

IN THE HIGH COURT OF SINDH AT KARACHI

CR. MISC. APPLICATION NO.104/2022

Applicant : Nudrat Mand Khan,
through Mr. Aamir Mansoob Qureshi, advocate.

Respondent No.1: The state,
through Ms. Seema Zaidi, DPG.
Mr. Mohsin Abbas, AAG.

Respondent No.3.: Nadeem Arif
Through Mr. Ikhtiar Ali Channa advocate

Date of hearing : 14.03.2022.

Date of order : 17.03.2022.

ORDER

SALAHUDDIN PANHWAR, J. Through instant Cr. Misc. Application, the applicant has challenged the order dated 22.01.2022 passed by the Court of Civil Judge & Judicial Magistrate-XIV, Karachi (South) in Criminal Case No.4687 of 2021 whereby application under Section 249 Cr.PC filed by the Applicant was dismissed.

2. Precisely, relevant facts of the prosecution's case as per contents of FIR No.80/2020 lodged by Mr. Nadeem Arif [complainant] at P.S. Artillery Maidan, Karachi are that the FIR was lodged against the applicant/accused when allegedly the applicant/accused came to Karachi on 24.11.2019 and entered into a settlement agreement and issued cheques bearing No. A-22436690 dated 15.01.2020 amounting to Rs.500,000,000/- and No. A-22436691 dated 15.03.2020 amounting to Rs.495,000,000/- Meezan Bank Shaheen Complex Branch on 24.06.2020 but the same were returned due to insufficient

funds. Hence, the FIR was lodged against the applicant/accused. The investigation officer submitted the charge sheet No.65/2020 under Section 489-F r/w Section 512 Cr.PC against the applicant and placed the same in column No.2 with Red Ink via typewriter.

3. Learned counsel for the applicant has *inter-alia* contended that cheque in question was handed over by the accused Shahzad Nasim in the result of Settlement Agreement as security hence, ingredients of Section 489-F PPC are lacking in present case. He has emphasized over the settlement agreement dated 24.11.2019 which provides security clauses; that civil litigation is pending between the parties; by order dated 07.07.2020 passed by this court in Suit No. Nil of 2020 [Creek Marina Singapore PTE Ltd & Ors Vs. Siddiq sons Ltd. & Ors] this court passed direction '*no coercive action shall be taken, save in accordance with law*'. However, on same date in the night time at 1130 hours respondent No.3 lodged FIR; that it is settled principle of law that in case civil dispute is pending, criminal proceedings are to be stayed until controversy is resolved/adjudicated by the civil court. He has relied upon case laws reported in 1] 2010 YLR 2865 [Karachi] [Re. Muhammad Usman Farooqui Vs. The State], 2] 2005 SCMR 1599 [Supreme court of Pakistan] [Re. Sheraz Ahmed and Ors Vs. Fayyaz-ud-Din & Ors], 3] 2005 SCMR 1600 [Supreme Court of Pakistan] [Re. Ghulam Mujtaba Jatoi Vs. The State Thr. AAG Sindh Karachi], 4] 2010 SCMR 1835 [Supreme Court of Pakistan] [Re. Akhlaq Hussain Kayani Vs. Zafar Iqbal Kiyani & Ors], 5] 2017 SCMR 390 [Supreme Court of Pakistan] [Re. Muhammad Aslam Vs. The State & Ors], 6] 1982 SCMR 988 [Abdul Haleem Vs. The State & Ors], 7] PLD 1968 Supreme Court 281 [Re. Muhammad Akbar Vs. The State &

another] and 8] PLD 1992 Supreme Court 353 [Re. A. Habib Ahmed Vs. M.K.G Scott Christian & 5 Ors].

4. In contra, learned counsel for respondent No.3 has contended that it is settled law that civil and criminal proceedings shall be proceed side by side, hence, every criminal proceedings shall not be stayed where civil lis is pending. This case pertains to 489-F PPC which speaks that cheques issued with dishonest intention that is to be decided by the criminal court. The applicant has failed to file any contempt application in case FIR was registered in violation of order of this court. He has further contended that Magistrate is competent to stay the proceedings if complainant or witnesses are failed to lead their evidence, however, those powers cannot be exercised on the plea that civil litigation is pending. He has further contended that cheque in issue is not reflecting that same is as per the settlement agreement and that pertains to separate transaction, hence, trial court rightly dismissed the application.

