

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit 673 of 2024

Date: Order with signature of the Judge

For hearing of CMA No.9486 of 2024

04.09.2024

Mr. M. Tariq Mansoor, advocate for the plaintiff
Mr. Shahzaib Akhtar Khan, advocate for the defendant
Mr. Ali Safdar Depar, Assistant Advocate General

This application *inter alia* seeks for a restraint to be placed upon registration of an FIR by the defendants. Even though the said application seeks multiple independent relief, however, the said issue is over looked for purposes of adjudication hereof.

On the very first date of hearing, interim orders were passed, restraining the defendants, private parties as well as public functionaries, from registering any FIR against the plaintiff in the material circumstances.

On the last date plaintiff's counsel sought time to file rejoinder and a fixed date was given. Today, the respective learned counsel are present and no rejoinder has been filed.

Learned counsel for defendant argued that the present application and the interim order passed *prima facie* militated against Sections 56 (d) and (e) of the Specific Relief Act and it is on the said count that the plaintiff's counsel was confronted at the very onset.

It is the plaintiff's case that due to commercial dealings of his father unmerited remedial actions are being perpetuated there against. It is submitted that documentation obtained there from in favour of the private defendants was done illegally and *perhaps under influence of hypnosis*. It was thus argued that nothing in pursuance thereof may be permitted; including without limitation criminal consequences.

Learned counsel for the defendant submitted that the primary dispute was with respect to unpaid supplies in respect whereof the plaintiff himself issued an affidavit and postdated cheques. It was demonstrated that the manifest volition of the plaintiff is seen from his signatures and thumb impressions upon the respective instruments. It was stated that subsequent thereto this suit was filed by the plaintiff in an illegal effort to resile from his legal commitments; and ad-interim orders were obtained by misleading the court. It was pointed out that the interim order records the contention that documentation was obtained from the plaintiff under coercion and duress in presence of police officials, however, such a plea was alien to the pleadings.

Heard and perused. The primary issue before this Court is whether proceedings in criminal matters could be stayed / restrained; in the presence of

Section 56(d)/(e) of the Specific Relief Act 1877 that specifically precludes such injunctive relief. It is imperative to denote that the plaintiff's counsel abjured any argument in such regard.

There is a right to initiate criminal proceedings bestowed upon the citizens and the law makes provision for the course to be followed once such proceedings have been initiated. While the law provides for success and failure of such proceedings, as well as the consequences thereof, this Court has not been assisted with any law that could denude a citizen of such rights.

*Digri Sugar*¹ has appreciated section 56(e) and while maintaining its sanctity observed that it's not absolute. Paragraph 13 thereof observes that the rule remains dependent on the facts and circumstances, coupled with the discretion of the court; which otherwise cannot be curtailed. In *pari materia* circumstances *Atif Shabbir*² maintained that no injunctive relief was merited.

The discretion of a court can never be unfettered and has to be exercised per settled judicial principles. The application seeks a restraint upon involvement in criminal cases. Any restraint placed upon involvement in criminal cases, in this context, would judicially presume that such cases are devoid of merit. This determination is for the court of competent criminal jurisdiction, post concluding appropriate proceedings, and under no circumstances within the remit of the civil court.

In the present facts and circumstances *Atif Shabbir* appears to be squarely applicable and no case is made out to dis-apply the mandate of section 56(e) of the Specific Relief Act 1877. Even otherwise, when subjected to the anvil of *prima facie* case, balance of convenience and irreparable harm, the scales do not favor the plaintiff.

In view hereof, this application is found to be misconceived and even otherwise devoid of merit, hence, dismissed.

Judge

Amjad

¹ *PLD 2020 Sindh 678.*

² *2023 CLC 100.*