

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Misc. Application No. S-283 of 2026
[Khair Muhammad v. SSP Mirpurkhas & Others]

Counsel of Applicant : Mr. Mir Muhammad Mangrio, Advocate.

Counsel of Respondents : Mr. Mehboob Ali Kapri, Advocate for Respondent No.5.

Mr. Neel Parkash, Deputy P.G Sindh.

Date of Hearing : 28.09.2026

Date of Order : 28.09.2026.

ORDER

Muhammad Humayon Khan, J.: Through this Criminal Miscellaneous Application under Section 561-A Cr.P.C., the applicant, Khair Muhammad, has called in question the order dated 13-08-2026 passed by the learned Additional District & Sessions Judge-I/Ex-Officio Justice of the Peace, Mirpurkhas, in Criminal Miscellaneous Application No.1303 of 2026, whereby the application under Sections 22-A & 22-B Cr.P.C. moved by respondent No.5 was allowed and the concerned SHO was directed to record his statement under Section 154 Cr.P.C. and register an FIR in respect of the alleged dishonoured cheque. The applicant seeks setting aside of the impugned order, principally contending that the underlying transaction is civil in nature and that the impugned order was passed without affording him an opportunity of hearing.

2. Briefly stated, the background of the matter, in chronological order, is that on 24-09-2022, respondent No.5/Khawar Iqbal entered into an agreement with Mst. Nusrat Bano and Ghulam Murtaza for purchase of House No.F-151, Scheme No.II, Mohalla Bhansingh Abad, Mirpurkhas, for a total consideration of Rs.2,700,000/-, against which he claims to have paid an aggregate amount of Rs.680,000/-, while the balance was to be paid at the time of execution and registration of the sale deed on 24-03-2023. According to respondent No.5, when the transaction could not materialise, settlement proceedings followed and the

applicant, being related to the vendors, allegedly undertook to refund the amount; consequently, the earlier agreement was stated to have been cancelled and the applicant issued Cheque No.1996563153 dated 10-06-2025 for Rs.650,000/-, drawn on MCB Bank Limited, Umerkot Branch, which, upon presentation through UBL, M.A. Jinnah Road Branch, Mirpurkhas, was dishonoured for insufficient funds. Respondent No.5 further alleged that despite repeated demands the amount remained unpaid and that on 31-07-2026, when he again approached the applicant, the latter refused payment and allegedly extended threats. He thereafter approached the police for registration of an FIR and, upon their failure to do so, instituted Criminal Miscellaneous Application No.1303 of 2026 under Sections 22-A & 22-B Cr.P.C. before the Ex-Officio Justice of the Peace.

3. The police report submitted before the learned Ex-Officio Justice of the Peace recorded that the dispute concerned outstanding money arising from a property transaction and that the cheque had been deposited at UBL, M.A. Jinnah Road, Mirpurkhas, falling within the limits of P.S. Town Mirpurkhas. Thereafter, by order dated 13-08-2026, the learned Additional District & Sessions Judge-I/Ex-Officio Justice of the Peace, Mirpurkhas, observing that the dishonoured cheque and return memo prima facie disclosed a cognizable offence under Section 489-F PPC, allowed the application and directed registration of the FIR, while further directing that the proposed accused should not be arrested until evidence was collected against him. Aggrieved thereof, the applicant has invoked the inherent jurisdiction of this Court under **Section 561-A Cr.P.C.** through the present Criminal Miscellaneous Application, seeking setting aside of the aforesaid order.

4. Learned counsel for the applicant contended that the impugned order dated 13-08-2026 is contrary to law and facts and has been passed without affording the applicant an opportunity of hearing, thereby offending the requirement of due process. He argued that the controversy essentially arises out of a property transaction of civil nature, initially entered into between respondent No.5 and Mst. Nusrat Bano/Ghulam Murtaza, to which the applicant was not an original contracting party. He maintained that the applicant neither obtained any

loan nor incurred any independent financial liability towards respondent No.5; rather, the cheque in question was issued merely as a guarantee/security subject to fulfilment of the agreed condition concerning transfer of the property, which, according to him, was never fulfilled. Learned counsel further contended that the ingredients necessary to constitute an offence under Section 489-F PPC were, therefore, not prima facie attracted merely because the cheque was subsequently dishonoured. He also questioned the territorial aspect of the proceedings, submitting that the cheque-return transaction fell within the jurisdiction of P.S. Town Mirpurkhas, as was also reflected in the police report. On these premises, he prayed that the impugned order directing registration of the FIR be set aside.