5. Learned Deputy Prosecutor General Sindh supported the arguments of learned counsel for respondent No.3.

6. At the outset, it would be relevant to reproduce the respective paras of settlement agreement on which much emphasized was given by the counsel.

“3. Security:

3.1. As security for payment against the above mentioned USD Investment amount the Sponsors Through the Marketing Agent shall hand over allotment of apartments equivalent USD 5,000,000/-, which shall be no less than 78.292 Square Feet [round up to 24 three bedroom apartments]. Said allotment letters/allotment agreement shall be transferred into the name of the Investors [or their nominee] and kept in escrow with M/s. Habib Bank Limited within ten days of this agreement failing which the said documents shall be kept in escrow with M/s. MCB Bank Limited, within a further 30 days [escrow bank shall be referred to as the ‘the Bank’] and released to the Investors on 16th May, 2020 by the bank. Upon payment of the USD Investment within stipulated time, the

Bank shall return allotment letter to the Sponsor. Upon receipt of above payment by Investors the allotment shall get automatically cancelled.

3.2 As security for the PKR Investment the Sponsor shall hand over post-dated cheques, duly signed by Mr. Shehzad Nasim, for each of the two installments. Postdated cheques shall be handed over to the Investor within 2 days of execution of this agreement. Said postdated cheques shall be returned in the event that the Sponsor makes equivalent payment in any other manner.

4. General.

4.1. During this process and post completion of the Settlement Agreement, the Investors expressly and irrevocably undertake not to enjoin, Interfere, prevent or restrain the Sponsor by injunction or otherwise from proceeding with the Project, in any manner as the Company/Sponsor deems fit, for any reason whatsoever.

4.2. Time shall remain of the essence throughout the tenure of this agreement and the parties shall be bound to act strictly in accordance with the time lines mentioned herein and above.

4.3. The Investors undertake that 11[governing law and jurisdiction] of the Investor Agreement dated 16th June 2017 are deemed to be included by reference into this Settlement Agreement in the case of default or dispute.

7. Learned counsel for the applicant has emphasized that there is dispute with regard to hand over of 24 three bedrooms apartments and these apartments were handed over to respondent No.3 hence, the applicant is not liable to pay the amount whereas, learned counsel for respondent No.3 contends that clause 3.1 and 3.2 are independent items, apartments relates to the US Dollar given by the complainant and PKR amount for that postdated cheques were issued and dishonored.

8. I have perused the impugned order and interpretation of Settlement Agreement. Admittedly civil litigation is pending but this court has to examine whether proceedings can be stayed in respect of FIR under Section 489-F PPC

by exercising powers under Section 249, Cr.P.C. It would be conducive to refer Section 249 Cr.PC which reads as under:

“249. Power to stop proceedings when no complainant: In any case instituted otherwise than upon complaint, a Magistrate of the First Class, or with the previous sanction of the Sessions Judge, any other Magistrate may for reasons to be recorded by him, stop the proceedings at the stage without pronouncing any judgment either of acquittal or conviction; and may thereupon release the accused”.

9. Perusal of above reflects that it is manifest that scope of Section 249, Cr.P.C. is limited and the criminal proceedings can be stayed by the Magistrate only on the ground where prosecution fails to produce the Complainant but pendency of civil litigation cannot be considered a bar to the maintainability of the criminal proceedings. In recent Case of **Dr. Sikandar Ali Mohi-ud-Din v. Station House Officer and others (2021 SCMR 1486)**, it has been held by the Honourable Supreme Court: **“It is now settled that criminal as well as civil proceedings can go side by side if the same is spelled out on the basis of cogent foundation. It is admitted fact that the aforesaid crime report was lodged on the application of the appellant when the document in question was found forged and the same was based upon legal foundation. It would have been much better if the learned Single Bench directed the learned trial court to conclude the proceedings and decide the lis on the basis of evidence brought on the record, so that it might not prejudice the case of either of the party”.** In this case, the cheques were issued by the accused, which were dishonoured on presentation; thus, the criminal case is based upon legal foundation. The grounds raised by the learned counsel with regard to the clauses of the settlement agreement and liability of the accused can only be considered by the trial Court exhaustively and comprehensively after recording evidence. In Case of **Muhammad Usman S. Memon v. IVth Additional District and Sessions Judge, Hyderabad through Presiding Officer and 4**

