

**IN THE COURT OF JUDICIAL MAGISTRATE
AT KARACHI (Central).**

Case, No.319 of 2011

The stateComplainant

Vs

Farjan Khan S/o Muhammad Aslam Khan..... Accused /Applicant

*FIR No. 16/2011
PS Yousuf Plaza
U/s 42o, 489/F PPC*

APPLICATION UNDER SECTION 294-A Cr.P.C.

It is most respectfully prayed on behalf of the Applicant/accused that this Hon'ble Court may be pleased to acquit the accused as there is ***No probability of conviction and the charge is groundless,***
Inter alia, on the following facts and grounds:-

F A C T S OF PROSECUTION

Brief facts of the prosecution case is that:-

The complainant Mr. Ghulam Waris Son of Mr. Inayat Ali, resident of House No.SU-54, Askari-IV, Street No.3, Rashid Minas Road, Gulistan-e-Jauhar, Karachi, verbally reported the matter to the police, that he is residing at the above address and has his own business. The ownership rights of Rajput Twin Towers, ***Plot No. C-8 and C-9*** Block-10, FB Area Karachi were purchased by Farjan Khan son of Muhammad Aslam (The Applicant/Accused) against Rs.35,000,000/-. The said Farjan Khan had issued cheques of MCB Bank Limited of Branch Account No.00053567, bearing cheque 1) Nos. 3946644 amounting to Rs.500,000/-, 2) 5792976 amounting to Rs. 4,000,000/-, 3) 5792974 amounting to Rs.4,500,000/-, 4) 5792975 amounting to Rs.4,500,000/- and 5) 3946643 amounting to Rs.500,000/- which were dishonoured for the insufficient funds in the account. My complaint is against Mr. Farjan Khan Son of Muhammad Aslam for giving me dishonoured cheques and cheating me.

Hence this FIR is registered under Section 420/489-F PPC against Applicant/accused.

(Certified copy of FIR is annexed herewith as Annexure “A”)

TRUE FACTS/BACK GROUND OF THE CASE:-

That the complainant has concealed the true facts while lodging FIR against the applicant as to make out the case of civil depute into the criminal nature which dispute arises in respect of the business wherein he was partner and committed the violation of partnership Deed. The brief facts are mentioned herein below for kind consideration;-

1. That the applicant/accused is well educated and got his MBA MIS from USA, worked for several years in field of IT and then started his own business in the name of M/S Rajput construction, builders and developer.
2. That it is also submitted that the immovable property C-9, the same was owned by the complainant who had sold the said immovable property to the applicant against the sale consideration. The applicant has paid the entire sale consideration to the complainant and no amount whatsoever is due and pending on the said property. The physical possession of the said property is also with the accused. Therefore, it is evident that complainant has taken false and frivolous plea with ill design and intent about the said property in his FIR.

(Copy of the conveyance deed dated 21.2.2007 is filed hereto & marked as annexure “B”)

3. That the **Plot No.C-8** has never been the ownership of the complainant. The said plot was owned by one Mst.Khursheed Zamir Ahmed, who against the sale consideration had sold out the same to the applicant/accused. The sale deed was executed in favor of the applicant/accused on 23.6.2007; as such the complainant has never been

the owner of the said immovable property C-8 and sold the same to the accused. It is prudent to submit here that the applicant/accused is in physical possession of the said immovable property since the day of execution of conveyance deed.

(Copy of the conveyance deed dated 23.6.2007 is filed hereto & marked as annexure “C”).

4. That the complainant due to ill and malicious intent and failed to perform the obligation of his own part per the partnership deed and just to black mail and harass the accused, malafidely presented and got the cheques dishonored, after filling up the same of his own accord, whereas no such agreement was between the parties to present these cheques, as the payments mentioned in the said cheques were to be paid either from 10% income of booking of Tower-B of the aforesaid project or to be adjusted in the flats as per the payment schedule fixed for the allottees, which the complainant could dispose of and the get his own money.
5. That as to the immovable property C-8, it is submitted that the complainant has shared only 55% of the sale consideration with the applicant / accused under a partnership agreement dated 19.03.2007. There were number of obligations to be performed by the complainant which failed to do so and caused serous financial losses to the applicant/accused. After detailed negotiations and deliberations, the complainant expressed his inability to continue with the said partnership agreement, which was dissolved by virtue of Dissolution Agreement.

(Copy of partnership agreement is filed hereto and marked as Annexure “D”)

6. That according to the said dissolution instrument/agreement, the complainant agreed to retire as against the lump sum consideration of Rs.34,000,000/- which was required to be paid in terms of Clause-5 of the said Dissolution Agreement, from the booking amount of Tower-B of the said plot. Accordingly, out of total agreed amount, the accused has till date paid about 20,000,000/- to the complainant, which is even

beyond the agreed ratio. The accused and his officials are constantly contacting and requesting the complainant to sit and reconcile the account so that the rest of the payment is also made per the arrangement envisaged in the partnership dissolution instrument. The said arrangement is fully established from the partnership agreement and dissolution of partnership agreement. Therefore, on this score alone, the matter requires further inquiry and the applicant prays for concession or pre-arrest bail as the applicant is having extreme apprehension of arrest on behest of the applicant, who wants to humiliate and torture the applicant for the purpose of getting illegal gain.

