JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL REVISION NO.104 OF 2024

UMER ABBASI
VS
THE STATE & ANOTHER.

Petitioner by: Syed Shajjar Abbas Hamdani, Advocate.

Respondents by: Mr. Wajid Hussain, Advocate for the Complainant.
Rana Hassan Abbas, ADPP.
Mr. Tanveer SI, P.S Bani Gala.

Date of hearing: 19.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Revision Petition under Sections 435 and 439-A, Code of Criminal Procedure, 1898 **("Cr.P.C")**, Umer Abbasi **("Petitioner/Convict")**, has assailed the Judgment dated 30.05.2024 **("Impugned Judgment I")** passed by the learned Judicial Magistrate Section 30, Islamabad-East **("Trial Court")** whereby the Petitioner has been convicted and sentenced to undergo rigorous imprisonment for three years in case, FIR No.137 dated 25.04.2023 registered under section 489-F, Pakistan Penal Code, 1860, **("PPC")** with Police Station Bani Gala, Islamabad **("Subject FIR")**. The Trial Court granted the benefit of Section 382-B, Cr.P.C. to the Petitioner. Additionally, the Petitioner/Convict challenges the Judgment dated 25.06.2024 **("Impugned Judgment II")** passed by the learned Additional District & Sessions Judge/Judge, Special Anti-Rape Court, East-Islamabad **("Appellate Court")**, which dismissed the Petitioner/Convict's appeal against the Trial Court's decision.

2. The brief facts of the case are that the Respondent No. 2/Complainant [Muhammad Usman] reported to police that he deals in the property business and has a close business relationship with the Petitioner/Convict, who operates a business with the name of Al-Baraq Real Estate with its office located in Asian Arcade, Sector-C, Bahria Enclave, Islamabad**.** On 18.11.2022, the Petitioner/Convict approached the Complainant and requested a sum of Rs. 35,000,000/- for his business. The Complainant provided the requested amount to the Petitioner/Convict in the presence of witnesses Awais Ahmed and Umer

Shahzad. When the Complainant demanded repayment of the amount from the Petitioner/Convict, he provided a cheque bearing No. 0000000003, dated 01.03.2023**,** for the sum of Rs. 35,000,000/- drawn on Bank Al-Falah Limited. However, when the cheque was presented for payment at the concerned bank, it was dishonored. As a result, the subject FIR was registered.

3. After the registration of the Subject FIR, Challan under Section 173, Cr.P.C was submitted in the Trial Court, copies under Section 241-A, Cr.P.C were supplied to the Petitioner/Convict and the charge was framed against him to which he pleaded not guilty and claimed trial. Thereafter, five prosecution witnesses were produced before the learned Trial Court. In his statement recorded under Section 342, Cr.P.C, the Petitioner/Convict opted not to produce defense evidence or to appear under Section 340(2), Cr.P.C to record his statement under oath. After hearing the arguments of both sides, the learned Trial Court vide the Impugned Judgment I convicted the Petitioner/Convict and sentenced him to three years of rigorous imprisonment. The benefit of Section 382(b), Cr.P.C was also extended to the Petitioner/Convict.

4. Being aggrieved of the Impugned Judgment I, the Petitioner/Convict filed criminal appeal before the learned Appellate Court who after hearing arguments from both the sides, dismissed the appeal and maintained the conviction awarded to the Petitioner/Convict by the learned Trial Court.

5. The learned counsel for the Petitioner/Convict argued that both the Impugned Judgments are against the law and facts; that there are material discrepancies in prosecution evidence; that the learned Appellate Court while maintaining the conviction and learned Trial Court while awarding the sentence, have overlooked these material discrepancies that the prosecution failed to establish the essential requirements to attract the penal provisions of Section 489-F, PPC; that the prosecution failed to prove that the cheque in question was issued by the Petitioner/Convict for repayment of loan or fulfillment of an obligation; that the prosecution has failed to prove through any cogent and reliable evidence that the Complainant paid any amount to the Petitioner/Convict; that the Investigating Officer during his investigation has failed to investigate whether the Complainant had the necessary resources to provide the huge amount of Rs. 35,000,000/-; that the conviction of the Petitioner/Convict is result of non-reading and misreading of

