

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr. Misc. Appln:No.S-284 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection
For hearing of main case
For hearing of MA-4292/2023

26.05.2023.

Mr. Muhammad Hassan Chandio advocate for applicant.
Mr. Ghulam Ali Talpur, advocate files power on behalf of
respondent No.3, taken on record.
Mr. Nazar Muhammad Memon, Addl.P.G.
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KHADIM HUSSAIN SOOMRO, J:- Through this Criminal Miscellaneous Application, the applicant has impugned the order dated 04.05.2023 passed by learned Illrd Additional Sessions Judge/Ex-officio, Justice of Peace, Hyderabad in Criminal Misc. Application being Cr.Misc.A.No.1581 of 2023 under Section 22-A(vi)(i) Cr.P.C, in which the directions have been issued for registration of FIR against the applicant.

2. Precisely facts of the case so narrated by the applicant Surichand/respondent No.3 in his application u/s 22-A-6(i) Cr.P.C are that the proposed accused/applicant Yasir Iqbal is a contractor by profession and they have had a good relationship with each other hence, in the month of March 2022 the proposed accused/applicant Yasir Iqbal requested him that he needs amount for business purpose therefore due to friendship the applicant Surichand/respondent No.3 gave him cash amount Rs.20,00,000/- in the presence of witnesses and at that time, the proposed accused/applicant Yasir Iqbal gave him Four cheques viz (1) No.D-00805782 amounting Rs.5,00,000/- (2) No.D-00805783 amounting Rs.5,00,000/- (3) No.D-00805784

amounting Rs.5,00,000/- (4) No.D-00805785 amounting Rs.5,00,000/- dated 15.11.2023, all cheques were drawn to Meezan Bank Ltd Nawabshah Branch. The proposed accused/applicant Yasir Iqbal also gave undertaking on non-judicial stamp paper No.2149 dated 13.01.2023 in presence of witnesses. After some time proposed accused/applicant Yasir Iqbal asked respondent no 3 to encash the aforesaid cheques, but when he deposited one cheque No.D-00805782 on 15.04.2023 amounting to Rs.5,00,000/- at his own account bearing No.12670078011554010 Bank Al-Habib Citizen Colony Branch Hyderabad same was returned with the memo of cheque on 17.04.2023 with the remarks of insufficient funds in the account of proposed accused/applicant Yasir.

3 The respondent No.3 filed Criminal Misc application being No.1581 of 2023 under section 22-A-6(i) Cr.P.C, which was allowed vide order dated 04.05.2023, which is impugned before this court.

4. The learned counsel for the applicant contended that there was a business transaction between the applicant and respondent No.3, and in lieu thereof, respondent no 3 issued a cheque in the amount of Rs.25,00,000.00 (twenty-five hundred thousand), which was dishonoured on its presentation; therefore, the applicant filed a Cr.Misc.A. being No.5477 of 2023, under Section 22-A(vi)(i) Cr.P.C, but the same was withdrawn by way of compromise dated 06.01.2023. Learned counsel further contended that the applicant had purchased flat No. 308 for a valuable consideration amount of Rs.50,00,000.00 (five hundred thousand), out of which Rs. 25,00,000.00 (twenty-five hundred thousand) adjusted being an amount of dishonouring of a cheque issued by respondent No.3 in favour of the applicant, as cited

above and for the rest of amount he has issued four postdated cheques bearing No.D.00805782 amounting Rs.5,00,000/- (2) No.D-00805783 amounting Rs.5,00,000/- (3) No.D-00805784 amounting Rs.5,00,000/- (4) No.D-00805785 amounting Rs.5,00,000/- dated 15.11.2023 of his account, out of which one cheque which is the subject matter of the present Criminal Misc application bearing No. D-00805782 dated 15.11.2023 an amount of Rs.5,00,000/ was dishonoured on its presentation. As per the learned counsel for the applicant, since respondent No.3 has refused to fulfil the remaining part promise and denied executing the registered sale deed of said flat in favour of the applicant; therefore, he is not under obligation to get the subject cheque encashed, and he lastly requests for setting aside of the impugned order.

