

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-356 of 2025

Applicant : Noor Ahmed son of Rustam Khan, Mangerio
Through Mr. Shoaib Niaz Khaskheli, Advocate

Respondent No.5 : Through Mr. Sarfraz Magsi, Advocate.

The State : Through Mr. Gulzar Ahmed Malano, Addl. P.G

Date of hearing : 19.09.2025
Date of order : 19.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J.- Applicant Noor Ahmed has invoked inherent jurisdiction of this court, seeking to set aside the order dated 21st May 2025 passed by the learned Additional Sessions Judge/ Ex-Officio Justice of Peace, Kandiaro, in Criminal Miscellaneous Application No.1838 of 2025, whereby the application for registration of FIR against the respondent No.5 was dismissed. The applicant further prays for directions to respondent No. 4, the Station House Officer, Police Station Kandiaro, to record his statement under Section 154 of the Code of Criminal Procedure and register a case against respondent No.5 if a cognizable offence is disclosed.

2. The factual matrix of the case, as narrated by the applicant, presents a straightforward transaction that allegedly evolved into a criminal matter. According to the applicant's version, on 29th November 2024, he was present at an otaq in his village along with witnesses Javed Lakho and Ghulam Nabi Lakho. At about 04:30 pm on the same date, the proposed accused, Shahmeer Mangrio, approached the applicant with a request for financial assistance. The proposed accused represented that he required a sum of money and assured the applicant that he would return the same within a month. Based on their cordial relationship and trusting the representation made by the proposed accused, the applicant agreed to advance an amount of Rs.3,50,000 (Three lacs fifty thousand rupees) to him.

3. In consideration of this advance, the proposed accused issued two cheques from his account No.0000109515 maintained with National Bank of Pakistan, Mauripur Branch, Karachi. The first cheque bore No. 6821272 dated 20th October 2025 while the second cheque bore No.68212725 dated 20th April 2025, collectively covering the advanced amount. The transaction was witnessed by the aforementioned persons present at the otaq. Subsequently, on 20th April 2025, the proposed accused contacted the applicant telephonically,

requesting him not to present the cheque before the bank as he would arrange to pay the amount in cash within a short period. However, the proposed accused failed to honor his commitment within the stipulated time.

4. Consequently, the applicant proceeded to the National Bank, Kandiaro Branch, and submitted cheque No.68212725 for Rs.1,75,000 in his own account for encashment. However, on 28th April 2025, the bank returned the cheque with a memo indicating that the account was closed, described as a "Photo Account." Following this dishonor, the applicant, accompanied by witnesses, approached the proposed accused on the next day to demand repayment of his due amount. The proposed accused not only refused to return the money but also issued threats of dire consequences to the applicant.

5. Having exhausted all avenues for amicable resolution, the applicant approached Police Station Kandiaro for lodging of a First Information Report against the proposed accused. However, the concerned Station House Officer refused to register the FIR, compelling the applicant to seek recourse through the Ex-Officio Justice of Peace. The applicant filed Criminal Miscellaneous Application No.1838 of 2025 before the Court of learned Sessions Judge Ex-Officio Justice of Peace, Naushehro Feroze, seeking directions for FIR registration against the proposed accused. The case was subsequently transferred to the Court of learned Additional Sessions Judge Ex-Officio Justice of Peace, Kandiaro, who, after calling for a police report, dismissed the application vide the impugned order dated 21st May 2025.

6. The learned counsel for the applicant vehemently argued that the impugned order suffers from multiple legal infirmities and deserves to be set aside. He contended that the learned Additional Sessions Judge/ Ex-Officio Justice of Peace acted in haste without applying his judicial mind to the factual and legal aspects of the case. The counsel emphasized that the order is not sustainable in the eyes of law as it fails to appreciate the actual facts submitted by the applicant and demonstrates a fundamental misunderstanding of the applicable legal provisions.

