

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

Criminal Revision Application No. 100 of 2022  
(Askari Bank Limited v Muhammad Farooq & another)

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<b>Date</b>	<b>Order with signature of Judge</b>
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Before:  
Mr. Justice Salahuddin Panhwar  
Mr. Justice Adnan-ul-Karim Memon

**Date of hearing:- 11.11.2024**  
**Date of Order: 22.11.2024**

Mr. Muhammad Mahmood Ali advocate for the applicant  
Mr. Rizwan Ahmed Siddiqui advocate along with Mr. Furqan Siddiqui advocate for respondent No.1  
Mr. Altaf Ahmed Sahar, Assistant Attorney General

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**ORDER**

**Adnan-ul-Karim Memon, J:-** Through this Criminal Revision application, Askari Bank Limited has questioned the order dated 31.01.2022 passed by the learned Judge Banking Court No. III Karachi in Criminal Complaint No. 01 of 2018, where the criminal proceedings against the respondent were stayed till a decision on Banking Suits No. 30 of 2014, and Banking Suit No. 08 of 2014, pending before this Court, an excerpt of the order is reproduced as under:-

*"15. As discussed above, the fate of this criminal complaint is dependent on the outcome of the suits filed by the complainant bank and the accused against each other before the Hon'ble High Court. Although, the civil liability is independent of the criminal liability and there is no invariable rule exists that criminal proceedings should be stayed pending the decision of civil suit but it is purely a matter of discretion yet and while exercising discretion the guiding principles as laid down by the Hon'ble Superior Courts should be to see as to whether the accused is likely to be prejudiced if the criminal proceedings are not stayed and where it is clear that the criminal liability is dependent on the outcome of civil ligation and where it is difficult to draw a line between the bona fide claim and criminal action, then criminal proceedings must be stayed As discussed, the fate of these criminal proceedings is dependent on the outcome of the Suits filed by the bank and the accused against each other before the Hon'ble High Court In my humble view, if this complaint is proceeded and decided and if the judgment and decree, passed by the Hon'ble High Court in above said suits, are in deviation to the decision of this complaint then the effect thereof would prejudice the accused. Furthermore, the amount if any due and recoverable is yet to be ascertained and determined by the Hon'ble High Court as the quantum of the amount cannot be determined in this criminal complaint by this Court.*

*16. In view of the above discussions I am of the considered view that the accused has succeeded in establishing his case for postponement/ stay of these criminal proceedings till the decision of suits filed by the complainant and the accused against each other before the Hon'ble High Court. This*

*application is thus allowed Resultantly this criminal complaint is stayed till the final disposal of suits i.e. (1) suit bearing number 30 of 2014 filed by the complainant against the accused and (11) suit bearing number 08 of 2014 filed by the accused against the complainant before the Hon'ble High Court."*

2. Facts of the case, in a nutshell, are that M/S Askari Bank filed a Banking Suit No. 30 of 2014 for recovery of Rs.1, 210,815,254.77; under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (FIO), against M/s Amir Rice Export and Import Co. / respondent, on the premise that respondent availed Export Re-finance Facilities (ERF), executed financing and security documents and, defaulted on repayments, and failed to pay penalties imposed by SBP. The respondent filed Banking Suit No. 08 of 2014 for Declaration, Mandatory and Prohibitory Injunction, rescheduling, restructuring of accounts, payment /adjustment of amounts of money, delivery, purchased goods compensation against losses, and damages sustained due to misdeeds of applicant bank before this Court and both the matters are still sub-judice. As per the applicant, the Askari Bank filed a criminal complaint against the respondent in 2016. The respondent has been fighting the case and recently got proceedings postponed until this Court settles related Banking suits. The trial court has stayed the proceedings arising out of the criminal complaint until the final disposal of the above two suits pending before this Court. The applicant bank objected to the stay of the proceedings because criminal and civil proceedings can proceed simultaneously.

