

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-5961 of 2017

Before:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Irshad Ali Shah

M/s World Wide Traders Petitioner

Versus

M.Fahad Bhai and others Respondents

Date of hearing: 18.02.2020.

Date of Decision: 18.02.2020

Mr. Ghulam Mehdi, advocate for petitioner.

Private respondent in person.

Mr. Ali Haider Saleem, DPG.

Ms. Naushaba Haq Solangi, AAG.

ORDER

IRSHAD ALI SHAH, J:- The facts in brief necessary for disposal of instant petition are that the petitioner lodged an FIR bearing Crime No.1255 of 2010 under section 489-F PPC against the private respondents with Police Station Preedy Karachi, same on investigation was recommended by the police to be disposed of under “A” Class, which was cancelled by learned 3rd Civil Judge and Judicial Magistrate, Karachi South under “C” Class vide her order dated 09.05.2017, which is impugned by the petitioner before this Court by way of instant petition.

2. It is contended by learned counsel for the petitioner that the learned trial Magistrate has passed the order on the basis of presumption by touching the merits of the case, which could not be sustained on legal premises. By contending so, he sought for direction against the learned Trial Magistrate to take cognizance of the offence.

3. Learned DPG and AAG did not support the impugned order while the private respondent in person has sought for dismissal of the instant petition by contenting that the dispute on settlement of account the petitioner is attempting to settle by involving him in a false case.

4. We have considered the above arguments and perused the record.

5. There is line of demarcation between investigation and trial. On investigation one has to prove his case worth cognizance, while in trial one has to prove his case beyond shadow of doubt. In the instant case the cheques issued by the private respondent have been bounced by the bank for want of sufficient funds, which obviously is constituting a cognizable offence punishable under section 489-F PPC. In such eventuality, learned Trial Magistrate ought not to have concluded that the element of dishonesty is missing. Such finding obviously was calling for recording of evidence. In these circumstances, the impugned order is set aside with direction to learned Trial Magistrate to take cognizance of the offence and then to proceed with it in accordance with law.

6. The instant petition is disposed of accordingly.

JUDGE

JUDGE