5. Conversely, learned counsel for respondent No.5, assisted by the learned APG, supported the impugned order and contended that the material placed before the learned Ex-Officio Justice of the Peace prima facie disclosed the commission of a cognizable offence under Section 489-F PPC. It was argued that the applicant had issued the cheque for Rs.650,000/-, which, upon presentation, was dishonoured for insufficient funds, and the cheque along with the bank return memo constituted sufficient material at that stage for recording the information under Section 154 Cr.P.C. Learned counsel maintained that the controversy as to whether the cheque was issued towards discharge of an obligation or merely as security/guarantee involves factual questions to be examined during investigation and could not justify preventing registration of the criminal case at the threshold. It was, therefore, prayed that the instant application, being devoid of merit, be dismissed and the impugned order dated 13-08-2026 maintained.

5. I have heard learned counsel for the parties as well as learned A.P.G. and have perused the material available on record with their assistance. The controversy which falls for determination is whether the order dated 13-08-2026 passed by the learned Ex-Officio Justice of the Peace, directing recording of the statement of respondent No.5 under Section 154 Cr.P.C., suffers from such illegality, perversity or abuse of process as would justify interference by this Court in exercise of its inherent jurisdiction under Section 561-A Cr.P.C.

6. Before advertizing to the respective versions of the parties, it would be appropriate to keep in view the limited scope of proceedings before an Ex-Officio Justice of the Peace. In *Younas Abbas and others v Additional Sessions Judge, Chakwal and others PLD 2016 SC 581*, the Honourable Supreme Court held that the functions exercised under Section 22-A(6) Cr.P.C. are quasi-judicial in character and require application of judicial mind; however, those functions remain complementary to the statutory functions of the police and do not convert the Justice of the Peace into an investigating agency. More recently, in *Syed Qamber Ali Shah v Province of Sindh and others (2024 SCMR 1123)*, the Honourable Supreme Court reiterated in clear terms that the Justice of the Peace is not required to punctiliously scrutinise the truth of the allegations or render findings upon their merits. His concern at that stage is whether the facts narrated disclose a cognizable offence; the truth or otherwise of those facts is thereafter to be investigated in accordance with law.

7. The principle is not new. In *Muhammad Bashir v Station House Officer, Okara Cantt. and others PLD 2007 SC 539*, the Honourable Supreme Court held that where information conveyed to the police discloses commission of a cognizable offence, the police cannot refuse to record the same by first embarking upon an enquiry into its correctness. The safeguard against a false accusation lies in lawful investigation and, where appropriate, proceedings against the false informant, rather than suppression of the information at its inception. The same broad statutory scheme was reiterated in *Abdul Rehman Malik v Synthia D. Ritchie and others 2020 SCMR 2037*, where the Apex Court emphasized the statutory obligation arising under Section 154 Cr.P.C. once information discloses a cognizable offence.

8. Likewise, the Larger Bench judgment in *Mst. Sughran Bibi v The State PLD 2018 SC 595* explains that an FIR is merely the first information setting the criminal law into motion; it is neither a final declaration of guilt nor an adjudication upon the correctness of the informant's version. It is the investigating

officer who is required to examine all relevant versions and ultimately place the actual facts discovered during investigation before the competent Court.

9. Examined against the above principles, the application filed by respondent No.5 before the learned Ex-Officio Justice of the Peace contained a specific assertion that, during settlement of the earlier property transaction, the present applicant agreed to refund the amount already received and, for such purpose, issued Cheque No.1996563153 dated 10-06-2025 for Rs.650,000/- in favour of respondent No.5; that upon presentation the cheque was dishonoured for insufficient funds; and that despite demand the amount remained unpaid. The learned Ex-Officio Justice of the Peace had before him the cheque, its dishonour memo and the police report and, upon a tentative examination thereof, found disclosure of a cognizable offence and directed registration of the case, while specifically protecting the proposed accused from arrest until evidence was collected against him.

