

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No. 891 of 2025

Applicants : 1. Sajid Gagai S/o. Salim Gagai
2. Salim Gagai S/o. Abdul Karim
3. Faiza Gagai W/o. Sajid Gagai.
Through Mr. Hunnain Yaseen Junejo,
advocate

Respondent No.1 : The State
Through Ms. Tahira Depar,
APG

Respondent No.2 : SHO of PS Gizri.

Respondent No.3 : SSP Complaint Cell.

Respondent No.4. : Muhammad Asif Memon
Son of Haji Ashraf Memon
Through Mr. Mujahid Ali Maitlo,
advocate

Date of hearing : 07.10.2026.

Date of Order : 07.10.2026.

ORDER

Jan Ali Junejo, J:- Through this criminal miscellaneous application, the applicants has called in question the order dated 29.09.2025 (hereinafter referred to as the "impugned order") passed by the learned Additional Sessions Judge-IX, Karachi South, in his capacity as Ex-Officio Justice of Peace, whereby the application filed by respondent No.4 under Sections 22-A Cr.P.C. was allowed, with a direction to the concerned police to proceed in accordance with law on the allegations made therein.

2. Succinctly, the case of Respondent No.4 is that he is a law-abiding and peace-loving citizen residing with his family and has never been involved in any criminal or immoral activity. He alleged that he had suffered financial loss due to the fraudulent acts of the proposed accused, namely Sajid Gagai and Sumair Gagai, who, along with their associates, allegedly induced him and his brother-in-law to invest in their business, namely *Gagai Fabrics International*, situated at Office No. F-93, 2nd Floor, Falaknaz Corporate City, I.I. Chundrigar Road, Karachi, pursuant to an

agreement dated 04.05.2021, whereby a monthly profit of 5% was promised. He stated that he invested Rs.6,00,00,000/- in instalments, while a further amount of Rs.2,00,00,000/- was allegedly invested through his brother-in-law, Muhammad Asif Memon. However, the proposed accused allegedly claimed that their business was suffering losses, defaulted on the promised payments, and refused to return the invested amounts. He further stated that FIR No.361/2025 had already been registered at Police Station Ferozabad against Sajid Gagai in respect of the alleged fraudulent activities and that the said accused was on bail. He alleged that, upon repeated demands for repayment, Sajid Gagai issued three cheques bearing Nos.98179129, 98179130 and 98179131, drawn on Bank Alfalah, Cloth Market, Karachi, amounting to Rs.22,50,000/-, while Sumair Gagai issued cheque No.A-89148190, drawn on Meezan Bank, for Rs.1,50,000/-, but all the cheques were dishonoured. He further alleged that Sumair Gagai had received Rs.30,00,000/- from the account of his brother-in-law and that Sajid Gagai had also issued a joint cheque bearing No.00422314, dated 30.09.2022, drawn on Summit Bank, along with his wife. He maintained that the proposed accused had acted in concert to deceive him and his brother-in-law and cause them financial loss. Lastly, he stated that he approached Respondent No.2 for registration of an FIR, but the latter declined to register the same.

3. Upon hearing the parties, the learned Ex-Officio Justice of Peace allowed the application, observing, inter alia, that the allegations disclosed an apparent instance of criminal trespass and that the alleged offence was cognizable in nature. The learned Court accordingly directed the SHO concerned to record the statement of the complainant under Section 154, Cr.P.C. and, if a cognizable offence was disclosed, to register an FIR in accordance with law and proceed with investigation. Hence, the present application.

4. Learned counsel for the applicants contended that the impugned order was passed by the learned Court below in a hasty and mechanical manner, without proper appreciation of the facts and documentary

