

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 648 of 2023

Date	Order with signature of Judge
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For hearing of main case

08.11.2023

Mr. Muhammad Afzal Roshan advocate for the applicant
Mr. Ayaz Muhammad Khoso advocate for the respondent No.4
Ms. Rahat Ehsan APG

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Muhammad Noman has assailed the legality of the order dated 06.09.2023 passed by the learned Vth Additional District & Sessions Judge /Ex Officio Justice of Peace (Malir Karachi in Criminal Petition No. 2354 of 2023. For convenience sake the relevant portion of order dated 06.09.2023 is reproduced as under:-

“Heard learned counsel for the petitioner and minutely examined the entire record available before me. The version of the petitioner is fully corroborated by the documentary evidence in shape of Agreement and Cheque along with dishonoring of memo of the Bank, therefore, I am of the firm view that the petitioner has succeeded to make out a prima facie case against the proposed accused. Therefore, SHO of PS Malir Cantt is directed to record the statement under section 154 Cr.P.C of the petitioner and register the FIR against the proposed accused With these observations, the application in hand is/disposed of accordingly.”

2. Brief facts of the case are that the respondent No.1 filed an application under Section 22-A & B Cr. P.C for registration of the FIR under Section 489-F PPC against the applicant and his two brothers Muhammad Usman and Muhammad Adnan on the facts and grounds mentioned in the said criminal petition; that the applicant issued a cheque No. 10614240 of Bank Al Habib Saadi Town Branch amounting to Rs. 3,800,000/- to the respondent No.4 which was dishonored.

3. The learned counsel for the applicant argued that the applicant issued a cheque No. 10614240 of Bank Al Habib Saadi Town Branch amounting to Rs. 3,800,000/- to the respondent No.4 which was purely a security/guarantee cheque on behalf of the applicant and it is a well settled principle of law that a cheque which is issued towards repayment of some outstanding loan or fulfilment possible future obligation therefore foundational elements of Section 489-F PPC are prima facie missing. He has further contended that the applicant in order to resolve the issue between the parties has filed a civil Suit No. 770/2023 in the Court of VI

Senior Civil Judge Malir, Karachi for declaration cancellation compensation and permanent injunction which is still pending for adjudication. He lastly prayed for allowing the Criminal Miscellaneous Application.

4. Mr. Ayaz Muhammad Khoso, learned counsel for the respondent No.4 has contended that the applicant issued a cheque No. 10614240 of Bank Al Habib Saadi Town Branch amounting to Rs. 3,800,000/- to the respondent No.4 which was dishonored. He has further contended that the respondent No.4 is fully supported in shape of agreement and cheque along with returning memo of the bank. He lastly prayed for dismissal of the Criminal Miscellaneous Application.

5. Ms. Rahat Ehsan APG assisted by Mr. Ayaz Muhammad Khoso advocate for respondent No.4 has contended that the trial Court has not made any illegality or irregularity in the impugned order, therefore she prayed for dismissal of the instant Criminal Miscellaneous Application.

6. I have given due consideration to the submission made and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO and learned IInd Additional District Judge Thatta. 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 fairly deterrent against misuse of the provisions of Section 154, Cr.P.C.

8. In view of the above facts and circumstances discussed supra coupled with the plea raised by the learned counsel for the applicant that no FIR could be registered under Section 489-F PPC when the purported cheques were issued for security purposes, suffice it to say that there will be no harm if the statement of the complainant is recorded by the concerned SHO under the law.

9. It appears to me that the order passed by the learned Justice of Peace seems to be reasonable and within the parameters of the law and does not fall for interference on my part.

10. This Criminal Miscellaneous Application is dismissed.

JUDGE

Zahid/*