JUDGMENT SHEET

IN THE LAHORE HIGH COURT LAHORE
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Writ Petition No. 4190 of 2021

Naveed Ishaq **Versus** Ex-Officio Justice of Peace, etc.

JUDGMENT

Petitioner by:	Mehr Fakhar Raza Ajmal Malana, Advocate.
Respondents by:	Rao Raheel Nadeem, Advocate. Malik Shoukat Mahmood Mahra, Assistant Advocate General.
Date of hearing:	**21.12.2021**

MUHAMMAD SHAN GUL, J:- The fact that the proposition before this Court has not received a lot of judicial attention is perhaps owed to the fact that the matter in issue is so obvious and logically so settled that it has never been considered moot so as to be written about or deliberated.

2. **Can a dishonoured 'self' cheque i.e. a cheque issued by an account holder i.e. drawer to 'himself' (payee) ever result in attracting criminal liability i.e. three years of hard treatment in addition to stigmatization and moral blameworthiness, contained in Section 489-F PPC? Can a person dupe himself? Can a**

person lend money to himself and thereby assume an obligation to repay himself? Can a person defraud himself? Can a person bind himself to an obligation that he owes himself? These questions may sound very basic and in fact naïve but since a Justice of Peace i.e. an Addl. District & Sessions Judge has ordered for the registration of a criminal case against the petitioner in the present petition on the basis of a dishonoured 'self' cheque without demur, the proposition at hand gains importance and may be worthy of being looked at, both, for the purpose of gaining judicial clarity as also in ensuring respect and sanctity for the age old principle of penal liability being strictly construed.

3. Despite best efforts all that this Court has been able to lay its hands on are two reported precedents (both bail applications) and which only contain observations on the proposition in issue in passing.

4. In "*Muhammad Sarfraz v. The State and others*" **(2014 SCMR 1032)**, it has been held as follows:-

> *"Moreover, the said cheque, was not issued in favour of the complainant; besides there is no amount mentioned in words. The complainant however alleges that this was a 'self cheque' and therefore, it was issued to him and accordingly the dishonouring of the cheque would attract the provisions of section 489-F, P.P.C. He has also mentioned that the amount covered by the cheque was paid by the complainant to the petitioner from time to time for the purposes of the business and it is for the return of such amount. Contrarily, on further query, there is no evidence available with the complainant as to how, when and by*

> *what process various amounts were paid to the petitioner for business purposes. To that end, these aspects of the matter have not been taken into consideration by the learned High Court while declining bail to the petitioner. We find these contours of the case to be quite conspicuous and relevant entitling the petitioner to bail."*

5. In "*Johar v. The State and another*" **(2014 YLR 640)**, it has been held as follows:-

> *"The question whether a cheque issued to 'Self' can be said to be issued with dishonest intention or towards repayment of a loan or fulfillment of an obligation, which is dishonored on presentation would seriously need consideration at trial."*

6. The above cases, therefore, only attach a *prima facie* recognition and acknowledgement to the otherwise basic principle that a dishonoured 'self' cheque cannot possibly attract criminal liability. **The issue before this Court, therefore, comes across as arguably a case of first impression.**

7. Petitioner has laid a challenge to an order dated 15.3.2021 whereby a Justice of Peace has ordered for the registration of a criminal case against the petitioner on the basis of a 'self' dishonoured cheque on which no endorsement whatsoever in favour of the eventual bearer has been recorded.

8. Facts in brief as canvassed by the counsel for the petitioner are that the petitioner never issued the cheque to anyone or in anyone's name and which is why no name of a recipient is mentioned as 'payee' and it is the drawer himself