7. Elaborating on the factual aspects, the learned counsel submitted that according to the bank memo, the account of respondent No. 5 had been closed by the bank authorities, yet he intentionally and dishonestly issued the cheques to the applicant. The counsel argued that such conduct on the part of respondent No.5 was motivated by malafide intentions and ulterior motives, clearly falling within the definition of Section 489-F of the Pakistan Penal Code, which specifically addresses the dishonest issuance of cheques. He emphasized

that the applicant had successfully proved his case before the learned Justice of Peace, establishing a *prima facie* case against respondent No.5, yet the learned Presiding Judge dismissed the application without cogent reason or proper legal analysis.

8. The counsel further argued that the proposed accused had committed a heinous offence and therefore deserved to be prosecuted according to law. He stressed that it was the mandatory duty of respondent No. 4, the Station House Officer, to record the statement of the applicant under Section 154 of the Code of Criminal Procedure, which is a mandatory provision of law that cannot be circumvented through administrative convenience or subjective assessment of the case merits. The counsel maintained that the rejection of the application constituted a denial of the applicant's fundamental right to lodge a complaint regarding a cognizable offence.

9. The learned Additional Prosecutor General, appearing for the State, adopted a neutral stance while acknowledging the procedural requirements governing FIR registration. The State's representative emphasized that the police are duty-bound to register FIRs for cognizable offences as mandated by Section 154 of the Code of Criminal Procedure, and any refusal to register an FIR should be based on valid legal grounds rather than subjective assessments of case merits. However, the learned APG also noted that the Ex-Officio Justice of Peace must exercise discretionary powers judiciously while considering applications under Sections 22-A and 22-B of the Code of Criminal Procedure.

10. The State's position remained that if the complaint discloses a *prima facie* cognizable offence, the investigating machinery should be set into motion through FIR registration, and the question of guilt or innocence should be determined through proper investigation and trial rather than at the preliminary stage of FIR registration. The learned APG emphasized that the courts should be cautious not to usurp the investigative function of the police while simultaneously ensuring that genuine complaints are not dismissed without due consideration.

11. The police report, as reflected in the impugned order, presented the version of the proposed accused through his counsel, who denied the allegations leveled by the applicant. According to the police report, the proposed accused claimed that his cheque book and other documents were misplaced from his house, and such complaint was made through online reporting at Police Station Kandiaro on 19th March 2018. The proposed accused supported his claim by submitting a photocopy of an affidavit and the online complaint, asserting that

the applicant, being a close relative, had easy access to his house and could have misused the misplaced cheque book.

12. The investigating authorities, through their report, suggested that the close relationship between the parties and the applicant's access to the proposed accused's residence created a possibility of misuse of the cheque at the hands of the applicant. This perspective was apparently adopted by the learned Additional Sessions Judge Ex-Officio Justice of Peace in reaching his conclusion to dismiss the application.

13. The record before this Court contains several crucial documents that form the foundation of the present application. The certified true copy of the impugned order dated 21st May 2025 passed by the learned Additional Sessions Judge Ex-Officio Justice of Peace, Kandiaro, along with the memorandum of Criminal Miscellaneous Application No.1838 of 2025, provides the immediate background to the present proceedings. The photostatic copies of the two cheques bearing numbers 6821272 and 68212725, both drawn on National Bank of Pakistan, Mauripur Branch, Karachi, with account number 0000109515, constitute the primary evidence of the alleged transaction between the parties. The bank memo dated 28th April 2025, indicating the return of cheque No.68212725 with the notation "Photo Account," serves as crucial evidence establishing the dishonor of the cheque due to the closure of the account. Additionally, the record contains the photocopy of the affidavit submitted by the proposed accused claiming loss of his cheque book and other documents, along with the purported online complaint made to Police Station Kandiaro on 19th March 2018.

14. Having carefully examined the record, heard the arguments of learned counsel for the parties, and considered the applicable law, this Court finds that the present application raises fundamental questions regarding the scope of judicial review over orders passed by Ex-Officio Justices of Peace and the proper application of legal principles governing FIR registration in cases involving dishonor of cheques.

