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

Criminal Appeal No.473 of 2023

Adnan Hamayun
Vs.
Arjumand Jahangir and another

Appellant by:	Ch. Ali Abbas, Advocate.
Respondent No.1 by:	Syed Asghar Hussain Sabzwari, Advocate.
Respondent No.2/State	Rana Ali Raza, State Counsel. Ghulam Murtaza, S.I.
Date of Hearing:	**25.02.2025.**

INAAM AMEEN MINHAS, J.- This appeal has been directed against the judgment dated 21.10.2023 **("Impugned Judgment")**, passed by learned Magistrate Section 30, Islamabad (West) **("Trial Court")**, whereby respondent No.1 was tried in case FIR No.298, dated 04.10.2014, under section 489-F, PPC, registered at Police Station Shalimar, Islamabad and was acquitted.

2. Brief facts of the case as unfolded from the FIR are that the appellant/complainant is involved in the business of buying and selling vehicles. He had a business relationship with respondent No.1/accused and gave him Rs. 68,00,000/- as loan. In return respondent No.1/accused , issued cheque No.99860440, dated 01.04.2013 against the said amount. However, when the appellant presented the said cheque in Silk Bank Limited, F-11 Markaz, Islamabad, it was dishonoured due to insufficient funds.

UNCERTIFIED

3. After completion of the investigation, report u/s 173, Cr.P.C was submitted before the Court for trial. Trial Court framed the charge, recorded evidence and after hearing the arguments of learned counsel for the parties acquitted respondent No.1/accused from the case, hence, this appeal.

4. Learned counsel for the appellant contended that Impugned Judgment is against the law and facts of the case; that Impugned Judgment is result of misreading and non-reading of evidence, especially the finding that the cheque was issued as guarantee cheque; that Impugned Judgment is based on surmises and conjectures.

5. Conversely, learned counsel for respondent No.1 opposed the instant appeal and contended that the Impugned Judgment has been passed in accordance with law and respondent No.1 has rightly been acquitted.

6. I have the arguments advanced by learned counsel for the parties and gone through the record with their able assistance.

7. Perusal of the record reveals that as per the contents of the complaint Exh.PE, loan of Rs.68,00,000/- was taken by respondent No.1 and in lieu of that cheque No.99860440 Exh.PA & PB was issued by respondent No.1. However, the back side of the cheque Exh.PA, contains an endorsement, which is reproduced hereunder:-

> *"Against Land Cruiser BG0009, which is to be sold by Arjumand Jahangir. The vehicle is currently in the possession of Adnan Humayun along with its original documents. This cheque serves only as a guarantee and will be honored after the sale of the aforementioned car/jeep."*

UNCERTIFIED

This endorsement was brought on the record and remained unchallenged or undisputed by the appellant. This endorsement discloses another version of the prosecution case that is entirely different from the case mentioned in the complaint Exh.PE. The presence of this endorsement proves that the cheque was not issued in lieu of payment of loan rather the same was issued as a guarantee. This aspect has seriously damaged the prosecution case and created doubts in favour of respondent No.1.

8. Furthermore, during examination-in-chief, the appellant made substantial improvements to the original allegations contained in complaint Exh.PE. The appellant asserted financial claim of Rs. 20,760,000/- against respondent No.1 in his examination in chief. However, he admitted to have received Rs.7,100,000/- from the father of respondent No.1 Raja Jahangir. This amount is neither mentioned in complaint Exh.PE nor any evidence was produced by the appellant. The appellant by making improvement brought a new case as all these facts surfaced during the examination-in-chief of the appellant, directly contradicts the appellant's earlier position as mentioned in the complaint Exh.P.E. Consequently, these inconsistencies and contradictions significantly undermine the credibility of the appellant's case, rendering it doubtful and unreliable.

9. In order to establish an offence under Section 489-F, PPC, the prosecution has to prove the following essential elements of the offence:-

i. That the cheque in question was issued by the accused with dishonest intent.

UNCERTIFIED

ii. That the cheque was issued either for the repayment of a loan or to fulfill an outstanding obligation.

10. In the present case, the prosecution has failed to provide sufficient evidence to establish that a sum of Rs. 6,800,000/- was advanced by the appellant to respondent No.1 as a loan. Furthermore, the endorsement on the reverse side of the cheque Exh.PB presents a different fact that the cheque Exh.PB was issued as a guarantee in relation to the sale of a vehicle, which is a totally different story and negates the stance taken in complaint Exh.PE. It is settled principle of law that if there is a single loophole/lacuna in the prosecution case, benefit of such loophole/lacuna will go in favour of the accused as held in ***Muhammad Hassan vs. State*, (2024 SCMR 1427).**

11. The alleged payment by the appellant to respondent No.1 as a loan has not been substantiated nor any obligation on the part of respondent No.1 has been proved as such the essential ingredients to establish an offence under Section 489-F PPC remained unproven. Consequently, the prosecution has failed to prove its case against respondent No.1.

12. 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.

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. Reliance is

UNCERTIFIED

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

14. It is also settled that an appeal against acquittal is governed by settled principles, wherein an acquittal carries a strong presumption of innocence. The appellate court does not interfere unless the findings of Trial Court are perverse, arbitrary, or based on a misreading of evidence.

15. In view of above discussion, it is concluded that Trial Court properly appreciated the evidence and passed the Impugned Judgment in accordance with law. Consequently, the instant appeal is **dismissed** being meritless. Impugned Judgment of Trial Court is **upheld.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 11.03.2025.

JUDGE

R.Anjam

UNCERTIFIED