JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No. 203 of 2023

Rana Muhammad Irfan Hafeez

VERSUS

The State and another

APPELLANT BY:	Mr. Salman Yousaf Khan, Advocate
RESPONDENTS BY:	Mr. Iftikhar Ahmed Cheema, SPP. Mr. Shafqat Ghaffar, Advocate for respondent No.1. Mr. Shoib Shahid, S.I. P.S Margalla, Islamabad.
DATE OF DECISION:	23.09.2026

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***AYYAZ SHAUKAT, J*:-** Through this appeal, the appellant, being the complainant in F.I.R. No.173 of 2020 dated 31.08.2020, registered under section 489-F of the Pakistan Penal Code, 1860 ("PPC") at Police Station Margalla, Islamabad, impugns the judgment dated 03.05.2023 passed by the learned Judicial Magistrate Section 30, Islamabad (West), whereby respondent No.2, Ahmad Faiz ur Rehman, was acquitted of the charge. The appellant prays that the impugned judgment be set aside and that respondent No.2 be convicted. The appeal has been preferred under section 417(2A) of the Code of Criminal Procedure, 1898 ("the Code"), within the period of thirty days prescribed therein.

2. The facts, so far as necessary for the disposal of this appeal, are briefly stated hereunder. The appellant describes himself as the Manager Admin and Procurement of M/s Secure Logistic Company (Pvt.) Ltd. The F.I.R. was registered on 31.08.2020 on the basis of his written application, Ex.PA. The case set up in that application is that respondent No.2 had issued three cheques, each in the sum of Rs.13,00,000/-, drawn upon Bank Al Habib Limited, "against payment obligation due on his part", the total

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obligation being stated as Rs.39,00,000/. All three cheques were dishonoured on presentation at Faysal Bank in June–July 2020. It was alleged that respondent No.2 had dishonestly issued the cheques, knowing that there were no funds in his account.

3. The cheques, exhibited as Ex.PC, Ex.PD and Ex.PE, are drawn upon the account of M.A. Hamza Enterprises and are signed by respondent No.2 over the stamp of that concern; each is payable to "Secure Logistics Group (Pvt) Ltd". The return memos of the drawee bank show that the first cheque was returned unpaid for insufficiency of funds, while the other two were returned for two reasons cumulatively, namely that payment had been stopped by the drawer and that the drawer's account held insufficient funds.

4. Upon the conclusion of the investigation, the report under section 173 of the Code of Criminal Procedure, 1898 ("the Code") of the Code was submitted, the charge was framed, and respondent No.2 pleaded not guilty.

5. The prosecution examined five witnesses. The appellant appeared as PW-1. Habib Ullah ASI, an investigating officer, appeared as PW-2. Umer Khalid ASI, another investigating officer, appeared as PW-3. Syed Ijlal Haider, Operation Manager, Faysal Bank appeared as PW-4 and Sohail Ashraf, ASI appeared as PW-5. The documentary evidence comprised the application Ex.PA; the three cheques Ex.PC, Ex.PD and Ex.PE together with their deposit and dishonour slips; an agreement dated 13.11.2018, Ex.PF/1-7; and the bank verification report, Ex.PH/2.

6. In his statement under section 342 of the Code respondent No.2 denied the allegations. He stated that the company named in the evidence was not the complainant of the F.I.R., that the appellant was not shown to be authorised by any company, and that the cheques were not issued dishonestly, whether under the agreement Ex.PF/1-7 or towards any loan or

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obligation. He further asserted that the case had been instituted to blackmail him by misusing the cheques. He led no evidence in defence.

7. By the impugned judgment, the learned trial court acquitted respondent No.2. The trial court held that the application Ex.PA did not disclose the nature of the obligation; that the appellant had advanced for the first time in his examination-in-chief a version that the cheques were issued in connection with vehicles, and had admitted that this version was absent from Ex.PA; that he had adduced no ledger of the company showing any amount due from respondent No.2; and that the investigating officers had admitted that no obligation of payment was found against him. It further held that the cheques were payable to the company and not to the appellant, who had furnished no authority to pursue the case on its behalf; and that the person shown as the depositor of the cheques, one Ijaz Abbasi, was neither associated with the investigation nor produced at the trial, so that a presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984 could be drawn against the prosecution. It concluded that the prosecution had failed to prove that the cheques were issued towards any obligation due from respondent No.2, and extended the benefit of doubt to him.

