IN THE HIGH COURT OF SINDH CIRCUIT COURT AT MIRPURKHAS

Criminal Miscellaneous Application No. S-146 of 2024

Applicants	:	1. Ratan Kumar s/o Devjee, Meghwar 2. Jaitmal Singh s/o Dalji *Through* Mr. Syed Sardar Hussain Shah, advocate for applicant No.1 Mr. Bhooro Bheel, advocate for applicant No.2.
Respondents	:	*Through* Mr. Muhammad Arif Jhandeer, advocate for respondent No.1.
The State	:	*Through* Mr. Neel Parkash, DPG.
Date of hearing	:	22.07.2026
Date of order	:	28.07.2026

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ORDER

KHALID HUSSAIN SHAHANI, J:— Applicants have invoked the inherent jurisdiction of this court to assail the legality, propriety, and jurisdictional competence of proceedings emanating from Direct Complaint No. 02 of 2022, pending before the learned Civil Judge & Judicial Magistrate-II/MTMC, Umerkot, together with the order whereby cognizance was assumed against the applicants and coercive process set into motion.

2. The facts, shorn of unnecessary detail, disclose that Respondent No.1, Irshad Ahmed, instituted a direct complaint under Section 200, Cr.P.C., read with Section 28 of the Microfinance Institutions Ordinance, 2001, invoking also Section 23(4) of the said Ordinance and Sections 420, 406 and 120, PPC. It was alleged that applicant/accused Ratan kumar and Jaitmal Singh, former employees of Pak Oman Microfinance Bank Limited, acting in concert with co accused ccused Ayaz Ali and Hubdar Ali, customers of the said bank, had processed or facilitated loans upon fabricated death certificates, occasioning wrongful loss to the institution. Respondent No.1 described himself in the complaint as Area Manager of the bank, asserting authorization "by the CEO" to represent it. A careful scrutiny of the complaint, however, reveals this assertion to be nothing beyond a bare averment in pleadings; no authorization traceable to the State

Bank of Pakistan, nor any material satisfying the statutory precondition under Section 28, was placed upon the jurisdictional record at the stage cognizance was sought.

3. The learned trial Magistrate, upon recording statements under Section 200, Cr.P.C. of the complainant and one supporting witness, proceeded to hold that sufficient prima facie material existed and, invoking Sections 23(4) and 28 of the Ordinance, assumed cognizance and issued process, including non-bailable warrants premised upon the non-bailable character of Section 409, PPC. It further transpires that, antecedent to the direct complaint, Respondent No.1 had approached the Ex-Officio Justice of Peace, Umerkot, under Sections 22-A & 22-B, Cr.P.C., seeking registration of an FIR. That application, Crl. Misc. No. 53 of 2022, was dismissed vide order dated 01.02.2022, the learned Sessions Judge/Justice of Peace having expressly reproduced Section 28(1) of the Ordinance and held that cognizance of an offence thereunder may be taken only upon a complaint in writing by an officer of the State Bank duly authorized in that behalf, a threshold the application failed to cross.

4. The applicants further placed on record material illuminating the broader dispute between the parties: resignation correspondence dated 05.08.2021, its acceptance dated 16.08.2021, a subsequent show-cause notice dated 04.11.2021, an order of termination dated 14.01.2022, and proceedings under Section 15(2) of the Sindh Payment of Wages Act, 2015, concerning unpaid dues, gratuity, leave encashment, and provident fund. This Court does not treat such material as dispositive of guilt or innocence; it is noted only to establish that an independent employment and monetary dispute predated the impugned complaint. Of decisive significance, however, is the order-sheet dated 13.07.2026, which records that learned counsel for Respondent No.1 had earlier, on 02.12.2025, sought time to produce the letter of authorization, whereupon this Court granted a final opportunity, adjourning the matter to 22.07.2026 with an unambiguous direction that failure to produce the authorization would result in the matter being decided without further indulgence. This order-sheet is of central evidentiary weight: it demonstrates that the deficiency of authority was not a peripheral technicality but a matter

judicially flagged, with Respondent No.1 afforded a final and explicit opportunity to cure it, an opportunity he did not avail.

5. Learned counsel for the applicants contended, with considerable force, that the direct complaint was incompetent ab initio, the complainant being neither an officer of the State Bank of Pakistan nor a person authorized by it within the contemplation of Section 28(1) of the Ordinance. It was submitted that the learned Magistrate committed material illegality in assuming cognizance upon the self-serving assertion of authorization by the bank's own CEO, notwithstanding that the special statute confines the gateway of cognizance exclusively to a complaint instituted by an officer of the State Bank so authorized, not an officer of the microfinance institution itself. Reliance was placed upon the earlier order dated 01.02.2022, wherein an identical objection had already found favour with the learned Sessions Judge/Justice of Peace. It was urged that where a special law prescribes the mode and source of cognizance, resort cannot be had to the general provisions of the Code to circumvent that statutory restriction, more so where, despite repeated opportunity culminating in the order dated 13.07.2026, no authorization was ever produced, a failure fatal to the very foundation of the complaint.