15. The threshold question that arises for determination is whether the present application under Section 561-A of the Code of Criminal Procedure is maintainable against an order passed by an Additional Sessions Judge functioning as Ex-Officio Justice of Peace. This question has been conclusively settled by the apex Court in the landmark judgment of *Younas Abbas and others versus Additional Sessions Judge Chakwal and others*, reported in PLD 2016 Supreme Court 581. The Supreme Court, while examining the nature of

functions performed by Ex-Officio Justices of Peace, observed that unlike ordinary Justices of Peace who perform executive, administrative, preventive, and ministerial functions, the powers exercised by Ex-Officio Justices of Peace under Sections 22-A and 22-B of the Code of Criminal Procedure are quasi-judicial in nature.

16. The Supreme Court specifically held that the functions performed by Ex-Officio Justices of Peace cannot be characterized as executive, administrative, or ministerial inasmuch as they do not carry out, manage, or deal with things mechanically. Their functions, as described in clauses (i), (ii), and (iii) of subsection (6) of Section 22-A of the Code of Criminal Procedure, are quasi-judicial as they entertain applications, examine the record, hear the parties, pass orders, and issue directions with due application of mind. This judicial pronouncement establishes beyond doubt that orders passed by Additional Sessions Judges acting as Ex-Officio Justices of Peace are subject to judicial review by the High Court under Section 561-A of the Code of Criminal Procedure.

17. The maintainability of the present application finds further support from the judgment of the Azad Kashmir High Court in *Sikandar Azam and others versus Zulqarnain Akhter and others*, wherein it was held that High Courts possess jurisdiction under Section 561-A of the Code of Criminal Procedure to review orders of Ex-Officio Justices of Peace to prevent abuse of process or secure the ends of justice. Therefore, this Court is satisfied that the present application is maintainable and proceeds to examine the merits of the case.

18. The substantive issue before this Court relates to the proper application of legal principles governing the registration of First Information Reports in cases involving allegations under Section 489-F of the Pakistan Penal Code. Section 489-F deals with the dishonor of cheques and requires the prosecution to establish specific elements for a successful conviction. However, at the stage of FIR registration, the question is not whether all elements of the offence can be proved beyond reasonable doubt, but whether the complaint discloses a prima facie cognizable offence that warrants investigation.

19. The Supreme Court of Pakistan, in *A. Habib Ahmed versus M.K.G. Scott Christian*, reported in (PLD 1992 Supreme Court 353), laid down the fundamental principle that if prima facie an offence has been committed, justice requires it should be inquired into and tried. This principle emphasizes that the threshold for FIR registration is significantly lower than the standard required

for conviction, and courts should be reluctant to prevent the investigative machinery from functioning when a cognizable offence is prima facie disclosed.

20. Examining the factual matrix of the present case through this legal lens, it is evident that the complaint of the applicant discloses essential elements that could constitute an offence under Section 489-F of the Pakistan Penal Code. The applicant has alleged that he advanced a sum of Rs.3,50,000/- to the proposed accused based on a specific request for financial assistance with an assurance of repayment within a month. In consideration of this advance, the proposed accused issued two cheques, one of which was subsequently dishonored by the bank with the notation "Photo Account," indicating that the account was closed at the time of presentation.

21. The legal significance of the "Photo Account" notation cannot be understated in the context of Section 489-F of the Pakistan Penal Code. When a cheque is dishonored due to closure of the account, it raises serious questions about the drawer's knowledge of the account status at the time of issuance and his intention in issuing the cheque. If the drawer knew or should have known that his account was closed or had insufficient funds, the issuance of such a cheque would clearly fall within the definition of "dishonest" as contemplated under Section 24 of the Pakistan Penal Code, which defines dishonesty as causing wrongful gain to one person or wrongful loss to another.

22. The learned Additional Sessions Judge Ex-Officio Justice of Peace appears to have committed a fundamental error by conducting what essentially amounted to a mini-trial at the stage of determining whether a cognizable offence was disclosed. The impugned order reveals that the learned Judge evaluated the defense put forward by the proposed accused regarding the alleged loss of his cheque book and the complainant's access to his residence. While these may be valid defenses that could be raised during trial, they are not appropriate considerations for determining whether an FIR should be registered.