3. The theme of the argument of the learned counsel for the applicant is that the applicant-Askari Bank sued respondents/customers for over a billion rupees and the respondent-customer countersued. Both cases are ongoing. Meanwhile, Askari Bank filed a criminal complaint against the respondent customer, on the premise that the accused had committed a breach of various obligations and representations committed the offense punishable under sections 20(1)(b) and 20(2), but the trial court has paused the criminal proceedings until the above Banking cases are resolved by this Court. Per learned counsel the trial court's order staying the criminal proceedings is incorrect. He contends that criminal and civil proceedings can be initiated and pursued simultaneously, even if they relate to the

same subject matter. The counsel further argues that the prosecution has a strong prima facie case against the respondent and that the trial court's decision to stay the proceedings was/is premature and uncalled for. He added that the impugned order dated 31.01.2022 is against the spirit of the law, and principles laid down by the Supreme Court on the subject issue; that the trial court erred in law while holding that criminal proceedings with regard to the same subject matter as that of a civil suit could not be initiated and proceeded until liability is determined; that besides above this complaint is also based on the ground that the accused had committed breach of various obligations and representations and due to breach of such obligations and representations the accused committed the offence punishable under section 20(1)(b) and 20(2) of the Financial Institutions recovery of Rs. 1,210,815,254.77/- (Rupees One Billion Two Hundred and ten million eight hundred and fifteen thousand, two hundred and fifty four and seventy seven paise only against the respondent No.1, which is pending before this court; that the criminal and civil remedies are distinct from each other and they could be simultaneously initiated and proceeded on the basis of same subject matter being cognizable and non cognizable offences in terms of law. He has further contended that there is nothing on the record to prove that the witnesses were absent on hearing and the prosecution had prima facie a strong case on the record against the respondent, which needs a deeper appreciation of evidence, which has been stopped without reasons; that the facts provide for bulky evidence, without the examining of which the innocence of the accused person cannot be determined and therefore the application for postponement of the proceedings has been filed at a pre-mature stage and without merits and any legal cause. He has further contended that the learned trial court failed to understand and appreciate the difference between civil and criminal remedies and the legal principle laid down which is from time to time upheld by the superior courts and adjudication of civil and criminal proceedings on the same subject matter, does not come under the ambit of double punishment or vexation of accused twice. In support of his contention, he relied upon the cases of *Misbah Karim and others v Federation of Pakistan and others* **PLD 2016 Sindh 62**, *Syed Wajahat Hussain Zaidi v Banking Court No.1 and others*

**2018 CLD 1273**, Salman Ashraf v Additional District Judge Lahore and others **2023 SCMR 1292**, Hbib Bank Ltd v The State and others **1993 SCMR 1853**, Askari Bank Limited v Tara Chand **2022 CLD 1042** and The State v Illahi Bux and others **PLD 1965 (W.P) Karachi 231**. He lastly prayed allowing the instant Criminal Revision Application.

4. Mr. Rizwan Ahmed Siddiqui learned counsel for the respondent has refuted the stance of the applicant Bank and argued that the applicant bank filed a criminal complaint against the respondent Muhammad Farooq Sole Proprietor of M/S Amir Rice Export and Import Co, for defaulting on a banking loan. He argued that the criminal case should be paused until two related Banking suits are resolved by this Court, and this is the reason the Banking Court agreed and stayed the criminal proceedings arising out of a criminal complaint No. 1/2018 lodged by the applicant under section 20(1)(b) and(2) of the FIO 2001. The bank has now filed a criminal revision application challenging the stay order granted by the trial court vide order 31.01.2022, which is not maintainable in terms of section 22(6) of the FIO 2001. As per learned counsel, the criminal complaint is based on the same subject matter as the Banking suits pending adjudication for determination of the liability if any on the part of the respondent. He contended that the criminal liability is dependent on the outcome of the Banking suits and that the respondent has not committed an offense under Section 20(1)(b) and 20(2) of the FIO 2001. He has contended that this complaint is based on the ground that respondent No.1/accused had obtained export-related finance facilities from the complainant Bank against his assurances and undertaking to execute export orders but instead of making exports he allegedly misappropriated funds of the complainant bank and public money for his personal benefits these allegations were/are false and fabricated needs proper determination by this court in the aforesaid suits till then the respondent cannot be saddled with criminal liability; as that the alleged criminal liability is dependent on the outcome of the civil liability/ Banking suits; that after more than two years from the filing of the above suits, applications for leave to defend, replications and passing of the orders by this court, the complainant bank has approached this court and filed instant criminal complaint showing the cause of action to be same as the