5. The learned counsel for respondent No.3, as well as learned Addl.P.G submits that there was no transaction as alleged by the applicant, neither there is a written agreement about flat No.308 nor an oral agreement. Moreover, as per the contention of the applicant, the alleged agreement took place in January 2023; since then, no suit for the specific performance of the contract and the permanent injunction has been filed by the applicant against respondent No.3. The counsel for respondent No.3 contended that the Cr.Misc. Application being No. 5477 of 2023 filed by the applicant against respondent No.3, but that was dismissed as withdrawn on the basis of compromise, and the withdrawal order does not show the terms and condition as claimed by the applicant .

6. I have heard the counsel for the parties and examined the material available on the record.

7. It is admitted that there was no written agreement regarding the flat in question between the parties. As per the contention of the applicant's counsel, the promises and set of promises between the parties about the flat took place in the month of January 2023, but since then, no civil proceedings have been initiated by the applicant against respondent No. 3.

8. The applicant accepts the issuance of the cheque, signature over the same, its presentation in the concerned bank, and dishonouring due to insufficient balance. When the applicant issued the cheque in question, he was under obligation to arrange the amount in his account for its encashment, but the applicant failed to do so.

9. According to Section 13, of the Negotiable Instruments Act, 1881, Negotiable instrument".(I) A negotiable instrument means a promissory note, bill of exchange or cheque payable either, to order or to bearer. "a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand." Dishonouring of cheque in question, the presumption would be that the same was issued against some consideration as per 118(a) of the Negotiable Instrument Act 1881, unless the applicant rebuts it. In the present case, the applicant issued four cheques in favour of respondent No.3 out of which one was presented in the Bank and the same was dishonoured. The holder of a negotiable instrument is considered due course unless it is to be established by the applicant that the same is for illegal consideration. In the case in hand, the applicant admits that he has issued the cheques as a consideration amount of the flat in question; whether these cheques are for consideration of the flat or otherwise requires evidence.

10. Reverting to another submission made by the learned counsel for the applicant that the dispute between the applicant and respondent No.3 is purely civil in nature that does not create criminal liability; at the most, dishonouring the cheque does a civil wrong for which respondent No 3 has got the remedy to file a civil suit under order 37 rule 1 CPC for the recovery for an amount in question. No doubt, the dishonouring of a cheque creates civil wrong, but simultaneously, it is a criminal wrong. Therefore, both proceedings can be initiated concurrently. The aims and objects of criminal proceedings are to punish the criminal for an offence committed by them, while civil remedy is to recover the amount outstanding against defendants. Both proceedings have distinct features, natures and consequences. In this context reliance can be place In "Muhammad Khan v. Magistrate Section 30, Pindi Gheb, District Attock and 3 others" (PLD 2009 Lahore 401), the relevant Paragraph no 09 of the judgment reproduced as under :-

"Section 489-F, P.P.C. clearly lays down that whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation is liable to face the legal consequences on its being dishonoured. Issuance of a cheque towards repayment of a loan or fulfillment of an obligation is primarily a civil matter. Object of section 489-F, P.P.C. is not to affect recovery of the amount in question under the dishonoured cheque. This penal provision of law has been brought on the Statute Book in order to punish a person, who dishonestly issues a cheque with reference to his civil liability. Similarly, availability of an alternate remedy to the complainant is no ground to discharge the accused because the aggrieved complainant can invoke civil and criminal law simultaneously."

11. Since dishonouring the cheque creates a cognizable offence as defined in the third column of the second schedule of the Criminal Procedure Code, 1898; it requires registration of the FIR as per section 154; accordingly, the SHO concerned is hereby directed to record the statement of the respondent No.3 if the cognizable offence is made out

the same be incorporated in the book under section 154 CrPC, in case the information supplied by the respondent No 3 prove to be false then he shall be subject to the proceeding under section 182 PPC and the applicant shall not be arrested until unless there is incriminating evidence against him.

12. In light of the above facts and circumstances of the case the application merits no consideration being misconceived is dismissed along with the pending application .

JUDGE