23. The Supreme Court of Pakistan has consistently held that Section 154 of the Code of Criminal Procedure mandates the registration of FIRs when information about cognizable offences is received, and there is no provision in the law that authorizes police or judicial authorities to conduct a preliminary inquiry into the truthfulness of the complaint before registration. The purpose of investigation is to ascertain the veracity of the allegations made in the FIR, and this investigative process cannot be short-circuited by premature evaluation of potential defenses.

24. Furthermore, the approach adopted by the learned Additional Sessions Judge demonstrates a misunderstanding of the burden of proof applicable at different stages of criminal proceedings. At the FIR registration stage, the complainant is only required to provide information that prima facie discloses a cognizable offence. The burden then shifts to the investigating agency to conduct a thorough investigation and determine whether sufficient evidence exists to support the allegations. The question of whether the accused can successfully establish his defense is a matter for trial, not for the FIR registration stage.

25. The judgment of the Supreme Court in *Mian Allah Ditta versus The State*, reported in 2013 SCMR 51, provides important guidance on the application of Section 489-F of the Pakistan Penal Code. The Court held that for an offence under this section, there must be an existing obligation at the time of cheque issuance, not a futuristic one. In the present case, the applicant's version clearly establishes that the loan was advanced on 29th November 2024, creating an existing obligation when the cheques were subsequently issued. This satisfies the requirement of an existing obligation as laid down by the apex Court.

26. This Court has consistently maintained in numerous judgments that even in cases involving Section 489-F of the Pakistan Penal Code, if the basic ingredients are prima facie disclosed in the complaint, FIR registration cannot be refused on the basis of potential defenses that may be available to the accused. The proper forum for adjudication of such defenses is the trial court after a complete investigation has been conducted and charges have been framed.

27. The constitutional dimension of this case cannot be ignored. The right to lodge an FIR for cognizable offences is recognized as a fundamental right that flows from the constitutional guarantee of access to justice and due process of law. The Supreme Court has repeatedly emphasized in various judgments that police authorities cannot refuse FIR registration based on their subjective assessment of case merits or the likelihood of successful prosecution. Such an approach would effectively usurp the judicial function and deny citizens their fundamental right to have their grievances investigated through the established legal process.

28. The powers vested in Ex-Officio Justices of Peace under Section 22-A(6)(i) of the Code of Criminal Procedure were specifically designed to address the problem of police reluctance in registering FIRs for cognizable

offences. The legislative intent behind these provisions was to provide an alternative remedy to aggrieved persons when police authorities refuse to perform their statutory duty of FIR registration. However, these powers must be exercised with due application of mind and in accordance with established legal principles.

29. The impugned order reveals that the learned Additional Sessions Judge failed to appreciate the distinction between the evidentiary standard required for FIR registration and the standard required for conviction. By engaging in a detailed evaluation of the proposed accused's defense and giving credence to his explanation regarding the misplaced cheque book, the learned Judge exceeded his jurisdiction and usurped the investigative function that properly belongs to the police. Moreover, the approach adopted in the impugned order sets a dangerous precedent that could effectively nullify the protective provisions of Section 489-F of the Pakistan Penal Code. If courts begin to accept explanations regarding lost or stolen cheque books at the FIR registration stage without proper investigation, it would become virtually impossible for genuine victims of cheque dishonor to obtain justice. Such an approach would encourage unscrupulous individuals to issue cheques without adequate account balance, knowing that they could escape the consequences by claiming that their cheque books were lost or stolen.

30. The principle established by the Supreme Court in cases dealing with the scope of judicial review emphasizes that even obiter dicta of the apex Court enjoys a highly respected position and contains definitive expressions of the Court's view on legal principles. The consistent judicial pronouncements regarding the limited scope of inquiry at the FIR registration stage constitute settled law that must be followed by all subordinate courts. In the present case, the applicant has provided sufficient prima facie evidence to establish that a cognizable offence under Section 489-F of the Pakistan Penal Code may have been committed. The existence of the cheques, the bank memo indicating dishonor due to closure of account, and the allegations regarding the underlying transaction create a factual foundation that warrants investigation. The question of whether the proposed accused can successfully establish his claimed defense regarding the lost cheque book, or whether the complainant can prove all elements of the offence beyond reasonable doubt, are matters that should be determined through proper investigation and trial.