8. Learned counsel for the appellant submitted that the impugned judgment suffers from misreading and non-reading of the evidence. It was further submitted that the issuance of the cheques and their dishonour stand established; that the cheques were issued in discharge of the liability of respondent No.2 for vehicles supplied to him under the agreement Ex.PF/1-7; and that respondent No.2 issued them knowing that there were no funds in his account, with the object of misappropriating the funds of the company. His principal submission was that the learned trial court erred in drawing a presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984 against the prosecution merely because the employee of the company who presented the cheques for encashment was not produced. He further

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submitted that the learned trial court disregarded the dicta of the superior courts and relied upon a defective police report.

9. Learned counsel for respondent No.2 supported the impugned judgment. He submitted that the prosecution failed to prove the foundational element of the offence, namely that the cheques were issued towards the repayment of a loan or the fulfilment of an obligation; that the version relating to the supply of vehicles was an improvement introduced at the trial; that no account, ledger or other document of the company was produced; that the investigating officers found no obligation against respondent No.2; that the appellant was neither the payee of the cheques nor shown to be authorised by the payee; and that an order of acquittal carries a double presumption of innocence which the appellant has failed to displace.

10. Learned Special Public Prosecutor adopted the arguments of learned counsel for the appellant and supported the impugned judgment.

11. I have heard learned counsel for the appellant and learned counsel for respondent No.2 as well as the learned State Counsel, and have carefully examined the record and the applicable law.

12. It is necessary first to notice the nature of the jurisdiction which this Court is called upon to exercise and then the elements of the offence with which respondent No.2 was charged.

13. An appeal against acquittal does not stand upon the same footing as an appeal against conviction. The difference lies in the presumption of innocence. Under it, the accused is not called upon to prove anything, and the prosecution must establish every ingredient of the offence beyond reasonable doubt. When a competent court, having heard the evidence, acquits the accused, the presumption is not exhausted but is further strengthened. The accused then comes before the appellate court not only as a person presumed innocent, but as one whose innocence has been judicially

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affirmed after trial. This is what the superior courts describe as the double presumption of innocence.

14. The doctrine has a practical consequence, for it defines the burden which an appellant must discharge. In an appeal against acquittal the appellant must show that the acquittal cannot stand, and the appellate court will not substitute its own view for that of the trial court merely because the evidence is capable of a different reading. The trial court, moreover, had the advantage of observing the witnesses, an advantage which is not lightly to be set aside.

15. The principle was enunciated in ***Ghulam Sikandar and another v. Mamaraz Khan and others*** **(PLD 1985 SC 11)**, where the Hon'ble Supreme Court held that an acquittal will not be disturbed merely because, upon a reappraisal of the evidence, a different conclusion is possible, and that interference is warranted only where the conclusion of the trial court is one which no reasonable person could have reached. The law was restated authoritatively in ***The State v. Abdul Khaliq and others*** **(PLD 2011 SC 554)**, in the following terms:

> *"The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal."*

16. It follows that the question before this Court is not whether, upon the evidence led, a conviction could have been recorded. The question, rather, is whether the view taken by the learned trial court was one which could

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reasonably be taken upon that evidence. If it was, the acquittal must stand, even if this Court might itself have appreciated some part of the evidence differently.

17. Turning to the offence, it is apposite to reproduce section 489-F of the PPC.

> *"489-F. Dishonestly issuing a cheque.- Whoever dishonestly issues a cheque towards re-payment of a loan or fulfilment 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."*

18. The object of section 489-F, PPC was to enhance the credibility of the cheque as an instrument of commerce, by attaching a criminal consequence to its dishonest issuance. The section does not, however, convert every unpaid cheque into a crime. It is a penal provision, and, like every penal provision, it is to be construed strictly. The prosecution must bring the case within its words, and any doubt as to whether it has done so must be resolved in favour of the accused.

