

**DISHONOURING OF A**  
**BANK CHEQUE**

*BY*

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## **SECTION-6 OF THE NEGOTIABLE INSTRUMENTS ACT**

- “Cheque.” A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable other-wise than on demand.”

# **Section-139 Of The Negotiable Instrument Act**

- **Presumption in favour of holder.** – It shall be presumed, unless the contrary is proved, 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.

## **ORDER XXXVII, RULE 2(2) OF C.P.C**

- In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree.

## **ORDER XXXVII, RULE 3 OF C.P.C**

- **Defendant showing defence on merits to have leave to appear.--**(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.
- (2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

- “Presumptions contain reasonably and appreciably truthful facts – supported by legal logic & reasoning as a basis – for presuming its correctness until rebutted.”

**Section-20 subsection (4) of “Financial Institutions (Recovery of Finances) Ordinance, 2001” is as follows:-**

- “Whoever dishonestly issues a cheque towards re-payment of a finance or fulfillment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to one year, 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.”

**Section-489 (after amendment) of the Pakistan Penal Code by Ordinance., LXXXV of 2002., by adding subsection-F which reads as follows:-**

- **[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 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.]**



## **Section-2(e) of “Financial Institutions (Recovery of Finances) Ordinance, 2001”**

- (e) “Obligation” includes—
- (i) any agreement for the repayment or extension of time in repayment of a finance or for its restructuring or renewal or for payment or extension of time in payment or any other amounts relating to a finance or liquidated damages; and
- (ii) any and all representations, warranties and covenants made by or on behalf of the customer to a financial institution at any stage, including representations, warranties and covenants with regard to the ownership, mortgage, pledge, hypothecation or assignment of, or other charge on assets or

properties or repayment of a finance or payment of any other amounts relating to a finance or performance of an undertaking or fulfillment of a promise;

and

- (iii) all duties imposed on the customer under this Ordinance; and
- (f) “rules” means rules made under this Ordinance.

# **JUGDMENTS**

**1. Allah Ditta**

**Versus**

**Additional Sessions Judge, Sheikhupura and 3 others.**

**P L D 2011 Lahore 246**

***Before Sardar Tariq Masood, J***

S. 489-F---Constitution of Pakistan, Art.199---Constitutional petition---Dishonestly issuing a cheque---Staying of criminal proceedings during pendency of civil proceedings, refusal of--  
-Civil suit had been filed by the accused petitioner much after the registration of the F.I.R. against him by the respondent complainant---Civil suit was not pending prior to the registration of the case---Civil and criminal proceedings could be initiated side by side and criminal case must be allowed to proceed on its own merits---Civil proceedings relating to the same transaction were not a legal bar to continuance of criminal proceedings---Both the proceedings could proceed concurrently, because conviction for a criminal offence was altogether a different matter from civil liability.

- While the spirit and purpose of criminal proceedings was to punish the offender for commission of a crime, whereas the purpose behind the civil proceedings was to enforce the rights arising out of **contracts**.
- Both the civil and criminal proceedings could co-exist and proceed simultaneously without any legal restriction and Courts could not stifle one proceeding for the other.
- Judgment of a civil court was also not admissible in criminal proceedings to establish the truth of the facts upon which it was rendered---Proceedings in the criminal trial, therefore, could not be stayed---Impugned orders refusing to stay the criminal proceedings against the accused till the decision of his civil suit, did not suffer from any illegality or perversity---Constitutional petition was dismissed in limine.

## 2. Mazhar Hussain Versus State 2010 P L D 60

Lahore High Court, Lahore.

- Complainant got registered F.I.R. at Police Station “F.S”, district ‘S’ against petitioner/accused---Accused had contended that F.I.R. registered at Police Station “F.S” was without jurisdiction as disputed cheque was issued from the Bank at place ‘A’ in district “B” and cheque in dispute was also dishonoured by said Bank;
- No legal bar or prohibition existed on complainant/drawee in that regard; it was his option or choice, he could initiate criminal proceedings under **S.489-F, P.P.C.** at any of the two places---Both Police Stations at place ‘A’ and ‘F.S.’ had got jurisdiction to lodge F.I.R.

