**JUDGMENT SHEET**
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

**Criminal Appeal No.315 of 2022**

**Dr. Shahid Rasheed Butt**
**Vs.**
**The State, etc.**

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|---|---|
| Appellant by: | Mr. Mudassar Khalid Abbasi, Advocate. |
| Respondent No.1/State by: | Rana Ali Raza, State Counsel.<br>Muhammad Waseem, S.I. |
| Respondent No.2 | Mr. Jawad Hussain Adil, Advocate. |
| **Date of Hearing:** | **12.02.2025.** |

**INAAM AMEEN MINHAS, J.-** Through the instant appeal, the appellant assails judgment dated 28.05.2022 **("Impugned Judgment")**, passed by learned Judicial Magistrate, West, Islamabad **("Trial Court")**, whereby respondent No.2 was acquitted from case FIR No.385, dated 29.07.2021, u/s 489-F, PPC, P.S Karachi Company, Islamabad.

2. Brief facts as per memo of the appeal are that the appellant/complainant is owner of property i.e ground floor shops No.1 to 7, situated in Mount View Plaza, Plot No.16, F-6 Markaz **("Rented Premises"**), Islamabad and respondent No.2/accused entered into a lease agreement dated 29.03.2021 and in consideration of the agreement certain cheques as advance rent were handed over as an amount/price of fixtures and furniture already available in the Rented Premises. The possession was handed over to respondent No.2/accused. The appellant/complainant submitted cheques No.00000280 and 00000292 **('Subject Cheques")** for

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encashment, which got dishonoured for the reason that the account holder/respondent No.2/accused had stopped the payment. The dispute was reported to the police, whereupon the case was registered against respondent No.2/accused. After completing the investigation, challan was submitted for trial. Trial Court framed the charge, recorded evidence and after hearing learned counsel for the parties acquitted respondent No.2/ accused from the case, hence, this appeal.

3. Learned counsel for the appellant contended that no reason whatsoever has been given by Trial Court in Paragraph No.17 of the Impugned Judgment and reliance has been placed on ***Malik Safdar Ali vs. Syed Khalil Ali & 2 others*****, (PLD 2012 Sindh 464)**, which is not applicable in the instant case, whereas in the present case relationship of landlord and tenant are admitted in the light of rental agreements dated 20.03.2021 & 29.03.2021. It was further contended that in Paragraph No.20 of the Impugned Judgment Trial Court wrongly held that the appellant did not appear personally before the police for registration of the case, whereas, the appellant while appearing as PW3, acknowledged his signatures on the complaint except that the complaint was handed down by his counsel. He also contended that the findings in respect of the photocopies of the cheques are not in accordance with the law and relied upon article 76-B read with article 113 of Qanun-e-Shahadat Order, 1984, which says that facts admitted need not to prove and respondent No.2 admitted the issuance of cheques in his statement u/s 164 Cr.P.C. He further contended that the PW1 Bank Manager and PW2 verified the photocopies of the Subject Cheques mentioned in rental agreement dated

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29.03.2021 Exh.PW3/Dx1 and the appellant himself appeared as PW3 and stated that Subject Cheques were dishonestly issued as such offence u/s 489-F PPC is proved against respondent No.2.

4. Learned counsel for respondent No.2 contended that the appellant in connivance with the police, orchestrated the registration of FIR Exh.PW2/1 by suppressing material facts. It was argued that a valid rent agreement dated 29.03.2021 Exh.PW3/Dx1 was executed between the appellant and respondent No.2 and as per clause 5 of the said agreement, twelve rental cheques were issued to the appellant and as per clause 7 of the said agreement two additional cheques—Cheque No. 00000292 amounting to Rs. 3,250,000/- dated 15.06.2021 and Cheque No. 00000293 amounting to Rs. 3,250,000/- dated 22.06.2021 were specifically in lieu of furniture, fixtures, and other items, subject to their physical handover. Learned counsel further submitted that physical possession of the Rented Premises was never transferred to respondent No.2 as the Capital Development Authority **("CDA")** had sealed the Rented Premises on 07.04.2021 vide order Exh.PW3/D-2. The Rented Premises was subsequently de-sealed on 10.04.2021 and the CDA, upon de-sealing, handed over possession of the same to the appellant. Therefore, there was no occasion for respondent No.2 to retain possession of the Rented Premises. It was further argued that the appellant deliberately withheld these crucial facts. However, during cross-examination, the appellant admitted existence of the rental agreement dated 29.03.2021 Exh.PW3/Dx1 and the CDA sealing order Exh.PW3/Dx2; that these admitted facts fundamentally contradict and

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negate the prosecution's version of events, thereby rendering the entire prosecution story untenable.