others (PLD 2011 Karachi 624), it has been held by this Court that “*In my view therefore, the question of whether, as claimed by the complainant, the agreement to sell is a forgery and constitutes an offence, is a matter that the criminal court can consider and decide at the trial on, and disposal of the complaint. The civil suit will be decided on its own merits, and the criminal court need not stay its hand to await the outcome of the civil litigation*”. In Case of *Seema Fareed and others v. The State and another (2008 SCMR 839)*, it has been propounded by the Honourable Supreme Court that: “*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*”.

10. With regard to case laws as referred by learned counsel, I have perused the same.

1. Case of Muhammad Usman Farooqui¹ relates to Illegal Dispossession Act, wherein Illegal Dispossession Act complaint was dismissed; that order was assailed in Revision Application, same was allowed with direction to proceed with the complaint. Accordingly, respondents challenged that order before the apex court and apex court held that “The respondent is claiming to have purchased the ‘said plot’ from the applicant and has based his claim upon an Agreement of Sale and a possession letter allegedly signed by the applicant the veracity whereof can only be determined by the court of civil jurisdiction where the suit of the responded seeking specific performance of Sale Agreement is pending and the criminal court has no jurisdiction to determine the effect

¹ 2010 YLR 2864

of the said documents on the basis of police report. Even in the peculiar circumstances it would not be appropriate for the court of criminal jurisdiction to determine as to whether the possession of 'said plot' was handed over by the applicant to the respondent in consequences to sale agreement and possessing letter or otherwise, till the effect of the said document is decided by the court of civil jurisdiction. Furthermore, it cannot be ignored that the possession of the 'said plot' has been taken over by the court of civil jurisdiction precluding the court of criminal jurisdiction from directing restoration, therefore, it appears to be just and appropriate for the purpose of avoiding a conflicting decision that the effect of the disputed documents be determined first by the court of civil jurisdiction.

2. Case of Sheraz Ahmed². Case of the case were that accused persons were acquitted under Section 249-A Cr.PC on the ground that civil suit is pending. Accordingly, Leave to Appeal was granted and order of High Court was modified and criminal case was stayed until decision of civil court.

3. Case of Akhlaq Hussain Kayani³. It is held that no invariable rule exists to the effect that pending decision of a civil suit criminal proceedings must be stayed "Although civil liability is independent of the criminal liability and no invariable rule exists to the effect that pending decision of 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 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".

In present case criminal proceedings were stayed on the ratio that issue relates to the title of the properties and accused were arraigned under Section 414/418/420/465/466/467/468/471/474 PPC.

4. In the case of Muhammad Aslam⁴. It is held that the law is settled that there is no universal principle that whenever a civil suit and a criminal case involved similar and identical subject matters, the proceedings before the criminal court must necessarily be stayed.

5. In the case of Abdul Haleem⁵ dispute between the parties was over agriculture land hence, criminal complaint was stayed.

² 2005 SCMR 1599 [SC]

³ 2010 SCMR 1835 [Supreme Court of Pakistan]

⁴ 2017 SCMR 390 [Supreme Court of Pakistan]

⁵ 1982 SCMR 988.

6. In the case of Muhammad Akbar⁶ High Court while exercising jurisdiction under Section 561-A Cr.PC stayed the proceedings of criminal court due to pendency of civil case on the plea that criminal liability is depended upon the civil liability.

11. Perusal of above referred case laws shows that same pertain to different circumstances and issue was pertaining to illegal dispossession and criminal complaints with regard to properties wherein the title was to be decided by the Civil Courts; therefore, criminal proceedings were stayed on different fora hence, trial court has yet to examine at the trial whether cheques were issued by the accused with dishonest intention and trial court (Magistrate) has exercised its discretion by dismissing the application under Section 249, Cr.P.C., therefore, this court cannot interfere in the well-reasoned Order passed by the Magistrate impugned in this Cr. Misc. Application.

12. For the reasons set-forth here-in-above, this Criminal Misc. Application being devoid of merits is hereby dismissed accordingly.

J U D G E

M.Zeeshan

⁶ PLD 1968 Supreme Court 281.