JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Revision No.06 of 2022

Shehbaz Ahmed

Versus

The State and another

Date of Hearing	:	18.02.2022.
Petitioner by	:	Mr. Muhammad Mazhar Javed & Zeeshan Riaz Cheema, Advocate.
Respondent by	:	Syed Ghulam Nabi Shah, Qaiser Hussain & Ibrar Hussain, Advocates
State by	:	Shujaullah Gondal, State counsel alongwith Fakhar Abbas, S.I.

ARBAB MUHAMMAD TAHIR, J. Through this common judgment, I propose to decide Crl. Revision No.06 of 2022 (filed by the petitioner /Shehbaz Ahmed) ("hereinafter referred to as "**the petitioner**") and Writ Petition No.416 of 2022 (filed by respondent No.2/complainant-Ch. Muhammad Imran) (hereinafter referred to as "**the complainant**") since they both entail common features and arise from one and the same composite judgment dated 18.01.2022 passed by the Court of the learned Additional Sessions Judge-East, Islamabad dismissing the criminal appeal preferred by the petitioner under [Section 58 of the Pakistan Penal Code, 1860 (hereinafter referred to as **"P.P.C."**) and the criminal revision petition preferred by the complainant against the judgment dated 13.11.2021, passed by the Court of the learned Judicial Magistrate-East, Islamabad. Vide said judgment dated 13.11.2021, the learned Judicial Magistrate, Islamabad convicted the petitioner under Section 489-F P.P.C. and sentenced him to undergo two years rigorous imprisonment. Benefit of Section 382-B of the Code of Criminal Procedure, 1898 ("hereinafter referred to as **"Cr.P.C.""**) was also extended to the petitioner. Both the said judgments dated 18.01.2022 and

13.11.2021 passed by the Courts of the learned Additional Sessions Judge and the learned Judicial Magistrate, Islamabad, respectively, are assailed by the petitioner as well as the complainant. Hence, the appeal and the writ petition.

2. Through Crl. Revision No. 06 of 2022, the petitioner seeks his acquittal in case F.I.R. No.221/2017 dated 24.08.2017 in respect of offence under Section 489-F P.P.C. registered at Police Station, Lohi Bher, Islamabad. Whereas, through writ petition No.416 of 2022, the complainant seeks the enhancement of the sentence awarded to the petitioner by the learned trial Court vide impugned judgment dated 13.11.2021.

3. Succinctly the facts as gleaned out from the contents of the F.I.R. are that petitioner and the complainant had a dispute of an amount of Rs.2,200,000/-. The petitioner in order to discharge his obligation towards the repayment of his liability, issued a cheque bearing No.28272011 dated 06.04.2016 drawn on Allied Bank Sawan Garden, Islamabad, but when the complainant presented the said cheque for encashment, the same was dishonoured on account of there being insufficient fund. Hence, the F.I.R.

4. Learned counsel for the petitioner-convict after narrating the facts leading to the filing of Criminal Revision No.06 of 2022 has contended that the concurrent judgments passed by the learned courts below suffer from material irregularity; that the learned courts below erred by relying upon the statements of the witnesses, whose statements were not recorded under section 161 Cr.P.C. by the Investigation Officer; that both the learned courts below erred in law inasmuch as they did not construe Section 345(1) Cr.P.C. in its true perspective; that the learned Courts below ignored the substantial provisions of the law governing the subject; that the learned Courts below also fell in error while convicting the petitioner ; that the petitioner was entitled to the benefit of the doubt which, the learned Courts below have, not extended to him; and that the appeal filed by the complainant before Session Court be dismissed with costs.

Learned counsel prayed for the petitioner's appeal to be allowed in terms of the relief sought therein and for the writ petition filed by the complainant to be dismissed.

5. On the other hand, learned counsel for the complainant while supporting the writ petition has opposed the instant criminal revision by contending that the petitioner knowing the fact that there is insufficient funds in his bank account, issued the cheque in question with mala-fide intention; that the statements of the prosecution witnesses are trustworthy; that the charge against the petitioner has been proved beyond any shadow of the doubt; that the learned trial Court has rightly convicted the petitioner ; that the judgment passed by the learned trial Court is well-reasoned and is in accordance with the law. It was next contended that the prosecution witnesses have fully implicated the petitioner with the commission of the offence. Learned counsel for the complainant prayed for the petitioner's appeal to be dismissed and for the appeal preferred by the complainant to be allowed in terms of the relief sought therein, which fully established the issuance of a cheque from petitioner's account towards fulfillment of a financial obligation and its failure upon presentation. Adverting to the plea for enhance of the sentence awarded to the petitioner, learned counsel for the complainant argued that the petitioner having issued the cheque in question with a dishonest intent does not deserve any leniency as such his sentence be enhanced up to the limit provided under the law.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts necessitating the filing of the appeals before Session Court are discussed in paragraph No.03 above and need not be reiterated.

8. The entire edifice of the prosecution is rested on the cheque in question. The record shows that a business relationship was in existence between the petitioner and the complainant. The petitioner towards the fulfillment of a financial liability issued a cheque (Exh.

PB) bearing No.28272011 dated 06.04.2016 drawn on Allied Bank Sawan Garden, Islamabad to the complainant. The said transaction is said to have been witnessed by Mohsin Ali and Tariq Mehmood, who appeared as PW-2 and PW-3, respectively. The said PWs admitted the issuance of the cheque in question by the petitioner. The complainant presented the said cheque in the Bank for encashment, but the same was dishonoured on account of there being insufficient balance in the petitioner's bank account. The dishonor slips in relation to the said cheque were produced by PW/1 as Exh. **PC** and **PE**.

