

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

**Cr. Misc. Application No.S-210 of 2017**

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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*Date of Hearing* : 20.02.2018.

*Date of Order* : 20.02.2018.

**Mr. Jagdish R. Mullani, Advocate for applicant.**

**Mr. Shahid Ahmed Sheikh, Dy. Prosecutor General.**

**ORDER**

**AGHA FAISAL, J:** The subject criminal miscellaneous application has been preferred against the order of the learned Additional District Judge-II, Jamshoro at Kotri dated 20.07.2017 (hereinafter referred to as the "Impugned Order"), the contents whereof are reproduced herein below:

*" The instant criminal revision application u/s. 435 & 439 Cr.P.C has been filed by the above named applicant against the order dated 05.06.2017 passed by learned Civil Judge & Judicial Magistrate-II Sehwan in Criminal Case No.167/2016 Re-the State Vs. Ayoub Memon and others whereby he dismissed the application of complainant to stay the proceedings of criminal case till final decision of civil litigation.*

*The learned counsel for the applicant was directed to satisfy this Court on the point of maintainability of this criminal revision application.*

*I have heard the learned counsel for the applicant, who argued that learned Trial Court has failed to consider the material aspect of the case while passing the impugned order that the complainant has moved the application bonafidely, based on genuine cause and reasons for staying/keeping the matter on dormant file till decision of the civil litigation; that learned Trial Court has also failed to consider that application had been moved as per dictum held by the Apex Courts; that the Trial Court has also failed to consider that if both the matters proceeded together there is likelihood of conflicting judgments; that learned Trial Court has not assigned any cogent reason while passing the impugned order, hence prayed for setting aside the*

*impugned order and allowing of this application. He relied upon the case laws reported in 1969 P.Cr.L.J 411 Supreme Court, 1983 P.Cr.L.J 1341 (Lahore), PLD 1968 SC 281.*

*I have considered the submission of learned counsel and perused the material available on the record.*

*On 16.06.2016 the complainant Muhammad Anwar got lodged FIR at P.S Sehwan u/s. 506/2, 447, 34 PPC alleged therein that he owned residential plot, area 1290 Sq.Ft. which is being looked after by Asif Qureshi. On 05.06.2016 Asif Qureshi informed the complainant that Ayoub Memon and Anwar Memon resident of Muhalla Ghulam Rasool came at the plot with weapons and trespassed. The complainant accompanied Asif Qureshi and Muhammad Khan went to place of wardat where found the above accused. The complainant asked the accused Anwar Memon and Ayoub Memon that the plot belonged to complainant but they issued threats of murder to him, hence complainant returned back move applications, hence this FIR.*

*After usual investigation the case was challaned and pending before the court of learned Civil Judge & Judicial Magistrate-II Sehwan.*

*During pendency of the criminal case the present applicant moved application without section before the Court of learned Civil Judge & Judicial Magistrate-II, Sehwan, prayed therein to stay/dormant the criminal proceedings till decision of civil litigation.*

*The version as set forth in the FIR is different to that of civil litigation pending among the parties. Criminal proceedings are not bared in presence of civil proceedings and both civil and criminal proceedings can be carried out simultaneously. There is no invariable rule exists to the fact that pending decision of the civil suit, criminal proceedings regarding the same subject must be stayed.*

*The learned Trial Court has passed a judicial order with well reasons and learned counsel for the applicant failed to point out any illegality or irregularity committed by the learned Trial Court. The learned Trial Court while passing impugned order has given reasons alongwith the case laws.*

*Both the proceedings viz. criminal and civil are different, hence there is no logic to stay the criminal proceedings during the pendency of civil suit.*

*By way of criminal proceedings a wrong doer is to be punished for the crime while through civil litigation a civil right of an aggrieved person usurped by the wrongdoer is protected.*

*The order passed by the learned trial Court is speaking, well reasoned and is within four corners of law hence call for no interference.*