### 3. Mahmood Akhtar Khan Versus State 2010 CLD 639

Lahore High Court, Lahore

- Quashing of F.I.R.---Exclusive jurisdiction of Banking Court--  
-Scope—Accused sought quashing of F.I.R on the ground that under S.20(4) of Financial Institutions (Recovery of Finances) Ordinance, 2001, provisions of **S.489-F, P.P.C** were not applicable-Validity—High Court declined to quash the F.I.R on the ground taken by accused as the dictum laid down by Supreme Court in view of Art. 189 of the Constitution was binding on all subordinate authorities including High Court---Question whether accused had issued cheques in question to complainant with malafide intention or not could be solved after conducting thorough investigation which could not be undertaken in summary proceedings under Art.199 of the Constitution---High Court directed that accused had to satisfy investigating officer of criminal case and not High Court about stated falsity of allegations leveled in F.I.R.---Petition was dismissed in circumstances.

**4. Bashir Ahmed Versus Additional Sessions Judge  
2010 Y L R 940  
Lahore High Court, Lahore**

- Contention of the petitioner was that a civil suit was pending before the civil court and injunction was issued with regard to cheque in dispute---Civil and criminal proceedings could proceed simultaneously---Factual controversy as to whether the petitioner had settled the account with the respondent or not, could only be resolved by the civil court;

**5. Sabir Ahmed                      Versus Nazeer Ahmed**  
**2010 C L D 344**  
**Karachi High Court, Sindh.**

- Matter was governed by the Financial Institutions (Recovery of Finances) Ordinance, 2001, which was a complete code in respect of transactions between the financial institution and the customer, which were defined by S.2(a) & (c), while S.7 of the said Ordinance had provided the powers of the Banking Court---Subsection (4) of S.20 of the same Ordinance had provided the remedy for a financial institution where the cheque was dishonestly issued and the same was dishonoured because of insufficient balance in the account---Proviso of S.7 of the said Ordinance had clearly envisaged that any offence embodied in S.20 committed by the customer of the Bank would only be subjected by the above mandate of law by way of filing direct complaint, as defined in S.4(h), Cr.P.C. in the Banking Court having jurisdiction---Police, therefore, had no authority to book the accused by lodging the F.I.R. and taking cognizance in the matter on the basis of F.I.R. and assuming jurisdiction by the Magistrate was without lawful authority and *cm-am non judice*---



- Financial Institutions (Recovery of Finances) Ordinance, 2001, being a special enactment had overriding effect on the ordinary law and the borrower or customer of the Bank could not be proceeded under the provisions of **Pakistan Penal Code**—Only remedy available to the Bank and Financial Institution was to invoke the provisions of S.20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, by filing a direct complaint in terms of Proviso of S.7 of the said Ordinance—Prosecution of accused under Ss.489-F & 420 P.P.C. on the basis of F.I.R. was abuse of process of the, court and without lawful authority--- Impugned orders were consequently set aside and the proceedings pending in the court of Magistrate were quashed---Petition was allowed accordingly

**6. Muhammad Khan  
Versus  
Magistrate Section 30, Pindi Gheb, District Attock.  
2009 P L D 401.  
Lahore High Court, Lahore.**

- Civil nature of the dispute also could not estop the complainant to invoke the criminal law---Section 489-F, P.P.C. had clearly laid down that whoever dishonestly issued a cheque towards repayment of a loan or fulfillment of an obligation, was liable to face the legal consequences on its being dishonoured. Issuance of a cheque towards repayment of a loan or fulfillment of an obligation was primarily a civil matter---
- Object of S.489-F, P.P.C. was not to affect recovery of the amount in question under the dishonoured cheque, but to punish a person who dishonestly issued the cheque with reference to his civil liability---Similarly, availability of an alternate remedy to the complainant was no ground to discharge the accused, because the aggrieved complainant could invoke civil and criminal law simultaneously.

**7. Malik Tariq Mehmood                      Versus                      Askari Leasing Ltd.  
2009 C L D 1422.**

**Lahore High Court, Lahore.**

- **Object and reasons for enacting Financial Institutions (Recovery of Finances) Ordinance, 2001 and Penal Code, 1860 were different---Cheques issued by customer to Leasing Company in connection with lease of vehicle were dishonoured---Leasing Company got registered F.I.R. against the customer---Validity---Lessee of the vehicle was a “customer” within the meaning of S.2(c) of the Financial Institutions (Recovery of Finances), Ordinance, 2001 and case of lessee clearly fell within the ambit of provisions of Financial Institutions (Recovery of Finances) Ordinance, 2001---Section 7, Financial Institutions (Recovery of Finances) Ordinance, 2001 had conferred criminal jurisdiction to the Banking Court, to try offences punishable under the Ordinance---Whenever an offence was committed under S.20(4) of the Ordinance, Banking Court would take cognizance upon a complaint filed by the authorized person and complaint would be tried by concerned Banking Court, appeal against which was provided before High Court---F.I.R. against the customer under S.489-F, P.P.C. or allowing the same to exist was only wastage of time and abuse of process of law---High Court allowed the constitutional petition of the customer and directed the police not to take law in its own hands in cases covered within the ambit of Financial Institutions (Recovery of Finances), Ordinance, 2001---Principles.**

