

# IN THE HIGH COURT OF SINDH KARACHI

Present: Mr. Justice Dr. Syed Faiz ul Hassan Shah

## **Crl. Misc. Application No. 527 of 2025**

Applicant: Mehmoood Asghar through Syed Muhammad Yahya advocate

The State: Through Ms. Seema Zaidi, Addl. P.G. Sindh along with ASI/IO Jauhar ur Rehman and PI Zahid Hussain Qadri of PS Bahadurabad

Respondent No.3 Muhammad Younus present in person

Date of hearing: 09.07.2025

Date of Judgment: \_\_\_\_\_

## **ORDER**

**Dr. Syed Fiaz ul Hassan Shah, J.-** Through this Crl. Misc. Application, applicant has impugned the orders dated 24.03.2025 passed by learned IV-Additional Sessions Judge, Karachi East and 03.05.2025 passed by learned Civil Judge & Judicial Magistrate-XI, Karachi East.

2. Brief facts of the case are that the instant FIR was lodged by the complainant Mst. Sadia Abdul Shakoor w/o Abdul Shakoor against present applicant Mehmoood Asghar and Mst. Nasreen Mehmoood w/o Mehmoood Asghar u/s 420/34 PPC for fraud and embezzlement of money. The case was investigated by the IO / ASI Johar-ur-Rehman of PS Bahadurabad, who after completing investigation submitted challan against accused Mehmoood Ashgar u/s 420/34 r/w 512 Cr.PC showing him as absconder, while the IO exonerated the name of Mst. Nasreen Mehmoood from the case due to non-availability of sufficient evidence against her. Later on, the accused

Mehmood Asghar after obtaining pre-arrest bail joined the investigation and the I.O. submitted supplementary charge sheet against the Applicant, which was accepted vide Order dated 16.10.2024. The applicant has challenged the said order in Crl. Revision Application No.06/2025 before IV-Additional Sessions Judge, Karachi East, which was allowed vide order dated 24.03.2025 by setting aside the order dated 16.10.2024 passed by the said Judicial Magistrate, and the matter was remanded back to the said Judicial Magistrate with direction to pass speaking order afresh. Subsequently, the said Magistrate vide impugned order dated 03.05.2025, accepted the challan and case has been registered against the Applicant.

3. I have heard learned counsel for the applicant as well as Addl. P.G and the respondent No.3 in person and with their assistance perused the record.
4. Through this Crl. Misc. Application, the applicant has challenged the said Order under the *inherent jurisdiction* of this Court with following prayers:

(A) Call the record and proceedings of the instant Criminal Case from the trial Court (Judicial Magistrate No. XI-East at Karachi) and in the meantime suspend the proceedings of the Trial Court as the same are operating as advance punishment of the Applicant.

(B) Quash the FIR No. 168/2024 registered at PS Bahadurabad, Karachi, under Sections 420/34 PPC against the Applicant, consequently set aside the impugned Orders and declare further proceedings in the case as illegal.

(C) Grant any further and better relief as may be deemed appropriate in the facts and circumstances of the case.

5. I have duly considered the arguments advanced by the learned counsel for the applicant on the point of question of law that FIR has

been registered in violation of Statutes viz the “West Pakistan Private Money Lenders Ordinance, 1960” and the “Sindh Prohibition of Interest on Private Loan Act, 2023”. The relevant provisions read as under:

West Pakistan Private Money Lenders Ordinance 1960:-

Section 2 of said Ordinance read as:-

(k) —interest includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged for or on account of costs of expenses;

(l) —loan means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the Court finds to be in substance a loan, but shall not include, —

- (i) an advance in kind made by a landlord to his tenant for the purposes of husbandry; provided the market value of the return does not exceed the market value of the advance as estimated at the time of advance;
- (ii) a deposit of money or other property in a Post Officer Saving Bank, or any other bank or with a company, or with a co-operative society or with any employer as security from his employees;
- (iii) a loans to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other enactment relating to religious or charitable societies;
- (iv) a loan advanced by or to the Central or any Provincial Government or by or to any local authority or other body corporate setup under the authority of the Central or any Provincial Government;
- (v) a loan advanced by a bank, a co-operative society or a company whose accounts are subject

to audit by a certified auditor under the Companies Act, 1913;

(vi) a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage;

(vii) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;

(m)—money-lenders means a person carrying on the business of advancing loans;

3. (1) No money-lender shall, after a date to be notified in this behalf by Government carry on or continue to carry on the business of money-lending unless he holds an effective licence under this Ordinance.

(2) A money-lender may apply to the Collector for a licence which may be granted for such period, in such form and on such conditions, and on payment of such fees, as may be prescribed.

(3) No money-lender shall carry on the business of money-lending except in accordance with the terms and conditions of such licence.

(4) An application for a licence under this section or for the renewal of a licence shall be in such form and shall contain such particulars as may be prescribed.