31. Having presided over numerous cases involving similar legal issues, this Court has observed that there is often a tendency among judicial

officers to conduct elaborate inquiries at preliminary stages, perhaps with the well-intentioned objective of filtering out frivolous cases. However, such an approach, while seemingly efficient, undermines the carefully crafted procedural framework established by the legislature and can result in denial of justice to genuine complainants. The criminal justice system is predicated on the principle that investigation precedes adjudication, and each stage of the process serves a specific purpose. The FIR registration stage is designed to capture complaints and set the investigative machinery in motion, while the investigation stage serves to gather evidence and determine the veracity of allegations. The trial stage then provides the forum for complete adjudication of the matter based on legally admissible evidence and in accordance with established principles of criminal jurisprudence. When judicial officers begin to merge these distinct stages and conduct mini-trials at the FIR registration stage, they not only exceed their jurisdiction but also deprive the parties of their right to a fair and complete adjudication of their disputes. Moreover, such an approach can lead to inconsistent decisions based on incomplete information and preliminary impressions rather than thorough investigation and proper legal analysis.

32. The present case serves as a reminder that while judicial efficiency is important, it should never come at the cost of procedural fairness and adherence to established legal principles. The proper approach in cases involving applications for FIR registration is to determine whether the complaint *prima facie* discloses a cognizable offence, and if so, to direct the registration of the FIR and allow the investigative process to proceed in accordance with law.

33. After careful consideration of all aspects of the case, including the factual allegations, applicable legal principles, and relevant judicial precedents, this Court has reached the conclusion that the impugned order dated 21st May 2025 passed by the learned Additional Sessions Judge/ Ex-Officio Justice of Peace, Kandiaro, is legally unsustainable and must be set aside. The learned Additional Sessions Judge committed multiple legal errors by failing to apply correct legal principles, prematurely evaluating defense evidence, and conducting what essentially amounted to a trial at the FIR registration stage. The approach adopted in the impugned order demonstrates a fundamental misunderstanding of the limited scope of inquiry permissible at the stage of determining whether a cognizable offence is *prima facie* disclosed.

34. The complaint filed by the applicant clearly establishes the basic ingredients that could constitute an offence under Section 489-F of the Pakistan Penal Code. The allegations regarding the advance of money, issuance of cheques in consideration thereof, and subsequent dishonor due to closure of account create a factual foundation that prima facie discloses a cognizable offence warranting investigation. The question of whether the proposed accused can establish his claimed defense regarding the lost cheque book, or whether the complainant can prove all elements of the offence beyond reasonable doubt, are matters for investigation and trial, not grounds for refusing FIR registration. The proper course of action is to register the FIR and allow the investigating officer to conduct a thorough investigation to determine the veracity of the allegations made by both parties.

35. Accordingly, the impugned order dated 21st May 2025 passed by the learned Additional Sessions Judge/ Ex-Officio Justice of Peace, Kandiaro, in Criminal Miscellaneous Application No.1838 of 2025 is hereby set aside. Respondent No. 4, the Station House Officer, Police Station Kandiaro, District Naushehro Feroze, is directed to record the statement of the applicant under Section 154 of the Code of Criminal Procedure within seven days from the receipt of this order. If the statement discloses a cognizable offence under Section 489-F of the Pakistan Penal Code or any other applicable provision, the Station House Officer shall register a First Information Report and conduct investigation according to law, submitting the report under Section 173 of the Code of Criminal Procedure in due course.

36. Criminal Miscellaneous Application is allowed in the above terms. Office is directed to send a copy of this order to the concerned Station House Officer for compliance and to the learned Additional Sessions Judge Ex-Officio Justice of Peace, Kandiaro, for information.

J U D G E