**8. Muhammad Asghar Versus State**  
**2008 MLD 717**

**Lahore-High-Court-Lahore**

- **S. 489-F---**Pre-arrest bail, confirmation of---No dispute existed regarding issuance of cheques to the complainant by accused--  
-Real controversy in the case requiring determination was as to whether cheques were issued by accused dishonestly to defraud the complainant or with bona fide intention---Matter between the parties was purely of civil nature, which was already subjudice before the competent forum---Certificate of Bank Manager had established that cheques in question had not been dishonored due to lack of sufficient amount in the account of accused, but encashment had been refused under his own instructions---Accused, while issuing the cheques was not having any dishonest intention to deceive or defraud the complainant which was the main ingredient of offence under **S. 489-F P.P.C---**Investigation of the case had been completed and report under **S. 173, Cr.P.C.** submitted to the concerned court---No useful purpose would be served by committing accused to the police custody---Ad interim pre-arrest bail already granted to accused, was confirmed, in circumstances.

**9. Syed Hassan Raza Versus Deedar Hussain Shah  
2008 PLD 305**

**Karachi High Court, Sindh.**

- **SS.489-F, 504 & 506(2)**---Criminal Procedure Code (V of 1898), **S.173**---Magistrate while disagreeing with the summary report submitted by the Investigating Officer with the recommendation for disposal of the case under “B” Class, had directed the Investigating Officer to submit the charge sheet under **S.173 Cr.P.C.** before the Court having jurisdiction---Validity---Accused admittedly had issued the cheque for the amount of Rs.197,000/- in the name of the complainant, which was subsequently dishonoured---Accused had himself instructed the Manager of the Bank concerned to stop payment of the said cheque through a letter, as the payment had already been made to the complainant in cash---Accused took a contradictory stand subsequently when he wrote a letter to complainant acknowledging that the amount of Rs.197,000/- was still outstanding and he requested the complainant to get the payment of the said cheque from the Bank---

- Bank informed the accused by means of a letter that the payment of the said cheque to complainant was still stopped as per instruction of the accused and the complainant once again was put at disadvantage---Said contradictory stand taken by the accused while dealing with the complainant had, prima facie, made out a case under S.489-F, P.P.C.---Magistrate under **S.173, Cr.P.C.** while taking cognizance of the case was competent to apply his judicious mind to the summary report and then to pass the order---Impugned order revealed that it appeared from the police papers that the investigating team had disposed of the case under 'B' (false) class on account of statements of the defence witnesses---Record, however, showed that the accused had given the cheque, which was bounced for want of arrangement, as was also clear from the Bank record---Accused had not denied his signatures on the cheque issued to the complainant and such prima facie evidence could not be brushed aside---Impugned order did not suffer from any illegality---Petition was dismissed accordingly.

**10. Muhammad Younis Versus State**  
**2006 P CR L J 994**  
**Lahore-High-Court-Lahore**

- S.489-F---Quashing of proceedings---Challan in the case was submitted against al the persons named in the F.I.R.---Two accused persons/Petitioners moved application for their discharge, but the Trial Court refused to discharge them despite the fact; that in report under S. 173, Cr.P.C., both petitioners were placed in column No.2 with the remarks that they were innocent---Complainant had specifically alleged that cheque in question was issued by person other than the petitioners---High Court, on petition under S. **561-A, Cr.P.C.**, had come to the conclusion that case against petitioners could not proceed on the basis of record and directed the Trial Court not to proceed against them with direction that case against petitioners would be regarded having been cancelled.