cause of action shown in the above mentioned two Banking suits and alleged that the respondent/accused had committed a criminal offense as envisaged in section 20 of FIO 2001 without determination which is apathy on the part of the Applicant Bank. He next contended that in paragraph 11 of the criminal complaint, the complainant bank has admitted that the accused adjusted the principal of the ERF-I and II facilities but failed to adjust the mark-up of the same which is being claimed and is outstanding and in paragraph 13 of the complainant bank has submitted that the cause for the filing of the complaint is the default on part of the accused though the respondent No.1 has not committed an offense under section 20(1)(b) and 20(2) of the FIO as alleged as all need proper determination. He has further contended that the allegations leveled against respondent No.1 in the criminal complaint are dependent on the outcome of Banking Suits filed by both the parties before this court as the subject matter of both the suits and the criminal complaint is the same, he repeated his submissions. In support of his contention, he relied upon the cases of Abdul Ahad v Amjad Ali & others **PLD 2006 SC 771, 2013**, Bank Alfalah Limited v Interglobe Commerce Pakistan (Pot) LTD & others **2017 CLD 1428**, Apollo Textile Mills Ltd & others v Soneri Bank Ltd. **PLD 2012 SC 268**, The State v Maulvi Muhammad Yasin Khan **PLD 1968 SC 281**, Abdul Haleem v The State & others **1982 SCMR 988**, A Habib Ahmed v MKG Scot Christian & others **PLD 1992 SC 353**, Rehmat Ali v Dilawar Shah & others **2005 CLC 1673**, National Bank of Pakistan v Sanaullah & others **2011 CLD 1013**, Syed Omar Nazar Shah v Bank of Punjab & others **2019 CLD 707**, Messrs Long Grain Rice Mills (Pot) LTD. V Habib Bank Limited **2016 CLD 551** and Bashir Ahmed & others v Fazle Ghaffar & others **2000 P Cr. LJ 1215**. He lastly prayed for the dismissal of the Criminal Revision Application.

5. We have heard the learned counsel for the parties and have perused the material available on record.

6. The respondent contends that this Revision Application is not maintainable against an interlocutory order under Section 22(6) of FIO 2001. The respondent claims the impugned order is interlocutory as it was passed on an interlocutory application under Section 344 Cr. P.C.

7. Since the question of the maintainability of the present Criminal Revision Application has been raised, in terms of section 22(6) of the FIO 2001, therefore, we would like to decide the issue regarding maintainability first.

8. Before proceeding further, it will be appropriate to examine the provisions of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, which for the sake of ready reference is reproduced as under:-

*“22. Appeal. (1) Subject to subsection (2), any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty days of such judgment, decree, sentence, or final order prefer an appeal to the High Court.*

*(2) The appellant shall give notice of the filing of the appeal in accordance with the provisions of Order XLIII, Rule 3 of the Code of Civil Procedure (Act V of 1908) to the respondent who may appear before the Banking Court to contest admission of the appeal on the date fixed for hearing.*

*(3) The High Court shall at the stage of admission of the appeal, or at any time thereafter either suo motu or on the application of the decree holder, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case, and as to the security to be furnished by the appellant: Provided that the admission of the appeal shall not per se operate as a stay, and nor shall any stay be granted therein unless the decree-holder has been given an opportunity of being heard and unless the appellant deposits in cash with the High Court an amount equivalent to the decretal amount inclusive of costs, or in the case of an appeal other than an appeal against an interim decree, at the discretion of the High Court furnishes security equal in value to such amount; and in the event of a stay being granted for a part of the decretal amount only, the requirement for a deposit in cash or furnishing of security shall stand reduced accordingly.*

*(4) An appeal under subsection (1) shall be heard by a bench of not less than two Judges of the High Court and, in case the appeal is admitted, it shall be decided within 90 days from the date of admission.*

*(5) An appeal may be preferred under this section from a decree passed ex parte.*

*(6) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court other than an order passed under subsection (11) of section 15 or subsection (7) of section 19.*