(Copies of payment receipts are filed hereto & marked as annexure “E/1 to E/8”).

7. That it will kindly be appreciated that the complainant having his own mind set and motives, expressed his inability to continue with the said agreement. Accordingly, in terms of the discussion, the said partnership agreement was dissolved vide Deed of Dissolution of Partnership dated 28.08.2008 as such the case of present applicant is of further inquiry and the applicant is entitled for concession of pre-arrest bail from this Honorable Court. It will kindly be appreciated that in the said Dissolution of Partnership Agreement the amount payable is show as Rs.34,000,000/- whereas malafidely and maliciously the complainant has claimed in his FIR a sum of Rs.35,000,000/- as payable by the accused.

(Copy of dissolution of partnership is filed hereto & marked as annexure “F”).

8. That in respect of the above dispute the complainant also sent a Notice on 12.5.2010 as to pressurize the applicant; the complainant claimed such paid amount. So much so the payments/cheques which have been cancelled have also been claimed by the complainant from the applicant, which was properly replied by the applicant through his counsel. **(Copy of Notice and reply is filed and marked as annexure “G/1&G/2”).**

9. That since the act of the complainant malafidi hence the applicant has filed the Suit No.199/2011 before this Hon, able Court for Declaration, Injunction, Rendition of Accounts and Specific Performers wherein Notices has been issued. **(Copy of the Suit is filed and marked as annexure “H”)**.
10. Then the complainant after filling of the suit by the applicant as counterblast has also filed the Suit No.247/2011 on 10.2.2011 before this Hon able Court for recovery of the amount of the cheques.**(Copy of the suit is filed and marked as annexure “I”)**.

Despite of the true facts as mentioned above the complainant malafidly lodged FIR in respect of the cheques subject matter of civil dispute.

Hence upon disclosure of the registration of the FIR the applicant surrendering himself immediately before the Sessions Court with the prayer that he may please be granted pre-arrest bail as that he was gravely apprehend of his arrest with the hands of police who wants to arrest him on instigation of complainant and to compel him to confess the crime which he never committed and for this purpose police were raiding the house of the applicant.

The Hon able Court of VTH Additional Sessions Judge (Central) Karachi vide Order dated 25.1.2011 has been pleased grant Interim Bail before Arrest to the applicant and vide an order dated 10.2.1011 the same was confirmed on merits with the direction to submit the surety for **Rs.10, 00, 0000/-(One Crore)**. **(Copy of the order is field and marked as annexure “J”)**.

That the surety documents were submitted before the Court which was sent for verification and valuation of the property. It is respectfully submitted that the verification of the documents came on record of the Sessions Court through proper channel wherein it was stated that the property documents are genuine but the valuation of the property was got delay.

That in the meanwhile the complainant also filed application for cancellation of bail which was dismissed vide order dated 28.3.2011

and in that Order it was further observed by the Hon, ble Court that applicant has not misused the bail and grant further time for valuation of the property.(**Copy of Order is filed and marked as annexure “K”**).

That since the valuation of the property getting late from the side of Revenue Department, hence, the Hon, ble Sessions Court vide Order dated 5.4.2011 cancelled the bail of the applicant. (**Certified Copy of Order is filed and marked as annexure “L”**).

That same Order date 5.4.2011 was Impugned in bail application No.443/2011, filed before the Hon able High Court and the Hon, ble High Court vide its Order dated 7.4.2011 was pleased grant Interim bail to the applicant.(**Copy of Order is filed and marked as annexure “M”**).

That the facts supported with documentary prove as mentioned above clearly makes the case of the complainant is of civil nature,

Hence this application for acquittal before this Hon, ble Court among others on following grounds:-

GROUND S

1. That the applicant is innocent and has been falsely implicated in present case due to business enmity and in order to extort capital from the applicant / accused.
2. That the charge against the applicant/accused is groundless and there is no probability and possibility of the conviction of applicant/accused if the further trial is permitted to be proceeded.
3. That from bare reading of the contents of the FIR is crystal clear that complainant has concealed the **true facts** of the case and mere stated that the cheques has been given by the accused to him which was bounced without mentioning the background of the story.
4. That the **true facts are given above** and since the dispute between the two is absolutely **civil nature** but the complainant for the sloe purpose

just to harass and blackmail the applicant and to extort money has given the criminal color.

