ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Appeal No.344 of 2022

Amjad Ghafoor Khan

Versus

The State and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	11.02.2025	Mr. Hunble Murad Siddiqui, Advocate for the appellant.

This appeal has been directed against the judgment dated 14.05.2022 **("Impugned Judgment")** passed by the learned Judicial Magistrate Section 30, Islamabad **("Trial Court")**, whereby respondent No.1 has been acquitted from case FIR No.73, dated 16.03.2017, under section 489-F PPC, registered with Police Station Shalimar, Islamabad.

2. The facts, in brief, as per memo of the appeal are that the appellant/complainant moved an application/Exh.PI to the SHO, Police Station Shalimar, Islamabad stating therein that respondent No.1/accused borrowed an amount of Rs.15,500,000/- from him, which is proved from the agreement and the Cheque. That despite repeated requests by the appellant/complainant, respondent No.1/accused is not ready to return the amount. After getting the cheques dishonored, the appellant/complainant informed respondent No.1/accused but despite that he is not

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ready to return the amount and the appellant/complainant never demanded for excessive amount than the agreed in the agreement, therefore, his amount may kindly be returned. On the basis of the application Exh.PI of the appellant/complainant, case FIR No.37, dated 16.03.2017, under section 489-F PPC, Police Station Shalimar, Islamabad Exh.PK was registered. After completion of the investigation, the police sent up report under section 173 Cr.P.C before the Trial Court for trial. The Trial Court proceeded in the matter, framed the charge, recorded the evidence and after hearing the arguments of the learned counsel for the parties acquitted respondent No.1/accused through the Impugned Judgment, hence, this appeal.

3. Learned counsel for the appellant contended that the Trial Court while passing the Impugned Judgment did not appreciate the evidence in its true perspective; that respondent No.1 never denied execution of the agreement Exh.PH; that the Trial Court reached on wrong conclusion that Exh.PH was executed under coercion; that respondent No.1 produced no evidence to substantiate that the Exh.PH was executed under coercion rather there is only verbal assertion of respondent No.1 in his answer to a question recorded during the statement recorded u/s 342, Cr.P.C; that minor discrepancies in the prosecution case are always

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ignored by the Courts whereas in the present case there is no minor discrepancy; that the Impugned Judgment is based on surmises and conjectures.

4. I have heard learned counsel for the appellant and perused the record.

5. Perusal of the record reveals that in the complaint Exh.PI, the appellant alleged that he extended a loan of Rs.15,500,000/- to respondent No.1, which is proved through an agreement Exh.PH and a cheque. However, in the civil suit titled *Amjad Ghaffar vs. Waseem Ahmed Malik* Exh.DB, the appellant, in Paragraph 5 of the plaint, categorically averred that no written instrument was signed between him and respondent No.1. Additionally, the appellant did not mention the date, time, and place where the alleged amount was given to respondent No.1, both in his complaint Exh.PI and the agreement Exh.PH, which is contradictory stance in respect of mode of payment of amount to the appellant.

6. In the civil suit Exh.DB, it is categorically mentioned in Paragraph 4 of the plaint that the amount was transferred to respondent No.1 through a banking channel on different occasions. However, no proof of such a transaction was produced by the appellant during prosecution evidence.

7. The prosecution has failed to produce any substantive evidence to prove that the alleged amount,

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as claimed by the appellant, was ever given to the respondent No.1. Moreover, the appellant while appearing as P.W.3 admitted during cross-examination that he has no proof that the amount was delivered to respondent No.1 as such issuance of the cheque for repayment of the amount is not proved. Mere issuance and dishonour of cheuqe in the absence of essential ingredient such as repayment of loan did not constitute offence u/s 489-F, PPC. Reliance is placed upon ***Rashid Ahmed vs. Muhammad Masood and another*** **(2020 P Cr. L J 1126 [Islamabad]**.

8. On the other hand, respondent No.1 produced his bank statement Exh.D1 covering the relevant period, which does not reflect the transfer of the alleged amount into his account through a banking channel.

9. Furthermore, Muhammad Adeel Yasin appeared as P.W.1 and deposed that the cheque was dishonored due to difference in signatures. Despite that the prosecution made no effort to substantiate this claim by obtaining a report of handwriting expert to compare respondent No.1's signatures, hence signatures on the disputed cheque are not proved.

10. Moreover, respondent No.1 in his defence evidence produced the application to stop payment Exh.DA, attested copy of the suit under Order XXXVII,

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CPC Exh.DB, Judgment in the suit Exh.DC and the Decree Exh.DD, which remained un-rebutted.

11. The prosecution has miserably failed to establish (i) the signatures of respondent No.1 on the Cheques Exh.PC and Exh.PF (ii) no source of payment of such huge amount as claimed through banking channel (iii) contradictory plea in civil suit and the FIR (iv) dismissal of the civil suit in respect of the same cheques through any cogent, tangible, and reliable evidence, which has created serious doubt and caused damage to the prosecution case. The prosecution's case is riddled with doubts, discrepancies, and contradictions. It is settled law that the prosecution must prove its case beyond any shadow of doubt.

12. It is also 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)**.

13. The approach for the reappraisal of evidence in an appeal against acquittal differs from that in an appeal against conviction. It is a well-settled principle of law that an accused is always presumed to be innocent unless proven guilty beyond a reasonable doubt.

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Reliance is placed upon ***Ghulam Sikandar and another vs. Mamaraz Khan and others*** **(PLD 1985 SC 11)**.

14. In an acquittal case the presumption of innocence is double. The Courts are very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, or suffering from the errors of grave misreading or non-reading of the evidence. Reliance is placed upon ***Sardaran Bibi vs. The State and others*** **(2024 SCMR 1116)**.

15. The Trial Court has properly appreciated the evidence and no glaring illegality or misreading of material facts has been found. Respondent No.1 is, therefore, entitled to double presumption of innocence and no compelling reason exists to interfere with the acquittal. Furthermore, the State has not challenged the acquittal, reinforcing the view that no miscarriage of justice has occurred.

16. In light of the above discussion, this appeal bears no merit, therefore, the same is **dismissed in *limine.*** The Impugned Judgment of the Trial Court is **upheld.**

(INAAM AMEEN MINHAS)
JUDGE

R.Anjam

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