

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Criminal Miscellaneous Application No. S- 519 of 2025
Muhammad Usman vs Majid Ali and others

Date	Order With Signature Of Judges
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1. For hearing of case
2. For hearing of MA No.8523/2025

24-11-2025

Mr. Hakim Ali Shar, Advocate for applicant.
 Mr. Muhammad Rafiq Buledi, advocate along with
 Respondent No.1.
 Mr. Muhammad Mohsin Mangi, Assistant Prosecutor General.

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Ali Haider 'Ada' J.- Through this Criminal Miscellaneous Application, the applicant assails the order dated 04.06.2025 passed by the learned Additional Sessions Judge-V/Ex-Officio Justice of Peace, Malir, Karachi in Criminal Petition No. 673 of 2025 filed by respondent No.1 against the present applicant as well as respondent No.2. Through the impugned order, the learned Justice of Peace allowed the application and directed the concerned police official to record the statement of the complainant and, if a cognizable offence is disclosed, to register an F.I.R.

2. The controversy between the parties arises out of a series of transactions, which may be understood in three phases. In the first phase, respondent No.2, on account of a plot/property transaction, issued a cheque to respondent No.1. When that cheque was dishonoured, F.I.R. No. 473/2023 was registered for the offence punishable under Section 489-F PPC. Subsequently, the parties entered into a compromise. During the process of compromise, the present applicant, who is the real brother of respondent No.2, issued another cheque in favour of respondent No.1. On the strength of this understanding, F.I.R. No. 473/2023 was disposed of by the learned trial Court. In the second phase, the cheque issued by the present applicant pursuant to the compromise was also dishonoured, whereafter the complainant lodged F.I.R. No. 1461/2023 for the

offence punishable under Section 489-F PPC against both the applicant and respondent No.2. During the pendency of those proceedings, a further Deed – described as a Razinama / Iqrarnama was executed between the parties, wherein respondent No.2 (Muhammad Noman) issued two additional cheques in favour of respondent No.1 (Majid Ali Mangi). This Deed was executed exclusively between Noman and Majid. In the third phase, both the cheques issued pursuant to the said Deed were dishonoured. Respondent No.1, claiming continuous fraudulent conduct, approached the police for registration of yet another F.I.R. against respondent No.2 and applicant. However, through the impugned order, the learned Justice of Peace directed action not only against respondent No.2 but also against the present applicant, which order is now under challenge.

3. Learned counsel for the applicant submits that although F.I.R. No. 473/2023 was initially lodged, it was subsequently compromised. Likewise, F.I.R. No. 1461/2023, which included the present applicant as an accused, stood disposed of upon execution of the Deed. Counsel argues that the applicant has no concern whatsoever with the underlying plot/property transaction, which pertains exclusively to respondent No.2. Although being a brother, the applicant had earlier issued a cheque only to facilitate the compromise, but the subsequent Deed executed between respondent No.2 and respondent No.1 does not reflect any role or obligation on part of the applicant. Therefore, it is submitted that the applicant cannot be saddled with criminal liability under Section 489-F PPC, and that the learned Justice of Peace has wrongly passed the impugned order against him.

4. Conversely, learned counsel for respondent No.1 contends that the present Criminal Miscellaneous Application is not maintainable in view of the judgment of this Court at Circuit Court, Hyderabad, in the case of Ameen Ali & others vs. The State, wherein the scope of interference under Section 22-A & 22-B Cr.P.C. has been delineated. It is submitted that the Deed was not complied with, and

that non-fulfillment of the agreed terms constitutes an offence. Counsel further asserts that the applicant and respondent No.2 acted in connivance, and that the applicant, having facilitated the earlier compromise and having himself issued a cheque which was dishonoured, is equally liable to be proceeded against under Section 489-F PPC.

5. Learned Assistant Prosecutor General supports the arguments advanced by learned counsel for respondent No.1. He submits that non-compliance of the Deed constitutes an actionable offence, and that the learned Justice of Peace has rightly exercised his jurisdiction. He further argues that, in view of the law discussed supra, this Court lacks jurisdiction to entertain the present application.

