JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Revision no.106 of 2023
Muhammad Atif
Versus
The State

Petitioner by:	Mr. Owais Awan, Advocate
Respondent by:	Ch. Muhammad Nawaz, State counsel along with Mr. Jawad Hussain Aadil, Advocate
Date of Hearing:	**29.05.2025**

Sardar Ejaz Ishaq Khan, J:- The petitioner assails the judgment of his conviction by the trial Court dated 19.06.2023, and of the appellate court dated 27.06.2023 dismissing his appeal, whereby he was convicted and sent to serve his sentence of 3 years under section 489-F PPC, in FIR no. 99/2022, police station Sihala, Islamabad.

2 Prior to the instant FIR, on 11.08.2021, FIR no. 594/21 was registered at police station Industrial Area under sections 420, 468/471 PPC, by the same complainant, on the allegations of the petitioner embezzling Rs.9.1 million given by the complainant to him for deposit against the complainant's outstanding tax liability owed to Khyber Pakhtunkhwa Revenue Authority (KPRA), coupled with the allegation of preparing forged deposit slips of KPRA.

3 While in police custody, and for the complainant not opposing the petitioner's bail in FIR 549/21, the petitioner signed 3 cheques in the sum of Rs. 7.1 million (with 2 million claimed to have been repaid in cash), and filed a 'bayan halfi' to that effect before the trial Court. He was released on bail. The cheques bounced, and three separate FIRs were registered by the complainant in three different police stations.

4 The instant FIR no. 99/22, dated 01.02.2022, was registered at police station Sihala, under section 489-F PPC in respect of one cheque. The relevant part of the FIR reads as under:

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میں مسمی عدنان ملک مکان نمبر 26-13/1 گلی نمبر 3 چک شہزاد اسلام آباد کا رہائشی ہوں اور عدنان انٹر پرائزز کے نام سے کمپنی ہے میں نے عاطف ولد عبدالغفور جو کہ ٹیکس ایڈوکیٹ ہے کو کمپنی کے ٹیکس جمع کروانے کے لیے **مامور کیا ہوا ہے** جس کو ٹیکس جمع کروانے کے لیے **بذریعہ بینک رقم مبلغ 91 لاکھ روپے بھجوائے**۔ مجھے KPRA **کی جانب سے ٹیکس جمع نہ کرانے کا نوٹس موصول ہوا** تو میں نے میاں عاطف سے رابطہ کیا اور پوچھا کہ اپ نے ٹیکس جمع نہ کرایا ہے میری رقم واپس کرو جس نے مجھے 20 لاکھ روپے نقد دیے بقایہ رقم 71 لاکھ روپے میں سے ایک عدد چیک نمبر UBL23005658 صدر راولپنڈی برانچ کا دیا جو مقررہ تاریخ پر اپنے بینک اکاؤنٹ HBL ڈی ایچ اے فیز II اسلام آباد میں جمع کرایا جو مذکورہ میاں عاطف کے بینک سے payment stop ہونے کی وجہ سے ڈس انر ہو گیا۔ (emphasis added)

5 By the time this petition was finally heard, the petitioner had already undergone his entire sentence of three years. On 19.07.2024, the case was disposed of on that basis, but the petitioner's counsel insisted through a CM that his client was innocent, and that the finding of conviction be examined by this Court, notwithstanding the petitioner having served out his sentence.

6 I have reviewed the two judgments of the learned Courts below in light of the record, and I come to the conclusion that the petitioner's conviction was not possible on the basis of the evidence presented.

7 The following assertions of primary facts per the FIR were essential to be proven, but were not, and so I briefly deal with those assertions of facts and the evidence led:

مامور کیا ہوا ہے

The complainant, who appeared as PW-3, admitted in this cross-examination that he had not produced any evidence of the appointment of the petitioner as his agent for deposit of tax and that no contract for services was signed. Not only that, he also admitted that he did not even know where the petitioner's office was! It does not appeal to a rational mind that the complainant, a businessman, would hire someone to provide professional tax services without any formal contract, and that too where the amount to be entrusted to him was a huge sum of Rs. 9.1 million.

بذریعہ بینک رقم مبلغ 91 لاکھ روپے بھجوائے

The complainant did not produce any evidence of payment of Rs. 9.1 million to the petitioner, even though he claimed to have made the

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payment through banking channels. He admitted in the cross-examination that he had not produced any such evidence. Later in the cross-examination, he took a contrary stance stating that he had made the payment through some other persons. He also admitted that he had no direct dealing with the petitioner. The IO (PW-1) admitted in cross-examination that the complainant did not produce before him any receipt of payment to the petitioner.

KPRA کی جانب سے ٹیکس جمع نہ کرانے کا نوٹس موصول ہوا

The complainant did not produce the default notices issued by the KPRA. He admitted so in the cross-examination. He even admitted that he did not even know how much was the defaulted amount!

