

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-187 OF 2023

Applicant : Darryl Thomas s/o Osca Thomas, Christian
Through M/s Muhammad Uzair & Amir Ali Bhutto,
Advocates

Respondent No.3 : Mst. Hijab Khoso w/o Shafique Ahmed Khoso
Through Mr. Ghulam Mujtaba Jakhar, Advocate

The State : Through Zulfiqar Ali Jatoi, Addl. P.G

Date of hearing : 17.11.2025
Date of order : 21.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Darryl Thomas, invokes the inherent jurisdiction of this court, calling in question an order dated 13th March 2023 passed by the learned Civil Judge and Judicial Magistrate/Consumer Protection Court Sukkur in Criminal Summary Case No.47/2023 arising out of Crime No.103/2022 registered at Police Station S.I.R.S Sukkur for offences under Sections 406 and 420 of the Pakistan Penal Code, whereby the learned trial court accepted the investigation report submitted under Section 173 Cr.P.C and disposed of the First Information Report under cancelled C-Class.

2. The factual matrix of the case, as culled out from the impugned order and the application under consideration, reveals that the complainant Darryl Thomas, who served as Legal Advisor to All Pakistan Women Association (APWA) Sukkur, lodged FIR No.103/2022 on 11th August, 2022 alleging therein that the accused Mst. Hijab w/o Shafique Ahmed Khoso, who worked as Project Director of APWA Sukkur from 2006 to 2022, dishonestly withdrew Rs.2,400,000/- from the school fund account in December 2014 without administration permission and committed fraud by purchasing a Suzuki Van Registration No.CV-1762 in her own name. The complainant further alleged that on 21st August 2022, when the accused resigned from her position, she gave an undertaking in the presence of Chairperson Rashida Kiran and Project Director Rozina Khuwaja through a letter that she was returning the vehicle Suzuki Van APV CV-1762 to APWA Sukkur. The accused

stated that the driver would bring back the vehicle alongwith original documents, but neither the vehicle nor the file was returned. After investigation, the Investigating Officer submitted a final report under Section 173 Cr.P.C recommending disposal of the case under C-Class. The learned trial court, vide impugned order dated 13th March 2023, agreed with the Investigating Officer's recommendation and disposed of the FIR under cancelled C-Class, observing that the accused purchased the vehicle through installments on lease from Sonari Bank Limited, and the matter pertained to civil liability, therefore the complainant ought to have filed a civil suit instead of lodging FIR.

3. The learned counsel for the applicant has advanced multiple substantial grounds challenging the impugned order. The primary contentions are that the learned trial court failed to apply its judicious mind while passing the impugned order and did not pass a speaking order. It is submitted that the police conducted a mala fide investigation and brought the case under C-Class without collecting crucial documentary evidence including audit reports, letters written by the accused, and vehicle registration documents.

4. The applicant emphasizes that audit reports of 30th June 2018, 2019, 2020, and 2021 were submitted during summary proceedings which corroborate that the vehicle was purchased from APWA's accounts and funds, and monthly installments, yearly tax and excise registration tax were also paid from APWA's accounts. Furthermore, the accused herself wrote a letter dated 21st August 2022 to the Excise and Taxation Department Sukkur bearing letter No.APWA/edu/837/2022 admitting that the APV Van was purchased for APWA Sukkur Project but she got its registration in her own name. Most significantly, learned counsel has contended that the trial court erroneously held that the complainant should have filed a civil suit instead of lodging FIR, which finding is contrary to the settled principle of law that concurrent remedies under civil and criminal law can be pursued and that an act does not lose its criminal liability just because it has a civil liability. In support, reliance has been placed on the judgment reported as 2022 SCMR 2001.

5. *Heard & Perused.*

6. Section 561-A Cr.P.C preserves the inherent powers of the High Court and reads as follows:

"Saving of inherent power of High Court: Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice".

This provision confers three primary powers upon the High Court: *firstly*, to enforce any order under the Criminal Procedure Code; *secondly*, to prevent the misuse of the judicial process by any court; and *thirdly*, to ensure the attainment of justice. The inherent jurisdiction is exercised sparingly to correct errors of law in exceptional cases and to prevent abuse of the process of court.

7. It is a well-established principle of criminal administration of justice that the opinion of the Investigating Officer is never binding upon the Magistrate dealing with the report forwarded under Section 173 Cr.P.C. The Magistrate is competent to agree or disagree with the police report and take cognizance of the offence or even order further investigation into the matter. The Magistrate is required to consider the report under Section 173 Cr.P.C in light of the material collected during the investigation and then pass an order. Any order passed must be a judicious and just order and not an arbitrary order without reasons and justification. The Supreme Court of Pakistan in *Muhammad Akbar v. State* (1972 SCMR 335) has held that even on the report submitted under Section 173 Cr.P.C, the Magistrate could, irrespective of the opinion of the Investigating Officer to the contrary, take cognizance if upon the materials before him he found that a prima facie case was made out against the accused.