*(7) Any order of stay of execution of a decree passed under subsection (2) shall automatically lapse on the expiry of six months from the date of the order whereupon the amount deposited in Court shall be paid over to the decree-holder or the decree-holder may enforce the security furnished by the judgment-debtor.*

9. The term "interlocutory order" is not defined in FIO 2001. While appeals are generally allowed against orders under CPC. Section 22(6) of FIO 2001 specifically bars appeals against interlocutory orders that do not dispose of the entire case. This suggests that "interlocutory order" refers to non-final orders. The legislative intent is clear, appeals are limited to final orders. However, in the present proceedings, the impugned order only stayed the criminal proceedings due to certain reasons disclosed in the

order. Primarily, criminal revision can be filed against orders passed by the Banking Court under FIO, 2001 in the exercise of criminal jurisdiction, therefore, the objection to the maintainability of the Revision Application is overruled. Let this criminal revision application be decided on merits.

10. The main question is whether there is enough evidence to charge the respondent under sections 20(1)(b) and 20(2) of the FIO 2001. Additionally, the court is deciding if the trial court was right to pause the criminal proceedings because of a related civil case between the bank and customer pending before this Court to determine liability.

11. Touching on the above proposition, it appears that the witness of the applicant-bank, Zeeshan Ghani Branch Manager Askari Bank Limited New Challi Branch Karachi, claims in his private complaint filed under Section 200 of Cr. P.C. that the respondent/accused obtained a significant loan from the bank under false pretenses and failed to repay it. Further, the respondent/accused's actions constitute a criminal offense under the Financial Institutions (Recovery of Finances) Ordinance, 2001. His statement as well as the statement of his witness is reproduced as follows:-

**"Statement of Mr. Zeeshan, complainant's witness 1 under Section 200 of Cr.P.C."**

*I do hereby affirm and declare on oath that, I am duly constituted attorney of the complainant to file a complaint against the accused in the court of law. I am well conversant with the facts of the case and have signed the complaint on behalf of the complainant. I produce a photocopy of the Power of attorney as Annexure "C" I say that the complainant is a Banking company within the meaning of the term "financial institution" as defined under the financial institution recovery of finance ordinance 2001. I say that the Accused person is a sole proprietor of M/s Amir Rice Export and Import Co. (the Customer/ Borrower) and has been maintaining a Current Account No.0100009803 and having availed certain finance facilities from the Complainant Bank, I say that from 2004 the Accused was from time to time, availing various finance facilities from the Complainant Bank including an Export Re-finance Facility ("ERF Facility"). On the specific requests of the accused and for the purpose of supporting the accused in meeting his business requirements, the Complainant Bank kept on renewing/ enhancing the said ERF Facility over a period of 9 years. That on 01.02.2013, upon the expiry of the ERF Facility and on the specific warranties and representations of Accused No. 1, the Complainant and Accused No. 1 entered into a Finance Agreement and related documents to secure the ERF Facility of Rs.1,050,000,000/-, Under this Agreement, Accused No. 1 undertook to repay the marked-up amount of Rs.1,260,000,000/- by 31.01.2014. I further say that Accused to avail of such facilities and at present 29 different contracts of ERF-I and ERF-II are outstanding/ recoverable. To secure the said finance facilities. The accused had executed /signed the various securities charge documents including viz. Facility Offer Letters and Request Letters, Request Letter dated 31.12.2012, Finance Agreement, Offer Letter, a summary of 29 Outstanding Export Refinance Bills along with their respective documents, i.e. Contracts, Letters,*

*Applications/ Undertakings, 11 Export Refinance Bills along with their respective documents, i.e. Contracts, Letters, Applications/ Undertakings, the notices/ letters, as Annexure "B to J/11". I further say that after having committed default in the Settlement/ Restructuring Agreement, the Accused just to avoid paying the Complainant Bank file Suit B-30/2014 for recovery of Rs.1,210,815,254.77/- (Rupees One Million Two Hundred And Ten Million Eight Hundred And Fifteen Thousand Two Hundred And Fifty Four And Seventy Seven Paisa only) against the Accused which is pending before the High Court of Sindh, at Karachi. As Annexure "K". I further state that the accused undertook, represented, and covenanted to perform certain obligations and the complainant granted various finance facilities to the accused persons on the basis of such undertakings representations, and covenants. The accused have badly failed to comply and perform with their undertaking The accused has intentionally dishonestly committed fraud and cheated the Bank. It is a deliberate CRIMINAL ACT on the part of the accused and the accused has committed an offense punishable under Section 20(1)(a)&(b) (2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, hence accused may be dealt with under the laws and legal action may be taken against the accused in the interest of justice."*

