

# 489-F PPC

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## Case U/S 489-F by the complainant-Bank

### Registration of the case U/S 489-F by the complainant-Bank through its Manager was a mala fide action .....Remedy through the - Banking Court under the Financial Institutions (Recovery of Finances) Ordinance, 2001---

S. 489-F---Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001), S.7--- Constitution of Pakistan (1973), Art.199---Constitutional petition---Quashing of F.I.R.---Accused petitioner had taken a loan of Rupees Fifty lac from the complainant-Bank, but due to recession in business he could not deposit four monthly instalments and on demand of Bank furnished a guarantee cheque of Rupees fifty lac, which was not meant for immediate encashment---However, Bank on the said cheque having been dishonoured got the present case registered against the petitioner under S.489-F, P.P.C. vide the impugned F.I.R.---Validity---Aims and objects of Financial Institutions (Recovery of Finances) Ordinance, 2001, and S.489-F, P.P.C. being entirely different, could not be amalgamated or confused with each other at the whims of either of, the parties---Financial Institutions (Recovery of Finances) Ordinance, 2001, was a complete Code providing procedure for the Banking Courts, specially constituted under the said Ordinance, for recovery of loans from the defaulters and dealing with the commission of any offence as enumerated under S.7 of the said Ordinance---Banks or their administrations, therefore, were debarred from taking the advantage of S.489-F, P.P.C. through initiation of proceedings against the defaulters on dishonouring of any cheque issued by the loanee, who had availed any finance facility---Registration of the present case by the complainant-Bank through its Manager was a mala fide action against the petitioner, as it could avail remedy through the - Banking Court under the Financial Institutions (Recovery of Finances) Ordinance, 2001---Registration of case under S.489-F, P.P.C. against the accused petitioner being mala fide and abuse of process of law, could not be allowed to sustain on record---Impugned F.I.R. was consequently quashed and constitutional petition was accepted accordingly. (2009 PLD 541 LAHORE-HIGH-COURT-LAHORE)

---High Court set aside order passed by Ex-Officio Justice of Peace for registration of case U/S 489-F PPC on application filed by complainant bank---Petition was allowed accordingly. ( 2014 PCrLJ 1 LAHORE-HIGH-COURT-LAHORE)

Registration of case on application of Bank by order of Additional Sessions Judge/Ex-Officio Justice of Peace ---Order passed by Additional Sessions Judge/Ex-Officio Justice of the Peace and F.I.R. registered on the basis thereof being abuse of process of law were untenable---Constitutional petition was accepted and order passed by Additional Sessions Judge/Ex-Officio Justice of the Peace and F.I.R. registered on the basis thereof were quashed. (2014 MLD 746 LAHORE-HIGH-COURT-LAHORE), ( 2013 CLD 2250 LAHORE-HIGH-COURT-LAHORE), (2013 CLD 508 ISLAMABAD), (2013 MLD 736 ISLAMABAD)

## Pre conditions of 489-F PPC

If the following conditions are fulfilled and proved by the prosecution only then provisions of S.489-PPC are attracted:-

- I. Issuance of cheque ;
- II. Such issuance was with dishonest intention;
- III. The purpose of issuance of cheque should be;
  - a) To re-pay a loan; or
  - b) To fulfill an obligation(which in wide term inter alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance)
- IV. On presentation, the cheque is dishonoured.  
( 2010 SCMR 806 SUPREME-COURT)

## Cheque issued on basis of a business transaction...bail allowed

S. 497---Penal Code (XLV of 1860), S 489-F---Dishonestly issuing a cheque---Bail, grant of---  
Cheque issued on basis of a business transaction ---Dispute of civil nature---Effect---Accused had issued the dishonored cheque to the complainant in the backdrop of a business transaction between the parties---Both parties also had previous financial dealings---Dispute between parties was of civil nature and no cogent evidence was available to attract provisions of S.489-F, P.P.C.---Offence alleged did not fall within the prohibitory clause of S.497, Cr.P.C.---Accused was no more required for further investigation---Accused was granted bail in circumstances.( 2013 PCrJ 1591 LAHORE-HIGH-COURT-LAHORE)

