

IN THE HIGH COURT OF SINDH KARACHI

Criminal Misc. Appln. No. 466 of 2025

Applicant : Mst. Fakhra daughter of Muhammad Saeed
Through Abdul Ghaffar, advocate

Versus

Respondents. : 1. The S.P Complaint Cell, District Korangi.
2. The SHO police station Al- Falah, Korangi.
through Mr. Muhammad Mohsin Mangi,
Assistant Prosecutor General, Sindh.

Proposed Accused : 3. Syed Mubarak Hussain Shah
Son of Syed Allah Wasaya Shah.
4. Syed Waqar Hussain Shah son of
Syed Mubarak Hussain Shah.
Through Mr. Nadeem Khalid, advocate.

Date of hearing : 31.07.2025.

Date of order : 08.08.2025.

O R D E R.

MIRAN MUAHAMMAD SHAH, J.:- Through this Criminal Misc. Application, the applicant namely Mst. Fakhra daughter of Muhammad Saeed has challenged the impugned order dated 26.05.2025, passed by the learned 1st Additional District and Sessions Judge, Karachi (East) in Criminal Misc. Application No.2265 of 2025, whereby the applicant's request for the lodgment of the FIR against the proposed accused was declined. The applicant had approached the Court of the District and Sessions/Ex-Officio Justice of Peace, Karachi-East, by filing Criminal Misc. Application No.2265 of 2025 under Section 22-A and 22-B Cr.P.C for seeking directions for the registration of the FIR against the proposed accused person. The matter was assigned to the learned 1st Additional District and Sessions Judge, Karachi (East), who after hearing the parties dismissed the application through the impugned order dated 26.05.2025. Hence this application.

2. The learned counsel for the applicant submits that the applicant filed an application against the proposed accused persons at the concerned police station on 15.03.2025, wherein she stated that she had married with the proposed accused No.1 namely Syed Mubarak Hussain Shah; however, such marriage could not continue and was

subsequently dissolved; that a settlement was carried out between the parties, whereby the proposed accused persons undertook to pay an amount of Rs.3,661,000/- to the applicant and for such purpose, the proposed accused persons provided one pay order for Rs.1,000,000/- and one cheque of Rs.1,000,000/- both of which were duly encashed, and thus the applicant received a total amount of Rs.2,000,000/- from the proposed accused persons; that the proposed accused also issued another cheque No.1963010619 dated 06.03.2025 for the remaining amount of Rs.1,661,000/- but the same returned unpaid on 10.03.2025 due to stoppage of payment by the drawer. Subsequently, another cheque bearing No.1963010622 dated 14.03.2025, for Rs.1,661,000/- which was also dishonored, thus the applicant again approached respondent No.2 with a written complaint, which was duly received but no action taken against the proposed accused persons. Consequently, the applicant has been compelled to approach this Court for the registration of the FIR, as well as for protection against the proposed accused persons. He, therefore, prays for allowing the instant Criminal Misc. Application.

3. On the other hand, Mr. Nadeem Khalidi, advocate files a vakalatnama on behalf of the proposed accused persons, which is taken on record and he requests for time to prepare himself, however, due to objections raised by the learned counsel for the applicant, he states that he is ready to argue the matter, hence, he opposes the grant of the instant Criminal Misc. Application on the ground that the applicant is ex-wife of proposed accused, who divorced her on 22.07.2024; that the applicant has a grievance against her ex-husband regarding her alleged share in his property, despite the fact that he is still alive. Due to this dispute, both parties have filed various cases against each other, however, a written compromise was reached between them in the presence of the President of the Malir Bar Association, Karachi and other witnesses and after such settlement no amount remained due from the proposed accused persons. As part of the settlement, proposed accused No.2 on behalf of his father, paid a total sum of Rs.3,819,300/- to the applicant and her daughter Mst. Izba

Noor; that the payment was made through a combination of pay orders, cheques and cash on different dates; that the applicant after receiving the full claimed amount, issued a valid receipt dated 18.04.2025, in the presence of attesting witnesses, acknowledging the full and final settlement of her claims, in the same receipt, the applicant also returned cheque No.1963010622, which had earlier been dishonoured due to “demand signature” as reported by the concerned bank. He lastly prays for the dismissal of the instant Criminal Misc. Application.