**Statement of Mr. Nazakat Rafique, complainant's witness 2 under section 200 of Cr.P.C.**

*"I do hereby affirm and declare on oath that, I am duly constituted attorney of the complainant to file a complaint against the accused in the court of law. I am well conversant with the facts of the case and have signed the complaint on behalf of the complainant. I produce a photocopy of the Power of attorney as Annexure "C" I say that the complainant is a Banking company within the meaning of the term "financial institution" as defined under the financial institution recovery of Finance Ordinance 2001. I say that the Accused person is a sole proprietor of M/s Amir Rice Export and Import Co. (the Customer/ Borrower) and has been maintaining a Current Account No.0100009803 and having availed certain finance facilities from the Complainant Bank, I say that from 2004 the Accused was from time to time, availing various finance facilities from the Complainant Bank including an Export Re-finance Facility ("ERF Facility"). On the specific requests of the accused and for the purpose of supporting the accused in meeting his business requirements, the Complainant Bank kept on renewing and enhancing the said ERF Facility over a period of 9 years. That on 01.02.2013, upon expiry of the ERF Facility and on the specific warranties and representations of the Accused No. 1, the Complainant and Accused No. 1 entered into a Finance Agreement and related documents to secure the ERF Facility of Rs. 1,050,000,000/ Under this Agreement, the Accused No. 1 undertook to repay the marked-up amount of Rs. 1,260,000,000/- by 31.01.2014. I further say that Accused to avail such facilities and at present 29 different contracts of ERF-I and ERF-II are outstanding recoverable. In order to secure the said finance facilities. The accused had executed /signed the various securities charge documents including viz. Facility Offer Letters and Request Letters, Request Letter dated 31.12.2012, Finance Agreement, Offer Letter, a summary of 29 Outstanding Export Refinance Bills along with their respective documents, Le. Contracts, Letters, Applications/ Undertakings, 11 Export Refinance Bills along with their respective documents, Le Contracts, Letters, Applications/ Undertakings, the notices/ letters, as Annexure "B to J/11"*

*I further say that after having committed default in Settlement/ Restructuring Agreement, the Accused just to avoid paying the Complainant Bank file Suit B-30/2014 for recovery of Rs. 1,210,815,254.77/- (Rupees One Billion Two Hundred And Ten Million Eight Hundred And Fifteen Thousand Two Hundred And Fifty Four And Seventy Seven Paisa only) against the Accused which is pending before the High Court of Sindh, at Karachi. As Annexure "K".*

*I further state that the accused undertook, represented, and covenanted to perform certain obligations and the complainant granted various*



*finance facilities to the accused persons on the basis of such undertakings representations, and covenants. The accused have badly failed to comply and perform with their undertaking. The accused has intentionally dishonestly committed fraud and cheated the Bank. It is a deliberate CRIMINAL ACT on the part of the accused and the accused has committed an offense punishable under Section 20(1)(a)&(b) (2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, hence accused may be dealt with under the laws and legal action may be taken against the accused in the interest of justice."*

12. The trial court took cognizance vide order dated 22-03-2018 and passed the following order:—

*"Heard Mr. Arshad Mehmood Khan learned advocate for the complainant and perused the record.*

2. *The record shows that above noted complaint has been filed by the complainant Askari Bank Limited against accused Muhammad Farooq under Section 20(1)(b) & (2) of the Financial Institutions (Recovery of Finances) Ordinance 2001 (the FIO) on 30-01-2016. Accordingly statements of the attorneys of the complainant namely Mr Zeeshan and Nazakut Rafique were recorded under Section 200 Cr. P.C on 16-05-2016 and the matter was adjourned to 18-07-2016 for orders. On 21-05-2016 Mr. Rizwan Ahmed Siddiqui advocate appeared on behalf of the accused and filed an application under Section 203 Cr. P.C read with Section 20 of the FIO, which was dismissed by this Court vide order dated 18-11-2017*