8 I must confess my shock and surprise at both the Courts below overlooking these material shortcomings in the complainant's evidence on the pivotal facts on which his complaint rested. Both the Courts below ignored the most important element of section 489-F, namely, that the cheque was issued for the discharge of a financial obligation. With no evidence of payment through bank to the petitioner, with no sight of the KPRA's tax default notice, with the complainant admitting that he had no direct dealings with the petitioner, and with no appointment letter of the petitioner, it was a gross miscarriage of justice for the learned Courts below to conclude that the financial obligation underlying the cheques was established beyond reasonable doubt solely because the complainant had so deposed in his examination-in-chief.

9 The learned trial Court relied on the fact of the cheques being issued in a bail order by compromise, with the compromise deed filed with the Court. However, the terms of the compromise deed cannot be read to mean more than what they state expressly. They only state that if the cheques were dishonoured, the complainant may move for cancellation of bail and registration of FIR – no admission of guilt by the petitioner was made in his bayan halfi filed in the trial Court for bail. I fail to see how the trial court and the appellate court spelt out guilt of the petitioner from that bayan halfi. Instead, they ought to have paid greater attention to the petitioner's stance in

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his statement under section 342 CrPC that the cheques were obtained in blank with his signatures under coercion while in police custody. Based on the general experience, this is not uncommon.

10 The prosecution case has to stand on its own strength, and not on an inferential basis that the underlying element of actus reus of the offence, namely, existence of a financial obligation, which had to be proved independently by the prosecution, but which was not proven to the standard of beyond reasonable doubt. The mere issuance of a cheque which stood dishonoured on presentation does not *per se* constitute the offence under section 489-F PPC unless some evidence of the underlying financial transaction accompanies it: *Mian Allah Ditta vs The State* (2013 SCMR 51); *Muhammad Ashraf vs The State* (2021 PCrLJ 586).

11 The learned Courts below relied on the presumption of consideration under section 118 of the Negotiable Instruments Act, 1881, to presume the existence of the key ingredient of an underlying financial obligation. This was a shocking legal error. The presumption of consideration under the Negotiable Instruments Act is for civil disputes. It does not apply to criminal matters, and does not dispense the prosecution's duty to establish the underlying financial obligation beyond reasonable doubt. It was held as follows in *Sakhawat Haider vs Emperor* [A.I.R 1920 Allahabad 242(1)]:

> For the purposes of the civil courts the Negotiable Instruments Act lays down that the presumption is that a promissory note has been passed for consideration. That rule of law would not necessarily apply to a criminal trial in which every element which goes to constitute a particular offence has to be proved by the prosecution. In the present case it was necessary for the prosecution to prove that the promissory notes were for consideration and it was not for the accused to prove the contrary.

12 The learned Judge in the aforesaid judgment was somewhat cautious by using the word 'necessarily' while observing that the presumption of consideration did not apply to criminal trials. Such caution was dissonant with the next two sentences, which reiterated the golden principle of criminal jurisprudence that the key facts forming the actus reus in a criminal offence must be proven independently by the prosecution. I would not hesitate to

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state the same principle without such a qualification. Section 489-F did not exist when the Negotiable Instruments Act was passed; if it did, I have no doubt that the framers of the Act would have added that the presumption did not apply in criminal trials for the reason that the operation of such a presumption would obviate the need for the prosecution to prove the ingredients of the offence by independent evidence, with the unsalutary consequence that the burden of proof for both civil trials and criminal trials in cases of dishonour of cheques would become one of a balance of probabilities only, and the prosecution would then rest by simply producing a dishonoured cheque for the guilt of the accused to follow as a necessary consequence of the presumption of consideration. That would run counter to the very foundations of criminal jurisprudence.

13 Another crucial aspect of this case is the registration of three FIRs in different police stations under section 489-F, despite this being held contrary to the law by the Islamabad High Court in *Hamid Khan vs The State* (2022 MLD 31 Islamabad). The underlying transaction was the same: the three cheques were issued for payment of the same amount in instalments, which, in any event, per the petitioner's case, were issued under coercion in the police station. In the circumstances, I find that the registration of the other two FIRs was plainly contrary to the settled law on the subject. The proper legal route would have been to add the offence of section 489-F in the original FIR no. 594/21, as the antecedent question of the financial obligation allegedly owed by the petitioner to the complainant was pivotal to bring home the charges under the original FIR no. 594/21, and the learned Courts below committed a grave error by deciding the section 489-F FIR without waiting for the FIR 594/21 to be decided first. Could any question of criminal liability against the petitioner arise if the underlying payments claimed to have been made through banking channels and the default notices of KPRA could not be proved by the complainant in the original FIR 594/21? Obviously not.

14 As a result, I find that there was patent misreading of the evidence in the trial by both the learned Courts below, and also that the conclusion of law of the financial obligation premised on the presumption of consideration

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was incorrect, leading to a grave miscarriage of justice, with the petitioner ending up serving a sentence that could not be awarded to him.

15 Resultantly, the petitioner's conviction is set aside and he is acquitted of the charge for which he was convicted.

(Sardar Ejaz Ishaq Khan)
Judge

Announced in open Court on **04.07.2025**.

Judge

Approved for Reporting

Imran

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