**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

**CRIMINAL REVISION NO.32 OF 2025**

**AMEER KHAN**
VS
**THE STATE & 2 OTHERS.**

Petitioner by: Malik Khalid Mansoor, Advocate.

Respondents by: Rana Hassan Abbas, Assistant District Public Prosecutor.
Mr. Iftikhar ASI, P.S Tarnol.

Date of hearing: 26.03.2025

**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")**, Ameer Khan **("Petitioner/Convict")**, has assailed the Judgment dated 18.10.2024 **("Impugned Judgment I")** passed by the learned Judicial Magistrate Section 30, Islamabad-West **("Trial Court")** whereby the Petitioner has been convicted and sentenced to undergo simple imprisonment for one year and six months in case FIR No.450 dated 19.12.2017 registered under section 489-F, Pakistan Penal Code, 1860, **("PPC")** with Police Station Tarnol, Islamabad **("Subject FIR")**. The Trial Court granted the benefit of Section 382-B, Cr.P.C. to the Petitioner. Additionally, the Petitioner/Convict challenged the Judgment dated 14.11.2024 **("Impugned Judgment II")** passed by the learned Additional Sessions Judge, Islamabad-West **("Appellate Court")**, which dismissed the Petitioner/Convict's appeal against the Trial Court's decision and reduced the sentence to imprisonment for one year.

**2.** The brief facts of the case are that the Respondent No. 3/Complainant [Arshad Mehmood] reported to police that Petitioner/Convict received Rs.5,00,000/- from him as loan and for return of the same, issued a cheque bearing No.B-26775622 dated 06.09.2017, for the sum of Rs. 5,00,000/-, drawn on Meezan Bank Tarnol Branch. 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, four prosecution witnesses were produced before the learned Trial Court. In his statement recorded under Section 342, Cr.P.C, the Petitioner/Convict opted to produce defense witnesses under Section 340(2), Cr.P.C and produced Raja Nasir Ali as DW-1 and Jan Zaib as DW-2. After hearing the arguments of both sides, the learned Trial Court vide the Impugned Judgment I convicted the Petitioner/Convict and sentenced him to one year and six months of simple 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, partly allowed the appeal and reduced the sentence of Petitioner/Convict from 1½ years to 1-year simple imprisonment.

**5.** The learned counsel for the Petitioner/Convict argued that there are material contradictions and dishonest improvement in the statement of prosecution witnesses; that both the Impugned Judgments are against the law and facts of the case; that the prosecution has failed to bring home guilt to the Petitioner/Convict and the order of conviction is not sustainable in the eyes of law; that the Impugned Judgments are required to be declared illegal, ultra vires and liable to be set-aside; that the Impugned Judgments are result of misreading and non-reading of evidence; that the Impugned Judgments caused great miscarriage of justice and the same are not maintainable under the norms of natural justice; that the case of the Petitioner/Convict is of no evidence and the Petitioner/Convict is behind the bars since his arrest; that the prosecution case is full of doubts and the learned lower courts failed to appreciate the law; that prosecution miserably failed to prove the case against the Petitioner. In the last, learned counsel prayed 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”)** 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 party and 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 the cheque was issued with dishonest intention; that the purpose of issuance of the cheque was to repay a loan or to fulfill an obligation; and that the cheque was dishonored upon presentation. In order to prove the offence of dishonoring of cheque, the Complainant/Prosecution produced four witnesses in support of his claim that a cheque of Rs.5,00,000/- was issued towards the repayment of the loan, which was given to the Petitioner/Convict by the Complainant.

**10.** PW-1 Muhammad Ashfaq Ahmed ASI, who is the Investigating Officer of the case, stated that on 19.12.2017, he registered the F.I.R Ex.PA, when he received an application. He stated that on 20.12.2017, he prepared site map plan Ex.PB on the pointation of the Complainant. He also took into possession the cheque Ex.PD and dishonor slip Ex.PE through a recovery memo Ex.PC. The cheque was verified from the concerned bank, and the statement of the Manager of the Bank was recorded. He further stated that he arrested the accused on 18.02.2018 and produced him before the court on 19.02.2018, whereafter the latter was sent to judicial lockup.

**11.** PW-2 Malik Arshad Mehmood who is the Complainant, supported his version contained in Ex.PB (F.I.R), through his statement before the Court. He also produced original cheque Ex.PD and dishonor slip Ex.PF.

**12.** PW-3 Arsalan Tahir Qureshi, deposed that the cheque valuing Rs.5,00,000/- was presented in his Bank on 13.11.2017, which got dishonored due

to insufficient funds in the bank account of the Petitioner/Convict, and as a consequence, dishonor slip Ex.PE was issued. He further stated that the dishonor slip was verified by him and he put his signature on it.