5. I have heard the learned counsel for the parties and gone through the record with their able assistance.

6. It is an admitted fact that the original Subject Cheques were not produced in evidence and only photocopies thereof were exhibited as Exh.PW2/2 and Exh.PW2/3 without obtaining prior permission from the Court for adducing secondary evidence as mandated under article 76 and article 77 of the Qanun-e-Shahadat Order, 1984. It is settled by now that secondary evidence is inadmissible unless it is established that the original document is lost, destroyed, or otherwise unavailable due to circumstances beyond the control of the party relying on it and prior permission of the Court has been sought.

7. The prosecution did not produce the original Subject Cheques during the trial without any cogent reason and withheld the best evidence, therefore, under Article 129(g) of Qanun-e-Shahdat Order, 1984 an adverse inference shall be drawn against the prosecution. In this regard reliance is placed upon ***Mst. Zarsheda vs. Nobat Khan*** **(PLD 2022 SC 21),** wherein it was held that:-

> *"Adverse inference for non-production of evidence is one of the strongest presumptions known to law and the law allows it against the party who withholds the evidence."*

8. Likewise, the rental agreement dated 29.03.2021 Exh.PW3/Dx1 was surfaced for the first time, when PW3 entered in the witness box and during

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cross-examination Exh.PW3/Dx1 was brought on record, which was unequivocally admitted by the appellant.

9. Upon perusal of the contents of the rental agreements, particularly Exh.PW3/Dx1, clauses 5, 6, and 7 are found to be relevant and are reproduced as follow:

> *"5. That the owners shall handover the physical possession of the premises on the 1st April 2021 That the owner shall provide a grace period of 62 days to tenant for renovation/construction of the premises which shall come in effect after giving the physical possession of premises The grace period shall effect from 1 April 2021 to 31st May 2021 the rent shall effected from the 1st June 2021 Detail of 12 Rental Cheques (HBL) is as under*
>
> | *Cheque* | *Amount Rs.* | *Date* |
> |---|---|---|
> | *00000280* | *1,300,000* | *01 June 2021* |
> | *00000281* | *1,300,000* | *06 July 2021* |
> | *00000282* | *1,300,000* | *03 August 2021* |
> | *00000283* | *1,300,000* | *07 September 2021* |
> | *00000284* | *1,300,000* | *05 October 2021* |
> | *00000285* | *1,300,000* | *02 November 2021* |
> | *00000286* | *1,300,000* | *07 December 2021* |
> | *00000287* | *1,300,000* | *04 January 2022* |
> | *00000288* | *1,300,000* | *01 February 2022* |
> | *00000289* | *1,300,000* | *08 March 2022* |
> | *00000290* | *1.300.000* | *08 April 2022* |
> | *00000291* | *1,300,000* | *09 May 2022* |
>
> *The tenant purchase the furniture and fixture and ownership of the mentioned assets*
>
> *6. Fixture detail and payment mode:*
>
> *Fixture details is as under:-*
>
> - *05 AC Unit*
> - *16 Freezer*
> - *02 Chiller*
> - *01 Generator*
> - *01 Glass Center Racks*
> - *27 Gondola*
> - *02 Wooden Rack*
> - *02 Chips Rack*
> - *02 Cash Counter*
> - *27 Wall Racks*
>
> *7. Owner has agreed that fixture and all above items will be **handed over** and tenant has right to resale assets to the Tenant against Amount Rs 6,500,000/- (Six Million Five Hundred Thousand). Tenant issued 2 cheques for above fixture and cheque detail is as under:*

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*Cheque #00000292 Rs. 3,250,000/ 15-06-2021*
*Cheque #00000293 Rs 3,250,000 22-06-2022"*