19. It is also noteworthy that the presumption of consideration which section 118 of the Negotiable Instruments Act, 1881 attaches to a negotiable instrument operates in civil proceedings founded on the instrument. It does not relieve the prosecution, in a trial under section 489-F, of the burden of proving that the cheque was issued towards the repayment of a loan or the fulfilment of an obligation. The two provisions serve different ends. The former facilitates the recovery of money due upon an instrument. The latter punishes a dishonest act, and a dishonest act must be proved as such. This is of particular relevance here, as respondent No.2 did not, in his statement under section 342 of the Code, dispute his signatures on the cheques. That

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circumstance, by itself, does not establish the obligation towards which they are alleged to have been issued.

20. A plain reading of the section shows that the object for which the cheque is issued forms part of the definition of the offence itself. It punishes the dishonest issuance of a cheque "towards re-payment of a loan or fulfilment of an obligation". A cheque which is not shown to have been issued for either of those purposes falls outside the section, notwithstanding its dishonour. Equally, the burden which the section places upon the accused is a narrow one, relating only to the defence that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault. It does not shift to the accused the burden of disproving the existence of the loan or obligation. The burden of proving the obligation remains upon the prosecution throughout, as in every criminal case.

21. The Hon'ble Supreme Court enunciated the position as follows in ***Mian Allah Ditta v. The State and others*** **(2013 SCMR 51)**:

> *"Every transaction where a cheque is dishonoured may not constitute an offence. The foundational elements to constitute an offence under this provision are issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfilment of an obligation and lastly that the cheque in question is dishonoured."*

22. This Court, in ***Muhammad Anwar and others v. The State and others*** **(2019 P.Cr.L.J. 1244)**, described dishonesty as the mens rea of the offence and the issuance of the cheque towards the repayment of a loan or the fulfilment of an obligation as its actus reus, and held that the prosecution must prove both beyond reasonable doubt, the existence of only one of them being insufficient to sustain a conviction. Dishonesty itself is defined in section 24 of the PPC by reference to the intention of causing wrongful gain to one person or wrongful loss to another. The same ingredients were earlier enumerated by the Hon'ble Supreme Court in **Muhammad Sultan v. The State (2010 SCMR 806).**

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23. It emerges from the foregoing discussion that the existence of a loan or obligation is not merely incidental to the offence but is its very foundation. The issuance of a cheque and its dishonour, standing alone, prove no more than that a cheque was issued and not honoured. Unless it is further proved that the cheque was given towards the discharge of a subsisting liability, the question whether its issuance was dishonest does not arise, as there is nothing in relation to which the drawer can be said to have intended a wrongful gain or a wrongful loss.

24. Adverting to the record, the enquiry turns, first and principally, upon whether the prosecution proved that the three cheques were issued towards the fulfilment of an obligation owed by respondent No.2.

25. The point of departure is the application Ex.PA, on the basis of which the criminal process was set in motion. It states only that the cheques were issued "against payment obligation due on his part" and that the total obligation was Rs.39,00,000/-. It does not say what that obligation was, out of what transaction it arose, when it arose, or how the sum of Rs.39,00,000/- was arrived at. It is silent as to any vehicles or agreement.

26. It was only when the appellant entered the witness box as PW-1 more than two years after the registration of the F.I.R., that the case assumed a definite form. He then stated that the company had supplied vehicles to the concern of respondent No.2 and that the cheques had been issued in lieu thereof. Upon being confronted with Ex.PA, he admitted, in cross-examination that the supply of vehicles by the company to M.A. Hamza Group and the issuance of the cheques in lieu thereof, which he had stated before the court, were not mentioned in Ex.PA. In further cross-examination he admitted that he had not produced any ledger of the company showing any amount outstanding against respondent No.2.

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27. These admissions go to the root of the prosecution case. The omission from Ex.PA was not a matter of mere detail but an omission of the very transaction out of which the obligation was said to arise. A complainant who sets the criminal law in motion upon the footing that money is owed to him or to those he represents would ordinarily state the basis of the amount claimed. When that transaction appears for the first time in the witness box, it amounts to an improvement upon a material particular, and it is well settled that a witness who improves his account upon a material particular cannot be relied upon to that extent without independent corroboration. Reference in this behalf may be made to ***Akhtar Ali and others v. The State*** **(2008 SCMR 6)**.

