

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

Criminal Miscellaneous Application No.S-195 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For orders on office objection
For orders on M.A. 3065/2019
For hearing of main case
For hearing of M.A. 3066/2019
For orders on M.A. 6136/2019

03.12.2021

Mr. Zainuddin Baloch advocate for applicant.

Mr. Nazar Muhammad Memon, Addl.P.G Sindh.

Mr. Abdul Hafeez Solangi advocate for respondent No.3.

-.-.-

MUHAMMAD IQBAL KALHORO,J- Applicant is accused in FIR No.39/2019 registered at P.S Qasimabad Hyderabad u/s 489-F PPC by Mst. Muneer Begum disclosing that she had purchased a House No.C-311 from the accused against consideration of Rs.1,25,00,000/-, paid her Rs.60,00,000/- in cash. But subsequently the transaction was cancelled and she demanded back her money. Applicant paid her Rs.3,00,000/- in cash and issued a cheque of Rs.57,00,000/- for remaining amount paid to her in advance. On presentation the cheque was dishonored and when she demanded the money from applicant, she refused resulting in registration of the case against her.

I have heard learned defense counsel who has submitted that complainant has concealed a fact of her relation with the accused who was living in their house as daughter-in-law; and that she was with her husband who had easy access to all her documents including cheque book and which has been misused by the complainant. No evidence of any transaction was found in the investigation and even the signature on the cheque was found fake.

Learned Additional Prosecutor General Sindh has not supported the impugned order.

Learned counsel for respondent No.3 / complainant has submitted that there is evidence of sale agreement and iqarnama between parties; in the iqarnama applicant has admitted sale of house to respondent No.3 and issuance of cheque of Rs.5700000/- when the deal was cancelled and respondent No.3 demanded back her amount; PWs in their statements have fully supported version of complainant and factum of investigation. He lastly has supported the impugned order and stated that law requires decision of the disputes on merits rather than on technicalities.

I have considered submissions of parties and perused material available on record. The investigation report shows that applicant is daughter-in-law of the

complainant who had filed suit for dissolution of marriage on the ground of Khulla against her son on 01.01.2019 prior to filing of the FIR dated 15.02.2019 reporting an incident dated 08.02.2019. The complainant has not disclosed her relation with the applicant in FIR. Besides, no evidence of transaction of house as alleged by the complainant has been collected in the investigation. The alleged bungalow which applicant is shown to have sold to complainant even did not belong to her has been found in investigation. Her signature on cheque was also sent for expert opinion to Forensic Science Laboratory and the report has come in negative that the signature on the cheque is dissimilar to her signatures. These facts led the IO to dispose of the case under 'B' class. However, when he submitted the report, the learned Magistrate did not agree with him and took cognizance of the offence against the applicant which she has challenged by means of this application.

I have seen the impugned order. No reason rebutting the findings in the investigation report has been given by the learned Magistrate. His finding is influenced only by the fact of bouncing of the cheque. He has not however appreciated that simple dishonourment of the cheque is not an offence u/s 489-F PPC unless it is shown to have been issued dishonestly in repayment of loan or in fulfillment of some obligation. When there was no evidence of either transaction of sale of house as alleged by the complainant nor evidence of amount of Rs.60,00,000/- paid to the applicant by her; there was no question of returning the amount to the complainant by applicant through a cheque. Applicant was daughter-in-law of the complainant and was living with her before FIR. In such circumstances, complainant's having possession of a cheque leaf of the applicant is not unusual or abnormal. It is also important to note that the case was registered against applicant after she filed a suit for khulla against her husband the son of the complainant. The two documents viz. sale agreement and iqarnama bearing photographs of applicant, produced by the counsel for complainant today during hearing, appear to be managed ones and do not inspire confidence. For, sale agreement dated 13.10.2018 is in fact a proforma with blanks which have been filled and details mentioned. It bears a number as 504754; whereas iqarnama purportedly subsequently purchased on 07.11.2018 bears a number as 499818 which is earlier to the number mentioned on sale agreement dated 13.10.2018 purchased purportedly a month prior to it. Both the documents have been purchased from the same Notary Public and appear to have same handwriting and pen used. Learned counsel for complainant when confronted with such facts could not give any satisfactory reply.

After taking stock of all these facts and circumstances, I am of the view that the impugned order is not sustainable and is accordingly set aside. The report submitted by the IO is accepted and the case is disposed of as recommended by the IO.

JUDGE