who is mentioned as ‘payee’ i.e. ‘self’. Learned counsel for the petitioner submits that the cheque in issue was kept by way of security by his employer, Muhammad Sohail, who manages and runs a poultry shop and who handed it over to the complainant without sensitizing the petitioner and without taking the consent of the petitioner. Learned counsel for the petitioner adds that even the police report summoned by the Justice of Peace supports his stance that he was an employee many years back at ‘Umar Traders’ where the complainant/respondent No.3, Mushtaq Ahmad, was also a regular visitor and where a ‘**committee system**’ was in vogue which was managed by the proprietor of Umar Traders along with the petitioner. That this ‘committee system’ was brought to an end six years back and whereafter the petitioner also left that shop and started working for one Muhammad Sohail, who runs a poultry shop in the same vicinity and where too the complainant was a regular visitor. That there was a dispute about payment of dues between his new employer, Muhammad Sohail, and the complainant and to reconcile which his new employer obtained a security cheque from him only to be kept and shown as security and not to be handed over and which is why it carries no endorsement with reference to anyone else but the petitioner himself and that, therefore, no one could have even become a holder in due course of the cheque in question.

9. Learned counsel for the respondent, on the other hand, supports the impugned order passed by the Justice of Peace dated 15.3.2021 and submits that the well-reasoned order passed by the Justice of Peace should be upheld.

10. The order passed by the Justice of Peace is being reproduced hereunder:-

> *"3. The police report was summoned, which supports stance of the petitioner. Learned counsel for the petitioner produced the cheque as well as the dishonouring memo, in original, which were returned after perusal. Hence, from the very contents of the petition, commission of cognizable offence u/s 489-F PPC is made out, so the respondent No.2 i.e. SHO Police Station Tulamba, Mianchannu, is directed to register the case u/s 489-F PPC and submit his report before the office of undersigned at earliest. File be consigned to the record room after its due completion.*

11. What is strange about the order passed by the Justice of Peace is the additional direction for a compliance report generally not found in orders by Justices of Peace while ordering registration of criminal cases. **What is also conspicuous is the order being absolutely silent about the fact of the cheque in issue being a 'self' cheque.**

12. According to the Hon'ble Supreme Court of Pakistan in "*Mian Muhammad Akram v. The State and others*" **(2014 SCMR 1369)** and "*Mian Allah Ditta v. The State and others*" **(2013 SCMR 51)**, Section 489-F PPC is relevant and attracted only to cases where the dishonoured cheque had been issued for repayment of a loan or towards

discharge of an obligation. It has been clarified by the Hon'ble Supreme Court of Pakistan that the obligation to be discharged had to be an existing obligation and not a futuristic obligation arising out of a possible default in future. This is why a cheque issued by way of surety or guarantee to cater for a possible default in future cannot be accepted as a cheque issued towards discharge of an obligation. According to the Hon'ble Supreme Court of Pakistan the obligation in the context of Section 489-F PPC has to be an existing obligation, existing at the time of issuance of the cheque and not a futuristic obligation. A provision constituting a criminal offence and entailing punitive consequences has to be strictly and narrowly construed and interpreted, it may be added with advantage.

13. Section 489-F of the Pakistan Penal Code of 1860 criminalizes and resultantly penalizes the act of ***dishonestly*** *issuing a cheque* ***towards repayment of a loan or fulfilment of an obligation***, which is dishonoured on presentation by punishment with imprisonment which may extend to three years or with fine, or with both, unless the drawer 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.

14. The term '*dishonestly'* has been defined by the Pakistan Penal Code, 1860 in **Section 24** to mean doing anything **with the intention** of causing wrongful gain to one person or wrongful loss to another person.

15. In order for the act of issuance of a cheque to constitute a *cognizable offence* under Section 489-F of the PPC, 1860 not only must the cheque be issued *with the intention of causing wrongful gain to one person or wrongful loss to another* but the cheque must also be issued towards the *repayment of a loan or fulfillment of an obligation*.

16. Keeping in view the above two provisions it was held by the Honorable Supreme Court of Pakistan in "*Mian Allah Ditta v. The State and others*" **(2013 SCMR 51)** at Paragraph 6 that *"every transaction where a cheque is dishonored may not constitute an offence. The foundational elements to constitute an offence under this provision are issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation and lastly that the cheque is dishonored."*

17. A "self-cheque" has neither been defined by the Penal Code nor the Negotiable Instruments Act, 1881, but it is obviously a cheque wherein the drawer himself is the payee. The word "*issues"* in terms of a cheque has been expounded by virtue of Section 3 (e) of the Act of 1881 to mean *"the first delivery of a… cheque complete in form to a*

person who takes it as ***holder****"* while the term "holder" of a cheque has been defined by Section 8 of the Act of 1881 to mean *"the* ***payee or endorsee who is in possession of it or the bearer thereof****".* The term "payee" has been explained by Section 7 to mean *"The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid".*

18. Quite obviously, if the payee is "self" it can be reasonably and correctly presumed that the money for which the cheque was issued was to be paid to the drawer himself and it is also reasonable to presume that a person would not *dishonestly* issue a cheque to pay money to himself and that the cheque was not issued towards the repayment of a loan or towards the fulfillment of some legal obligation one has towards oneself.