11. Syed Hassan Raza Versus Deedar Hussain Shah and others

**PLD 2008 Karachi 305**

*Before Abdur Rahman Faruq Pirzada. J*

- Accused admittedly had issued the cheque for the amount of Rs. 1,97,000 in the name of the complainant, which was subsequently dishonoured---**Accused had himself instructed the Manager of the Bank concerned to stop payment of the said cheque through a letter, as the payment had already been made to the complainant in cash.**
- **Said contradictory stand taken by the accused while dealing with the complainant had, prima facie, made out a case under S. 489-F, P.P.C.**
- **Accused had not denied his signatures on the cheque issued to the complainant and such prima facie evidence could not be brushed aside--- Impugned order did not suffer from any illegality.**



**12. Maj. (Rtd.) Javed Inayat Khan Kiyani  
Versus  
The State**

**PLD 2006 Lahore 752**

**Before Syed Shabbar Raza Rizvi, J**

- **Object of 489-F. PPC was to curb in fraudulent or dishonest issuance of cheques to cause dishonest gain or to cause dishonest loss.**
- Definition of “dishonestly” that the gain or loss contemplated need not be a total acquisition or a total deprivation, but was enough, if it was temporary retention of property by the person wrongfully gaining or temporary “keeping out” the property from the person, legally entitled.
- “Dishonestly” defined and explained.

**13. Iftikhar Akbar Versus The State**  
**2008 MLD 159**

**Before Sh. Azamat Saeed, J**

- **Mere issuance of a cheque which is subsequently dishonoured does not constitute an offence under S. 489-F, P.P.C. unless same is issued dishonestly and for the repayment of a loan or for discharging any obligation.**

**14. Tahir Rashid Versus The state and 4 others**  
**2007 YLR 518 [Lahore]**  
**Before Ijaz Ahmad Chaudhry, J**

- That cheque in question was issued only as a guarantee for a person who had dealing with complainant/petitioner---Cheque in dispute had been issued by respondent in favour of petitioner, which was presented before the Bank, twice, but same was dishonoured each time due to insufficiency of funds and prima facie offence under S. 489-F, P.P.C. was made out --- Whether cheque in dispute had been issued as a guarantor or towards repayment of a loan or fulfillment of an obligation required recording of evidence and it was the function of the Court to decide whether there was some element of dishonesty on the part of executant of the cheque--- Magistrate had agreed with the police report through impugned order in a mechanical manner and he appeared to have not applied judicial mind to consider the facts of the case---Impugned order though was an executive order, but Magistrate was to pass speaking order and he, in no way, was bound by the police opinion to agree with the same---Police opinion was not binding on the Court---Magistrate did not properly exercise jurisdiction vested in him, which had rendered impugned order illegal and without jurisdiction---High Court being competent to interfere therewith, constitutional petition was accepted and impugned order was set aside, with direction to remand case to Magistrate, who would pass fresh orders on cancellation report, submitted by the police within specified period.

## 15. Major Anwar-UI-Haq Versus The State

PLD 2005 Lahore 607

Before Ali Nawaz Chowhan, J

- S. 489-F---Application and scope of S. 489-F,P.P.C---Rational behind the enactment of S. 489-F, P.P.C. does not call for a mechanical action immediately when a cheque is returned by a banker, but is to be used only where prima facie, the purpose of issuing the cheque was dishonestly pure and simple in the matter of payment of loan---past conduct of the party is also to be seen---business transactions, genuine disputes and contractual obligations may not constitute an intention for the offence. [p. 609] C & D.

**16. Sheikh Mureed Hussain  
Versus**

**S.H.O Police station Kohsar, Islamabad and 2 others.**

**2005 P Cr. L J 144 [Lahore]**

**Before Tanvir Bashir Ansari, J**

- **Notice placed on record issued through counsel on behalf of petitioner to respondent, had explained circumstances in which cheque in dispute was issued—Even according to investigation carried out by police, petitioner/accused had been found prima facie innocent---Lodging of F.I.R. was the result of ulterior motive which had been negatived even during police investigation---Constitutional petition for quashing of F.I.R. was allowed and F.I.R. registered under S. 489-F P.P.C. was directed to be quashed.**

**17. Shah Jehan Khetran  
Versus  
Sh. Mureed Hussain and others  
2005 SCMR 306**

*Mian Muhammad Ajmal and Faqir Muhammad Khokhar, JJ*

- **Disputed cheque had inadvertently been issued to the complainant from a different account, whereas he had paid the entire amount**
- **High Court had found from record that there was a nomination form issued by the complainant in favour of the accused long with a notice informing the transfer of his membership of Islamabad Stock Exchange in favour of the accused---Counsel for the accused also issued a notice explaining the circumstances in which the disputed cheque was issued---As a result of investigation carried out by police, the accused had been found *prima facie* innocent---**