6. Heard and perused the material available on record.

7. Before the year 2002, dishonour of cheque as an independent criminal offence was not specifically prescribed in the Pakistan Penal Code. The provision now contained in Section 489-F PPC was inserted through Ordinance LXXXV of 2002 dated 25.10.2002. Prior to this amendment, the only statutory mechanism dealing with dishonoured cheques in financial transactions was available under the Financial Institutions (Recovery of Finances) Ordinance, 2001. Under Section 20 of the said Ordinance, financial institutions were empowered to initiate criminal proceedings against borrowers/defaulters by filing a complaint, where during the course of loan transactions a cheque was issued and subsequently dishonoured. As no general penal provision existed for dishonour of cheque outside the context of financial institutions, the legislature first introduced Section 20 of the 2001 Ordinance, and subsequently, in continuation of this legislative scheme, inserted Section 489-F in the Pakistan Penal Code in the year 2002 to criminalize the act of issuing a cheque dishonestly with the intention of fulfilling an obligation and thereafter failing to honour the same. A person failing to meet such obligation, resulting in dishonour of the cheque, is thus liable to punishment under Section 489-F PPC. For ready reference, **Section 20 of the Financial Institutions (Recovery of**

Finances) Ordinance, 2001 and Section 489-F PPC are reproduced as under: —

20. Provisions relating to certain offences.- (1) Whoever__

(a) dishonestly commits a breach of the terms of a letter of hypothecation, trust receipt or any other instrument or document executed by him whereby possession of the assets or properties offered as security for the re-payment of finance or fulfillment of any obligation are not with the financial institution but are retained by or entrusted to him for the purposes of dealing with the same in the ordinary course of business subject to the terms of the letter of hypothecation or trust receipt or other instrument or document or for the purpose of effecting their sale and depositing the sale proceeds with the financial institution; or

(b) makes fraudulent mis-representation or commits a breach of an obligation or representation made to a financial institution on the basis of which the financial institution has granted a finance; or

(c) subsequent to the creation of a mortgage in favour of a financial institution, dishonestly alienates or parts with the possession of the mortgaged property whether by creation of a lease or otherwise contrary to the terms thereof, without the written permission of the financial institution; or

(d) subsequent to the passing of a decree under section 10 or 11, sells, transfers or otherwise alienates, or parts with possession of his assets or properties acquired after the grant of finance by the financial institution, including assets or properties acquired benami in the name of an ostensible owner shall, without prejudice to any other action which may be taken against him under this Ordinance or any other law for the time being in force, be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to a fine which may extend to the value of the property or security as decreed or the market value whichever is higher and shall be ordered by the Banking Court trying the offence to deliver up or refund to the financial institution, within a time to be fixed by the Banking Court, the property or the value of the property or security.

Explanation. - Dishonesty may be presumed where a customer has not deposited the sale proceeds of the property with the financial institution in violation of the terms of the agreement between the financial institution and the customer.

(2) Whoever knowingly makes a statement which is false in material respects in an application for finance and obtains a finance on the basis thereof, or applies the amount of the finance towards a purpose other than that for which the finance was obtained by him, or furnishes a false statement of stocks in violation of the terms of the agreement with the financial institution or falsely denies his signatures on any banking document before the Banking Court, shall be guilty of an offence punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) *Whoever resists or obstructs, either by himself or on behalf of the judgment debtor, through the use of force, the execution of a decree, shall be punishable with imprisonment, which may extend to one year, or with fine, or with both.*

(4) *Whoever dishonestly issues a cheque towards re-payment of a finance or fulfillment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to one year, 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 honoured and that the bank was at fault in not honouring the cheque.*

(5) *Where the person guilty of an offence under this Ordinance is a company or other body corporate, the chief executive by whatever name called, and any director or officer involved shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly.*

[(6) All offences under this Ordinance shall be triable by a Banking Court in accordance with section

7. All offenses, except for the offence of willful default, shall be bailable, non-cognizable and compoundable.]

[(7) Notwithstanding anything to the contrary provided in any other law for the time being in force, action in respect of an offence of willful default shall be taken by an investigating agency, to be nominated in this behalf by the Federal Government, on a complaint in writing filed by an authorized officer of a financial institution after it has served a thirty days notice upon the borrower demanding payment of the loan, advance or financial assistance.