3. *The perusal of statements of the attorney recorded under Section 200 Cr. P.C shows that a prima facie case is made out against accused Muhammad Farooq under Section 20(1)(b) & (2) of the FIO. The offense committed by the accused comes within the jurisdiction of this Court. The complaint is thus admitted and registered. It is directed that Bailable Warrants of Arrest be issued against the accused above named in the sum of Rs.50,000/- with P/R bond in like amount. The warrants against the accused shall be served through the S.H.O., PS SITE and S.H.O., PS Civil Lines, Karachi. Order accordingly."*

13. The trial court after taking cognizance passed the aforesaid impugned order which is under challenge. Meanwhile, this court called progress report from the trial court. The trial court has submitted the progress report which reads as under:-

*"With reference to the captioned subject and your letter referred above, it is stated that Askari Bank Limited (Previously known as Askari Commercial Bank Limited) filed the above-stated Criminal Complaint through its attorney on 3/01/2016. Statement of complainant U/S 200 of Cr. P.C. was recorded on 16.05.2016. On 21.05.2016 learned advocate for the accused filed an application U/S 203 Cr. P.C. read with section 20 of F.I.O, 2001, which was dismissed by the then trial Judge of this Court, vide order dated 08.11.2017. A bailable Warrant of arrest was issued against the accused in the sum of Rs. 50,000/-. On 13.04.2018 accused appeared in the Court along with his advocate and furnished surety as well as P.R. Bond in the like amount. On 18.07.2019 learned advocate for the accused filed application U/S 265-K Cr. P.C, which was dismissed by my learned predecessor vide order dated 17.04.2021. Thereafter on 03.06.2021 learned advocate for the accused filed an application U/S 344 Cr. P.C for postponement of proceedings. The said application was allowed by my learned predecessor, vide order dated 31.01.2022 with remarks that "this criminal complaint is stayed till the final disposal of Suits ie. (i) suit bearing number 30 of 2014 filed by the complainant against accused and (ii) suit bearing number 08 of 2014 filed by the accused against the complainant, before the Hon'ble High Court".*

14. From the above statement of the witnesses it is to be seen whether there is sufficient material to connect the respondent with criminal liability. The core allegations against the respondent are that he intentionally misled the bank by making false representations and promises regarding their ability to repay the loan; that the accused failed to fulfill their contractual obligations under the loan agreement; that the accused's actions may constitute criminal offenses under the Financial Institutions (Recovery of Finances) Ordinance, 2001. Prima facie the bank has the remedy to pursue a civil lawsuit to recover the outstanding debt. However, it is yet to be determined if the accused's misrepresentations were intentional and caused harm to the bank. Offenses under sections 2(g)(ii) and (iii) of FIO 2001 are independent of civil liability for default. These offenses are triggered by specific actions of the customer, such as misusing funds or misappropriating collateral. Once civil liability for default is established, the offense of willfulness can be investigated. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Mian Ayaz Anwar and others v State Bank of Pakistan and others 2019 CLD 375.

*“17. So far as the offences in section 2(g)(ii) and (iii) of the FIO are concerned, they provide for independent offences which can be tried under section 20 of the FIO independent of any determination of a default in an obligation to pay. Neither offences are dependent on the civil liability of 'default' under section 9 of the FIO as they are offences due to the very act of the customer. So if a customer utilizes the finance obtained from a financial institution for purposes other than for which it was given for or if a customer removes, transfers or misappropriates collateral or security of the financial institution, then the act of such removal, transfer or misappropriation constitutes an offence for which criminal proceedings can be initiated under section 20 of the FIO. A lot has been argued with reference to the power given to a government agency for investigating into the offence of "willful default" under section 20(7). However, we find that the power is simply to investigate, that too on a complaint filed in writing by the Bank and after securing a thirty days' notice. Hence it is neither unconstitutional nor excessive. The Banking Court being the special forum to try offences under the FIO is the proper forum to try the offence of willful default and in this regard in terms of the provisions of section 20(7) once the civil liability of default is established the offence of willfulness can be investigated by the FIA or any other nominated Federal Government Agency. Offences under section 2(g)(ii) and (iii) however are not dependent on the determination of the civil liability and can be investigated in terms of section 20(7) by the nominated government agency. In all such cases the Banking Court will try the offence of willful default as per section 20 of the FIO.” emphasis added.*