evidence; that prosecution has miserably failed to prove the charge against the Petitioner/Convict through cogent and confidence-inspiring evidence; that the reasons for conviction of the Petitioner/Convict are neither in accordance with law nor based upon the well-settled principles of law applicable; that the learned Trial Court has not applied its judicial mind while passing the Impugned Judgment I; and that instant Petition may kindly be accepted and the Impugned Judgments may kindly be set-aside and the Petitioner/Convict may kindly be acquitted in the instant case.

6. The learned Assistant District Public Prosecutor **("ADPP")** duly assisted by learned counsel for the Complainant argued that the prosecution has proved the case against the Petitioner/Convict beyond any shadow of doubt; that the prosecution witnesses remained consistent on material aspects of the case; that the Petitioner/Convict's counsel has failed to point out any material contradiction in the statements of prosecution witnesses; that the learned Trial Court and the learned Appellate Court have passed well-reasoned judgments keeping in view the evidence available on record; that the learned Appellate Court has not committed any illegality or irregularity while passing the Impugned Judgment II; and that the instant Revision Petition may kindly be dismissed.

7. The learned counsel for the parties as well the learned ADPP have been heard and record perused with their able assistance.

8. The Petitioner/Convict is convicted for an offence under Section 489-F PPC. For ready reference, Section 489-F PPC is reproduced as under:-

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

9. Basic ingredients of Section 489-F, PPC are that cheque was issued with dishonest intention; that purpose of issuance of cheque was to repay a loan to fulfill an obligation; and that cheque was dishonored upon presentation. In order to prove the offence of dishonoring of cheque, Complainant/Prosecution produced five witnesses in support of their claim that a cheque of Rs.35,000,000/- was issued towards the repayment of loan, which was given to the Petitioner/Convict by the Complainant.

10. PW-1 Muhammad Usman who is the Complainant, supported his version contained in Ex.PA (written complaint dated 31.03.2023), through his statement before the Court. He also produced original cheque Ex.PC and dishonoring slip Ex.PD. He was cross-examined by the learned Defense Counsel but nothing material could be brought on record, rather he reaffirmed his stance during the whole cross-examination. The relevant portion of the cross-examination is reproduced hereunder: -

"یہ درست ہے کہ میرے بیان میں یہ نہ لکھا گیا ہے کہ مجھے ملزم نے کب اور کس کے سامنے چیک متدعویہ دیا. ازخود کہا کہ چیک پر تاریخ لکھی ہوئی ہے۔ میں ساڑھے تین کروڑ روپے کی رقم اپنے گھر سے لے کر آیا تھا. ازخود کہا کہ ڈھایئ کروڑ روپے اپنے گھر سے لایا تھا اور ایک کروڑ روپے اپنے چچا کے گھر سے لایا تھا. میں نے ملزم کے ساتھ ساڑھے تین کروڑ روپے کی نسبت کوئی تحریر نہ ککھی تھی ازخود کہا کہ ملزم رشتہ دار تھا اس لئے تحریر میں نہ لایا گیا. اگر عدالت میرے چچا عبداللہ عباسی کو بطور گواہ عدالت میں طلب کرے تو مجھے کوئی اعتراض نہ ہے۔ "

11. PW-2 Umer Shahzad stated that he was present in the office of the Complainant (PW-1), when in the meanwhile Petitioner/Convict came there and demanded a loan of Rs.35,000,000/-. He also promised that the amount shall be paid back on 28.02.2023, upon this, the Complainant paid the amount to the Petitioner/Convict in his as well as in the presence of one Muhammad Awais.

12. PW-3 Jamshed Ali who is the Operational Manager of Silk Bank, Kurri Road Chak Shahzad Branch, Islamabad, deposed that the cheque Ex.PC was presented in his Bank on 26.03.2023, which got dishonored due to insufficient funds in the bank account of Petitioner/Convict, and as a consequence dishonor slip Ex.PD was issued. He further stated that the dishonor slip was verified by him.