4. The learned Assistant Prosecutor General, Sindh also opposes the grant of the instant Criminal Misc. Application and adopted the arguments advanced by the learned counsel for the proposed accused persons.

5. I have heard the learned counsel for both the parties as well as the learned Assistant Prosecutor General Sindh at length. It is an admitted position that the applicant and the proposed accused No.1 were husband and wife, and the proposed accused No.2 is the ex-father-in-law of the applicant. From the documents submitted by both the parties, it transpires that a settlement was attempted between the applicant and proposed accused No.1 in relation to their matrimonial dispute. However, certain financial matters remained unresolved, for which an agreement was entered into between the parties. Relevant documents in this regard have been submitted by both sides along with their respective applications and statements. After perusing of these documents, it becomes apparent that a clear distinguish can be made regarding the list of financial transactions that were required to be settled between the both the parties, after obtaining the divorce. After such agreement and the receipt of a substantial amount by the applicant, a dispute arose only concerning the third and final installment. It is a substantial believe that any financial transactions arising out of divorce are to be settled either through Civil Proceedings or before a Family Court. It appears highly improbable that such matters should be given a criminal color and the FIRs be registered by using/misusing the provisions of criminal law, thereby dragging the

parties into unnecessary criminal litigation. For these very reasons, the Hon'ble Supreme Court has laid down dicta discouraging the conversion of civil disputes into criminal cases. Such matters, which can be amicably, resolve through civil courts or arbitration (Private or Judicial) should not be transformed into criminal proceedings. However, recognizing that genuine criminal acts do occur, for which section 22-A & 22-B Cr.P.C have been inserted in the law to ensure that victims of serious criminal offences are not left without remedy or forced to suffer due to inaction by police or law enforcement agencies. There should be a legal remedy available for them to approach the courts in cases of such injustice and victimization, especially when influential and powerful individuals in society try to prevent the registration of heinous cases against themselves, their families and their associates. When a poor victim is refused for lodgment of FIR by law enforcement agencies or those responsible for registering cases, their complaints are often not entertained. There should be a remedy available to protect such victims from the high-handedness of the police authorities. However, it has been noted that in recent time, these provisions are being misused to settle personal scores or applied in cases involving small nature offences. The Hon'ble Superior Courts in number of cases discouraged such practices and have not allowed the application under section 22-A & 22-B Cr.P.C in cases of a civil nature. The courts have held that civil disputes should not be given a criminal color merely to obtain benefit by intimidating the other party. The civil dispute should not be entangled in criminal litigation. The present case appears to be of a similar nature, where a purely matrimonial dispute and related financial transactions are being improperly dragged into criminal proceedings. I place my reliance upon a case law and hereby reproduce the relevant portion of case law of Honorable Supreme Court of Pakistan as 2021 SCMR 468 (reproduce relevant portion):-

"Held, that report submitted by the police did not support petitioner's claim and there was consensus that both sides were locked in a dispute of civil nature--- Against such peculiar backdrop, refusal by the Justice of Peace to issue direction to the Station House Officer and non-interference by the High Court therewith did not

suffer from any jurisdictional error or flaw---Petition for leave to appeal was dismissed and leave was refused.”

6. I also place my reliance upon unreported Judgment passed by this Court in Criminal Misc. Appln. No.736 of 2021 and C.P. No.S-09 of 2022, (reproduce relevant portion):-

“The provisions of section 22-A, Cr.P.C. have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging of duties takes an action against the accused would be subjected to harassment by invoking provision of section 22-A, Cr.P.C. The Courts in mechanical manner should not allow application under sections 22-A & B and should apply its mind as to whether the applicant has approached the Court with clean hands or it is tainted with malice. Unless such practice is discouraged, it would have far reaching effect on the police officials who in discharge of duties take actions against them. The law has to be interpreted in a manner that its protection extends to everyone.”

7. I am of the opinion that such kind of application should not be entertained and should preferably be decided and dealt with through an out of court settlement, as was done earlier in this matter, or through the civil courts, which have the proper jurisdiction to decide such issues.

8. Hence, I do not see any illegality in the impugned order dated 26.05.2025 passed by the learned 1st Additional District and Sessions Judge/Ex-Officio Justice of Peace, Karachi-East, and upheld the order passed by the learned trial Court and hereby dismiss the Criminal Misc. Application No.466 of 2025 to be devoid of merits.

JUDGE

Manthar Brohi.