(8) An offence of willful default shall be cognizable, non-bailable and non-compoundable and punishable with imprisonment which may extend to seven years or fine not exceeding the amount of default or with both.

(9) Any person convicted of the offence of willful default by a Banking Court shall not be eligible to receive any loan, advance or finance from any financial institution for a period of ten years and shall not be permitted to contest any election as a member of the Majlis-e-Shoora (Parliament), any Provincial Assembly or a local body for a period of five years, after serving out a sentence after conviction.]

489-F. Dishonestly issuing a cheque: Whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation which is dishonoured on presentation, shall be punished with imprisonment which may extend 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 honoured and that the bank was at fault in not honouring the cheque.

8. Now, with regard to the concept of “fulfilment of an obligation” under Section 489-F PPC, the Honourable Supreme Court of Pakistan has elaborated the essential prerequisites and the legal framework governing prosecution under this provision in the case of *Muhammad Sultan v. The State* (2010 SCMR 806). The Apex Court has explained what initial conditions must exist before criminal liability can arise under Section 489-F PPC and what criteria determine whether the issuance of a dishonoured cheque constitutes an offence within the meaning of the law. The relevant paragraph from the judgment is reproduced as under: —

A perusal of section 489-F, P.P.C. reveals that the provision will be attracted if the following conditions are fulfilled and proved by the prosecution: --

(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 fulfil 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 some performance).

(iv) on presentation, the cheques is dishonoured.

9. Presently, as noted earlier, F.I.R. No. 473/2023 was disposed of in the first phase, and F.I.R. No. 1461/2023 was also disposed of in the second phase. The present proceedings pertain to the third phase of litigation, which commenced upon the execution of the Compromise Deed. For proper adjudication, it is essential to examine the contents of the said Deed with care and caution. The Deed reflects that Majid Ali (respondent No.1) had lodged F.I.R. No. 473/2023, and upon compromise, Muhammad Usman (present applicant), who is the brother of respondent No.2, issued a cheque, leading to the registration of F.I.R. No. 1461/2023. That matter too was compromised. During the course of compromise, an amount of Rs. 1,600,000/- was paid to respondent No.1. Regarding the remaining amount, it is respondent No.2 who issued the cheque, not the applicant. The Compromise Deed was executed solely between

Majid Ali (respondent No.1) and Noman (respondent No.2), and was witnessed by Muhammad Yousuf and Muhammad Imran. Upon careful examination of the Deed, it becomes evident that the present applicant, Usman, has no role in the compliance of the Deed nor in the performance of any obligation arising out of it. In such circumstances, the allegation that the applicant is involved in the commission of the offence punishable under Section 489-F PPC is misconceived.

10. It is a settled principle, as enunciated by the Honourable Supreme Court in the case of **Munawar Alam v. Qurban Ali (2024 SCMR 985)**, that the Justice of Peace is under a legal obligation to assess the material placed before him with due care and caution and must not pass orders in a mechanical manner. In this context, in the present case, the application filed before the Justice of Peace, although directed against both the present applicant and respondent No.2, when examined on its face, reveals that no material exists to show that any offence is made out against the present applicant.

11. So, keeping in view the facts and circumstances of the case, this Criminal Miscellaneous Application is partly allowed. The order passed by the learned Justice of Peace is set aside only to the extent of the present applicant, Muhammad Usman. However, the grievance of respondent No.1 against respondent No.2 remains intact, and to that extent, the order of the Justice of Peace shall continue to hold the field. For the foregoing reasons, the instant application stands disposed of in the above terms.

JUDGE

Saleem/P.S.