

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Appln. No. 493 of 2024.

Appellant : Adnan through Mr. Sandeep Kumar,  
Advocate.

Respondent No.1 : The State through Mr. Qamaruddin Nohri,  
D.P.G.

Respondent No.2to4 : Nemo.

Date of Hearing : 14.05.2026.

Date of Order : 04.7.2026.

### ORDER

**TASNEEM SULTANA, J.**— Through the instant Criminal Miscellaneous Application, the applicant has assailed the order dated 08.05.2024 passed by the learned IX Additional Sessions Judge/Ex-Officio Justice of Peace, Karachi East, in Criminal Miscellaneous Application No.1412 of 2024, whereby the application filed by respondent No.2 under Sections 22-A and 22-B, Cr.P.C. was allowed and the official respondents were directed to record his statement under Section 154, Cr.P.C.

2. Briefly stated, respondent No.2 approached the learned Ex-Officio Justice of Peace with the allegation that he had business dealings with the present applicant in respect of supply of branded oil, and during such dealings the applicant issued three cheques, bearing No. D-03440384 dated 28.09.2023 for Rs.300,000/-, No.48902228 dated 23.10.2023 for Rs.150,000/- and No.48902227 dated 16.10.2023 for Rs.100,000/-, which were dishonoured on presentation. Based on these allegations, respondent No.2 prayed for a direction to the police for registration of FIR. The applicant filed objections, taking the plea that the cheques were security cheques, that payments had already been made through banking channels, and that the dispute between the parties was essentially commercial in nature. The learned Ex-Officio Justice of Peace, however, allowed the application through the impugned order.

3. Learned counsel for the applicant contended that the impugned order is the result of non-application of judicial mind; that the learned Ex-Officio Justice of Peace treated the matter as a simple case of dishonoured cheques, though the record clearly showed a continuing business dispute between the parties relating to supply of oil; that the cheques in question were security

cheques and not instruments issued against any admitted, settled or finally determined liability; that the applicant had produced bank statements showing payments made to respondent No.2 through banking channels, including payment of Rs.5,94,989/-, which fact was noticed in the impugned order, but its effect was completely ignored; that respondent No.2 did not produce any statement of account, invoice reconciliation or other material to establish the actual outstanding liability, nor was it shown that the cheques were issued towards repayment of a loan or fulfilment of an existing obligation; that mere dishonour of cheques, in absence of prima facie material showing dishonesty and legally enforceable liability, could not attract Section 489-F, PPC; that respondent No.2 had already resorted to civil proceedings by filing Summary Suit No.05 of 2024, wherein unconditional leave to defend was granted to the applicant as the controversy required evidence, and the said suit was later dismissed for non-prosecution; and that the criminal process could not be permitted to be used as a pressure tactic for recovery of a disputed business claim. He, therefore, prayed that the impugned order may be set aside.

4. Conversely, learned A.P.G., assisted by the police official, submitted that the impugned order only directs recording of statement under Section 154, Cr.P.C. and, if any cognizable offence is made out, the same may be incorporated into FIR; therefore, according to him, no interference is called for. Respondent No.2, despite notice, has not appeared.

5. Heard learned counsel for the applicant, learned A.P.G. and perused the material available on record.

6. It is settled that while exercising powers under Sections 22-A and 22-B, Cr.P.C., the Ex-Officio Justice of Peace is not required to act merely as a post office. He is required to examine whether the information placed before him, on its face, discloses commission of a cognizable offence. Such function is quasi-judicial in nature and must be performed with due application of mind. Reference may be made to **Younas Abbas v. Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581)**, wherein the Honourable Supreme Court held that the functions performed by the Ex-Officio Justice of Peace are quasi-judicial in character. In **Hayat Kimya Pakistan (Private) Limited v. Humair Yusuf and others (2024 CLD 326)**, while examining the scope of Section 489-F, PPC in relation to security cheques, it was observed as under:

“15. The Indian courts have interpreted the phrase “discharge of debt or liability” in section 138 of INI Act in light of the Explanation given in it. The expression “repayment of a loan or fulfilment of an obligation” in section 489-F, P.P.C. somewhat carries the same meaning. Nonetheless, there is a subtle difference between the two sections. The INI Act makes dishonour of a cheque a strict liability offence, while mens rea is the fundamental component of the offence under section 489-F, P.P.C., which is signified by the word “dishonestly”.”