28. The improvement is fatal because the corroboration which the case required was such as lay entirely within the control of the appellant's side. An enterprise that supplies vehicles against payment ordinarily maintains a record of what it supplies, to whom, when and at what price, and of what it receives in return. Invoices, delivery documents, a statement of account or a ledger would have shown whether anything remained due from respondent No.2 in June 2020 and, if so, how much. None of these was produced, as the appellant himself admitted. The burden of proving the obligation lay upon the prosecution, and it was not discharged by an assertion made for the first time at the trial and supported by no document of account.

29. The agreement Ex.PF/1-7 does not bridge that gap. It is dated 13.11.2018, some nineteen months before the cheques were issued. At best, it evidences a business relationship. It does not by itself establish that any vehicle was in fact supplied under it, that any sum remained outstanding under it in June 2020, or that the three cheques were issued towards the discharge of that sum. There is a further difficulty. The question put to respondent No.2 under section 342 of the Code describes the agreement as one made between a concern called "Sieko Logistic Group" and M.A. Hamza Enterprises. The cheques are payable to "Secure Logistics Group (Pvt) Ltd".

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The appellant describes his employer as M/s Secure Logistic Company (Pvt.) Ltd. The record does not disclose whether these variations are merely clerical. It was for the prosecution to establish that the party to the agreement and the payee of the cheques were one and the same. That was not done.

30. The evidence of the investigating officers points the same way. PW-2, Habib Ullah ASI, admitted in cross-examination that no obligation for the payment of money was found against respondent No.2, and that the facts had for that reason become doubtful. He also stated that the complainant had been asked on more than one occasion but had not joined the investigation. PW-3, Umer Khalid ASI, stated that no witness was produced before him in support of the version of the complainant. The investigating agency, whose duty was to collect evidence for and against the accused, thus found nothing to support the existence of the obligation, and was given nothing by the complainant. These admissions made by the investigating officers on oath in cross-examination, constitute evidence like any other, and the learned trial court was entitled to act upon them, and did not act upon any opinion of the police.

31. It follows that the prosecution failed to prove the foundational element of the offence, namely that the cheques were issued towards the fulfilment of an obligation owed by respondent No.2. The finding of the learned trial court to that effect rests squarely upon the evidence, including the admissions of the appellant himself. It cannot be termed perverse, arbitrary or speculative. In my view, it is the correct finding and is by itself sufficient to sustain the acquittal. It is settled that a single circumstance which creates reasonable doubt in a prudent mind entitles the accused to its benefit, not as a matter of grace but as of right: ***Muhammad Mansha v. The State*** **(2018 SCMR 772).**

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32. The failure on the first element necessarily entails failure on the second. Dishonesty under section 489-F must be shown in relation to the loan or obligation towards which the cheque was issued. Where that loan or obligation is not proved, there is no basis upon which to infer that respondent No.2 intended to cause wrongful gain to himself or wrongful loss to the company. It is further noted that two of the three cheques were returned not only for insufficiency of funds but also because payment had been stopped by the drawer. A stoppage of payment may indicate a dispute between the parties as readily as it may indicate dishonesty. The prosecution never explored why payment was stopped.

33. A further question is whether the matter on this record, was in substance a civil dispute between two business concerns rather than a fit case for prosecution under section 489-F. The obligation asserted rested on a business relationship evidenced only by an agreement of uncertain application, unsupported by any account or ledger, and two of the three cheques were stopped by the drawer rather than merely dishonoured for want of funds. In **Abdul Saboor v. The State through A.G. Khyber Pakhtunkhwa and another (2022 SCMR 592)**, the Hon'ble Supreme Court held that section 489-F is not intended by the Legislature to be used for the recovery of a disputed amount, for which civil proceedings, including under Order XXXVII of the Code of Civil Procedure, 1908, provide the appropriate remedy. Although that observation was made at the stage of bail, it applies with greater force where, as here, the evidence has been recorded in full and the obligation itself has been found unproved. The finding of the learned trial court that the obligation itself remained unproved is consistent with that caution, and reinforces the conclusion reached above.

34. The next issue concerns the status of the appellant, upon which the learned trial court also commented. The observation must be put in its proper perspective. Under section 154 of the Code, information relating to

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the commission of a cognizable offence may be given by any person. The criminal law may be set in motion by anyone, and it is not a condition of the registration of an F.I.R., or of a trial founded upon it, that the informant be the person wronged or be authorised by that person. To the extent that the impugned judgment may be read as suggesting that the case was vitiated by the absence of a letter of authority, I am unable to concur.