19. In a recent case cited as "*Muzaffar Ahmad v. The State and 2 others*" (**2021 P.Cr.LJ 1393)**, the Lahore High Court has acknowledged some similarity between the offence relating to the dishonor of a cheque in India, which is governed by Section 138 of the Indian Negotiable Instruments Act, 1881 and the one relating to the dishonor of a cheque in Pakistan, which is governed by Section 489-F of the PPC, 1860 in the following words contained at Paragraph 24 of the judgment:

> *"No doubt section 138 of the Indian Negotiable Instruments Act is different from section 489-F PPC but the phrase "discharge of debt or liability" in the former somewhat carries the same meaning as "repayment of a loan or fulfilment of an obligation" in the latter."*

20. Needless to state that the ambit of the offence in Pakistan is further constrained by the words "whoever **dishonestly** issues a cheque…", which are absent in Section 138 of the Negotiable Instruments Act, 1881 presently in field in India. Not only this but Section 139 of the Negotiable Instruments Act, 1881 in India further presumes *that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability*, unless the contrary is proved. There is no such presumption under 489-F of the PPC, 1860, which only makes another unrelated presumption: that the drawer had made arrangements with his bank to ensure that the cheque would be honored and that the bank was at fault in not honoring the cheque. In relation to the issuance of a cheque, the Pakistan Penal Code does not presume that the holder of a cheque received it for the discharge of any debt or other liability meaning thereby that the onus shall be on the holder to prove in the first instance that he received it for such purpose.

21. In neighboring Indian jurisdiction, where the ambit of the offence relating to the dishonor of a cheque is relatively wider, it was held in a judgment reported as "*V.*

Rama Shetty v. N. Sasidaran Nayar" and cited as **(2008 Cri. L. J. 4297)** at Paragraph 3 that a self-cheque, which is not drawn in favor of another person, would not attract the provisions of Section 138 of the Negotiable Instruments Act, 1881.

22. In another judgment reported as **Dr. Jiten Barkakoti vs Subrata Patangia** and cited as **2005 CriLJ 3598** it was again held at Paragraph 8 as follows:

> *"Reverting 'to the facts of the present case, we find that Ext. I is a self-drawn cheque, it was not issued in favour of the complaint.* ***It was also not endorsed in favour of the complainant****. Hence, the provisions of Sections 118 and 139 of the Act are not applicable as the complainant is neither a payee nor a holder in due course and the dishonour of such self-drawn cheque does not amount to penal offence under Section 138 of the N. I. Act. We, therefore, hold that the trial Court, as well as, the appellate Court failed to correctly appreciate the provisions of the Act in holding the petitioner-accused Dr. Jiten Barkakoti guilty of the offence under Section 138 of the Act for dishonour of a self-drawn cheque, which was never endorsed in favour of any one."*

23. Also, in another recent case reported as ***J. Hari Kishan v. The State of Telangana*** *Criminal* Petition 7657/17 deciding a similar issue it was held "….. non-replying to a legal notice will not give status to the self-cheque as the person in possession of it as a Holder in due course within the meaning of Section 138 (b) of the Act, in the absence of any document to say what was mentioned in the legal notice without foundation of any endorsement of any document independently cheque was given to claim as Holder in due

course." Therefore, some documentation would be required to prove that a self cheque was endorsed in favour of the holder so as to make him a holder in due course, otherwise, it shall be presumed that it was a self cheque in its true essence and not one that was endorsed in favour of the holder**.**

