

THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.1180 of 2024.

Applicants : Muhammad Javed Aslam, Muhammad Omair and Muhammad Naveed Aslam, all sons of Chaudhry Muhammad Aslam through, Mr. Imtiaz Ali Shah, Advocate

Respondents : Mr. Zahoor Shah, Additional Prosecutor General Sindh, appearing for the State

Date of hearing : 25.09.2025.

Date of order : 03.10.2025.

ORDER

MUHAMMAD HASAN (AKBER), J.—Applicants have impugned the Order dated 11.11.2024 passed in Criminal Miscellaneous Application No.4000 of 2024 whereby learned Ex-Officio Justice of Peace/Additional Sessions Judge-X, Karachi South directed the SHO of Police Station Mithadar to record the Statement of applicant/Respondent No.4 under Section 154, Cr.PC., if a cognizable offence is made out.

2. Brief allegations raised by the complainant/ Respondent No.4 are that in the month of October 2022 the present applicants visited his office and disclosed that they are partners of Poultry International and are running business of poultry and eggs; other applicants supplied corn for Rs.88,00,000/-, in security whereof applicants provided him cheques Nos.36842405 of Rs. 15,00,000/-, dated 28.11.2022 and 36842406 of Rs.45,00,000/- dated 13.10.2023, D12651786 of Rs. 4,00,000/- dated 14.10.2023. The said cheques were dishonoured upon presentation due to insufficient funds. Due to business relations amongst parties, respondent No.4 waited and then lodged this application for registration of FIR, which was allowed vide Order impugned.

3. Applicants' learned counsel argued that there were seven respondents made in the application filed by the complainant, whereas the present three applicants are partners in M/s. Poultry International and two cheques including the present cheque No.D12651786 for Rs. 4,00,000/- dated 14.10.2023 was issued by the said firm as security in sale and purchase transaction of poultry and eggs. Per learned counsel, the said amount was clearly repaid, receipts whereof are also attached with the present application, however under mala fide intentions, the said cheques were not returned to the applicants. It was categorically stated, that the present applicants have no concern whatsoever with the other proposed accused Muhammad Saleem and Muhammad Zeeshan Nawaz, who had issued the other two cheques. It was lastly argued that the impugned order was passed in a mechanical manner, without considering all these facts and without appreciating the material available on record; that there remains no financial obligation on their part towards respondent No.4; that the subject cheque had become stale and was presented after more than six months. It was lastly prayed that the impugned order be set aside.

4. Learned Deputy Prosecutor General has supported the Order impugned.

5. Heard and perused. Record reflects that Cheques Nos.36842405 dated 28.11.2022 and Cheque No.36842406 dated 13.10.2023 were issued by one Muhammad Zeeshan Nawaz, whereas Cheque No.12651786 dated 13.10.2023 which is the subject matter of instant application, was issued by Poultry International, which belongs to the present applicants. The said cheque was dated 13.10.2023 and the dishonoured memo issued by the bank shows that it was presented in the Bank for encashment on 05.06.2024 i.e. after a clear lapse of more than six months.

6. The term "**stale cheque**", was defined in the case of **Noor Ahmad** ¹ as used in the Banking Glossary issued by the State Bank of Pakistan, in the following terms:

"Stale Cheque: A stale cheque is a cheque that has been outstanding for an unreasonable time. A cheque may be outstanding for more than six months and a bank may under its discretion refuse to honour such a cheque. A bank is under no obligation to a customer to pay a cheque, other than a certified cheque, after more than six months of its date, but it can charge its customer's account for a payment made thereafter in good faith."

7. A brief study of the case law developed in Pakistan on the subject in the criminal jurisdiction takes us to the following position:

i. In the cases of **Noor Ahmad**¹ *ibid*, **Muhammad Ashraf**², **Anwar Masood Khan**³ and **Altafur Rahman**⁴ pre-arrest bails in proceedings under section 489-F PPC. were granted to the accused on the premise that the concerned cheques were presented to the bank after more than six months and had become stale.

ii. In **Shafqat Hussain Hashmi**⁵ case, criminal proceedings were quashed, which were initiated based upon dishonour of a stale cheque presented after six months of its validity.

iii. In the case of **Sajid Irtaza**⁶ and **Col.(R) Mukarram Ali Shah**⁷ registration of FIR was disallowed on the same basis that the cheque had become stale before presentation.

iv. Even in the civil jurisdiction, the concept has been recognized. Hence, in the case of **HBL**⁸ and while placing reliance on **Griffiths**⁹ decree in civil proceedings against dishonour of cheque was set-aside on the ground that after the lapse of period of six months the cheque becomes stale. Same principles were followed in **Kamran Akhter**¹⁰.

8. Identical instances in the Indian jurisdiction in criminal proceedings concerning stale cheques could be found in, **Rekha Rani Pyne**¹¹, **Stanley Barros Pereira**¹² and **Arunbhai Nanavati**¹³ cases.

9. Turning to the case in hand, the subject cheque was drawn on 13.10.2023 and was presented in the Bank for encashment on 05.06.2024, clearly after a delay of more than six months. The learned Ex-Officio Justice of Peace ought to have applied its mind and the above-discussed principles before allowing the application in a mechanical manner under section 22-A & B Cr.PC and directing the SHO to register FIR against the applicant based upon a stale cheque. The use of the word "**may**" in section 22-A(6), Cr.P.C. clearly makes the jurisdiction of an Ex-officio Justice of the Peace as discretionary in nature, which is required to be exercised with caution and restraint and not in a mechanical manner, as held in **Khizer Hayat**¹⁴ case.

10. Applying the above principles to the facts of the present case, this appears to be a fit case for interference in the impugned Order. Consequently, this Criminal Miscellaneous Application is allowed and the impugned Order dated 11.11.2024 passed by learned Ex-Officio Justice of Peace, Karachi South, only to the extent of Cheque No.12651786 dated 13.10.2023, is set-aside.

JUDGE

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1. *'Noor Ahmad v. The State and others'* 2020 YLR 2064
 2. *'Muhammad Ashraf v. The State and others'* 2015 PCr.LJ 1050
 3. *'Anwaar Masood Khan v. State and others'* 2018 PCr.LJ 469
 4. *'Altaf-ur- Rehman v. State and another'* PLJ 2018 Cr.C. 532
 5. *'Shafaqat Hussain Hashmi v. The State'* 2012 MLD 1551
 6. *'Sajid Irtaza v. Additional Sessions Judge Lahore and 2 others'* 2021 P.Cr.LJ 1071
 7. *'Col. (R) Mukarram Ali Shah v. The State and another'* PLD 2025 Sindh 63
 8. *'Habib Bank Limited v. Jamilur Rehman'* 1994 MLD 271
 9. *'Griffiths v. Dalton'* (1940) 2 KB 264
 10. *'Kamran Akhter v. Jawed Ahmed Khan'* 2005 CLC 797
 11. *'Rekha Rani Pyne v. Sambhunath Halder'* 2000 (4) ICC 228
 12. *'Stanley Barros Pereira v. Julieta Cota e Clemente and other'* 2006(2)GOA L.R 287
 13. *'Arunbhai Nilkanthrai Nanavati v. Jayaben Prohlad Bhai'* 2000 Cri.LJ 1152
 14. *'Khizer Hayat V. Inspector-General of Police (Punjab), Lahore'* PLD 2005 Lahore 470