evidence placed on record, thereby violating the principles of due process and fair adjudication. He argued that Respondent No.4 had approached the Court with unclean hands by suppressing material facts, including previous proceedings between the parties before the same Court. He further submitted that the dispute between the parties was purely civil in nature and did not disclose the commission of any cognizable offence under Section 489-F PPC or any other provision of law, as no legally enforceable debt or liability existed between the parties, nor was there any privity of contract or transaction between them. He maintained that the same allegations had already been examined in Application No.3794 of 2024, wherein the learned Court had held the dispute to be civil in nature, and that passing the impugned order amounted to an impermissible review of its earlier findings. He further argued that the registration of an FIR is warranted only where the information discloses the commission of a cognizable offence and that the mere issuance or dishonour of a cheque, without proof of an underlying legally enforceable liability, does not constitute an offence under Section 489-F PPC. In support of his contentions, he relied upon the judgments reported as PLD 2007 SC 539, PLD 2016 SC 581, 2020 YLR 1221 (Karachi), and 2015 PCr.L.J. 1335, and submitted that the powers under Section 22-A Cr.P.C. ought not to be exercised mechanically. Lastly, he contended that continuation of the proceedings pursuant to the impugned order would amount to an abuse of the process of law and cause unnecessary harassment and irreparable loss to the applicant; therefore, the impugned order is liable to be set aside by this Court in exercise of its inherent jurisdiction under Section 561-A Cr.P.C. read with the relevant provisions of law.

5. Conversely, learned counsel appearing for respondent No.4 opposed the application and submitted that the impugned order was passed by the learned Ex-Officio Justice of Peace after proper consideration of the facts and material placed on record, as Respondent No.4 had specifically alleged that the applicants, in collusion with each other, induced him and his brother-in-law to invest substantial amounts in their business, namely Gagai Fabrics International, on the promise of monthly profits, but subsequently defaulted on their commitments and refused to return the invested amounts. He submitted that, despite

repeated demands for repayment, the proposed accused issued several cheques, which were dishonoured upon presentation, thereby necessitating legal action against them. He further argued that the allegations were supported by documentary material, including the investment agreement, details of the amounts transferred through cheques, and the dishonoured cheques, which prima facie warranted an investigation by the police. He maintained that the previous registration of FIR No.361/2025 against Sajid Gagai further demonstrated that the allegations required proper investigation and could not be brushed aside merely by characterizing the dispute as civil in nature. He further contended that the earlier proceedings referred to by learned counsel for the applicants did not preclude Respondent No.4 from approaching the competent forum on the basis of the allegations and material placed before it, nor did the impugned order amount to a review of any previous finding. He submitted that, at the stage of an application under Section 22-A(6), Cr.P.C., the learned Ex-Officio Justice of Peace was only required to examine whether the information disclosed a cognizable offence and, accordingly, direct the police to record the complainant's statement under Section 154, Cr.P.C. and proceed in accordance with law. He emphasized that the impugned order did not determine the guilt of the applicants but merely directed the police to assess the allegations in accordance with law and register an FIR if a cognizable offence was disclosed. Lastly, he contended that the applicants had failed to demonstrate any illegality, material irregularity, or abuse of process warranting interference by this Court under Section 561-A, Cr.P.C., and prayed that the instant application be dismissed and the impugned order be maintained.

6. On the other hand, learned A.P.G. Sindh for the State fully supports the impugned order, adopts the arguments advanced by learned counsel for Respondent No.4, and opposes the instant application.

7. I have heard the learned counsel for the applicants, learned counsel for respondent No.4, and learned A.P.G. Sindh for the State, and have carefully examined the material available on record.

8. The principal question requiring determination is whether the impugned order passed by the learned Ex-Officio Justice of Peace suffers

from any illegality, material irregularity, or jurisdictional defect warranting interference by this Court in exercise of its inherent jurisdiction under Section 561-A, Cr.P.C. The applicants have primarily challenged the impugned order on the grounds that the dispute is civil in nature, that the same allegations were previously considered in Application No.3794 of 2024, and that the alleged dishonour of cheques, without proof of an underlying legally enforceable liability, does not constitute an offence under Section 489-F, PPC. However, these contentions, at this stage, do not by themselves establish that the impugned order is unsustainable in law.