24. In **Anil Kuman v. Ramakrishna Kartha 2009(2) CCC 535 (Kerala High Court)**, it was held as follows:-

> *"1. Can a person who is not the payee and not an endorsee is entitled to file a complaint under Section 138 of Negotiable Instruments Act. This is the question to be settled in the revision.*
>
> *9.....**Delivery alone is not sufficient to make him a holder in due course, endorsement is mandatory. Ext. P1 shows that it is payable to Krishnadas. There is no endorsement by Krishnadas in favour of first respondent. Even if, there was delivery of Ext. P1 cheque by the brother of the payee in favour of first respondent as alleged in the complaint and that too for consideration as claimed by first respondent as PW 1 at the time of his examination, he cannot be the holder in due course as defined under Section 9 of Negotiable Instruments Act so long as there is no endorsement in his favour. Hence first respondent is not a holder in due course. When he is not the holder in due course Magistrate cannot take cognizance of the offence punishable under Section 138 of Negotiable Instruments Act, except upon a complaint in writing by the payee or the holder in due course of the cheque. The Magistrate could not have taken cognizance of the offence as first respondent is not the holder in due course. If so, the conviction is bad in law. Hence it can only be found that conviction of revision petitioner for the offence under Section 138 of Negotiable Instruments Act is not legal.***
>
> *10. Revision is allowed. Conviction of revision petitioner for the offence under Section 138 of Negotiable Instruments Act by the Judicial First Class Magistrate-I, Cherthala as confirmed by Additional Sessions Judge, Alappuzha is set aside. Revision petitioner is acquitted. The complaint stands dismissed."*

25. Therefore, when the question pertains to issuance of a "self-cheque", whereby the drawer is himself the payee, the offence created by Section 489-F is not attracted.

26. Section 154 of the Criminal Procedure Code, 1898 mandates the registration or recording of information relating to the commission of a cognizable offence, and the information provided by the informant must allege the commission of a cognizable offence. In case a cheque is made out to self only, and there is no supporting evidence that the bearer was in fact a holder in due course of such a cheque, the commission of a cognizable offence cannot be established.

27. If the cheque is issued to "Self" only, there will be no question of any offence. The problem arises when a Cheque is issued to "Self" but the same also allows the (unidentified) bearer to collect the proceeds and is presented by some person (since any bearer can present and get the cheque encashed) and upon its dishonour such person approaches the police for registration of FIR under Section 489-F. In the case before this Court the bearer of the Cheque is the Complainant and asserts the commission of offence without there being anything on record to show that he himself is the creditor of the drawer of the cheque. Therefore, it cannot be ascertained without more that the drawer of the cheque intended that the complainant could present the cheque and hence there is nothing to indicate that the drawer had any intention to issue the cheque to the

complainant let alone a dishonest intention and no evidence suggests that the complainant is creditor of the drawer either.

28. The above clearly means that none of the tests alluded to by the Hon'ble Supreme Court of Pakistan in "*Mian Muhammad Akram v. The State and others*" **(2014 SCMR 1369)** and "*Mian Allah Ditta v. The State and others*" **(2013 SCMR 51)** are met.

29. However since an offence under Section 489-F requires the cheque to have been issued with dishonest intention as well as for the purpose of payment against a loan or liability, being a mere 'payee' or a 'bearer' would arguably not fulfill the requirements of Section 489-F for which the complainant must show (i) a clear intention of the drawer allowing the complainant to present and encash the cheque (through a specific endorsement) and also (ii) a liability owed by the drawer of the cheque towards the complainant. Otherwise, it will simply be a bearer cheque open for encashment by anyone to whom the drawer does not owe or might not intend to pay anything.

30. In view of what has been observed and noted above, order dated 15.3.2021 is set aside and declared to be of no legal effect. It is also declared that a 'self' dishonoured cheque (even if the reference on the cheque to a bearer is not crossed) does not entitle a bearer to request for registration of a criminal case unless and until there is a positive endorsement

in favour of the bearer either on the back of the cheque in question or by means of a separate document which would make the bearer a ‘holder in due course’.

31. **Allowed** in the above terms.

(MUHAMMAD SHAN GUL)
JUDGE

Approved for reporting.

Judge

Waseem