*In view of the above discussion, the instant criminal revision application merits no consideration, which stands dismissed. With due respect and regards to the case laws cited by learned Counsel for applicant, it is stated that same are distinguished with the facts and circumstances of the case in hand”*

2. Brief facts of the present case are as follows:-

- (i) An FIR was registered in respect of an alleged trespass to the property / residential plot admeasuring 1290 Sq,Ft, situated in Qazi Ghulam Rasool Muhalla Sehwan (hereinafter referred to as the “Subject Property”), being FIR No.85 of 2016 under Sections 506(2), 447, 34 PPC at Police Station, Sehwan on 16.06.2016 by the applicant against the respondents.
- (ii) Subsequent to the registration of the aforesaid FIR the applicant instituted a civil suit in respect of the Subject Property in the Court of Civil Judge & Judicial Magistrate-II, Sehwan District Jamshoro in July 2017.
- (iii) The aforesaid FIR culminated in Criminal Case No.167 of 2016, which is being proceeded by the Court of learned Civil Judge & Judicial Magistrate-II, Sehwan (hereinafter referred to as the “Trial Court”).
- (iv) The applicant moved an application before the Trial Court and prayed as follows:

*“It is prayed on behalf of the complainant that this Honourable Court may be pleased to stay/dormant of above criminal proceedings pending before this Honourable Court as our Apex Court held that the criminal proceeding be stopped till decision of civil litigation connected with the same subject matter.*

*Therefore, this Honourable Court may be pleased to stay/dormant the above case till decision of civil litigation which is pending in*

*the court of Senior Civil Judge, Sehwan Re-Muhammad Anwar Qureshi V/s. Province of Sindh.”*

- (v) The learned Trial Court was pleased to *inter alia* dismiss the said application vide its order dated 05.06.2017, the content of which is reproduced herein below:-

*“By this order I would like to dispose of the Criminal Misc. Application for stay/dormant filed by the complainant Muhammad Anwar through his counsel and application under Section 249-A Cr.P.C filed by learned counsel on behalf of accused in above mentioned case and crime.*

*Brief facts of the case are that complainant is zamindar an he owns a residential plot admeasuring 1290 square feet situated in Qazi Ghulam Rasool Mohalla, Sehwan, which plot is of Ex.Chief Justice Abdul Haee Qureshi and complainant is legal heir and one Asif Qureshi used to look after the said plot. On 05.04.2016, Asif Qureshi informed complainant that accused Ayoob Memon and Anwar Hussain occupied the said plot and some persons duly armed with weapons are available there. On such information complainant reached at Sehwan and went at place of incident at about 06:00 p.m with Asif Qureshi and Muhammad Khan, where complainant party saw that above named accused with two unknown accused duly armed with weapons were available there. Complainant stated to accused Anwar and Ayoub that said plot belongs to him, on which above named accused become annoyed and pointed their weapons upon complainant party and issued deadly threats. Accused further directed complainant that if again he claimed the plot he would be murdered. Complainant party due to fear of weapons returned back and complainant moved such application before high officials and thereafter lodged instant FIR.*

*Notice to other sides were extended.*

*Learned counsel for the complainant contended that court may be pleased to stay/dormant of criminal proceedings be stopped till decision of civil litigation.*

*On the other hand learned counsel for accused argued that accused may be acquitted that prosecution failed to produce evidence since last number of hearings.*

*Heard the learned counsel for state, learned private counsel for complainant, learned counsel for the accused and have gone through the record minutely.*

*First of all at this stage it is very important to determine the question that whether the criminal proceedings may be stopped till the decision of civil litigation and whether the non appearance of appearance of prosecution witness is valid ground for making charge groundless and entitling the accused for his acquittal u/s 249-A Cr.P.C.*

*As far as the contention of learned counsel for complainant that criminal proceedings may be stopped till decision of civil litigation. It is settled principle that criminal and civil proceedings with regard to same event had different connotation. By way of criminal proceedings a wrongdoer is to be punished for the crime, through civil litigation a civil right of an aggrieved person usurped by the wrongdoer. Further it is held by Apex Court in the case law YLR 732 that:*