10. It is true that mere dishonour of every cheque does not automatically constitute an offence under Section 489-F PPC. In *Mian Allah Ditta v The State and others 2013 SCMR 51*, the Honourable Supreme Court identified the foundational requirements of the offence: the cheque must have been issued dishonestly; it must have been issued towards repayment of a loan or fulfilment of an obligation; and it must thereafter have been dishonoured upon presentation. In that case the material collected during investigation itself prima facie showed that the cheque had been given merely as security against a possible future liability, and it was in that peculiar factual background that the Court found one of the foundational elements to be missing.

11. Learned counsel for the applicant has heavily relied upon the plea that the cheque in the present matter was likewise a guarantee/security cheque. The record indeed shows that the applicant has instituted civil proceedings in which he has taken the stance that under the agreement dated 17-01-2025 one Rashid son of Muhammad Fiaz Malik was to pay Rs.650,000/- to respondent No.5 and that the

applicant's cheque could be presented only after transfer of the property in his favour. In his civil pleadings he has expressly described the instrument as a “guarantee/security” cheque and has disputed the maturity of the underlying obligation.

12. That circumstance, however, does not conclude the controversy at this stage. Respondent No.5 asserts the exact opposite: namely, that the earlier arrangement was cancelled during settlement proceedings, that the applicant personally agreed to refund the outstanding amount and that the cheque was issued for repayment thereof. Thus, the purpose for which the cheque was issued and whether an enforceable obligation had matured when it was presented are themselves disputed questions of fact. The Honourable Supreme Court in *Noman Khaliq v The State and another* 2023 SCMR 2122 held that where parties dispute whether a cheque had been issued towards repayment of a loan or fulfilment of an obligation, the matter is one to be resolved after recording evidence. Likewise, in *Muhammad Anwar v The State and another* 2024 SCMR 1657, the Court treated the character of a cheque as guarantee/security and the existence of an obligation as matters requiring examination on the peculiar evidence of the case.

13. The same approach has recently been adopted by this Court in *Muhammad Tahir Saleem v The State* 2026 SHC HYD 1315, where the underlying agreement itself described the disputed cheques as guarantee cheques. The Court observed that whether those instruments represented mere security or discharge of a legally enforceable obligation could not conclusively be determined without evidence. The distinction is important: such a defence may furnish substantial ground at bail or trial, but it cannot invariably be converted into a finding of fact at the pre-registration stage.

14. I am also mindful of *Abdul Saboor v The State through A.G. Khyber Pakhtunkhwa and another* 2022 SCMR 592, wherein the Honourable Supreme Court held that Section 489-F PPC was not enacted as a machinery for recovery of money and that civil remedies remain available for recovery of financial claims.

This principle was reiterated in *Noman Khaliq (supra)*. There can be no disagreement with that proposition. Criminal machinery cannot be employed as a debt-collection mechanism. Yet the converse is equally true: merely because an underlying transaction possesses a civil complexion does not, by itself, extinguish criminal consequences if the ingredients of a penal offence are independently alleged and ultimately established.

15. In *Dr. Sikandar Ali Mohi-ud-Din v Station House Officer and others (2021 SCMR 1486)*, the Honourable Supreme Court deprecated the summary termination of criminal proceedings merely because civil litigation concerning the same transaction was pending and held that civil and criminal proceedings may proceed side by side where there exists a cogent foundation for criminal prosecution. A similar principle was applied by this Court in *Muhammad Muzammil Afzal Bhatti v Muhammad Shahab Saqib and others 2015 CLC 1154*, where it was held that institution of a civil suit cannot, by itself, restrain the opposite party from resorting to criminal law if the facts otherwise make out a criminal case.

16. The applicant's objection that the impugned order was passed without first hearing him also does not persuade me to interfere. Registration of an FIR or a direction to record information under Section 154 Cr.P.C. does not constitute a determination of the guilt of the proposed accused. In *Syed Qamber Ali Shah (supra)*, while discussing this very stage, the Honourable Supreme Court approved the principle that a decision whether criminal process should commence does not necessarily require prior comments from the person proposed to be accused. More directly, in *Muhammad Anwar v S.P. Complaint Cell Hyderabad and others 2025 SHC HYD 12*, this Court held that neither the officer in charge of a police station nor the Ex-Officio Justice of the Peace is under an absolute legal obligation to first afford the proposed accused an opportunity of hearing before registration of the case or issuance of such direction. The cases of *Saeed Ahmad and others v Naseer Ahmad and others PLD 2000 Lahore 208* and *Muhammad Aslam v Additional Sessions Judge and others 2004 P.Cr.LJ 1214* were also noticed on the point.