35. The point is not, however, devoid of relevance. It goes not to the competence of the proceedings but to the weight of the evidence. The appellant was not the payee of the cheques. He came forward to prove a debt said to be owed to a company, without producing any document of that company, and without showing that he had personal knowledge of its dealings with respondent No.2 or of its accounts. His bare statement could not substitute for the proof which the company's records alone could have furnished. Read in that sense, the observation of the learned trial court is unexceptionable.

36. The principal submission of learned counsel for the appellant, which concerns Article 129(g) of the Qanun-e-Shahadat Order, 1984. The Article, so far as material, reads as follows:

> *129. Court may presume existence of certain fact.- The Court may presume the existence of any fact which it thinks likely to have happened ….*
> *Illustrations*
> *The Court may presume:*
> *…*
> *(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;*

37. A perusal of the Article shows that the presumption it contemplates is permissive and not mandatory. The Article employs the word "may" and not "shall". Whether the presumption is to be drawn depends upon the facts of each case, and the Court must consider whether, in the circumstances, the inference is a natural and reasonable one. The presumption is, moreover,

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rebuttable. It may be displaced by an explanation for the non-production of the evidence, or by other evidence on the record. Nor is it of general application, for it arises only in respect of evidence which "could be" produced, that is to say evidence which was available to and within the power of the party concerned. It does not arise where the witness was equally available to both sides, or where his evidence would have been merely cumulative, or where the fact he could speak to stands otherwise proved.

38. In a criminal trial, the provision operates against the background of the burden of proof. The prosecution is not bound to produce every witness who may have some knowledge of the matter. It is, however, bound to produce the material witnesses upon whom the proof of its case depends. Where it withholds a witness of that description, without explanation, the Court may infer that his evidence would not have supported the prosecution. This principle was applied by the Hon'ble Supreme Court in ***Lal Khan v. The State*** **(2006 SCMR 1846)**, upon which the learned trial court relied, holding that the withholding of the best available evidence gives rise to an adverse inference against the party withholding it.

39. The submission of learned counsel has some force, but only to a limited extent. Had the only question been whether the cheques were dishonoured, the non-production of the person who presented them might not by itself have been decisive, the return memos being documents which emanate from the drawee bank. Even upon that question, however, the evidence led was scanty. The only bank witness, PW-4, was an officer of the collecting bank and not of the drawee bank. He admitted that he was not posted at the branch when the verification report Ex.PH/2 was issued and that it was not issued in his presence. No officer of Bank Al Habib Limited was examined, and no statement of the account of the drawer was produced. These observations are made only for completeness; the issuance and dishonour of the cheques do not form the basis of this decision.

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40. The significance of Ijaz Abbasi, moreover, went beyond the mere act of presentation. He is the only person, other than the parties, who is shown to have handled the cheques on the side of the payee. His relationship with the company was never explained. No reason was offered for his non-production. The prosecution neither associated him with the investigation nor examined him at the trial. In these circumstances, the learned trial court cannot be faulted for drawing the inference permitted by Article 129(g); in any event, the omission left a gap in the prosecution case which nothing else on the record bridged.

41. More importantly, the submission does not touch the finding upon which the acquittal rests. Even if the reliance of the learned trial court upon Article 129(g) were excluded from consideration altogether, its finding that the obligation was not proved rests independently on the admissions of the appellant and of the investigating officers, and is sufficient by itself. An appellate court ought not to reverse an acquittal because one strand of the reasoning is open to criticism, where the conclusion is supported by other reasons which are sound.

42. For the foregoing reasons, I find that the impugned judgment dated 03.05.2023 proceeds upon a proper appreciation of the evidence and a correct application of the law. It suffers from no misreading or non-reading of evidence, and the view taken by the learned trial court was not merely a possible view but the correct one. No ground for interference with the order of acquittal is made out. The appeal, being devoid of merit, is **dismissed.** Consequently, C.M. No.01 of 2023, the application under section 427 of the Code for the arrest of respondent No.2, is also dismissed.

(AYYAZ SHAUKAT)
JUDGE

Saeed.

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