*“No legal bar existed on institution of two parallel proceedings against the same person and no hard and fast rule existed for stay of criminal proceedings till the decision of civil suit. Both could be proceeded separately.”*

*Another reliance is placed (NLR 2002 Cr.L.J 198) Muneer Ahmed Versus Province of Punjab (Lahore):*

*“There is no universal principle that, proceedings in a criminal case must necessarily be stopped when a similar or identical matter is pending before a civil court”*

*Furthermore, it was held by the Supreme Court in PLD 2010 SC 642 that, “Law is a living organ and it is duty of the court to adopt realistic and pragmatic approach for its application, looking for the peculiar facts and circumstances of the each case”.*

*As far as the contention of learned counsel for accused that accused may be acquitted u/s 249-A Cr.P.C, on the ground that prosecution has failed to produce their witnesses given last number of dates. No doubt recording evidence is not a mandatory requirement for an acquittal u/s. 249-A Cr.P.C, but in such like situation it is upon the accused to point out and show the discrepancies or infirmities in the prosecution case in order to satisfy the court that he is entitled for an acquittal u/s 249-A Cr.P.C, in the manner he prays. Order of acquittal itself is a judicial order which decides the fate of criminal case against*

*an accused person, hence, the same is required to be passed after applying judicial mind and should be based upon sound reason in accordance with the relevant provision of law. Language of section 249-A Cr.P.C., itself very much reflex that the acquittal on ground of non appearance of prosecution witness is not covered by the provision of section 249-A Cr.P.C.*

*Further, it was held in 2000 MLD 220 that, “an order of acquittal u/s 249-A Cr.P.C., passed on the ground of non appearance of prosecution witnesses was set aside with observations that the order of acquittal is passed in a mechanical fashion, without independent application of mind to the fact of the case, which is declared as nullity in the eyes of law and the same is passed in violation of the law.*

*Moreover, in 2005 SCMR 1544, the Honourable Supreme Court of Pakistan has made the following observations:*

*“Usually criminal case should be allowed to be dispose of on merits after recording of the prosecution evidence, statement of accused u/s 342 Cr.P.C., recording of statement of accused u/s. 342(2) Cr.P.C., if so desired by the accused persons and hearing the arguments of the counsel of the parties and the provision of section 249-A Cr.P.C., section 265-K Cr.P.C., and section 561-A Cr.P.C., should not normally be passed into action for decision of facts of criminal case.*

*In view of the facts and reasons, discussed above, the application under Section 249-A Cr.P.C, filed by the accused and stay application filed by the complainant that criminal proceedings may be stopped till decision of civil case is hereby dismissed being meritless. The learned I/C ADPP is required to produce its all un-examined witnesses before the court on date of hearing i.e. 11.07.2017, without fail. Office is directed to provide the copy of this order to learned I/C ADPP for compliance.”*

- (vi) The said order was assailed by the applicant before the learned Additional District Judge-II Jamshoro at Kotri and the dismissal of the said revision was undertaken vide the Impugned Order, which gave rise to the present matter.

3. It is pertinent to record that the controversy before this Court pertained exclusively to the dismissal of the application for staying the criminal proceedings, pending adjudication of the civil dispute.

4. It was contended by the learned Counsel for the applicant that since the both the civil and criminal disputes are in respect of the Subject Property, therefore, the proceedings in the criminal matter should have been stayed by the Court/s.

