JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL APPEAL NO. 473 OF 2024

IFTIKHAR ALI
Vs
THE STATE AND ANOTHER.

Appellant by: Mr. Nabeel Tahri Mirza, Advocate.

Respondents by: Mr. Ghulam Qasim Bhatti, Advocate for the Respondent No.2.

Rana Hassan Abbas, Assistant District Public Prosecutor.
Mr. Sanfar Khan ASI, P.S Sihala.

Date of hearing: 24.06.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Appeal under Section 417, Code of Criminal Procedure, 1898 **("Cr.P.C.")**, the Appellant has assailed the Judgment dated 25.06.2024 **("Impugned Judgment")** passed by the learned Judicial Magistrate Section 30, Islamabad-East, whereby Accused/Respondents No.2 was acquitted of the charges in FIR No.388/18 dated 03.09.2018 under Section 489-F Pakistan Penal Code, 1860 **("PPC")**, registered with Police Station Sihala.

2. The brief facts of the case, as per the memo of appeal, are that the Appellant/Complainant lodged FIR No. 388/2018 dated 03.09.2018 at Police Station Sihala, Islamabad, under Section 489-F of the Pakistan Penal Code, 1860 **("PPC")**, against Respondent No.2/Accused. As per the FIR, the Appellant and the Respondent No.2 maintained a friendly relationship. During the course of their acquaintance, Respondent No.2 claimed to be running a highly profitable business under the name of "Super Way Cash & Carry Store" and persuaded the Appellant to invest in the said business on a profit-sharing basis. Acting upon this representation, the Appellant sold his properties and, on various occasions, handed over a cumulative amount of Rs. 79,000,000/- to Respondent No.2 in the presence of witnesses namely, Muhammad Ehsan (son of Said Muhammad) and Humayun Shehzad (son of Zulfiqar Ali). Initially, Respondent No.2 paid monthly profits to the Appellant for a period of two to three months. However, thereafter, the Respondent

stopped making any further payments. Upon repeated demands by the Appellant for return of the invested amount and the due profits, Respondent No.2 allegedly issued a cheque bearing No. CA-0071770638 dated 17.08.2018 for an amount of Rs. 5,000,000/-, drawn on Faysal Bank Limited, Rawat Branch, Islamabad. The said cheque, however, was dishonoured upon presentation due to "insufficient funds." It is further alleged that when the Appellant confronted Respondent No.2 regarding the dishonoured cheque, he not only refused to make payment but also extended life threats to the Appellant.

3. The learned counsel for the Appellant contends that the Impugned Judgment is not sustainable in the eye of law, as it is based on misreading and non-reading of the material evidence available on record. It is argued that the learned Trial Court failed to properly appreciate the evidence in accordance with the settled principles of criminal justice and jurisprudence. The counsel submits that the acquittal of the Accused/Respondent No. 2 was result of a hasty and arbitrary exercise of jurisdiction, wherein the Trial Court did not even properly examine the case file. It is further contended that the judicial policy aims to ensure expeditious disposal of cases without compromising the requirements of a fair trial and due process, and certainly not at the cost of justice. The counsel emphasizes that there was sufficient and cogent evidence available on record warranting conviction of the Accused/Respondent No. 2, and thus, the case was not one fit for acquittal. He further submits that the learned Trial Court exceeded its lawful authority by passing a perverse and excessive judgment, which has resulted in serious miscarriage of justice. The learned counsel, therefore, prays that the Impugned Judgment be set aside and that this Court may be pleased to exercise its appellate jurisdiction in the interest of justice.

4. On the other hand, learned counsel for Respondent No. 2 and the learned Assistant District Public Prosecutor (ADPP) resisted the instant appeal and prayed for its dismissal on the ground that the Impugned Judgment is a well-reasoned order; that it does not suffer from any illegality or irregularity, and does not call for any interference.

5. I have heard the learned counsel for the parties as well as the learned ADPP and perused the record with their able assistance.

6. It is well-settled that in order to attract Section 489-F PPC, the prosecution must prove four essential ingredients: (i) issuance of a cheque by the accused, (ii) such issuance was dishonest, (iii) the cheque was given towards repayment of a loan or fulfillment of an obligation, and (iv) the cheque was dishonoured upon presentation. In the instant case, while the complainant alleged issuance of cheque in discharge of a claimed obligation, the original cheque and dishonour slip were not produced, and only photocopies were brought on record. The prosecution failed to justify the absence of the originals or invoke the necessary legal framework for admitting secondary evidence under Articles 76–78 of the Qanun-e-Shahadat Order, 1984. Moreover, it is well settled that in cheque dishonour cases, production of the original cheque and its dishonour record is not a mere formality but a fundamental evidentiary requirement. Reliance is placed on *Gulraiz versus The State and another* **(2021 PCr.L.J. 145)**.

7. The learned Trial Court also observed that the best possible evidence, i.e., the witnesses to the alleged transaction involving Rs. 79 million, were not produced despite being named in the FIR. The Complainant did not even file an application to summon them nor offered any plausible explanation for withholding them and such non-production of best available evidence leads to a negative inference under Article 129(g) of Qanun-e-Shahadat Order, 1984, and where prosecution withholds material witnesses, Courts may presume that their testimony would not have supported the prosecution case. Reliance to this effect can safely be placed on *Qalander Said versus The State and another* **(2013 YLR 759)**. Moreover, in cheque dishonour cases, absence of supporting independent witnesses weakens the prosecution's case materially.

8. The Appellant's counsel argued that the learned Trial Court misread evidence and ignored material facts. However, the learned Trial Court recorded a detailed appreciation of prosecution witnesses and rightly held that their testimony was not confidence-inspiring. PW-1 (complainant) gave a self-serving statement unsupported by any documentary proof of investment or legal obligation. PW-2 (investigating officer) merely produced photocopies of the cheque and memo, which could not be treated as primary evidence. The Trial Court's conclusion that the prosecution failed to discharge its burden of proof is supported by well-reasoned analysis and cannot be termed perverse or arbitrary. In a criminal trial, burden

squarely rests on the prosecution to prove its case beyond reasonable doubt and that the benefit of any real or plausible doubt must go to the accused. Reliance in this regard is placed on *Abdul Samad versus The State and another* **(2025 SCMR 639)** and *Ahmed Ali and another versus The State* **(2023 SCMR 781)**.

9. It is trite law that interference in an acquittal judgment is rare and only permissible where the findings are perverse, arbitrary, or reflect a miscarriage of justice. As held by the superior Courts of the country appellate Courts must exercise restraint in reversing acquittals unless gross misappreciation of evidence or manifest illegality is apparent. Reliance can safely be placed on *Alhaaj Malik M. Ashraf versus Javed Akhtar and another* **(2025 SCMR 787)**, *InayatUllah Butt v. Muhammad Javed etc*. **(PLD 2003 SC 563)** and *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others* **(2017 SCMR 1710)**. Further, if two views are possible, one pointing to guilt and the other to innocence, the benefit must go to the accused and the acquittal should not be lightly disturbed.

10. In the present case, the accused/Respondent No. 2's acquittal by the learned Trial Court is based on a reasonable and legal assessment of the evidence. The failure to produce original documentary evidence, the absence of key witnesses, and the overall lack of corroboration fully justified the conclusion that the prosecution failed to prove its case beyond reasonable doubt. No perversity, illegality, or misreading of record is demonstrated to justify interference by this Court.

11. For the reasons stated above, the instant appeal is devoid of merit and is accordingly **dismissed** and the Impugned Judgment is **upheld**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on this _____ day of June 2025.

JUDGE

Sajid/--