

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-283 of 2025

Applicant : Muhammad Naveed Anwar son of Muhammad Anwar, by caste Mughal
Through M/S Muhammad Uzair Shaikh & Amir Ali Bhutto, Advocates

Respondent No.4 : Zeeshan Saleem s/o Saleem Mughal,
Through Mr. Achar Khan Gabol, Advocate

The State : Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 18.09.2025
Date of order : 26.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J:- Applicant Muhammad Naveed Anwar invokes the inherent jurisdiction of this court, assailing the legality and propriety of the order dated 05th May 2025, passed by the learned Additional Sessions Judge-V/Ex-Officio Justice of Peace, Sukkur, in Criminal Misc. Appln. No.1230 of 2025, Re (Zeeshan Saleem VS SSP Sukkur and others), whereby on an application filed by respondent No. 4 under Sections 22-A and 22-B of the Code of Criminal Procedure, directions were issued to the concerned Station House Officer to record the statement of the complainant and proceed according to law if a cognizable offence is/was made out.

2. The factual matrix of the case, as emerges from the record, reveals that respondent No.4, Zeeshan Saleem, approached the learned Ex-Officio Justice of Peace with the allegation that he had sold plot No.B-37, measuring 150 square yards, situated at Crystal Model Town Phase-I, Housing Society, Sukkur, to the present applicant on 11th October 2024 for a total consideration of Rs.21,00,000. According to the complainant's version, an amount of Rs.2,50,000 was paid in cash at the time of agreement, while the remaining amount of Rs.18,50,000 was to be paid through a cheque bearing No. 1757778288, which was allegedly issued by the applicant. The complainant

further alleged that upon presentation, the said cheque was dishonored by the bank on 05th November 2024, and despite repeated requests, the applicant failed to make the payment.

3. The learned Ex-Officio Justice of Peace, after considering the application and the material placed before the court, was pleased to pass the impugned order directing the Station House Officer of Police Station "A" Section, Sukkur, to record the statement of the complainant and proceed according to law if a cognizable offence was disclosed. It is against this order that the present application has been filed.

4. However, a careful perusal of the objections filed by the applicant and the material available on record presents an entirely different picture of the transaction in question. The applicant has categorically denied having any sale-purchase transaction with the complainant and has asserted that the entire story narrated by the complainant is fabricated and concocted. The applicant has placed on record documentary evidence to demonstrate that the plot in question was already sold and registered in the name of one Mr. Noor-u-din, son of Ghulam Muhammad, prior to the alleged transaction with the complainant. Specifically, it has been shown that the complainant had already disposed of his interest in the said property in January 2024, which was several months before the purported sale to the present applicant in October 2024.

5. The applicant has further contended that his role, if any, in the matter was merely that of a witness to an agreement dated 12th December 2023 between Muhammad Arsalan Khokhar as vendor and Waseem Ali Jatoi as vendee regarding the same plot. The applicant has vehemently denied having entered into any independent transaction with the complainant for the purchase of the said property.

6. Perhaps most significantly, the applicant has alleged that the cheque in question was obtained from him through coercion and duress.

According to the applicant's version, he was wrongfully detained at Police Station "A" Section, Sukkur, where he was pressurized and compelled to provide the cheque under threat and intimidation. This allegation, if substantiated, would completely vitiate any criminal liability that might otherwise arise from the dishonor of the said cheque.

7. The Station House Officer of Police Station "A" Section, Sukkur, submitted a report to the learned Ex-Officio Justice of Peace wherein it was categorically stated that "the dispute revolves around a plot sale and purchase which appears to be a civil matter." This professional assessment by the investigating agency clearly indicates that the allegations do not prima facie disclose the commission of any cognizable criminal offence. The learned counsel for the applicant has placed reliance upon the case law cited in (2023 PLD 171) Lahore and (2014 P.Cr.L.J 218), which deal with the scope and application of the inherent powers of the High Court under Section 561-A of the Code of Criminal Procedure.

8. Having heard the learned counsel for the parties and having carefully examined the material available on record, this Court is constrained to observe that the impugned order suffers from manifest illegalities and infirmities that warrant interference in exercise of the inherent powers conferred under Section 561-A of the Code of Criminal Procedure, 1898.

9. The inherent powers under Section 561-A of the Code of Criminal Procedure are extraordinary in nature and are intended to prevent abuse of the process of law and to secure the ends of justice where no other adequate remedy exists. These powers, as consistently held by the superior courts, are neither alternative nor additional in nature and are to be rarely invoked only when it is necessary to prevent a clear abuse of the process of the court or to secure the ends of justice.

10. The fundamental question that arises for consideration is whether the allegations made by the complainant disclose the commission of a cognizable criminal offence or whether the matter is essentially of a civil nature. The distinction between a civil wrong and a criminal offence is well-established in jurisprudence, and courts have consistently held that criminal law should not be used as a debt recovery mechanism or to settle purely civil disputes.

11. The allegations made by the complainant primarily relate to the non-payment of consideration for the sale of immovable property. While the dishonor of a cheque may, under certain circumstances, constitute an offence under the law, the essential ingredients for establishing criminal liability are the issuance of the cheque in discharge of a legally enforceable debt or liability and the dishonor of the same due to insufficiency of funds, coupled with criminal intent. In the present case, however, the very foundation of the alleged transaction is suspect and appears to be tainted with fraud on the part of the complainant himself.

12. The material on record clearly establishes that the complainant had already disposed of his interest in the property in question in January 2024, several months before the purported transaction with the applicant in October 2024. This raises serious questions about the complainant's legal authority and capacity to enter into any subsequent transaction regarding the same property. A person cannot sell what he does not own, and any attempt to do so would constitute fraud rather than a legitimate commercial transaction.