**19. Aamir Shehzad Versus The State and another  
PLD 2005 Lahore 568  
Before Asif Saeed Khosa, J**

- Petitioner had contended that a civil suit had already been filed by him against the complainant regarding the same cheque and prior to that registration of the impugned F.I.R., an injunctive order had been issued by the Civil Court in respect of the said cheque and its use by the complainant; that the impugned F.I.R. was a counterblast to the civil suit already filed by him against the complainant; that the relevant cheque had been issued by the petitioner in favour of the brother of the complainant but the same had been returned to the petitioner and later on the said cheque had been stolen by the complainant for the purpose of registration of the F.I.R. in question and that the F.I.R. was based upon nothing but malice on the part of the complainant---Validity---Petitioner had admitted that the alleged theft of the cheque had never been reported to the police---



- Alleged dishonouring of the relevant cheque had come about prior to issuance of any injunctive order by a Civil Court and, thus, the offence, if any, had already been committed before passing of injunctive order by the Civil Court---**Laying of an information before the police regarding commission of a cognizable offence could not be stopped by a Civil Court---No injunctive order could be issued against the law---Article 4 of the Constitution provided an inalienable right of every citizen to be treated in accordance with law---No injunction could be granted by a Civil Court against criminal investigation or in any criminal matter under S.56(e), Specific Relief Act, 1877---High Court declined interference in the matter at such a stage. [p.570] A & C.**

**20. Seema Fareed and others  
Versus  
The State and another.  
2008 S C M R 839**

**Rana Bhagwandas and Saiyed Saeed Ashhad, JJ**

- Criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction had been instituted, it had never been considered to be a legal bar to the maintainability of criminal proceedings which could proceed, **concurrently because conviction for a criminal offence was altogether a different matter from the civil liability.**

## 21. Rehan Nasir

### Versus

S.H.O, P.S Raiz Bazar, Distt. Faisalabad and 2 others.

2008 Y L R 2505

Before M. Bilal Khan, J

- Art. 199---Penal Code (XLV of 1860), S.489-F---Constitutional petition---Quashing of F.I.R.---Contentions raised on behalf of accused needed a factual inquiry, which could not be undertaken by High Court in exercise of its constitutional jurisdiction under Art. 199 of the Constitution---Criminal proceedings could not be held in abeyance in all circumstances during pendency of a civil suit---Criminal proceedings were not barred in presence of civil proceedings and both proceedings could be carried out simultaneously---**Civil Court had no jurisdiction to prevent presentation of a cheque for encashment, which was a negotiable instrument**---Civil Court by its injunctive order had only directed the defendant accused not to receive money through illegal means and force---**Presentation of a valid cheque for encashment by no stretch of the argument could be termed as an attempt to receive money by illegal means or by force**---Constitutional petition was dismissed in limine accordingly.
- **Civil and criminal proceedings---Criminal Proceedings are not barred in presence of civil proceedings and both civil and criminal proceedings can be carried out simultaneously.**

22.

Muhammad Asif

Versus Muhammad Javed Akhtar

2006 M L D 1184

Before Sh. Hakim Ali, J

- O.XXXVII; Rr.1 & 2 & O.IX, R.13---Penal Code (XLV of 1860), S.489-F---Criminal Procedure Code (V of 1898), S.522-A---Availing of civil and criminal remedies simultaneously---Validity---Defendant applied for cancellation of exparte decree passed against him in suit for recovery on the basis of cheque, which was bounced on the score that since plaintiff had availed criminal remedy under S.489-F, P.P.C., suit under O.XXXVII, Rr.1 & 2, C.P.C. filed against him was not maintainable---Said contention was repelled by High Court holding that civil suit and criminal proceedings were two different remedies provided by law having different consequences as in commission of an offence, punishment was provided while through civil suit, recovery proceedings were commenced and the amount which was established to have been paid, was recovered, therefore, **both these remedies being not overlapping could be simultaneously availed of by the person who had been conferred such remedies by law---Subsection (3) of section 522-A, Cr.P.C. provided that a civil suit was not barred even in the presence of said section---Exercise of right of filing of suit could not create any hindrance in way of lodging F.I.R. under S.489-F, P.P.C. and vice versa---If different rights to commence proceedings of civil or criminal nature had sprung up with different results, those could be availed of differently and maxim that “a man should not be vexed twice,” would not be applicable in such a case.**