**13.** PW-4 Amir Abbas ASI stated that on 10.01.2018, the file of case FIR No.450/17 was marked to him for investigation. On 25.01.2018, he got warrant of arrest of the accused from the court. He tried to arrest the accused, but failed to do so. Thereafter, the investigation of the case was marked to the previous I.O.

**14.** The contention of the Complainant is that the accused took loan of Rs.5,00,000/- and in order to pay back the said loan, accused issued the cheque in question, which on presentation got dishonored. The main contention of the learned counsel for Petitioner/Convict is that the cheque in question was issued as a guarantee cheque as there were business relations between the parties. He pointed out that in the statement of Raja Nasir Ali DW-1, it is mentioned that Petitioner and the Complainant were partners in cloth business, having received Rs.5,00,000/- from the Complainant. Later on, the Petitioner paid back Rs.16,000/- to the Complainant as profit of the first month, and Rs.2,80,000/- was also paid from the original amount. Jan Zaib DW-2 stated exactly the same facts as narrated by DW-1.

**15.** The defense witnesses produced by the Petitioner/Convict admitted the fact that Complainant had indeed paid Rs.5,00,000/- to the Petitioner/Convict, though by investing in their mutual business. They also stated that some of the amount has been paid back, however, they failed to substantiate their claim through receipts or any other evidence. In criminal cases, the onus of proof is on the prosecution to prove its case against the Petitioner/Convict, and if initial burden is discharged by the prosecution, then onus is shifted to the accused in order to not only prove otherwise, but also to explain under what circumstances he had returned the amount and the reasons for not receiving back the cheque in question.

**16.** According to section 489-F PPC, dishonestly issuing a cheque towards re-payment of a loan or fulfillment of an obligation is an essential ingredient which needs to be proved by the Complainant/Prosecution in order to bring home the charge against the accused. In the present case, the witnesses produced by the Petitioner/Convict also admitted that the amount of Rs.5,00,000/- was paid to the Petitioner/Convict by the Complainant, however, as to whether the

said amount was given in the capacity of a loan or investment in their mutual business, in this regard, the record remains silent. The sole evidence, which is produced during the trial, is the statement of the Complainant as PW-2, whereas, no independent witness was produced in support of the version of the Complainant that could corroborate his stance. Secondly, the issuance of cheque with dishonest intention also needs to be proved. The Petitioner/Convict, in his statement under section 342 Cr.P.C, had stated that the cheque was issued in good faith, and as a guarantee in lieu of their business transaction.

**17.** The Complainant in his statement as PW-2 stated that Ameer (Petitioner) was working as Munshi at 26 Number Chungi, Paracha Traders Building Material, Cement etc, who had requested for a loan of Rs.5,00,000/- with a condition that he would return the same. Upon this, the Complainant handed over cash amount of Rs.5,00,000/- and in lieu of that, the Petitioner/Convict handed over a post-dated cheque of Rs.5,00,000/- having the date of 06.09.2017. The wording used by the Complainant in his statement before the court shows that he had received the cheque in question in lieu of the cash payment made to the Petitioner/Convict, meaning thereby that the cheque was issued as a guarantee.

**18.** The cheque handed over by the Petitioner/Convict to the Complainant seems to be a guarantee cheque in lieu of the loan released by the Complainant, but at the same time, it is an admitted fact that the Petitioner/Convict had received Rs.5,00,000/- from the Complainant and in order to pay back the said amount, he had issued the said cheque. A guarantee cheque in the instant circumstances and facts of this case will be covered under Section 489-F PPC. The Petitioner/Convict entered into a verbal agreement with the Complainant regarding sanctioning of a loan in his favour, after which, he had issued the cheque in question to the Complainant as a security/guarantee that resultantly got dishonored on presentation due to insufficient funds. The Petitioner/Convict has admitted to issuing the cheque as guarantee towards the repayment of loan, thus, the words “fulfilment of obligation” used in section 489-F PPC amounts to a guarantee for certain commitment. Therefore, the case of the Petitioner/Convict will come within the ambit of Section 489-F PPC. Keeping in view the above, the learned Trial Court convicted and sentenced the Petitioner for imprisonment of one and a half year, while the Appellate court reduced it to one year after considering the cheque amount of Rs.5,00,000/- issued by the Petitioner. The learned counsel on behalf of

the Petitioner has failed to point out any illegality or irregularity in the impugned judgment. Therefore, the conviction and sentence of the Petitioner is hereby maintained, however, this court is of the view that by keeping in mind the amount of the cheque, the sentence is further reduced to period already **undergone**. The Petitioner/Convict has been behind the bars since 18.10.2024, when the learned Trial Court had convicted him, whereafter he was taken into custody and sent to Central Jail Adyala Rawalpindi to undergo his sentence. Thus, the instant criminal revision is decided in the above terms with modification to the quantum of sentence.

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

**(MUHAMMAD AZAM KHAN)**
**JUDGE**

**Announced in the open court on 9.4.2025.**

**JUDGE**

*Sajid/--*