

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D-3186 of 2021

Date _____ Order with signature(s) of Judge(s).

For orders as to maintainability of Petition.

15.06.2021

Mr. Ghulam Rasool Shaikh, Advocate for the Petitioner.
Mr. Ch. Muhammad Rafique, Addl. Advocate General, Sindh.
Mr. Abrar Ali Khichi, Addl. P.G.

The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, seeking that FIR No.92 of 2021 registered at P.S Malir Cantonment on 16.04.2021 under Section 489-F PPC (the “FIR”) at the behest of the Respondent No.5 be quashed.

On 26.05.2021, a question of maintainability had been raised while issuing notice, and when called upon to satisfy the Court in that regard today, learned counsel for the Petitioner invited attention to the pleadings and contended that a case for quashment of the FIR was made out as the same had been filed on false and baseless allegations, as a pressure tactic for the for the purpose of coercion and blackmail. He pointed out that Suit No.09 of 2021 had been filed by the Petitioner before the District and Sessions Judge Malir, wherein that Respondent had been arrayed as the Defendant No.1, with it being prayed that the Court be pleased to declare the Petitioner/Plaintiff as insolvent and also to declare the monetary demands of the Defendants as illegitimate as well as restrain them from seeking encashment of the cheques specified, including that now underpinning the FIR. He submitted that the cheque in question has been issued by way of security, hence was not due to have been presented for encashment and the Respondent No.5 had sought to convert what was essentially a civil dispute into a criminal matter with mala fide intent.

Having perused the pleadings and considered the arguments of counsel, we are of the view that the Petition is misconceived as the grounds advanced entail a determination on a factual plane, which cannot be undertaken in the constitutional domain. Needless to say, the mere fact that certain civil proceedings may have been instituted by the Petitioner does not preclude the filing of the FIR, as a criminal case can be registered on the same set of facts where, prima facie, the elements constituting a cognizable offence are present. Furthermore, as the challan has apparently been presented before the competent Court, if the Petitioner desires that the FIR be quashed, he may alternately seek such remedy through an appropriate Application under section 249-A Cr.P.C.

As such, the instant Petition stands dismissed, but with no order as to costs.

JUDGE

JUDGE