8. The Magistrate has to deal with the charge-sheet by bestowing upon it his judicial consideration and pass a speaking order. Undisputedly, the Magistrate is not bound to agree with the report submitted by the Investigating Officer under Section 173 Cr.P.C and is empowered to disagree or discard the report submitted by

the Investigating Officer; however, it is incumbent upon the Magistrate to scrutinize the material collected during investigation. A Magistrate, when passing an order for cancellation of an FIR, is not acting in his judicial capacity and the order passed by him is an administrative one. However, this does not absolve the Magistrate from the duty to pass a speaking order with reasons. The judicial propriety demands that when a Magistrate approves a police report for cancellation of FIR, he must apply his judicial mind to the material available on record and record cogent reasons for his conclusion. In the instant case, perusal of the impugned order reveals that the learned trial court has merely observed that "*the record shows that accused Hijab Khoso purchased the case vehicle on payment of installments on lease from Sonari Limited Bank*" and concluded that "*it is alleged by the complainant that the accused being employee of APWA Sukkur committed fraud and the fraudulent account she purchased the case car. So far this allegation is concerned, it is a civil liability therefore; the complainant ought to have file civil suit instead of lodging FIR*".

9. This observation demonstrates that the learned Magistrate has not properly examined the material collected during investigation, particularly the audit reports, letters written by the accused, and the manner in which the vehicle was purchased and maintained. The order does not reflect any consideration of the crucial documentary evidence that was allegedly submitted during the summary proceedings. The finding of the learned trial court that the matter pertains to civil liability and therefore the complainant ought to have filed a civil suit instead of lodging FIR is contrary to the well-settled principles of law. It is an established proposition that concurrent remedies under civil and criminal law can be pursued and they do not always exclude one another. The Hon'ble Supreme Court of Pakistan in the judgment reported as 2022 SCMR 2001 has categorically held:

"Pursuing concurrent remedies under civil and criminal law-permissibility---Remedy (for the same cause) can be pursued both under the criminal law and civil law in diverse situations---Although they plainly overlap, they do not always exclude one another, and essentially vary in both content and impact---Any act does not lose its criminal nature just because it has a civil liability, and it is wrongly presumed that when a civil liability is under challenge and its discipline relates to civil remedy, criminal prosecution is

10. Much to the above, civil and criminal proceedings can proceed concurrently. This is based on the understanding that these two proceedings serve different purposes. The presence of civil litigation does not preclude the maintenance of criminal proceedings. The allegations in the FIR constitute offences under Sections 406 (Criminal Breach of Trust) and 420 (Cheating) of the Pakistan Penal Code. Section 405 PPC defines criminal breach of trust as: "*Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust*".

11. The essential ingredients of criminal breach of trust under Section 405 PPC are: (i) the accused must be entrusted with property or dominion over it; (ii) he must have dishonestly misappropriated the property or converted it to his use or disposed of it in violation of any trust or willfully suffered any other person to do so.

12. In the present case, the allegations are that the accused, being Project Director of APWA Sukkur, withdrew funds from the school fund account without administration permission and purchased a vehicle in her own name. If these allegations are established, they would prima facie constitute criminal breach of trust as the accused was entrusted with the management of organizational funds and allegedly misappropriated the same for personal benefit. The fact that the vehicle was purchased through bank financing does not ipso facto exculpate the accused from criminal liability if it is established that the down payment, installments, taxes and other expenses were paid from organizational funds without proper authorization. The applicant has placed considerable emphasis on the audit reports which allegedly demonstrate that the vehicle was purchased from APWA's accounts and that monthly installments and taxes were paid from organizational funds. While

forensic audit reports are not considered substantial proof of evidence by themselves, they are relevant and admissible in court as corroborative evidence. Audit reports are beneficial in identifying financial irregularities during investigation and can serve as key evidence in criminal cases.

13. However, the crucial point is that these audit reports and other documentary evidence should have been properly collected and examined by the Investigating Officer during the investigation, and subsequently scrutinized by the learned Magistrate before disposing of the case. The applicant's grievance is that despite submission of these documents during summary proceedings, they were not properly considered. The duty of an Investigating Officer is to collect relevant testimonies and other evidence so that the crime can be connected to the criminal. An investigation should be evidence-based. Section 161 Cr.P.C empowers the Investigating Officer to orally examine witnesses and record their statements. The Investigating Officer is also empowered to collect documentary evidence including any documents or things useful or relevant to the ongoing inquiry.

14. In the present case, the applicant's grievance is that the Investigating Officer failed to collect crucial documentary evidence including audit reports, letters written by the accused admitting the purchase of the vehicle for APWA, vehicle registration documents, and bank statements showing transfer of funds from APWA accounts. The applicant alleges that despite repeated requests, the Investigating Officer failed to collect this material evidence and submitted the report under C-Class with mala fide intentions.

15. Having considered the submissions advanced by the learned counsel for the applicant, perused the impugned order, and examined the legal principles governing the matter, this Court is of the considered opinion that the impugned order dated 13th March 2023 suffers from several infirmities which warrant interference by this Court in exercise of inherent jurisdiction under Section 561-A Cr.P.C.