10. It is evident from the aforementioned clauses of the rental agreement Exh.PW3/Dx1 that the Subject Cheques were issued by respondent No.2 in accordance with clause 7 of the agreement regarding furniture and fixtures. No such evidence was brought on record. Even the person from whom the appellant purchased the items was not produced as a witness. Consequently, the essential elements of *mens rea* or dishonest intent, which are fundamental prerequisites for the commission of an offence under Section 489-F, PPC are absent in the present case. Furthermore, it stands established that the appellant was under obligation to deliver all specified items to the respondent No.2 in lieu of the Subject Cheques. However, no such evidence was brought on record that the furniture and fixtures were, in fact, received by respondent No.2. Therefore, without fulfillment of the obligation on the part of the appellant, he was not legally entitled to present the Subject Cheques for encashment.

11. The Subject Cheques were issued contemporaneously with the execution of the rent agreement dated 29.03.2021 Exh.PW3/Dx1. The specified dates for encashment were 15.06.2021 and 22.06.2021 indicating that the Subject Cheques were to be presented subsequent to the delivery of furniture and fixtures from the appellant. However, the appellant in the FIR presented a contradictory version by alleging that he had purchased furniture and fixtures from the previous tenant on behalf of respondent No.2 but neither previous owner appeared as prosecution witness nor any documentary evidence was produced that the furniture and fixtures were purchased by the appellant on behalf of respondent No.2. This assertion

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stands in conflict with clause-7 of the rental agreement Exh.PW3/Dx1, which stipulates different facts.

12. So far as contention of learned counsel for the appellant that issuance of the Subject Cheques is admitted and it was respondent No.2, who has to discharge the onus, whereas the standard of proof applicable in civil and criminal cases is different. The distinction between the burden of proof in these two types of cases is fundamental to the principles of justice and equity.

Standard of Proof in Civil Cases.

13. In civil cases, the standard of proof is based on the balance of probabilities or preponderance of evidence. This means that a claim is established if it is more likely to be true than not. The burden of proof generally rests upon the party asserting a fact. It is settled law that in civil cases, a fact is considered proved if it is established on the balance of probabilities, meaning that the evidence in favor of the fact is stronger than that against it. Further, under article 117 of the Qanun-e-Shahadat Order, 1984, the burden of proof lies on the party who asserts the existence of a fact unless otherwise provided by law.

Standard of Proof in Criminal Cases.

14. In criminal cases, the standard of proof is beyond reasonable doubt. This stringent standard ensures that no innocent person is wrongfully convicted. The prosecution bears the burden to establish the guilt of the accused beyond any reasonable doubt, failing which, the accused is entitled to an acquittal. It is settled law that the prosecution must prove its case beyond a reasonable doubt. If there is any reasonable doubt regarding the guilt of the accused, the benefit of the doubt must go to the accused as a

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matter of right and not of grace. This principle is also enshrined in article 122 of the Qanun-e-Shahadat Order, 1984, which states that the burden of proving guilt lies solely on the prosecution. Reliance is placed upon ***Muhammad Suleman vs. Muhammad Saad Naseem,*** **(PLD 2023 Islamabad 124).**

15. It is a settled principle of law that even a single incident creating doubt in the prosecution's case is sufficient to warrant the acquittal of the accused. There is no requirement to prove multiple discrepancies to establish reasonable doubt. Reliance is placed upon ***Muhammad Nawaz and another vs. The State and others*** **(2024 SCMR 1731)**.

16. Respondent No.2 was acquitted after full-fledged 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 *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).**

17. Moreover, in the case of *Sajawal Khan and 4 others vs. Amir Sultan and 11 others* **(2016 PCr.L.J 929)** petition for special leave to appeal assailing order of acquittal was dismissed while observing as under:-

> "*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*."

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18. In the present case, the appellant has failed to give any strong and cogent reason to dislodge double presumption of innocence of respondent No.2.

19. In view of the above discussion, it is held that Impugned Judgment has been passed in accordance with law, which does not warrant interference by this Court. Consequently, the instant appeal is **dismissed.**

**(INAAM AMEEN MINHAS)**
**JUDGE**

**Announced in the open Court on 27.02.2025.**

**JUDGE**

R.Anjam

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