

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No.737 of 2023

| Date | Order with signature of Judge |
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For hearing of main case

27.11.2023

Mr. Muhammad Arif Sheikh advocate for the applicant
Mr. Talib Memon, Assistant PG alongwith SIP Asif Ali of PS Sukkhan Karachi
Mr. Ghulam Asghar Jutt advocate for respondent No.3

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Messum Mehdi has assailed the legality of the order dated 15.05.2023 passed by the learned VIIth Additional Sessions Judge (Malir) Karachi in Criminal Petition No. 1035 of 2023 (*Ali Zain v SHO PS Sukkhan & others*) whereby, the SHO PS Sukkhan was directed to record the statement of the complainant under section 154 Cr. P.C., inter-alia on the ground that the applicant was not heard before passing the impugned order.

2. At the outset, inquired the learned counsel for the applicant to explain how the applicant's application filed under section 561-A, Cr.P.C. is competent and maintainable before this Court, against the impugned order passed by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C., whereby direction was issued to the police to record the statement of the complainant but he has not been able to satisfy this Court in that regard and insisted on the plea that the applicant has nothing to do with the business of the complainant as he has not borrowed the amount from the complainant only his cheques have been used, whereas on the one cheque F.I.R No 412/2023 under section 489-F PPC has already been registered, his only anxiety is that his other cheques are in the custody of the complainant and he can again use the same cheques to blackmail the applicant on the same analogy, therefore this court has already suspended the operation of the impugned order. He prayed for a direction to the complainant to return the remaining cheques and /or restrain the police not lodging further F.I.Rs of the same crime based on the remaining cheques, the learned counsel for the complainant has candidly agreed with the aforesaid proposal and sought disposal of the instant Criminal Miscellaneous Application on the same analogy.

3. It appears from the record that the application under sections 22-A & 22-B, Cr. P.C. was a private respondent alleging therein that the proposed accused had handed over to him cheques bearing Nos. 10741899

dated 25.04.2022, of account number PK73BAHL 102509810103410, for an amount of Rs.4,00,000/-, Cheque No.10741906, dated 15.05.2022, for an amount of Rs.7,00,000/-, and Cheque No.10741898, dated 15.04.2022 for an amount of Rs.4,00,000/- towards the fulfillment of the obligation of payment but when such cheques were presented before the concerned bank, the same were dishonored due to insufficient fund and payment stopped by the drawer. The private respondent prayed in the petition for directions to the SHO concerned for recording his statement under section 154 Cr. P.C; and lodgment of FIR against the proposed accused and directions to SHO concerned to provide life protection to him and his family members.

4. The law is quite settled by now that the jurisdiction of a High Court under section 561-A, Cr.P.C. can be exercised only in respect of orders or proceedings of a court and that the provisions of section 561-A, Cr.P.C. have no application viz executive or administrative orders or proceedings of any non-judicial forum or authority.

5. In the present case the police have powers under Sections 154 and 156, Cr. P.C., and a statutory right to investigate a cognizable offense without requiring the sanction of the Court. It is well settled law that if an investigation is launched malafide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding under the law.

6. Since the applicant's only anxiety is to give direction not to lodge further criminal cases based on the subject cheques as one F.I.R of the same incident has already been registered as discussed supra and the police has no intention to book the applicant on the remaining cheques. This Criminal Miscellaneous Application is disposed of with direction to the concerned SHO not to entertain the request of the complainant if he comes to lodge further F.I.R. based on the subject cheques as discussed in the preceding paragraph as one F.I.R. of the incident has already been lodged.

7. The Criminal Miscellaneous Application stands disposed of in the above terms.

JUDGE