9. The essential pre-requisites in order to attract the provisions of Section 489-F, P.P.C. are (i) that the cheque was duly issued, (ii) such an issuance was with dishonest intent, (iii) that the issuance of the cheque was for repayment of a loan or fulfillment of an obligation and, (iv) the cheque so issued was dishonoured on presentation. Section 489-F, P.P.C. criminalizes dishonest issuance of the cheque. It would be apt to reproduced Section 489-F P.P.C.:-

> "*489-F. Dishonestly issuing a cheque.---Whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both, unless he can establish, for which the burden of proof shall rest on him, that he had 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."*

10. Bare reading of above quoted Section makes it crystal clear that it does not attract in every case where a cheque is dishonoured. The foundational elements to constitute an offence under the said Section are as follows:-

> *(i) the cheque was duly issued,*
> *(ii) it was issued with dishonest intent,*
> *(iii) it was issued towards repayment of a loan or fulfillment of an obligation, and*
> *(iv) it was dishonoured on presentation.*

11. The said pre-conditions to make out an offence under section 489-F, P.P.C. were also determined by the Honorable Supreme Court in the

case of "**Muhammad Sultan v. The State", reported in 2010 SCMR 806,** wherein it was held as under:-

> *"A perusal of section 489-F, P.P.C., reveals that the provision will 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 cheques should be:---*
>
> *(a) to repay a loan; or*
>
> *(b) to fulfill an obligation (which in wide term inter alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds person to some performance).*
>
> *(iv)on presentation, the cheque is dishonoured".*
>
> *However, a valid defence can be taken by the accused, if he proves that:*
>
> *(i) he had made arrangements with his bank to ensure that the cheques would be honoured; and*
>
> *(ii) that the bank was at fault in dishonoring the cheque. If the accused establishes the above two facts through tangible evidence and that too after the prosecution proves the ingredients of the offence then he would be absolved from the punishment."*

12. The absence of even one of these elements would take the case out of the ambit of Section 489-F, P.P.C. Section 489-F, P.P.C. does not stipulate any period within which the holder must present the cheque to the bank for encashment. From the perusal of the record it evinces that the petitioner had in fact issued the cheque in question with mala-fide intention and to deprive the complainant from a huge amount.

13. Furthermore it is evident from the record that all the four pre-requites were fulfilled. The complainant, who was the star witness appeared as PW-1 and deposed that the petitioner had borrowed an amount of Rs.22 lacs from him and in return, he (the petitioner) gave him a guarantee cheque, which he presented in the concerned bank,

which was dishonored on its presentation due to insufficient balance. The first ingredient of Section 489-F *ibid* stands satisfied. In order to dilate upon the second pre-requisite of the said Section, it must be proved that the cheque was issued with dishonest intent. The word "dishonest" is defined in Section 24 P.P.C. which reads thus:-

> *"24. "Dishonestly". Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"."*

14. The petitioner, who was in the knowledge of the fact that there was insufficient balance in his bank account, issued the said cheque with an ulterior motive, thereby causing wrongful loss to the complainant. As such, dishonesty on the part of the petitioner is apparent. The third and foremost pre-requisite is the issuance of the cheque for re-payment of loan or fulfillment of other obligation. Indeed, the petitioner, in the presence of PWs-2 and 3 issued the impugned cheque to the complainant in order to discharge his part of obligation towards the repayment of the loan. Since the petitioner had borrowed a huge amount from the complainant, he was under an obligation to repay and return the same to the complainant, which he did not do so instead with a dishonest intent, issued the cheque in question, thereby exposing himself to the punitive provision of the law. The last but not the least is the bouncing of the cheque when presented for encasement. The dishonor slips (Exh. **PC., P.E and P.D.**) show that the cheque in question was presented before the concerned bank thrice i.e. on 20.10.2016, 11.08.2016 and 03.08.2016, respectively. But on all these occasions, the same was bounced due to insufficient funds. Thus, it is evident from the record that all the essential pre-requisites stood satisfied. The petitioner did not bring any document on the record to show that the disputed cheque was not issued for a mala-fide reason. Although it appears that the prosecution has successfully established the issuance of the cheque from petitioner's account towards the fulfillment of a financial obligation and its failure upon presentation. The prosecution

witnesses have confirmed the issuance of the cheque in question and its presentation which was bounced thrice for want of sufficient balance. They have also confirmed the verification of the dishonoured cheque in question. Even otherwise, the issuance of the said cheque by the petitioner is not under dispute and, thus, objections carried by the learned counsel for the petitioner carry no force.

15. Now turning to the writ petition filed by the complainant for the enhancement of the sentence awarded to the petitioner by the learned Judicial Magistrate, Islamabad. Suffice it to say that each and every case is to be decided on its peculiar facts and circumstances. It is the discretion of the Court vested with the power to either enhance or reduce the sentence awarded to an accused person keeping in view the facts and circumstance of the case. The learned trial Court after finding the petitioner guilty of the offence under Section 489-F P.P.C. awarded him the sentence of two years rigorous imprisonment. The sentence provided for the said offence is three years, but the learned trial Court while considering the facts and circumstances of the case, awarded two years rigorous imprisonment to the petitioner, which was maintained by the learned Lower Appellate Court. As such, I do not find any illegality in the concurrent impugned judgments, passed by the learned Courts below.

16. In sequel to the above, the Crl. Revision No.06 of 2022 filed by the petitioner as well as the writ petition filed by the complainant being devoid of any legal force, are accordingly dismissed with no order as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ____March, 2022

JUDGE

//Kamran//