5. The learned Counsel for the applicant relied upon the case of *AKHLAQ HUSSAIN KAYANI V/S. ZAFAR IQBAL KIYANI & OTHERS*, reported as 2010 SCMR 1835 and drew the Court's attention to the following passage:

*"7. Although civil liability is independent of the criminal liability and no invariable rule exists to the effect that pending decision of a civil suit criminal proceedings must be stayed as it is purely a matter of discretion yet, while exercising the discretion, the guiding principle should be to see as to whether the accused is likely to be prejudiced if the criminal proceedings are not stayed but when it is clear that the criminal liability is dependent on the outcome of civil litigation, then criminal liability is dependent on the outcome of civil litigation, then criminal proceedings must be stayed, particularly when dispute is with regard to title of the property. The case of Muhammad Akbar v. The State and others (PLD 1968 SC 281) is an apt example to the proposition in hand wherein, in somewhat identical situation, proceedings in the criminal case were stayed. In that case proceedings were initiated for the alleged forcible and dishonest taking away of a motor bus by Iqbal-ur-Rahman and 40 other person of whom 16 were named in the First Information Report. After submission of challan accused persons were proceeded against. The accused persons moved the High Court for quashment of proceedings which was though refused yet, the proceedings were stayed till the time final decree in the civil suit between substantially the same principal parties, for the dissolution of a partnership and rendition of accounts, was passed. Leave to appeal was granted to consider as to whether in view of the facts and circumstances of the case the learned Judge acted legally in staying further proceedings in the criminal case? While dismissing the appeal it was held that normally criminal proceedings should not be postponed pending decision of the civil litigation connected with the*

*same subject-matter but where it is clear that the criminal liability is dependent on the result of the civil litigation or is so intimately connected with it that there is a danger of grave justice being done in the case, if there is a conflict of decision between the civil court and the criminal court then in such event it is equally clear that the criminal court has not only the right to but should also stay its hands of until the civil litigation is disposed of, for it is not desirable that when the title to the property itself is in dispute, the criminal courts should give a finding in respect of the same question. The above decision was latter followed in a number of cases, including the following:*

- (1) *Abdul Ahad v. Amjad Ali and others (PLD 2006 SC 771)*
- (2) *Sheraz Ahmad and others v. Fayyaz-ud-Din and others (2005 SCMR 1599)*
- (3) *Riaz-ul-Haq v. Muhammad Ashiq Jorah and others (2000 SCRM 991)*
- (4) *A. Habib Ahmad v. M.K.G. Scott Christian and others (PLD 1992 SC 353)*
- (5) *Abdul Haleem v. The State and others (1982 SCMR 988)*
- (6) *Muhammad Tufail v. The State and another (1979 SCRM 437)*

*From the perusal of the relief claimed in the civil suit, it is clear that complainant has himself sought a declaration from the civil court that transfer letter in question dated 8.3.1997 was bogus, forged and fictitious and was ineffective against his rights and as an alternate relief it was also prayed that a decree to the extent of his share in the sale proceeds of the car in question may also be passed. Since eligibility of the complainant to file the complaint itself is dependent upon the outcome of the civil suit, therefore, in our view, it was better for the High Court to have stayed the proceedings in the criminal case till the decision of the civil suit instead of quashing the F.I.R. Resultantly, this petition is converted into appeal and partly allowed to the extent that the impugned order dated 28.9.2007 to the extent of quashment of F.I.R. is set aside, however, proceedings in the criminal case are stayed till the decision of the civil suit.”*

6. It was thus the contention of the learned Counsel for the applicant that the Impugned Order was contrary to the principles of law and against the interests of justice.



7. The learned D.P.G drew the attention of this Court to the text of the application for stay filed by the applicant before the learned Trial Court, contents whereof have been reproduced supra, and stated that mere pendency of civil litigation is no ground for staying the proceedings of a criminal case.

8. The learned D.P.G further stated that criminal liability is independent of civil obligations and that the burden of proof as well as consequences in each are at variance to one another.

9. The learned D.P.G stated that it is apparent from the record that a civil suit has been filed in respect of the title to / share in the Subject Property, despite the fact that not a single document of title has been annexed to the said plaint by the applicant and nor any such title document has been referred therein.

10. The learned D.P.G placed before this Court a statement dated 22.12.2017, wherein it was demonstrated that all the material witnesses had been examined in the criminal proceedings and the side of the prosecution had been closed.