6. The position emerging from the impugned complaint and cognizance order, on the other hand, is that Respondent No.1 proceeded on the footing that he represented the bank under CEO authorization, and that the learned Magistrate found prima facie sufficient documentary material to justify proceeding against the accused.

7. Having heard learned counsel for the applicants and examined the record with the care the matter demands, I am persuaded that the objection raised strikes not at the sufficiency of evidence but at the very competence of the complaint and the jurisdictional validity of the cognizance assumed thereon. The analysis must commence with the text of Section 28(1) of the Ordinance, as reproduced in the order dated 01.02.2022: no court shall take cognizance of an offence under the Ordinance save upon a complaint in writing by an officer of the State Bank authorized in that behalf. The language is prohibitory, mandatory, and jurisdiction-defining in character. It does not merely

regulate procedure, it circumscribes the very source from which cognizance may lawfully spring. Where the complaint is not shown to emanate from the legally designated authority, the resultant defect cannot be cured by inference, implication, or general averment.

8. The complaint before the learned Magistrate was instituted by Irshad Ahmed, Area Manager of the bank, asserting CEO authorization. Authorization by the CEO of a microfinance bank, however, is not synonymous with a complaint in writing by an officer of the State Bank authorized in that behalf, as Section 28(1) exacts. The statute does not speak of an officer of the concerned bank, nor of a person authorized by its CEO; it deliberately and specifically identifies the competent complainant as an officer of the State Bank so authorized. This distinction is not semantic but substantive. Special statutes frequently condition not merely the offence but the very assumption of cognizance upon a designated public functionary's complaint; once the legislature has so narrowed the gateway, no Magistrate may enlarge it by equating institutional representation with statutory authorization.

9. The order dated 01.02.2022 of the learned Sessions Judge/Justice of Peace carries considerable persuasive weight in construing this statutory scheme, having reached an identical conclusion on the same provision, albeit in proceedings under Sections 22-A & 22-B, Cr.P.C. The reasoning on the statutory bar remains squarely applicable, since the same special provision governs the competence to set the criminal law in motion for offences under the Ordinance.

10. Equally telling is the conduct of Respondent No.1 during the pendency of these proceedings. The order-sheet dated 13.07.2026 records, without ambiguity, that a final opportunity was extended to produce the authorization letter, failing which the matter would be decided without further indulgence. No such document was ever produced. Once such default occurs despite explicit judicial opportunity, this Court is left with no lawful basis to presume the existence of authority, much less to sustain criminal proceedings resting upon a special statutory precondition that remains unfulfilled.

11. The learned Magistrate, in taking cognizance on 21.03.2022, observed that the complainant had produced a letter from the bank's CEO authorizing registration of the case. Even assuming such letter's existence, it would not satisfy Section 28(1), since the authorization contemplated by the statute is one relatable to an officer of the State Bank, not the CEO of the concerned microfinance institution. The learned Magistrate thus fell into manifest legal error by conflating internal corporate authorization with the statutory authorization mandated by the special law. Nor can the special bar be rendered nugatory by the mere addition of general penal provisions to the complaint; where the jurisdictional foundation invoked is the Ordinance, the precondition of Section 28 must be satisfied in letter and spirit before cognizance may lawfully follow.

12. It is also material that the applicants placed on record evidence of a parallel employment and monetary dispute resignation, its acceptance, subsequent show-cause and termination proceedings, and wage-related litigation. This Court does not hold such background to bar criminal prosecution per se; however, where the maintainability of the complaint itself stands in serious doubt and statutory authority remains unestablished, the Court must guard vigilantly against permitting prosecution to proceed upon a jurisdictionally infirm foundation. In these circumstances, I am constrained to hold that the complaint filed by Respondent No.1 was not competently instituted in the eye of law, the mandatory requirement of Section 28 of the Microfinance Institutions Ordinance, 2001 remaining unsatisfied. The learned Magistrate assumed cognizance without first ensuring compliance with this jurisdictional precondition, and cognizance so founded upon an incompetent complaint cannot be permitted to stand.

13. For the foregoing reasons, this Criminal Miscellaneous Application is allowed. The direct complaint filed by Respondent No.1, not having been shown to conform to the mandatory requirement of Section 28 of the Microfinance Institutions Ordinance, 2001, was not legally maintainable, and the learned Magistrate gravely erred in assuming cognizance thereon absent lawful fulfillment of the statutory precondition. Consequently, the order dated 21.03.2022 passed by the learned Civil Judge & Judicial Magistrate-II/MTMC, Umerkot, taking cognizance in Direct Complaint No. 02 of 2022, together with all

subsequent proceedings and coercive process issued thereunder against the applicants, is hereby set aside. It is, however, clarified that should the law otherwise permit, and should a complaint be instituted by a person strictly competent under the relevant special statute, the same shall be dealt with according to law, uninfluenced by any observation herein save to the extent of the jurisdictional defect determined in this matter.

J U D G E

Adnan Ashraf Nizamani