## Cheque issued on basis of a business transaction...bail refused

S. 497---Penal Code (XLV of 1860), S.489-F---Dishonestly issuing a cheque---Bail, refusal of---  
Accused who had not denied the issuance of cheques in question, had stated that the cheques were given in a business transaction as a guarantee; and major part of amount had been paid, but no proof of payment or any business transaction had been brought on record---Cheques were dishonoured due to lack of funds and accused knowingly that he had no balance in the account, issued the cheques, so had defrauded the complainant---Offence with which accused had been charged, though did not fall within the prohibitory clause of S.497, Cr.P. C., but the grant of bail to accused in every case not hit by the prohibitory clause, was not a rule of universal application, because each case had to be dealt with on its own facts and circumstances---Accused being not entitled to grant of bail, his bail petition was dismissed, in circumstances.

( 2011 PCrJ 752 LAHORE-HIGH-COURT-LAHORE)

S. 489-F---Criminal Procedure Code (V of 1898), S.561-A---Quashing of F.I.R.---In the wake of business transaction with the complainant, accused carrying on the same type of business, had delivered six cheques -amounting to Rs.82 lac, which had been bounced by the Banks on presentations--

-Offence under S.489-F, P.P.C. thus, obviously seemed to have been made out---Pendency of civil suit would not bar the proceedings in the Criminal Court---Petition for quashing the proceedings under S.561-A, Cr.P.C. was dismissed in circumstances. (2010 PCrLJ 351 KARACHI-HIGH-COURT-SINDH)

### **Cheque issued without consideration..... Burden of proof.**

O. XXXVII Rr. 1 & 2---Suit for recovery of money under provisions of Order XXXVII, C.P.C.---dishonouring of cheque ---Burden of proof---If a cheque, was claimed to have been issued without consideration or in the name of some other person, the burden to prove so, lay upon the party so claiming. ( 2013 MLD 769 KARACHI-HIGH-COURT-SINDH)

### **Cheque issued as a guarantee /security**

S. 489-F---Dishonestly issuing a cheque---Cheque issued as a guarantee /security---Scope---Words "fulfilment of obligation" used in S.489-F, P.P.C. amounted to a guarantee for certain commitment, therefore, a cheque issued as a guarantee /security would come within the ambit of S.489-F, P.P.C. (2013 PCrLJ 400 PESHAWAR-HIGH-COURT-NWFP)

S. 497---Penal Code (XLV of 1860), S.489-F---Dishonestly issuing a cheque---Bail, refusal of---Cheques in question had been admitted to have been issued by accused and no evidence had been shown to indicate that the said cheques were issued by way of guarantee ---Petitioner would have the opportunity to prove his assertion that the cheques were issued as a guarantee at the trial---Bail was (2011 YLR 1284 LAHORE-HIGH-COURT-LAHORE)

### **Stealing of cheque.....**

-S. 489-F---Reappraisal of evidence---dishonouring of cheque ---Scope---Stealing of cheque---Insufficient balance---Accused did not dispute his signatures on the cheque in question---Plea raised by accused was that his signed cheque was stolen from his cheque book---Validity---It was against natural conduct that a person would keep blank signed cheque in his cheque book---Defence witness stated that when accused filed application for stopping of payment of cheque in question, at that time accused had only a balance of Rs.300, in his account; in the application to stop payment of cheque, accused did not take the plea that his cheque book was stolen or that a cheque from the cheque book was missing---Supreme Court declined to interfere in concurrent findings of courts below resultantly conviction and sentence was maintained---Appeal was dismissed. .( 2010 SCMR 806 SUPREME-COURT)

### **Valid defence in dishonouring of cheque**

S. 489-F---dishonouring of cheque ---Valid defence. Accused can take valid defence , if he proves that he had made arrangements with the bank to ensure that the cheque would be honoured; and that the bank was at fault in dishonouring the cheque. If accused established two fact through tangible evidence and that too after prosecution proves ingredients of offence, then the accused is absolved from punishment.( 2010 SCMR 806 SUPREME-COURT)