17. The police report also does not establish that the complaint was false. What it records is that the parties had a dispute regarding outstanding money arising from a property transaction, that the cheque had been deposited at UBL, M.A. Jinnah Road, Mirpurkhas, where it was dishonoured, and that such branch fell within the territorial limits of P.S. Town Mirpurkhas rather than P.S. Gharibabad. The report thus raises a question as to the competent police station; it does not erase the allegation concerning issuance and dishonour of the cheque. Territorial allocation amongst police stations within the district cannot be allowed to defeat substantive recourse under Section 154 Cr.P.C.; the information has simply to be dealt with by the police station legally competent to investigate it.

18. There is another reason for restraint by this Court. In *Ghulam Muhammad v Muzammil Khan PLD 1967 SC 317*, the Honourable Supreme Court held that the inherent power under Section 561-A Cr.P.C. cannot be employed so as to interrupt or divert the ordinary course of criminal procedure provided by the Code. That principle has now been specifically reiterated in *Syed Qamber Ali Shah 2024 SCMR 1123*, where interference by the High Court under Section 561-A Cr.P.C. with an order of a Justice of the Peace was disapproved because the High Court had effectively assumed the role of an investigating forum and decided factual controversies before investigation could take place.

19. Applying the above law to the present case, I am not persuaded that this Court, at this stage, should pronounce whether the cheque was issued purely as security, whether the stipulated condition precedent had matured, whether respondent No.5 was legally entitled to present the cheque, or whether the applicant possessed dishonest intention within the contemplation of Section 489-F PPC. Each of these matters is capable of proof or disproof through the agreement dated 17-01-2025, the original cheque, banking record, the earlier agreement of 2022, the settlement alleged by respondent No.5 and the evidence of the persons who participated therein. A final or near-final conclusion upon those matters in proceedings under Section 561-A Cr.P.C. would amount to converting this Court

into an investigating or trial forum, a course expressly discouraged by the Honourable Supreme Court.

20. At the same time, the apprehension of the applicant against unnecessary arrest deserves the protection already incorporated by the learned Ex-Officio Justice of the Peace. Registration of an FIR does not carry with it an automatic command to arrest every person nominated therein. In *Mst. Sughran Bibi (supra)* the Honourable Supreme Court emphasized the duty of the investigating officer to find out the truth and not to commit himself prematurely to any one version, while in *Syed Qamber Ali Shah (supra)* an order directing registration of an FIR with the rider that the proposed accused should not be arrested without collection of tangible evidence was specifically noticed and restored by the Apex Court.

21. Consequently, I find no jurisdictional illegality or material irregularity in the impugned order dated 13-08-2026 warranting interference under Section 561-A Cr.P.C. The instant Criminal Miscellaneous Application is, therefore, **dismissed** and the interim order suspending operation of the impugned order stands recalled. The concerned S.S.P., Mirpurkhas, shall ensure that the statement of respondent No.5 is dealt with by the police station having territorial jurisdiction and, if the information so recorded discloses commission of a cognizable offence, the law shall take its own course strictly in accordance with Section 154 Cr.P.C.

22. It is, however, clarified that the applicant shall not be arrested merely on account of his nomination or the registration of the FIR. The Investigating Officer shall first collect material connecting him with the alleged offence and shall independently examine the agreement dated 17-01-2025, the applicant's plea regarding the cheque being a guarantee/security instrument, the earlier property transaction, the alleged settlement, the bank record and all other relevant material. If the investigation reveals absence of sufficient evidence or that the controversy is exclusively civil in nature, the Investigating Officer shall proceed

in accordance with Sections 169 and 173 Cr.P.C. Conversely, if the information is ultimately found to have been deliberately false, the remedy contemplated by law, including Section 182 PPC, shall remain available. Nothing observed herein shall be treated as an expression upon the guilt or innocence of the applicant or upon the merits of the pending civil proceedings.

The Criminal Miscellaneous Application stands dismissed in the above terms.

JUDGE

FAISAL