

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Misc. A. No. S- 444 & 445 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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08.11.2021

Mian Taj Muhammad Keerio, Advocate for applicant
Mr. Haibat Khan Bhatti, Advocate for respondent No.3
Ms. Safa Hisbani, A.P.G.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through listed Cr. Misc. Applications, applicant Abdul Ghaffar has called in question the order dated 9.7.2021 passed by learned Additional Sessions Judge, Shahdadpur.

2. At the very outset, I asked the learned counsel for the applicant as to how he maintains the present Cr. Misc. Application on the premise that charge sheet in the crime No.65 of 2021 of Police Station Shahpur Chakar has already been submitted to the competent court of law, thus the purpose of filing the present application has been served.

3. Mian Taj Muhammad Keerio, learned counsel for applicant has argued that the impugned Order passed by learned Additional Sessions Judge, Shahdadpur is not sustainable in law and is liable to be set-aside; that in existence of agreement between respondent No.3 and applicant / proposed accused regarding purchase of land bearing Survey No.410, the respondent No.3 entered into an agreement with another person of Umrani community and the subject cheque was given to respondent No.3 for security purpose to fulfil the conditions and to give the payment; whereas after creation of third party there was no such kind of liability upon the applicant but respondent No.3 misused the cheque and obtained order of lodgment of FIR; that the cheque was issued as a guarantee and per case law reported in **2016 P.Cr.L.J 769** the security / surety / guarantee cheque is not a cheque for criminal liability therefore the order is not sustainable; that learned Additional Sessions Judge, committed illegality while allowing the application as he failed to understand that criminal litigation is not the remedy to recover the

sale consideration / recover money. He lastly prayed for allowing the instant application and setting aside the impugned Order.

4. Heard learned counsel for the Applicant on the maintainability of the instant criminal Miscellaneous Application and perused the material available on record.

5. I have noticed that respondent No.3 moved an application before learned Additional Sessions Judge, Shahdadpur for registration of FIR against the applicant. In the memo of application, respondent No.3 stated that there was/is a sale agreement between him and the applicant / proposed accused which was executed in April 2019, regarding agricultural land, total admeasuring agricultural land 08-03 acres, for a total sale consideration of Rs.21,900,000/-; out of which Rs.10,00,000/- is still outstanding against proposed accused, while proposed accused handed over one security cheque Nos. 10254788 & 10254789, of Rs.10,00,000/- (Ten Lacs) each to the applicant of Bank Al-Habib Shahpur Chakar Branch of his account, while the possession of said land was handed over to proposed accused; that on presentation the cheque was dishonored with the memo of insufficient funds; therefore, he approached the official respondents for lodgment of FIR but they refused, hence, he applied to learned Sessions Judge, Sanghar for registration of FIR which was forwarded to learned Additional Sessions Judge, Shahdadpur. Learned Additional Sessions Judge, Shahdadpur after hearing respondent No.3 ordered the SHO concerned on 9.7.2021 to record the statement of respondent No.3, and if from his statement a cognizable offense is made out register the FIR.

6. Before parting with this order it is observed that this court vide order dated 15.7.2021 suspended the operation of the impugned Order dated 9.7.2021 passed by the learned Additional Sessions Judge, Shahdadpur in Cr. Misc. Application No. 878 of 2021. However, the police of PS Shahdpur Chakar registered the Case without intimation to this court, therefore, SSP Sanghar is directed to look into the matter and take disciplinary action against the delinquent officials in accordance with law and report compliance through Additional Registrar of this court. However, this observation will not come in the way of learned trial court.

7. Since the charge sheet in the crime No.65 of 2021 of Police Station Shahpur Chakar has already been submitted to the competent court of law thus no fruitful result will come out in the present case; that the applicant has the remedy to call in question the proceedings pending before the competent court of law. Hence the instant Cr. Misc. Application is dismissed along with pending applications. Resultantly Cr. Misc. Application No. 445 of 2021 is also found to be meritless and is accordingly dismissed leaving the applicant to avail his remedy under law.

JUDGE