

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Misc. Application No. 484 of 2025

Petitioner Nadeem Ahmed	:	Through Mr. Waqar Alam Abbasi, Advocate
Respondent No.1 The State	:	Through Mr. Ali Anwar Kandhro, Additional Advocate General Sindh
Respondent No.5	:	Present in person and also for respondent No.4
Dates of Hearing	:	05.10.2026
Date of Order	:	05.10.2026

ORDER

Muhammad Saleem Jessar, J.:- Through this Criminal Miscellaneous Application, applicant has assailed order dated 26.05.2025 penned down by Additional Sessions Judge-VII/Ex-Officio Justice of Peace, Malir Karachi, whereby Criminal Petition No.1340 of 2025 under Section 22-A(6)(i) Cr.P.C., filed by the respondents herein, was allowed and the SHO was directed to record statements of the respondents/applicants under Section 154 Cr.P.C., hence the applicant/proposed accused being aggrieved by said order has assailed the same.

Learned counsel for the applicant submits that applicant was merely an employee of an Estate Agency being run by one Ubaidullah and others and as such, has no nexus or concern with the affairs of said Estate Agency. He contends that learned Ex-Officio Justice of Peace failed to properly appreciate the submissions advanced on behalf of the applicant and without lawful justification, allowed the application under Section 22-A, Cr.P.C. Learned counsel has placed on record a copy of FIR No.341/2023, registered under Sections 406/420/34, PPC at Police Station Tipu Sultan, Karachi, along with a copy of order dated 16.05.2025 passed by the learned Civil Judge & Judicial Magistrate-II, Karachi South, which are taken on record. According to learned counsel said FIR involved an allegation of similar nature, which was challaned and was pending trial before learned Civil Judge & Judicial Magistrate-II, Karachi South, in Criminal Case No.2179 of 2024, {Re:*The State v. Nadeem*}. However, owing to non-appearance of complainant and prosecution witnesses, proceedings in said case were stopped under Section 249,

Cr.P.C. vide order dated 16.05.2025. Learned counsel further places on record a copy of FIR No.517/2023, registered under Sections 420/34, PPC at Police Station Darakhshan, Karachi along with a copy of judgment dated 21.12.2024 passed by learned Civil Judge & Judicial Magistrate-V, Karachi South, which are also taken on record. He submits that said FIR was likewise challaned and tried in Criminal Case No.627 of 2024, {Re:*The State v. Nadeem Ahmed*}, wherein, after recording of evidence, applicant was acquitted of the charge vide judgment dated 21.12.2024. Learned counsel finally contends that the dispute essentially pertains to a monetary/civil transaction and, therefore, respondents/complainants have an adequate remedy before the competent civil forum. He submits that impugned order dated 26.05.2025 is not sustainable in law and is liable to be set aside.

Conversely, learned Additional Prosecutor General appearing for the State opposes instant application and supports the impugned order. He submits that a substantial amount was allegedly received and thereafter misappropriated/ usurped by the applicant/proposed accused from the respondents. He further submits that documentary material was produced before learned Ex-Officio Justice of Peace and that police reports available on record also support the version of respondents. He, therefore, contends that a cognizable offence is prima facie disclosed and no interference with the impugned order is warranted.

Mr. Danish Iqbal, learned Advocate, appeared in person as respondent No.5 and also on behalf of respondent No.4 has drawn attention of the Court towards his statement dated 24.08.2026 along with objections, wherein certain application forms have been annexed which, according to him, demonstrate that applicant was a member of the Estate Agency. He submits that there is, therefore, no legal impediment in the way of the respondents in setting the criminal law into motion against the proposed accused. He accordingly prays that instant CrI. Misc. Application may be dismissed and SHO concerned may be directed to record statements of the respondents/informants under Section 154, Cr.P.C. and proceed strictly in accordance with law.

I have heard learned counsel for the petitioners and perused the record made available before me on the record.