11. It was conceded by the learned D.P.G that this Court did in fact have the discretion to intervene in the matter, however, that such discretion was required to be exercised judiciously and not in a mechanical manner.

12. The Court has carefully considered the submissions of the learned Counsel and seeks to consider the binding and persuasive pronouncements of the superior Courts in this regard.

13. A recent reported judgment in regard hereof is the case of *MUHAMMAD ASLAM V/S. THE STATE & OTHERS*, reported as 2017 SCMR 390, wherein the august Supreme Court of Pakistan has held as follows:

*“6. We note that the subject matter of the civil suit mentioned above and the subject matter of the present criminal case are quite distinct inasmuch as the civil suit pertains to an authority or otherwise of the educational institution to amend its rules and to continued application of the original scholarship rules to the respondent’s son or not whereas the present criminal case is about dishonest issuance of a cheque and its dishonouring and regarding criminal liability of respondent No.2 in that regard. The law is settled that there is no universal principle that whenever a civil suit and a criminal case involve similar or identical subject matters the proceedings before the criminal court must necessarily be stayed and a reference in this respect may be made to the cases of Syed Mohammad Ahmad v. The State (1972 SCMR 85), Muhammad Akbar v. The State and another (PLD 1968 SC 281), Soofi Muhammad Anwar v. Mst. Badshah Begum and 6 others (1999 SCMR 1475), M. Aslam Zaheer v. Ch. Shah Muhammad and another (2003 SCMR 1691), Rafique Bib v. Muhammad Sharif and others (2006 SCMR 512), Haji Sardar Khalid Saleem v. Muhammad Ashraf and others (2006 SCMR 1192), Abdul Ahad v. Amjad Ali and others (PLD 2006 SC 771) and Seema Fareed and others v. The State and another (2008 SCMR 839).*

*7. It may not be out of place to mention here that it had never been prayed by respondent No.2 before any court below that the proceedings before the criminal court may be stayed during the pendency of the civil suit and the High Court had granted that relief to respondent No.2 without the same ever having been formally prayed for. In the circumstances of the case noted above we have found the relief granted by the High Court to respondent No.2 to be hardly called for on the factual or legal planes. This appeal is, therefore, allowed and the impugned judgment passed by the High Court on 15.01.2015 is set aside.”*

14. Another reported judgment of the august Supreme Court of Pakistan is in the case of *SEEMA FAREED V. STATE*, reported in 2008 SCMR 839, the relevant portion thereof is reproduced herein below:

*“It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same*

*transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction.”*

15. The aforesaid judgment was also relied upon by a divisional bench of this Court in the case of *MESSRS TRUST INVESTMENT BANK LTD. through Authorized Officer V/S. GOVERNMENT OF SINDH through Secretary Home & 03 others*, reported as 2016 MLD 278.

16. The case of *GULAN V/S. THE STATE & 02 OTHERS*, reported as 2015 YLR 190, has also expounded upon the issue and it was stipulated as follows:

*“6. The controversy in issue in this case is whether pendency of civil proceedings may be a ground to stay the criminal proceedings, as the law on the subject has now been set at rest by the honourable Apex Court in the case of Haji Sardar Khalid Saleem v. Muhammad Ashraf and others (2006 SCMR 1192), wherein on the strength of cases reported as PLD 1985 SC 134 AND 1993 SCMR 2177 ruled that criminal proceedings are not barred in presence of civil proceedings and that civil and criminal proceedings can be proceeded simultaneously”.*

17. This Court has also opined upon this matter in the case of *MUHAMMAD JUNAID PASHA V/S. FAISAL SALEEM & 02 OTHERS*, reported as 2014 CLD 1646, the relevant portion whereof is reproduced herein below:

*“34. As far as the pendency of two criminal cases i.e. Criminal Case No.2893 of 2008 under section 489-F, P.P.C. against defendant Nos.1 and 2 in the Court of 1st Judicial Magistrate (South), Karachi and Criminal Case No.4075 of 2008 also under section 489-F, P.P.C. against defendant No.1 in the Court of Judicial Magistrate IV, Sought Karachi are concerned, it is suffice to say that a civil case cannot be halted to proceed on its merits merely because some criminal proceedings relating to the same transaction are*