5. That the Section 489-F speaks about **“Whoever dishonestly issues a cheque”**. It means that offence would be constituted when a cheque is dishonestly issued. The position in this case is different as that the cheques were given as conditional security to the complainant under the agreed settlement between the parties but the complainant had not followed the terms of the said agreement therefore the Section 489-F PPC does not apply to the present case and police had malafidely acted beyond their jurisdiction with connivance of the complainant.
6. That though the complainant has concealed real facts when he registered the case against the applicant but applicant has sufficient documentary proof that it is complainant who has defrauded and cheated the applicant and subsequently presented the cheques malafidely which was taken by the complainant as conditional security per the settled agreement got registered the case against the applicant.
7. That as enumerated above the **complainant was partner** of the applicant in the business of construction of the buildings and apart from his misdeed which he committed, it is admittedly a civil dispute and complainant has remedy to institute civil case which he did and filed suit in high Court but since the applicant was guilty in mind hence he also chooses the criminal litigation for harassment and blackmailing the applicant to further extort money.
8. That the section 489-F PPC is not attracted to the case of the complainant and it is apparently shown from the facts that the influential hands are in back to invoke the malice prosecution against the innocent persons.
9. That not a single cheque has been presented on its due date, as the said cheques were issued as matter of conditional security only and not for the purpose prompt encashment at all as is evident from clause 5 of the **Dissolution of Partnership Agreement(Annexure “F”)**.

10. That it is yet to be determined as to actually what amount is payable by the accused to the complainant and what is income ratio of the booking of Tower-B in order to ascertain whether the accused has paid the appropriate amount or there is any shortfall in payment of the agreed amounts and whether the complainant who was holding the said cheques as conditional security, was otherwise entitled to present the same malafidely and get them dishonoured just to harass and blackmail the accused and as such the case of the two parties absolute having civil depute and same can only be resolved through civil Courts.

11. That the contention of the accused with regard to the malafide and malicious intention of the complainant is otherwise evident and obvious from the fact that the complainant has most recently been claiming and demanding the amounts from the accused, which have already been paid, yet to pressurize the accused, the complainant served legal notices and claimed such paid amount. So much so the payments/cheques which have been cancelled have also been claimed by the complainant from the accused/applicant.

12. That it is a matter of record that the complainant is a habitual offender and has himself been involved in cheating, fraud and fraudulent acts and actions and he has faced trial before the Special Judge (Offences in respect of banks), Karachi in two different cases. So much so the complainant also cheated upon a very senior counsel of Sindh High Court, Karachi. This expresses the "Mens Rea" with the complainant, as how he wanted to cheat and grab maximum money from the accused /applicant by way of lodging the present FIR/case.

(Copies of documents are filed hereto & marked as annexure "N").

13. That the malafide intentions of the complainant malafidely presented those cheques with inordinate delay, which is evident from the presentation dates. Whereas the FIR has been lodged on 21.01.2011 with the inordinate delay of almost 09 months.

(Copies of the alleged cheques are filed hereto and marked as annexure “O”).

14. That the malafide intentions of the complainant is evident from the fact that the complainant has never been the owner of the Plot No.C-8. The said plot was sold by one Mst. Begum Khurshid Zamir Ahmed and this fact has been concealed by the complainant in the said FIR, rather complainant has mis-represented in the said FIR.
15. That it is also submitted that the accused has already paid about 60% of the agreed amount and is also paying the complainant amounts received to the accused in terms of Clause-5 of the Dissolution of partnership Agreement, hence there is no cheating having been committed by the accused/applicant.
16. That the challan in above case has also been submitted by the prosecution wherein it is clearly mentioned that the dispute between the parties is on business. The complainant has also stated in his further statement that they dispute over some business. **(Copy of the Chellan and the statement is filed and marked as annexure “P/1 &P/2”).**
17. That it is further respectfully submitted that the complainant also got registered an FIR for the forgery in business documents which was declared false and prosecution submitted the report under Section 173 Cr PC as “A” Class.**(Copies in this respect filed and marked as annexure “Q”).**
18. That under the circumstances and the law mentioned herein above, there is no probability of conviction of applicant in the above matter. It is submitted that it has been observed by the superior courts that acquittal can be ordered even when no evidence has been recorded as the powers under Section 249-A Cr.P.C. can be exercised at any stage of the proceedings and the words ‘**at any stage**’ has been interpreted by the Supreme Court, as at the initial stages, or in the middle stage

and even at the last stage when the judgment is to be pronounced. **(Reliance are placed on 1985 SCMR 257, PLD 97 SC 275 7 2002 SCMR 1076)**.

19. That continuance of the proceedings would be sheer waste of the precious time of this Hon'ble Court and would not be in the interest of justice rather it would be an abuse of the process of the court.

20. That the undersigned crave leave of his Honourable Court to add/urge further grounds at the time, hearing of this application

Karachi

Dated: May2011

ADVOCATE FOR APPLICANT
(M Ilyas Khan & Associates)