

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Criminal Appeal No. 7 of 2019
(PLA Filed on 23.1.2019)

Anees Ahmad s/o Mian Muhammad Sharif r/o
1-E Sector D/3 West Allama Iqbal Road Tehsil
and District Mirpur.

.... APPELLANT

VERSUS

1. Muhammad Akram s/o Ch. Lal Din r/o
House No. 4, Sector F/1, District and Tehsil
Mirpur.
2. State Through Additional Advocate General,
Mirpur.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
28.12.2018 in Criminal Misc. No. 63 of 2018)

FOR THE APPELLANT: Mr. Muhammad Khalil
Ghazi, Advocate.

FOR THE RESPONDENTS: Raja Saadat Ali Kiani,
Additional Advocate General
and Waheed Nazir,
Advocate.

Date of hearing: 26.3.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J—

The captioned appeal with leave of the Court arises out of the judgment dated 28.12.2018 passed by the Azad Jammu & Kashmir High Court in criminal miscellaneous No. 63 of 2018.

2. The facts forming the background of the captioned appeal are that on a written application filed by the complainant/appellant, herein, a case in the offence under section 489-F, APC, was registered against the accused/respondent, herein, at Police Station Thothal. It was stated that the accused gave cheque to the complainant which has been dishonoured. After registration of the case, the accused/respondent, herein, applied for pre-arrest bail before the Additional Sessions Judge, Mirpur on 18.8.2018. The learned Additional Sessions Judge initially allowed ad-interim bail to the accused which was later on confirmed by him vide order dated 20.8.2018. The order dated 20.8.2018 passed by the Additional Sessions Judge Mirpur was challenged by way of revision

petition before the Azad Jammu & Kashmir High Court on 5.9.2018, which through the impugned judgment/order dated 28.12.2018 has been dismissed.

3. Mr. Muhammad Khalid Ghazi, the learned Advocate appearing for the appellant argued that the judgment passed by the learned Additional Sessions Judge Mirpur as well as the learned High Court is perverse, illegal and against the settled law governing the bail matters. He argued that respondent No.1, herein, issued the cheque dishonestly and when the same was presented for withdrawal of the money in the concerned Bank, that was dishonored due to insufficient amount. The learned Advocate argued that this fact was admitted by respondent No.1, herein, but even then the learned Additional Sessions Judge has confirmed the bail and the order of the learned Additional Sessions Judge was erroneously maintained by the learned High Court. The learned Advocate further argued that the offence

with which the accused was charged was fully established and the accused was not entitled at least to pre-arrest bail. In support of his submission, the learned Advocate has placed reliance on the case reported as 2006 YLR 23. He further argued that respondent No.1, herein, is a habitual offender and is involved in different cases of similar nature but this fact has not been considered by the learned High Court. The learned Advocate further argued that the accused remained absent after availing the bail on some dates and went abroad without permission of the Court. Such like conduct of the accused-respondent militates against the grant of bail. The learned Advocate further argued that grant of bail in the case in hand has encouraged the repetition of the offence. In support of his submission the learned Advocate has placed reliance on the case reported as 2018 YLR 1865 and 2018 YLR 1554.

4. Conversely, Mr. Waheed Nazir, the learned Advocate appearing for respondent No.1,

submitted that the parties were engaged in the business and an amount of Rs.27,50,000/- out of Rs.33,00,000/- has been paid. He argued that the cheque was issued as guarantee for the remaining amount and respondent No.1, herein, has not committed any offence because he belongs to a respectable and noble profession. The learned Advocate argued that the question as to whether the cheque was given with dishonest intention requires further inquiry and the bail has rightly been confirmed by the learned Additional Sessions Judge Mirpur and the order of the learned Additional Sessions Judge was rightly approved by the learned High Court. In support of his submission the learned Advocate has placed reliance on the case reported as 2014 SCR 234 and 2014 SCR 409.

5. Raja Saadat Ali Kiani, the learned Additional Advocate General appearing for the State has owned the arguments advanced by Mr. Muhammad Khalil Ghazi, the counsel for the appellant.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. A perusal of the record reveals that a case against respondent No.1, herein, was registered on the intervention of the Additional Sessions Judge as a justice of peace. It was alleged that the accused issued cheque No. 0340-56373 amounting to Rs.1300000/- in the name of Habib Bank Limited Mirpur on 10.9.2017. The cheque was presented in the concerned Bank for realizing the amount on 16.10.2017 and the Bank has refused to make the payment on the ground that no amount is available in the relevant account, upon this a case, as stated above, was registered under section 489-F, APC vide F.I.R. No. 240/18. The accused/respondent No.1, herein, applied for pre-arrest bail before the learned Additional Sessions Judge Mirpur on 18.8.2018. After hearing the parties, the learned Additional Sessions Judge has confirmed the same vide judgment dated 20.8.2018. It was observed by

the learned Additional Sessions Judge that the dispute between the parties is of civil nature and the accused-respondent had to pay Rs.33,00,000/- to the appellant, herein. Only Rs.5,00,000/- are to be paid now and the respondent is ready to pay the same. In these circumstances, the learned Additional Sessions Judge came to the conclusion that the matter requires further inquiry and is of civil liability and confirmed the bail. The learned High Court has approved the said order through the impugned judgment dated 28.12.2018.

6. After perusing the record, we are of the view that the learned High Court has given sound reasons for maintaining the order passed by the learned Additional Sessions Judge. It is an admitted position that the dispute between the parties was with regard to payment of an amount of Rs.33,00,000/-, out of the said amount only Rs.5,00,000/- are to be paid. The question of dishonest intention cannot be proved from the conduct of the accused at bail stage. As

in the present case a larger portion of the amount has been paid, therefore, dishonest intention ascribed to the accused needs further inquiry. Law does not favour the cancellation of bail for petty matters because the curtailment of liability cannot be compensated if an accused is found innocent and is acquitted of the charge ultimately.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