*pending. Such pendency of cases, of course, was never considered a bar to maintainability of civil proceedings. No doubt, both the cases can proceed concurrently because conviction for 'criminal offence' is absolutely different matter as far as the civil liability is concerned. The spirit and purpose of criminal proceedings is to punish the offender for 'commission of crime' while the purpose behind the civil proceedings is to enforce civil rights. Both proceedings in law can co-exist and proceed simultaneously. Under circumstances, on this score as well as the suit as framed and filed by the plaintiff beside competent in law is quite maintainable.*

35. On this aspect of the matter reliance is placed on the case of *SEEMA FAREED AND OTHERS v. THE STATE AND ANOTHER* [2008 SCMR 839] wherein it was held as follows:--

*"4....It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction".*

36. Besides in the case of *MUHAMMAD SALEEM AND 2 OTHERS v. KHUDA BUX AND 4 OTHERS* [2003 MLD 266], it was held as follows:--

*"10. In the light of the dicta laid down by the Hon'ble Supreme Court, reproduced above, the standard of proof in civil and criminal cases is quite different. In a civil suit, the Court has to see only probability of truth whereas in criminal proceedings, the prosecution has to prove the alleged offence "beyond reasonable doubt" and if there is any doubt, the accused is entitled to its benefit not as the matter of grace or concession but as of right. Reference may also be made to the case of *Tariq Pervaiz v. The State* (1995 SCMR 1345). The agitated point raised by the learned Counsel for the applicant therefore, having no sanctity in the eyes of law".*

18. This Court shall now address the contentions of the learned Counsel for the applicant in seriatim:

- (i) The contention of the applicant that since both the civil and criminal disputes pertained to the Subject Property and hence the criminal proceedings be stayed, cannot be acquiesced in view of the case law stated supra, delineating that such a proposition is not sustainable in law.
- (ii) There is not a single cogent reason advanced, whereby it could be demonstrated that staying of the said criminal proceedings would have any benefit to the adjudication of the dispute or serve the interests of justice in any manner whatsoever.
- (iii) The case of *AKHLAQ HUSSAIN KAYANI V/S. ZAFAR IQBAL KIYANI & OTHERS*, reported as 2010 SCMR 1835, states that this Court does have discretion in such matters. However, such discretion has to be exercised judiciously and in the interest of justice.
- (iv) There has been no cause for this Court to consider that the exercise of such discretion in favour of the applicant would be in the interests of justice, hence the said judgment is distinguishable in the matter.
- (iii) It appears from the record that the criminal case is close to its conclusion as all the material witnesses have been examined and the prosecution side has already been closed. At this juncture, the staying of the said proceedings would be against the interests of justice.
- (iv) The civil suit appears to have been filed for determination of ownership rights in the Subject Property. Whereas the criminal proceedings relate to allegations of trespass and matters connected

therewith. It is the tentative view of this Court that whereas the civil proceedings agitate the issue of ownership, the criminal proceedings are restricted to the issue of occupation and hence the two are mutually exclusive.

19. In view of the foregoing and in pursuance of the judgments of the superior Courts referred supra, the present criminal miscellaneous application was found without merit and the same was dismissed vide the short order dated 20.02.2018, announced in the Court earlier today, the content whereof is reproduced as follows:

*“Heard both the learned Counsel at length and the Court is grateful for the assistance rendered. For the reasons to be recorded the subject criminal miscellaneous application and the listed applications are hereby dismissed”.*

20. These are the reasons for the short order, dated 20-02-2018, wherein the instant Criminal Miscellaneous Application was dismissed.

21. It is stipulated that the observations made herein are of a tentative nature and shall have no impact upon the determination of any dispute between the parties before any forum of appropriate jurisdiction in due consonance with the law.

**JUDGE**