13. PW-4 Naveed Ahmed ASI who is Investigating Officer of the case, stated that he registered F.I.R Ex.PF, when he received application from the Complainant. He stated that he took into possession the cheque and dishonor slip and took it through a recovery memo, duly signed by recovery memo witnesses. The dishonor slip was verified from the concerned bank, recorded the statement of the Manager of the Bank. The Petitioner/Convict did not surrender before lawful authority, therefore, proceedings under Section 512, Cr.P.C were initiated on 11.07.2023, The Petitioner/Convict then procured pre-arrest bail and joined investigation. During investigation, the Complainant produced three witnesses namely Saqib Latif, Zeeshan Mehmood and Ehsan ul Haq whose statements were

recorded under Section 161, Cr.P.C and after completion of investigation submitted complete challan before the learned Trial Court.

14. PW-5 Aslam Shah Constable served the publication against the Petitioner/Convict under Section 87, Cr.P.C, during the investigation.

15. The learned Trial Court formulated points of determination based on facts and circumstances of the instant case.

i. Whether the accused facing trial was under liability to pay Rs.35,000,000/- and in order to discharge such liability he dishonestly issued cheque bearing No.0000000003 drawn on Bank-Alfalah Limited Kuri Road Branch Islamabad in favour of the complainant which could not be honoured?

ii. Whether the prosecution has been able to prove the case against the accused beyond the shadow of reasonable doubt?

16. In order to prove conditions mentioned in Section 489-F, PPC the prosecution has to prove;-

i. issuance of cheque;
ii. such issuance was with dishonest intention.
iii. the purpose of issuance of cheque should be:--
    a) to repay a loan; or
    b) to fulfill an obligation (which in wide term *inter alia* applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds person to some performance).
iv. on presentation, the cheque is dishonoured.

17. It should be noted that the co-existence of all the elements mentioned above is essential for the conviction of the accused under Section 489-F, PPC. If any of the essential elements of the offence are missing, it cannot be concluded that the prosecution has successfully proven its case against the accused. In the present case, Complainant deposed before the Court that the Petitioner/Convict approached him for loan of Rs. 35,000,000/- on 18.11.2022 in the presence of witnesses and when the Petitioner/Convict failed to pay back the loan, he promised and executed a cheque of Rs. 35,000,000/- drawn on Bank Al-Falah, Kurri Road Branch, Islamabad dated 01.03.2023. When the cheque was presented, it was dishonored. The next essential element of the offence is the dishonesty on the part of the Petitioner/Convict in issuing the cheque. Since the bank account belongs to the Petitioner/Convict, it is unlikely that he was unaware of the credit in his bank account. Therefore, issuing a cheque under such circumstances reflects his

dishonest intention. It is important to note that the Petitioner/Convict has not denied the issuance of the cheque. Throughout the trial, he did not take the defense that his cheque book was stolen or that the cheque came into the possession of the Complainant through any other means. Furthermore, the Petitioner/Convict did not raise any allegation of forgery regarding the signature on the cheque during the trial.

18. The only stance taken by the learned counsel for the Petitioner/Convict is that the cheque was not issued for the discharge of any liability. However, the learned counsel failed to explain why the Petitioner/Convict, in his statement under Section 342, Cr.P.C.**,** could not provide a reason for executing the cheque in favor of the Complainant. Therefore, all the elements required under Section 489-F, PPC have been established by the prosecution. As a result, I concur with the findings of the learned Courts below as they did not commit any illegality or irregularity in passing the Impugned Judgments, hence, the same does not warrant any interference.

19. For what has been discussed above, the instant Criminal Revision Petition being devoid of any merit is hereby **dismissed**.

20. Copy of this judgment be sent to the learned Trial Court as well as the learned Appellate Court for information.

(MUHAMMAD AZAM KHAN)
JUDGE

Sajid/--