, the appellant has already filed suit for recovery along with damages, therefore, appeal is liable to be dismissed.

5. Heard, record examined.

6. It is well settled principle of criminal jurisprudence that it is the bounded duty of the prosecution to prove the charge against the accused by producing evidence of unimpeachable character having no material flaw/contradiction while a defence plea, though so ill, cannot be made basis to hold an accused guilty for the offence charged.

7. On the subject of issuance of cheque with dishonest intention, it is mandatory to establish the fact that the issuance of cheque had been with dishonest intention; that the cheque should be towards repayment of a loan or fulfillment of an obligation and that the cheque was dishonored on presentation for want of funds. Reliance in this respect is placed upon case of **Allah Ditta (2013 SCMR 51) & Muhammad Sultan (2010 SCMR 806).**

8. In the present case, the statement of the appellant/complainant (PW-1) is significant. The appellant in cross examination admitted that a writing (*stamp paper No. 230822*) was made between him and Munawar Hussain (*father of the respondent*) on 03.11.2016; that it was written in the said stamp paper that he had in his possession five cheques issued by the respondent; that out of said five cheques, three had already been dishonored. The witness categorically admitted the entire contents of the stamp paper and that he got registered an FIR against the father of the respondent. The appellant further admitted that the witness *Muhammad Naheed* had made a statement in that case to the effect that father of the respondent had issued cheques of Rs. 11 lac in lieu of the cheques earlier issued.

9. The statement of the appellant if read in conjunction with the other documents including pleadings in suit under order XXXVII CPC filed by the appellant that includes ex-parte judgment and the suit filed by the respondent against the appellant for cancellation of the subject cheque, Ex. PJ, it is surfaced that the dispute primarily had been between the appellant and the father of the respondent, against whom the appellant had lodged an FIR and that pursuant to settlement, the father of the respondent issued another cheque which, too, on presentation stood dishonored regarding which the appellant got registered an FIR. The statement of the appellant itself testifies the fact that for the cheque in question besides other cheques, the father of the respondent issued another cheque which stood dishonored for want of funds and that the appellant had also got registered an FIR against the father of the respondent. Thus, the charge in terms of section 489-F PPC against the respondent had become groundless and, therefore, the findings of the learned Trial Court are based on correct appreciation of evidence.

10. The respondent was acquitted after full length trial. It is settled law that an accused who is acquitted by any Court of competent jurisdiction carries double presumption of innocence, strong and cogent reasons are required to dislodge such presumption. Reliance is placed upon case laws reported as *Jehangir v. Aminullah* **(2010 SCMR 491),** *Mst. Anwar*

Begum v. Akhtar Hussain alias Kaka **(2017 SCMR 1710)**, *Zaheer Sadiq v. Muhammad Ijaz* **(2017 SCMR 2007)**, *Muhammad Azam v. The State* **(2009 SCMR 1232)** and *Muhammad Shafi alias Kuddoo v. State* **(2019 SCMR 1045).**

11. Moreover, in the cases of *Sajawal Khan and 4 others v. Amir Sultan and 11 others* **(2016 PCr.L.J 929)** and *Muhammad Shaft v. The State and others* **(1992 PCr. L.J 1391)**, petition for special leave to appeal assailing order of acquittal was dismissed by observing that "*when an accused is acquitted of the charge, he would enjoy double presumption of innocence in acquittal appeal under section 417 Cr.P.C. which could not be dislodged*."

12. In view of above, the impugned judgment dated 30.11.2021 does not call for any interference. Consequently, instant appeal fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 16. 02.2023.

JUDGE

//Kamran//*