(5) When an application for the renewal of a licence has been received from a money-lender before the expiry of the period of his licence, the existing licence shall be deemed to be effective until orders on the application have been made

6. Scope of “Money-Lender” relates to a person involved in advancing loan. The emphasis on “carrying on the business” implies a systematic, habitual, or commercial activity, not isolated or occasional lending. The provision of Section 3, Mandatory licensing is required for anyone who continues or initiates the business of money-lending after the notified date from the Collector, and lending must be conducted strictly in accordance with its terms. Firstly, the

Ordinance does not regulate private, one-off contractual loans between individuals unless such activity amounts to a business. The Section 2(l) excludes several categories from the definition of “loan,” including:

- Advances by landlords for husbandry,
- Deposits with banks, companies, or employers,
- Loans involving religious or charitable societies,
- Government or corporate body loans,
- Trader-to-trader loans in regular business,
- Negotiable instruments (excluding promissory notes).

7. These exclusions reinforce that the Ordinance targets commercial money-lending enterprises, not private or incidental lending arrangements. The phrase “*any transaction which the Court finds to be in substance a loan*” allows judicial discretion to pierce the form of a transaction. However, unless the lender is engaged in the business of lending, the licensing provisions do not apply. Thus, individuals lending money on a contractual basis, without engaging in a business, are not subject to the licensing regime under this Ordinance and therefore, the instant application of the Applicant on this point failed.

8. The second legal contention of the learned Counsel for the Applicant that the FIR is barred under the Sindh Prohibition of Interest on Private Loan Act, 2023, I would refer the Preamble and definition clause of operation provisions.

- Preamble: “AN ACT to provide for the prohibition of the business and practices of private money-lending and advancing loans and transactions based on interest, in the Province of Sindh.
- WHEREAS the injunctions of Islam as laid down in the Holy Quran and Sunnah have explicitly and unequivocally prohibited charging interest on loans and Allah and Prophet Muhammad (SAW)(PBUH) have declared war against those who do not abandon interest.”

- Section-2 (b) "borrower" or "debtor" means a person to whom a loan is advanced;
- Section 2 (j) "money lender" means a person, other than the Federal or Provincial Government or a financial institution, who lends money on interest or deals in interest based transactions and includes any person appointed by him to be in charge of a branch office or offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker who carries on the business of taking goods and chattels in pawn or pledge for a loan, offering payday loans, small personal loans or credit chits.

9. As regards the second legal contention that the instant FIR is barred under the Sindh Prohibition of Interest on Private Loan Act, 2023, it is pertinent to observe that the preamble of the said enactment unequivocally declares its object to be the prohibition of the business and practices of private money-lending and advancing loans and transactions based on interest within the Province of Sindh. The legislative intent, as derived from the preamble and operative provisions, is to curb exploitative interest-based lending practices that contravene the injunctions of Islam as laid down in the Holy Quran and Sunnah. However, the Act does not extend to contractual obligations or commercial transactions premised on prospective profits and costs, which fall outside the mischief contemplated by the statute. Therefore, unless the transaction in question is demonstrably interest-based and falls within the scope of prohibited money-lending activity, the registration of FIR under the said Act would be subject to judicial scrutiny.

10. I am not persuaded by the arguments advanced by the learned counsel for the appellant that the provisions of the West Pakistan Money Lenders Ordinance, 1960 and the Sindh Prohibition of Interest on Private Loan Act, 2023 bar the complainant from asserting her claim. The FIR, as recorded under Section 154,

Cr.P.C., contains specific allegations of fraud and misappropriation of funds by the applicant, which were advanced pursuant to a contractual obligation and not as an interest-based loan. The complainant has categorically stated that the amounts—Rs.11 lacs in cash and Rs.14 lacs through pay orders—were provided in furtherance of a contractual arrangement, devoid of any interest component. In such circumstances, the provisions of Sections 420 and 409, P.P.C., are prima facie attracted, as the allegations pertain to dishonest inducement and criminal breach of trust. Conversely, where the transaction is demonstrably interest-based, the statutory bar under the aforementioned special enactments may question. However, in the present case, the Police have rightly proceeded under the general penal provisions, and the applicability of special statutes stands excluded. The determination of factual disputes regarding the nature of the transaction and the alleged denial of receipt shall be subject to adjudication by the trial court upon recording of evidence.

11. The nature of the transaction, as pleaded, falls outside the scope of interest-based lending prohibited under the aforementioned statutes. The applicant's denial of receipt and assertion that the pay orders pertain to ancestral property transactions is a matter requiring adjudication by the trial court upon recording of evidence. It is well settled that Section 154, Cr.P.C. must not be interpreted in isolation or in a manner that impedes the registration and investigation of cognizable offences. Any such attempt undermines the statutory duty imposed upon the police and the broader objectives of the criminal justice system. In such circumstances, the exercise of inherent jurisdiction under Section 561-A, Cr.P.C., read with the

constitutional mandate to ensure justice, becomes imperative to prevent abuse of process and to secure the ends of justice as acknowledged under section 561-A Cr.P.C. Thus, the instant application for quashment of proceedings finds no merit and it is hereby dismissed while maintaining the Order passed by the learned Judicial Magistrate.

JUDGE

SAJID1