It was further observed that:

“17. Section 24, P.P.C. states that “whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing ‘dishonestly’.” Thus, issuing a cheque and its subsequent dishonour does not ipso facto attract section 489-F, P.P.C. The drawer's dishonesty must also be established, and for that purpose, every transaction must be carefully scrutinized.”

The learned Court further classified post-dated/security cheques in the following terms:

“19. Post-dated cheques may be classified into three broad categories: (a) cheques issued to discharge a liability that has already accrued or that is determined and would accrue on a specific date; (b) cheques issued to satisfy a future liability which may or may not occur; and (c) cheques provided for the payee's comfort under an express agreement and are not the product of any specific transaction. Criminal liability under section 489-F, P.P.C. generally arises only in respect of the cheques falling in category (a) unless the one-transaction or the continuing act theory can be applied.”

7. In **Altaf Hussain v. SHO, Police Station, Mahotta and others (2015 YLR 798 Sindh)**, this Court observed that if an offence is reported to the concerned SHO, it is his duty to record the statement of the complainant and, if a cognizable offence is made out, to register an FIR under Section 154, Cr.P.C. However, on receiving such complaint, it is the prerogative of the concerned SHO to form an opinion as to whether a cognizable offence is made out or not; and in non-cognizable cases, the concerned SHO is not obliged to register an FIR and drag the persons nominated therein unnecessarily, in order to avoid abuse of process of law. It was further observed that each case is to be examined and decided on its own peculiar facts and circumstances and that the SHO, though not required to examine the evidence or truthfulness of the alleged offence, cannot in a mechanical manner, without applying his mind, register an FIR in every case which may not even suggest commission of a cognizable offence. The said principle applies with equal force to the proceedings before the Ex-Officio Justice of Peace, who is required to examine whether the facts placed before him disclose a cognizable offence.

8. In **Rai Ashraf and others v. Muhammad Saleem Bhatti and others (PLD 2010 SC 691)**, the Honourable Supreme Court held that each and every case is to be decided on its own peculiar facts and circumstances and that what is said in a judgment, particularly in a criminal case, must be understood with reference to the facts of that particular case. It was also observed that where alternate remedy of filing a private complaint before the competent Court is available, disputed questions of fact cannot be decided in constitutional jurisdiction.

9. In the present case, the material placed before the learned Ex-Officio Justice of Peace showed that the matter arose out of business dealings

between the parties. The applicant specifically pleaded that the cheques were issued as security and that payments had already been made through banking channels. The bank statement was also placed on record. The impugned order itself notices that payment of Rs.5,94,989/- was shown in the bank statement, yet the learned Ex-Officio Justice of Peace did not examine the effect of such material in the context of the applicant's plea that the cheques were security cheques and that the dispute required scrutiny of accounts.

10. It is also material that respondent No.2 had filed Summary Suit No.05 of 2024 against the present applicant. In that suit, unconditional leave to defend was granted to the applicant on 26.03.2024, after the learned civil Court observed that the controversy between the parties required evidence and that the applicant had raised a plausible defence. Subsequently, the said summary suit was dismissed for non-prosecution on 28.08.2024. These circumstances further support the position that the matter between the parties was primarily commercial in nature and required adjudication on the basis of accounts, evidence and determination of liability.

11. Applying the above principles to the facts of the present case, it appears that the learned Ex-Officio Justice of Peace did not properly consider the applicant's objections, the plea of security cheques, the bank statement reflecting payments, the pendency of summary suit at the relevant time, and the fact that the controversy required scrutiny of accounts and evidence. Mere dishonour of a cheque by itself would not be sufficient to attract Section 489-F, PPC unless the element of dishonesty and issuance of cheque towards repayment of a loan or fulfilment of an existing obligation is prima facie reflected. Where the nature of transaction, actual liability, payments and purpose for which the cheques were issued are seriously disputed, a mechanical direction for registration of FIR would not be proper. If respondent No.2 still claimed commission of any offence, the remedy of filing a direct complaint under Section 200, Cr.P.C. before the competent Court was available to him, where he could lead preliminary evidence and the Court could examine whether process was liable to be issued.

12. For the foregoing reasons, the impugned order dated 08.05.2024 passed by the learned IX Additional Sessions Judge/Ex-Officio Justice of Peace, Karachi East, in Criminal Miscellaneous Application No.1412 of 2024, cannot be sustained. Consequently, the instant Criminal Miscellaneous Application is allowed; the impugned order is set aside and the application under Sections 22-A and 22-B, Cr.P.C. filed by respondent No.2 stands dismissed.

**JUDGE**

