

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. S-121 of 2025
(Mian Dad Vs. SHO Police Station A Section Ghotki & Others)

Date	Order with signature of Judge
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For hearing of main case.

ORDER.
02-05-2025.

Mr. Muhammad Farooque Ahmed Gujjar, Advocate for the applicant.
Mr. Asaddullah Soomro associate of Mr. Ashok Kumar K. Jamba
Advocate for Proposed Accused
Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General for the State.
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Ali Haider ‘Ada’,J:- The applicant, being aggrieved by the order dated 15.02.2025 passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Ghotki, in Criminal Miscellaneous Application No. 309/2025 titled '*Miandad vs. SHO Police Station “A” Section Ghotki & Others*', whereby the application filed by the applicant seeking registration of FIR was dismissed, has preferred the instant application.

2. Brief facts of the case are that the applicant filed an application under Sections 22-A and 22-B Cr.P.C. before the learned Justice of Peace/Sessions Judge, Ghotki, stating that the proposed accused received an amount of Rs. 400,000/- from him as a loan and, in lieu thereof, issued several cheques of different dates with the assurance of repayment. However, upon presentation, all the cheques were dishonored by the concerned bank, as confirmed through the bank's memorandum. Thereafter, the applicant approached the proposed accused in the presence of witnesses, but to no avail; instead, he was allegedly extended threats. Despite approaching the concerned police station and higher authorities, no action was taken. Left with no other remedy, the applicant filed the application

before the learned Justice of Peace, which was dismissed; hence, he has challenged the said order through the instant criminal miscellaneous application.

3. Learned counsel for the applicant contended that several cheques were admittedly issued by the proposed accused in order to discharge his financial obligation, but he failed to honour the same and instead, extended threats to the applicant. It is further argued that the learned Justice of Peace, while exercising powers under Section 22-A Cr.P.C., was obligated to examine whether a cognizable offence was made out; however, the application was dismissed on presumptions and in a mechanical manner. Therefore, the impugned order is liable to be set aside with a direction to the concerned SHO to record the statement of the applicant and if, a cognizable offence is made out, to proceed with registration of the FIR in accordance with law.

4. Conversely, learned counsel appearing on behalf of the proposed accused submitted that the entire amount was duly paid and discharged, and the claim now raised by the applicant is baseless and motivated by ulterior considerations. It was contended that after receipt of the payment, the applicant was under a legal obligation to return the cheques, which he failed to do. The learned Justice of Peace, having rightly appreciated the facts and circumstances, lawfully dismissed the application; hence, no interference is warranted, and the impugned order merits to be upheld.

5. Learned Deputy Prosecutor General for the State submits that, prima facie, the application filed under Sections 22-A & 22-B, Cr.P.C. reflects the commission of a cognizable offence within the meaning of Section 489-F, P.P.C. It is contended that the cheques in question were admittedly issued by the proposed accused and the concerned bank has confirmed its dishonour due to insufficient

funds. In these circumstances, the version of the applicant ought to have been recorded in accordance with law.

6. Heard learned counsel for the parties and perused the material available on record.

7. Before proceeding to analyze the facts of the case, it is pertinent to refer to the relevant provision of law. For ready reference, Section 489-F of the Pakistan Penal Code is reproduced as under:

489—F Dishonestly issuing a cheque—"Whoever dishonestly issues a cheque towards re-payment of a loan or fulfilment of an obligation which is dishonored on presentation, shall be punishable with imprisonment which may extended to three years, 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".

8. The primary objective behind the enactment of laws pertaining to dishonour of cheques is twofold: firstly, to instill confidence in the banking and financial system by ensuring that commercial transactions are conducted in a secure and trustworthy manner; and secondly, to deter dishonest conduct by individuals who issue cheques without sufficient funds, thereby safeguarding the integrity of financial dealings and reinforcing the rule of law.

9. Further, in case of *Muhammad Sultan Vs. The State (2010 SCMR 806)*, it is held by Apex Court that:

"A perusal of sections 489-F, P.P.C reveals that the provisions will be attracted if the following conditions are fulfilled and proved by the prosecutions;---

- (i) Issuance of cheque;
- (ii) Such issuance was with dishonest intention;
- (iii) The purpose of issuance of cheques should be:---
 - (a) To repay 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 person to same performance.

(iv) On prosecutions, the cheques is dishonored.

10. In the instant matter, the cheques were dishonored upon its presentation before the concerned Bank. At this preliminary stage, the defence plea raised by the proposed accused warrants thorough investigation. It is well-settled that such a plea may appropriately be taken before the Investigating Officer during the course of investigation. It is the fundamental duty of the Investigating Officer to collect evidence from all possible sources without bias. Furthermore, no arrest shall be effected unless and until concrete and tangible evidence is brought on record by the investigating agency.

11. The section 489-F PPC is a cognizable offence, therefore, only on the defence plea, even did not support with any cogent evidence has no ground to expel the version of applicant, who acted being as complainant. Reliance is placed on case of *Malik Sohail Aslam Vs. Superintendent of Police (Operation), Lahore and 3 others* (2017 YLR 1548).

“We are unanimous in our view that admittedly the cheque were dishonored and dishonored slips are attached with the record but this material aspect perhaps escaped notice of the learned Single Judge-in-Chambers. Guidelines in this respect can also be sought from “Younas Abbas and others Vs. Additional Sessions Judge, Chakwal and others” (PLD 2016 Supreme Court 581).

12. In view of the foregoing reasons, the impugned order dated 15.02.2025 passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Ghotki, in Criminal Miscellaneous Application No. 309/2025 is hereby set aside. The Station House Officer, Police Station ‘A’ Section Ghotki, is directed to record the version of the applicant and if, a cognizable offence is made out, proceed in accordance with law by incorporating the same under Section 154, Cr.P.C. Consequently, the instant Criminal Miscellaneous Application stands allowed.

JUDGE