

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Misc. Application No.S-372 of 2024
(Liaquat Ali Bhutto Vs. The State & others)

| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
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- 1. For Orders on office objection.
- 2. For hearing of main case.
- 3. For hearing of CMA No. 3019/2024 (Stay)

14-03-2025.

Mr. Muhammad Bux Bangwar, Advocate for the applicant.
Mr. Nauman Fareed Shaikh, Advocate for the private respondent.
Syed Sardar Ali shah Rizvi, Addl: Prosecutor General.

ALI HAIDAR “Ada”, J.-. The Respondent No. 3 filed an application u/s 22-A & 22-B Cr.P.C before Sessions Judge/Ex-Officio Justice of Peace Khairpur and thereafter same was entrusted to IInd Additional Sessions Judge/Ex-Officio Justice of Peace, Khairpur, the Respondent No. 03 stating that the Liaquat Ali/present applicant obtained loan amount of Rs. 35 lac from him for business purpose after closure of business, the said Liaquat Ali/applicant issued Cheque No. 409500009 dated 20-02-2022 of National Bank of Pakistan Khairpur, which on its presentation was dishonored vide memorandum dated 22-02-2022 showing insufficient funds. Then, he approached before Justice of Peace and succeeded to get order in his application for registration of FIR against the applicant through order dated 27-06-2024. As such order assails by applicant Liaquat Ali before this Court by preferring the instant Crl. Misc. Application.

2. Learned counsel for the applicant submits that the cheque is disputed as business transaction was completed through one Iqrarnama dated 17-12-2021 and in such Iqrarnama the respondent No. 3 stated that

now the applicant has no more liability against him. He further contends that he filed objections before learned Ex-Officio Justice of Peace, but same was not considered and even on same cause of action Summary Suit is also pending, filed by the respondent No. 3 against the applicant and now in order to change the civil litigation into criminal motion, the application for registration of FIR was filed. He placed reliance the cases reported as 2024 SCMR 985, 2013 SCMR 51, 2020 YLR 2064, 2024 YLR 1252, 2014 P.Cr.L.J 1093, PLJ 2024 SC (Cr.C) 42, 2015 P.Cr.L.J [Sindh] 846 and PLD 2023 Lahore 171 as well as also filed some documents covered under the statement showing that number of Summary suits were filed by respondent No. 3 against other individuals including present applicant as well as registered FIR/s against other individuals.

3. On the other hand learned counsel for the respondent No. 3 contended that Iqrarnama which was produced by the applicant is fake and only to manage defence plea such Iqrarnama is annexed. He further contends that the present applicant filed different applications before Ex-Officio Justice of Peace for provide protection against the respondent No.3, but that Iqrarnama was not attached in that pleadings. He further submits that the cheque was issued by the applicant in order to fulfill the obligations to repay the loan, but he failed to fulfill such obligations and in this regard the respondent No.3 has no option, but to approach before the competent Forum for registration of FIR. He placed reliance upon case of *Younas Abbas and others Vs. Additional Sessions Judge Chakwal and others* (PLD 2016 SC 581), *Muhammad Bashir Vs. Station House Officer, Okara Cantt and others* (PLD 2007 SC 539) and *Malik*

Sohail Aslam Vs. Superintendent of Police (Operation) Lahore and 3 others (2017 YLR 1548).

4. Learned Additional P.G for the State supports the order passed by learned Ex-Officio Justice of Peace and seeks dismissal of instant Crl. Misc. Application by virtue that the section 489-F PPC is cognizable offence and the facts which is narrated before Ex-Officio Justice of Peace folded that the cheque was duly issued and even there is no denial of any business transaction, so it is very much clear that such cheque was issued by the applicant to fulfill the obligations. He further adds that the defence taken by the applicant requires investigation and the investigation follows after registration of FIR.

5. Heard arguments and perused the material available on record.

6. In order to discuss the offence, it is very essential that section 489-F PPC is to be reproduced as the same is read as under:-

489-F, Dishonestly issuing of 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 honored and that the bank was at fault in not honoring the cheque”.*

7. The primary concept of enacting law related to cheque dishonor in two folds, firstly to confident in the banking system by ensuring that financial transactions are secured and reliable, secondly to deter individuals who dishonestly issued cheques, thereby protecting the integrity of financial system and upholding the rule of law is basic objective of such enactment.

8. 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.

9. In instant case, the cheque was issued specifically in the name of respondent No. 3, supported by witness and the cheque was dishonored due to insufficient funds of applicant's accounts and the bank issued a memorandum.

10. It is duty of Ex-Officio Justice of Peace to examine entire documents and after apply of prudent mind decide the application and pass appropriate directions to the concerned functionaries who were failed to fulfill their obligation and if, criminal case was registered, then it is prime duty of Investigation officer to collect evidence from all corners and till then no arrest should be effected unless a tangible evidence was collected by investigation agency.

11. There is no legal bar for appreciation of civil and criminal proceeding side by side, reliance be placed in case of *Gulshan Bibi v. The State reported in PLD 2016 SC 739*.

12. In view of foregoing reasons, no illegality or irregularity seems in order passed by Learned Justice of Peace, therefore the instant Crl. Misc. Application stands dismissed together with listed application.

J U D G E

Nasim/P.A