15. Having looked into the aforesaid aspect of the case, we have noted that Section 20(1)(b) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (FIO) pertains to the recovery of finance and other related amounts payable to a financial institution. It specifies that the amount recoverable includes the amount of

finance outstanding at the time the Banking suit was filed. Section 20(2) of the FIO 2001, states that an order passed under subsection (1) is deemed to be a decree for execution. This means that once an order is passed under subsection (1), it can be executed as if it were a court decree. In principle, these sections provide a mechanism for financial institutions to recover outstanding debts from defaulting borrowers.

16. The argument presented by the respondent is that the criminal liability of the respondent is contingent upon the outcome of the Banking suits. This implies that the criminal case cannot proceed independently of the Banking cases. Furthermore, it is claimed that the respondent has not committed an offense under Sections 20(1)(b) and 20(2) of the FIO 2001. These sections primarily deal with the recovery of finance and other related amounts payable to a financial institution. Therefore, to establish criminal liability under these sections, it would be necessary to demonstrate that the respondent has defaulted on a financial obligation to the bank and has failed to repay the amount due. The specific allegations against the respondent in the criminal complaint would need to be examined in detail to determine whether constitute a criminal offense under the FIO 2001 or any other relevant law which is dependable on the determination by this Court first where lis between the parties is pending until it decides, no criminal case can be lodged so far as default is concerned as no premature punishment can be awarded before determination of such liability, and without such determination of default, how the respondent can be saddled with criminal liability, he emphasized.

17. The complainant alleges that the respondent/accused breached various obligations and misrepresentations on the issue of finance, which led to the commission of an offense under Sections 20(1)(b) and 20(2) of the FIO 2001. However, Sections 20(1)(b) and 20(2) primarily relate to the recovery of finance and other related amounts.

18. It is settled law that when the criminal charges depend on the outcome of the civil cases, proceeding with the criminal case before the civil cases are resolved could potentially harm the accused. Additionally, the amount owed, which is a crucial element

in the criminal case, can only be determined in the civil court, and the criminal court is divested from such determination.

19. To establish criminal liability under these sections, it would be necessary to demonstrate that the accused has defaulted on a financial obligation to the bank and has failed to repay the amount due. The specific nature of the breached obligations and representations would need to be examined to determine whether they directly relate to the accused's financial obligations to the bank and whether they constitute a criminal offense under the FIO. Mere breach of a contract or civil obligation, without more, may not necessarily constitute a criminal offense. The prosecution would need to prove that the accused's actions were intentional, dishonest, or fraudulent and that caused significant financial loss to the bank. Additionally, the bank cannot unilaterally determine the amount owed and initiate criminal proceedings as such a proper judicial process is necessary to establish liability and debt amount before criminal charges can be pursued.

20. It is a well-settled principle that the criminal proceedings should be stayed until the related civil case is resolved. The criminal case should not proceed if it depends on the outcome of a civil case, especially when the same issues are involved in both cases to avoid potential prejudice to the accused if the criminal case were to be decided first. However, no prejudice shall be caused to the applicant bank if the banking suits proceed first to fix the liability on the respondent concerning liability for default and breach of obligations. Besides the respondent has not been exonerated from the charges therefore judicial propriety demands that the applicant bank be allowed to substantiate its allegations by adducing evidence, once liability is determined the criminal case can be revived for its culmination to its logical conclusion within reasonable time.

21. In view of the above facts and circumstances of the case, we are of the considered view that the witnesses claim the respondent/accused obtained a large loan from the bank under false pretenses and failed to repay it. This assertion needs adjudication first by this Court on the Banking side in the aforesaid Banking Suits and if the applicant bank succeeds in proving default

on the part of the respondent, certainly the consequences shall follow, therefore interference at this stage is not called for. The learned Banking court where the Banking suits are pending may endeavor to decide the lis between the parties within a reasonable time.

22. This Criminal Revision Application is misconceived and is accordingly dismissed.

JUDGE

JUDGE

Shafi