9. Perusal of the allegations advanced by respondent No.4 reveals that he has specifically alleged that substantial amounts were invested in the business of the proposed accused upon the assurance of monthly profits, that the invested amounts were not returned despite repeated demands, and that several cheques allegedly issued towards repayment were dishonoured. He has also referred to an investment agreement and other documentary material in support of his allegations. Whether the alleged transactions were genuine business dealings, whether any legally enforceable liability existed, whether the ingredients of Section 489-F, PPC, are attracted, and whether the proposed accused acted with any dishonest intention are matters that require examination in the light of the available evidence. At this preliminary stage, such disputed questions cannot appropriately be determined through a conclusive assessment of the merits of the allegations.

10. The contention that the dispute is purely civil in nature is also not sufficient, by itself, to exclude the possibility of criminal liability. A transaction may give rise to civil consequences and, depending upon the facts and the evidence, may also disclose the commission of a criminal offence. The mere existence of an investment agreement or a financial dispute does not automatically establish criminality; conversely, the availability of a civil remedy does not, in itself, bar criminal proceedings where the information discloses a cognizable offence. The allegations of inducement, non-repayment, and dishonoured cheques, therefore, require

consideration by the competent investigating agency in accordance with law, without presuming the guilt of the proposed accused.

11. As regards the applicants' objection concerning the previous proceedings in Application No.3794 of 2024, the mere assertion that an earlier application was decided on similar allegations does not, without examination of the relevant order and the precise nature of the proceedings, establish that the learned Ex-Officio Justice of Peace was legally precluded from passing the impugned order. The applicants have not demonstrated, on the basis of the material presently under consideration, that the impugned order necessarily amounts to an impermissible review of an earlier judicial determination. This contention, therefore, does not furnish sufficient ground for interference in the present proceedings.

12. It is a settled principle that the jurisdiction exercised by an Ex-Officio Justice of Peace under Section 22-A(6), Cr.P.C., is not intended to determine the guilt or innocence of the proposed accused or to conduct a detailed trial-like examination of the allegations. The relevant consideration is whether the information brought before the Court warrants a direction to the police to proceed in accordance with law. In the present case, the learned Court below directed the concerned police to record the statement of the complainant under Section 154, Cr.P.C. and, if a cognizable offence was disclosed, to register an FIR and proceed with the investigation in accordance with law. Thus, the impugned order, as described in the record, does not direct the registration of an FIR unconditionally, irrespective of the nature of the allegations; rather, it requires the police to act subject to the disclosure of a cognizable offence, whereas the principal allegations narrated by respondent No.4 concern financial transactions and dishonoured cheques, does merit attention. Nevertheless, the precise nature of the offence, if any, disclosed by the complaint must be assessed on the basis of the actual allegations and material placed before the police. Any discrepancy in the description of the alleged offence does not, by itself, justify setting aside the impugned order where the operative direction requires the police to proceed in accordance with law and register an FIR only if a cognizable offence is

disclosed. The police remain under an obligation to assess the complaint objectively and cannot treat the observation of the learned Ex-Officio Justice of Peace as a conclusive determination of the offence or the guilt of any person.

13. It is also pertinent to observe that the impugned order does not determine the civil rights or liabilities of the parties, nor does it establish the criminal culpability of the proposed accused. Any investigation undertaken pursuant thereto must remain impartial, and the investigating agency shall consider the available documentary evidence, the nature of the alleged transactions, and the applicable legal provisions without being influenced by any observation that may be construed as a finding on the merits of the case. The applicants shall remain at liberty to avail themselves of any remedy available under the law, should the circumstances so warrant.

14. In view of the foregoing discussion, I am of the considered opinion that the applicants have failed to make out a case for interference with the impugned order in exercise of the inherent jurisdiction of this Court under Section 561-A, Cr.P.C. Consequently, the instant Criminal Miscellaneous Application is dismissed. The impugned order dated 29.09.2025 is maintained.

15. The SHO, Police Station Gizri, is directed to act strictly in accordance with Section 154, Cr.P.C. upon the information furnished by respondent No.4 and, if the information discloses commission of a cognizable offence, to register the FIR and conduct investigation strictly in accordance with law. The investigation shall be carried out independently and impartially and shall not be influenced by any observation made in this order or in the impugned order. Nothing contained herein shall be construed as an expression of opinion on the guilt or innocence of the applicant.

16. The instant criminal miscellaneous application stands disposed of accordingly.

JUDGE