13. Furthermore, the complainant has failed to disclose the prior disposal of the property, which amounts to concealment of material facts and misrepresentation. Such conduct disentitles the complainant to invoke the criminal jurisdiction of the court, as he does not approach the court with clean hands. The maxim "he who seeks equity must do equity" and "he who comes

to equity must come with clean hands" are well-established principles of law that apply even in criminal proceedings where issues of propriety and fair play are involved.

14. The allegation made by the applicant that the cheque was obtained through coercion and duress at the police station adds another dimension to the case. If these allegations are true, then the entire basis for any potential criminal prosecution would collapse, as a cheque obtained through illegal means cannot form the foundation for criminal proceedings. The constitutional guarantee against self-incrimination and the protection against illegal detention would come into play in such circumstances. The professional assessment by the Station House Officer that the matter appears to be of a civil nature cannot be lightly brushed aside. Police officers, being experienced in distinguishing between civil and criminal matters, are in a position to make an informed assessment of the nature of disputes brought to their attention. When an experienced investigating officer concludes that a matter is civil in nature, such an assessment deserves due consideration by the judicial authorities.

15. The learned Ex-Officio Justice of Peace appears to have mechanically passed the impugned order without applying his judicial mind to the material facts and circumstances of the case. The order does not reflect any consideration of the serious questions raised regarding the complainant's title to the property, the prior disposal of the same property, or the allegations of coercion in obtaining the cheque. Such a mechanical approach to judicial decision-making is contrary to the established principles of administration of justice.

16. The powers conferred under Sections 22-A and 22-B of the Code of Criminal Procedure upon the Ex-Officio Justice of Peace are intended to ensure that genuine cases of criminal wrongdoing are not ignored by the police authorities. However, these provisions are not meant to be used as a tool for

harassment or for converting civil disputes into criminal cases. The judicial officer exercising these powers must carefully examine whether the allegations, if proved, would constitute a cognizable offence and whether the complainant has approached the court with clean hands.

17. In the case of *Imtiaz Ahmed Cheema v. SHO P.S Dharki*, reported in 2010 YLR 189, it was observed that courts should not allow applications under Sections 22-A and 22-B in a mechanical manner and should examine whether the applicant approached the court with clean hands or with malice. This principle is directly applicable to the present case, where the complainant appears to have concealed material facts and may himself be guilty of fraudulent conduct.

18. The Supreme Court of Pakistan has consistently held that where adequate alternative remedies exist, the extraordinary jurisdiction under Section 561-A should not be exercised. However, this principle does not preclude intervention where the continuation of proceedings would amount to a clear abuse of the process of law or would cause irreparable harm to an innocent person. In the present case, the allegations against the applicant appear to be motivated by malice and are based on false and fabricated facts.

19. The civil remedies available to the complainant, if he has any genuine grievance, include a suit for specific performance, damages for breach of contract, or recovery of money if any amount was actually paid. The existence of these adequate civil remedies further militates against the invocation of criminal jurisdiction, particularly when the criminal case appears to be without merit.

20. The continuation of criminal proceedings based on the impugned order would not only amount to an abuse of the process of law but would also result in harassment of the applicant, who appears to be innocent of any criminal wrongdoing. The precious time and resources of the criminal justice

system would be wasted in pursuing a case that is fundamentally flawed and without merit.

21. Courts have a duty to ensure that the criminal justice system is not misused for settling personal scores or for recovering civil debts. The distinction between civil and criminal liability must be maintained, and criminal courts should not allow themselves to be used as debt recovery tribunals. The present case is a classic example of an attempt to criminalize what is essentially a civil dispute, if any dispute exists at all.

22. The documentary evidence produced by the applicant showing the prior sale and registration of the property in January 2024 has not been controverted by the complainant. This evidence, if genuine, would completely demolish the foundation of the complainant's case and would establish that no legitimate transaction could have taken place between the parties in October 2024. The allegations of coercion and illegal detention at the police station are serious in nature and require proper investigation. If these allegations are substantiated, they would not only exonerate the applicant from any criminal liability but would also expose the complainant and possibly some police officials to potential criminal proceedings for wrongful confinement and extortion.

23. In view of the above analysis and keeping in mind the principles governing the exercise of inherent powers under Section 561-A of the Code of Criminal Procedure, this Court is of the considered view that the impugned order dated 05th May 2025 is manifestly illegal, improper, and contrary to the established principles of law. The order appears to have been passed without proper application of judicial mind and without considering the material facts and circumstances of the case.

24. The continuation of proceedings pursuant to the impugned order would result in manifest injustice to the applicant and would amount to an

abuse of the process of law. The case, as presented by the complainant, does not disclose the commission of any cognizable criminal offence and appears to be motivated by malice and fraud on the part of the complainant.

25. In the circumstances, the intervention of this Court in exercise of its inherent jurisdiction under Section 561-A of the Code of Criminal Procedure is not only justified but is necessary to prevent abuse of the process of law and to secure the ends of justice.

26. Consequently, this Criminal Miscellaneous Application is allowed. The impugned order dated 05th May 2025, passed by the learned Additional Sessions Judge-V/Ex-Officio Justice of Peace, Sukkur, in Criminal Miscellaneous Application No.1230 of 2025, is hereby set aside. The respondent No. 3, Station House Officer of Police Station "A" Section, Sukkur, is restrained from taking any action pursuant to the impugned order, including recording any statement of the complainant or registering any First Information Report against the applicant in connection with the subject matter of the said Criminal Miscellaneous Application. The complainant, respondent No.4, if so advised, is at liberty to pursue his civil remedies, if any, before the appropriate civil court for recovery of money or any other relief to which he may be entitled in law.

J U D G E