16. **Firstly**, the impugned order is not a speaking order. The learned Magistrate has failed to record any detailed findings on the material collected during

investigation. The order does not reflect any consideration of the audit reports, letters written by the accused, or other documentary evidence allegedly submitted during the summary proceedings. A bare perusal of the impugned order reveals that it is a cryptic order without proper reasoning and application of judicial mind. **Secondly**, the finding of the learned Magistrate that the matter pertains to civil liability and therefore criminal proceedings are not maintainable is patently erroneous and contrary to the settled legal position. The Hon'ble Supreme Court has unequivocally held that concurrent remedies under civil and criminal law can be pursued and an act does not lose its criminal nature merely because it also involves civil liability. The learned Magistrate has thus proceeded on an incorrect legal premise. **Thirdly**, the allegations in the FIR prima facie disclose commission of cognizable offences under Sections 406 and 420 PPC. If the accused, being Project Director and entrusted with management of organizational funds, withdrew money from school fund account without authorization and purchased a vehicle in her own name using organizational funds, such conduct would prima facie constitute criminal breach of trust and fraud. The fact that the vehicle was financed through a bank does not *ipso facto* negate criminal liability if the down payment, installments, taxes and other expenses were paid from misappropriated organizational funds. **Fourthly**, it appears that the Investigating Officer has failed to discharge his statutory duty of collecting relevant evidence. The applicant's allegation that despite availability of audit reports, letters written by the accused, vehicle registration documents and bank statements, the Investigating Officer failed to collect and examine this material evidence, is a serious concern. The material available on record suggests that prima facie the investigation was not conducted fairly and impartially. **Fifthly**, both prosecution witnesses namely Rashida Kiran and Rozina Khuwaja have supported the version of the complainant in their statements recorded under Section 161 Cr.P.C. The learned Magistrate has not properly evaluated these statements while disposing of the case. **Sixthly**, the applicant has highlighted that the accused herself wrote a letter to the Excise and Taxation Department admitting

that the APV Van was purchased for APWA Sukkur Project but got its registration in her own name. This admission, if established, is a crucial piece of evidence which should have been properly examined by the Investigating Officer and considered by the learned Magistrate. *Seventhly*, during the trial proceedings, the accused appeared before the trial court only once despite having obtained interim pre-arrest bail and never joined the trial proceedings thereafter spanning about 15 hearings. This conduct also merited consideration while evaluating the case.

17. In view of the aforesaid discussion and for the reasons recorded hereinabove, this Court is of the considered view that the impugned order dated 13th March 2023 passed by the learned Civil Judge and Judicial Magistrate/Consumer Protection Court Sukkur in Criminal Summary Case No.47/2023 cannot be sustained and is liable to be set aside. The learned Magistrate has failed to discharge his judicial duty of scrutinizing the material collected during investigation and has erroneously proceeded on the legal premise that criminal proceedings are not maintainable when civil liability is involved.

18. The investigation also appears to have been conducted in a perfunctory manner without collecting crucial documentary evidence. The ends of justice require that the matter be remanded to the learned trial court for fresh consideration. In the result, this application under Section 561-A Cr.P.C is allowed. The impugned order dated 13th March 2023 passed by the learned Civil Judge and Judicial Magistrate/Consumer Protection Court Sukkur in Criminal Summary Case No.47/2023 arising out of Crime No.103/2022, for offences under Sections 420, 406 PPC, registered at Police Station S.I.R.S, Sukkur, is hereby set aside. The matter is remanded to the learned trial court with the directions to call for the complete record of investigation including the case diary, statements recorded under Section 161 Cr.P.C, and all documentary evidence collected or submitted during the proceedings. The Investigating Officer shall be directed to collect and produce before the court all relevant documentary evidence including: Audit reports of APWA Sukkur for the relevant period, Letter dated 21.08.2022 written by the

accused admitting handing over of the vehicle, Letter bearing No.APWA/edu/837/2022 written by the accused to Excise and Taxation Department, Vehicle registration documents showing ownership details, Bank statements showing payment of installments, taxes and other expenses, Records of APWA Sukkur regarding fund withdrawals and vehicle purchase. The learned trial court shall examine all material available on record including witness statements and documentary evidence and pass a fresh, speaking order after application of judicial mind, in accordance with law. If upon scrutiny of material, the learned trial court finds that a prima facie case is made out against the accused, cognizance may be taken under Section 190 Cr.P.C notwithstanding the earlier police report. The learned trial court shall ensure that both parties are afforded adequate opportunity of hearing and all relevant material is properly examined before passing orders. It is clarified that this Court has not expressed any opinion on the merits of the case. The observations made hereinabove are *prima facie* in nature for the limited purpose of deciding this application and shall not influence the trial court in its independent judicial determination of the matter. Let a copy of this order be sent to the learned Civil Judge and Judicial Magistrate/Consumer Protection Court Sukkur for information and compliance. Office is directed to transmit the record to the concerned court expeditiously.

19. Application stands disposed of in the above terms.

J U D G E