

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR  
Cr. Misc. Appln. No.S- 93 of 2020

Date	Order with Signature of Hon’ble Judge
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**Priority case**

- 1. For hearing of main case
- 2. For hearing of MA No.1039/2020 (S/A)  
(Copy of order issued to learned trial Court)

**07.12.2020**

Mr. Shabbir Ali Bozdar Advocate for the Applicant  
Mr. Abdul Rehman Kolachi, DPG for the State

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**Aftab Ahmed Gorar, J;** The applicant/proposed accused by way of instant Criminal Miscellaneous Application under Section 561-A, Cr.P.C has impugned the order dated 28.01.2020 passed by learned Ex-Officio Justice of Peace/ 3<sup>rd</sup>. Additional Sessions Judge Mirpur Mathelo, who on application under Section 22-A(6)(1) Cr.P.C, has directed SHO Police Station Daharki to record statement of the private respondent Mst. Zakia and if the cognizable offence is made out, the same should be incorporated in the book u/s 154 Cr.P.C and if the FIR is found to be false during investigation, the SHO may prosecute the applicant under Section 182 Cr.P.C.

- 2. The facts in brief necessary for disposal of instant criminal miscellaneous application are that the private respondent after death of her husband Ali Bux received the share from agricultural land left by her husband so also she deposited the amount of his share in MCB Daharki Branch, whereas, the present applicant on the pretext of purchasing a residential house approached the private

respondent and met her on 25.02.2019 at MCB Bank Daharki Branch and then took her in Car; the proposed accused Manzoor on the point of pistol got her RTIs on two cheques and in collusion of proposed accused Saleh Muhammad Bhutto encashed her both cheques on 25.02.2019 and 0103.2019 and distributed an amount of Rupees Five Lac and Three lac and sixty two thousand rupees between each other. The private respondent on coming to know about encashment of her cheques approached the MCB Branch Daharki and met with Manager (one of the proposed accused), who issued threats and ousted from the branch through his peon. Thereafter the private respondent narrated such facts to her nekmards, hence the proposed accused returned an amount of Rs.5,62,000/-, while they promised to return the remaining amount of Rs.3,00,000/- ultimately refused for return of the amount and issued threats of dire-consequences, the private respondent then approached the police for recording of her FIR, it was not recorded by the police and she then by way of filing an application u/s 22-A and B Cr.P.C sought for direction against SHO P.S Daharki to record her FIR against the applicant which was issued as is detailed above by way of impugned order.

3. It is contended by learned counsel for the applicant that the account of the private respondent is photo account, therefore, the cheques if any could not be encashed until she herself appear for such purpose; that the cheques were got encashed by the private respondent herself, therefore, no such offence has taken place; that the private respondent has managed a false and fabricated story just to entangle the proposed accused in false criminal case; that the impugned order has been passed in a hasty manner without considering the fact that DSP Complaint Redessal Center Ghotki has

conducted inquiry into the matter, in which it is clearly mentioned that the private respondent has herself withdrawn/encashment such amount from the bank. He lastly contended that the impugned order passed by learned Ex-Officio Justice of Peace is liable to be set-aside.

4. Learned DPG for the State did not support the impugned order by contending that the report filed by the DSP Complaint Redressal Center, Ghotki has clearly stated that the alleged amount has been encashed / withdrawn by the private respondent herself having photo Account in the MCB Bank Daharki Branch.

5. I have heard the learned counsel for the applicant/proposed accused and learned DPG for the State and perused the record. The private respondent on the notice has put her appearance by engaging Mr. Sahib Dino Kalwar as her counsel, who filed vakalatnama on 20.03.2020, thereafter neither she nor her counsel appeared to proceed with the matter, again notice was issued to private respondent. Pursuant to notice, on 09.11.2020 the private respondent appeared and sought time, hence the matter was adjourned to 23.11.2020. On 23.11.2020, Mr. Muhammad Tahir Shaikh Advocate appeared and submitted that Mr. Ghulam Hyder Daudpoto Advocate will file vakalatnama on behalf of private respondent, at his request the matter was adjourned for today i.e. 07.12.2020. Today neither private respondent is in appearance nor her counsel, hence there is no need to keep the matter pending as the private respondent is procrastinating and using the delaying tactics.

6. The inquiry report furnished by the DSP Complaint Redressal Centre Ghotki dated 24.01.2020 clearly shows that the private respondent herself has withdrawn the alleged amounts from her

bank account, because she was holding a photo account in the said bank, therefore, in her absence the question of encashment of the cheques, if any, issued by her to anyone does not arise at all. Even otherwise, nothing has been brought on record, which may suggest that the proposed accused have encashed the amounts from the photo account of the private respondent through cheques issued by the private respondent. In these circumstances, the impugned order could not be sustained. It is set aside. Consequently, the instant Criminal Miscellaneous application is allowed along with listed application.

Judge

ARBROHI