

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 427 of 2023

Date	Order with signature of Judge
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Priority Cases

1. For order on M.A No. 7646/2023
2. For hearing of main case
3. For hearing of MA No. 7647/2023

20.11.2023

Mr. Waqar Alam Abbasi advocate for the applicant
Mr. Ilyas Khan Tanoli advocate for the respondent No.5
Mr. Talib Ali Memon APG

Through this Criminal Miscellaneous Application under Section 22-A Cr. P.C., the applicant Arshad Ali has assailed the legality of the order dated 22.06.2023 passed by the learned XI Additional District & Sessions Judge/ Ex. Officio Justice of Peace Karachi South in Criminal Miscellaneous Application No. 1666 of 2023 whereby direction to SHO concerned for registration of F.I.R against the Applicant. For convenience's sake, the relevant portion of the order dated 22.06.2023 is reproduced as under:-

“I have heard the learned counsel for the applicant, learned counsel for the proposed accused and carefully scanned the available record. It appears that learned counsel for proposed accused had denied any business relationship/transaction between the applicant and the proposed accused but he has not denied that the cheques in question are of the account of the proposed accused and bear the signature of the proposed accused and the same were bounced by the bank on presentation for encashment. It is also settled principle of law that enquiry as to the correctness or otherwise of information received by an officer Incharge of police station for the purpose of being reduced in writing as FIR is not permissible. Reliance may be placed on the reported case of Muhammad Bashir v Station House Officer, Okara Cantt and others (PLD 2007 SC 539)

6. Therefore, without assessing the correctness or correctness or otherwise of information and relying on the reported case of Muhammad Bahsir v SHO, Okara Cantt and others(PLD 2007 SC 539) the SHO P.S Mehmoodabad is directed to take the statement of the applicant on record and apply his independent, honest and fair mind, if cognizable offence is made out, then entry be effected in book under Section 155 Cr. P.C and its copy be placed before the concerned Magistrate for getting his appropriate orders. SHO concerned may also initiate criminal proceedings under Section 182 PPC against the applicant if complaint is proved false after investigation.”

2. Learned counsel for the applicant has submitted that respondent No.5 has lodged FIR No. 435 of 2023 under Section 489-F PPC at PS Mehmoodabad against the applicant and the subject cheque was dishonored before the aforesaid FIR, however respondent No.5 with malafide intention failed to show the subject cheque in the FIR and now again he intends to lodge second FIR of the same cheque which is not permissible under the law. He has further contended that there is a difference in signature in both the cheques one is in Urdu language and one is in English, which shows that the signature of the applicant has been

tempered. He has next contended that the impugned order is illegal and liable to be set aside on the premise that there is no outstanding amount against the applicant and the second FIR of the same incident cannot be lodged beside it is yet to be determined by the civil Court whether the signature of the cheque has been tempered by the respondent No.5 in connivance of the police or otherwise and it is for the civil Court to decide the issue of business transaction between the parties therefore the applicant cannot be saddled with criminal liabilities and direction to the police cannot be given for registration of the FIR. Learned counsel further submitted that the provision of section 489-F PPC cannot be used as a tool for recovery of the amount due in business dealing for which the civil remedy has been provided by law. He next submitted that if the cheques in which earlier FIR were lodged in a series meaning that at the time of lodging earlier FIR, the cheques of the present case were already available/dishonored as such no further FIR could be lodged. In support of his contention, he relied upon the case of Sheikh Rehan Ahmed v Judicial Magistrate II Karachi South **2019 MLD 636**. He prayed for allowing the instant Criminal Miscellaneous Application.

3. Learned counsel representing respondent No.5 has supported the impugned order dated 22.06.2023 passed by the learned Additional Sessions Judge XI Karachi South and argued that the correctness or otherwise the information needs to be looked into by the SHO as the cheque in question has been dishonored and prima facie offense under Section 489-F PPC has been made out. Learned counsel referred to Section 154 of Cr. P.C. argued that this is the statutory provision and registration of cognizable offense cannot be restricted however he agreed that the right to a fair hearing is the right of the parties under the law. In support of his contention he relied upon the cases of Suleman Shah v The State **2020 P Cr. L.J Note 154**, Fazal Khan v Additional Sessions Judge Barkhan Rakhni **2020 P Cr. LJ 442**, Malik Sohail Aslam v Superintendent of Police Lahore **2017 YLR 1548**, Muhammad Atif Saeed v Additional Sessions Judge Chishtian District Bhawalnagar **2021 P Cr. L.J 1372** and Dawood Abdul Ghafoor v Justice of Peace **2021 P Cr. L.J 1527**. He lastly prayed for dismissal of the instant Criminal Miscellaneous Application.

4. I have given due consideration to the submission made by the parties and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO concerned and order passed by learned XI Additional District & Sessions Judge/ Ex. Officio Justice of Peace.

5. The rationale beyond the conferring of powers upon the Justice of Peace was to enable the aggrieved person to approach the Court of Justice of Peace for the redressal of his grievances i.e. non-registration of FIRs, excess of Police, transfer of investigation to the Courts situated at district level or Session or at particular Sessions Division. The main purpose of section-22-A(6) Cr.PC., was to create a forum at the doorstep of the people for their convenience. Primarily, proceedings before the Justice of Peace are quasi-judicial and are not executive, administrative, or ministerial to deal with the matters mechanically rather the same are quasi-judicial powers in every case before him demand discretion and judicial observations and that is too after hearing the parties. It is, therefore, observed that the Justice of Peace before passing any order for the registration of the FIR shall put the other party on notice against whom the registration of FIR is asked for.

6. The grounds taken in the application under section 22-A Cr.PC appears to be reasonable that the learned counsel for the proposed accused had denied any business relationship/transaction between the applicant and Respondent No.5 but he has not denied that the cheques in question are of the account of the applicant and bear the signature of the applicant and the same were bounced by the bank on presentation for encashment. As it is settled law that even if there is no direction of the Court, the S.H.O. has no authority to refuse to record the statement of the complainant in the relevant register irrespective of its authenticity/correctness or falsity of such statement. In this context the Supreme Court in the case of Muhammad Bashir vs. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539) in para-25 and 26 have categorically held that S.H.O. has no authority to refuse to register FIR under any circumstances. He may refuse to investigate a case but he cannot refuse to record FIR.

7. The check against the lodging of false F.I.Rs was not the refusal to record such F.I.Rs, but the punishment of such informants under Section 182, P.P.C., etc. which should be, if enforced, a fair deterrent against misuse of the provisions of Section 154, Cr.P.C.

8. In my humble opinion, certain offenses as argued by learned counsel for the applicant have to be ascertained by the SHO concerned, however, he has to see whether respondent No.5 intends to lodge the proposed FIR under Section 489-F PPC against the applicant for a cheque which was earlier in his possession and an FIR had already been lodged and if he finds something fishy on the part of the complainant, he would take direct action under the law however, the aforesaid exercise shall be

undertaken within one week after providing the opportunity of hearing to the applicant and complainant.

9. This Criminal Miscellaneous Application is disposed of in the above terms. Consequently, the impugned order dated 22.06.2023 passed by the learned XI Additional District & Sessions Judge/ Ex. Officio Justice of Peace Karachi South in Criminal Miscellaneous Application No. 1666 of 2023 is maintained subject to the condition that if respondent No.5 succeeds in showing to SHO concerned a separate cognizable offense other than the offense already registered.

JUDGE