It is true that the dispute, at its core, relates to monetary transactions between the parties. However, mere fact that a transaction may also give rise to civil liability does not, by itself, constitute a bar to the initiation of criminal proceedings where the facts alleged, if taken at their face value, disclose the commission of a cognizable offence. If a person, while operating under the

umbrella of a firm or an estate agency, induces members of the public to part with substantial amounts of money on the basis of representations or commitments and thereafter, *prima facie*, dishonestly misappropriates or otherwise deals with such amounts in a manner attracting the penal provisions of law, the availability of a civil remedy cannot, in itself, absolve such person from criminal liability.

It is equally well-settled that civil and criminal proceedings may, in appropriate circumstances, be instituted and proceeded with simultaneously, even where they arise out of same transaction. Mere existence or availability of a civil remedy does not, by itself, bar initiation or continuation of criminal proceedings where the allegations *prima facie* disclose the commission of a cognizable offence. In case of *Salman Ashraf v. Additional District Judge, Lahore and others* (2023 SCMR 1292) Hon'ble Supreme Court of Pakistan has expressly held that the object of civil proceedings is to enforce civil rights and obligations, whereas the object of criminal proceedings is to punish an offender for the commission of an offence; consequently, both proceedings may ordinarily proceed concurrently. Likewise, in case of *Seema Fareed and others v. The State and another* (2008 SCMR 839) Hon'ble Supreme Court has held that institution of civil proceedings relating to same transaction does not constitute a legal bar to criminal proceedings, since civil and criminal liability operate in different fields and may coexist. Hon'ble Supreme Court has further recognized that the mere pendency of civil litigation is not a ground, by itself, for terminating criminal proceedings. In *Dr. Sikandar Ali Mohiuddin v. Station House Officer and others* (2021 SCMR 1486) it was held that criminal proceedings founded upon a cogent criminal allegation cannot be brought to an end merely because civil litigation concerning same subject matter is pending. Accordingly, whether the allegations are ultimately proved, whether the applicant had any role in the alleged transaction, and whether the material collected during investigation is sufficient to establish his culpability are matters to be determined by the competent forum at the appropriate stage of the proceedings. At the stage of investigation or taking cognizance, the existence of an alternative civil remedy does not, in itself, extinguish criminal liability where the ingredients of a cognizable offence are *prima facie* disclosed.

In the present case, the learned Ex-Officio Justice of Peace, after examining the material placed before him, directed the SHO concerned to record the statements of the respondents/informants under Section 154, Cr.P.C. The documentary material placed before this Court, including the documents relied upon by the respondents, *prima facie* warrants an investigation into the

allegations. At this tentative stage, this Court is not required to undertake a deeper appreciation of the evidence or determine the guilt or innocence of the applicant. Such an exercise would be premature and would amount to trenching upon the domain of the investigating agency and, subsequently, the competent trial Court.

As regards the FIRs and proceedings relied upon by the learned counsel for the applicant, the mere fact that proceedings in one case were stopped under Section 249, Cr.P.C., or that the applicant was acquitted in another case, does not, in the circumstances of the present matter, by itself create a legal bar against registration/investigation of a separate cognizable offence arising from distinct allegations and transactions. The effect, if any, of the previous proceedings upon the merits of the present case would necessarily depend upon the facts and evidence collected during investigation. Consequently, in view of the material available on record and the foregoing discussion, I am of the tentative view that a cognizable offence is prima facie disclosed and that the impugned order dated 26.05.2025 does not suffer from any illegality, irregularity or jurisdictional defect warranting interference by this Court in its constitutional/inherent jurisdiction. Accordingly, instant Criminal Miscellaneous Application is dismissed. The SHO concerned is directed to record the statements of the respondents/informants under Section 154, Cr.P.C. and proceed with the investigation strictly in accordance with law. However, keeping in view the nature of controversy and tentative observations made herein, the applicant shall not be arrested unless tangible and concrete material connecting him with the commission of alleged offence is collected during investigation.

Needless to observe that the observations made herein are tentative in nature and shall not prejudice either side or influence the investigating agency or the learned trial Court while dealing with the matter strictly in accordance with law.

Instant Criminal Miscellaneous Application, along with the listed application, stands disposed of in the above terms.

Azeem/Aamir

Approved for Reporting.

Judge
HEAD OF CONST. BENCHES