

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Misc. Application No. 411 of 2023**

along with  
Criminal Misc. Application No. 351 of 2024

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*Date*

*Order with Signature of Judge*

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**30.01.2025**

Mr. Nasrullah Korai, Advocate for the Applicant.  
Syed Mumtaz Ali Shah, Assistant Prosecutor General, Sindh.  
Mr. Rashid Mehmood Siddiqui, Advocate for Respondent No.2.

**ORDER**

**ALI HAIDER ADA-J**:- The FIR No.61 of 2023 was registered by applicant Shaikh Mohammad Imran for the offence punishable under Section 406, 420 & 506 PPC at police station Darakshan, Karachi, as in the said FIR, complainant/applicant has narrated that he had business terms with the respondent No.2 for vehicles and in this regard such vehicles were handed over to him and due to greedy nature as well as breach of trust, such accused misappropriated and committed the offence and did not return the vehicles so far.

2. The Investigation Officer conducted investigation and submitted report under 'C' class and the learned Judicial Magistrate-V, Karachi (South) agreed and satisfied with the opinion of the Investigation Officer and approved the report under 'C' class. The applicant challenged the order of learned Magistrate by way of filing instant Criminal Misc. Application.

3. Mr. Nasrullah Korai, learned counsel for the applicant submits that the moveable property is handed over to the accused and even the same is also mentioned in agreement which is available at pages-61/62 by way of signature of accused, further learned counsel argues that impugned order is not sustainable as the learned Magistrate passed it without tentative assessment but gone through as just like judgment and if he is to be given a chance, then he will produce the evidence before the Magistrate or as well as the I.O for establishing prima facie case. He has relied upon the

case laws reported as (2022 SCMR 2001) Muhammad Ali Versus Samina Qasim Tarar and others, (2019 YLR 2178) Mst. Bano Versus Civil Judge & Judicial Magistrate No.XII, Hyderabad and 8 others and (2020 P.Cr.L.J 835) Soomar Versus Civil Judge and Judicial Magistrate, Khipro District Sanghar and 8 others). During course of arguments, he submitted a statement along with relevant record.

4. On the other hand, Syed Mumtaz Ali Shah, Assistant Prosecutor General, Sindh submits that in entire record, business terms is not mentioned and even the documentary evidence is contra with the submissions of complainant, the I.O conducted investigation properly and submitted fair report before the learned trial Court. He further argues that even though the complainant did not take any kind of efforts for recording of his other witnesses before the Investigation Officer or before the Magistrate by filing of any kind of application, further argues that the complainant did not agree with the fate of the investigation even then he did not move any kind of application before the high ups of the police to change the investigation, finally, he argues that the order of learned Magistrate is justified.

5. On behalf of respondent No.2/proposed accused, Mr. Rashid Mehmood Siddiqui, Advocate submits that in entire documents, there is nothing mentioned that the vehicles were physically handed over to the accused by the complainant, further he argues that civil litigation is pending before this Court, which is also admitted by learned counsel for the applicant. Learned counsel relied upon the case laws reported as PLD 2020 SC 299.

6. Heard arguments and perused the material available on record.

7. Nine vehicles are questioned in the FIR and such vehicles are mentioned that the same were handed over for a business purpose, perusal of record shows that some of the vehicles have no any registration number and even the agreement as well as documentary evidence did not show any relevancy, furthermore the agreement dated 03.06.2021 is totally silent about physical possession of the vehicles.

8. Section 406 PPC deals punishment while the section 405 PPC is its definition. Section 405 PPC is reproduced as under;\_

*“405. Criminal breach of trust: Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust.”*

9. As illustrations of section 405 PPC even otherwise are also not attracted with such alleged offence, so far as the section 420 PPC is concerned, same defines punishment while definition is provided under section 415 PPC. Section 415 PPC is reproduced as under;\_

*“415. Cheating: Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person [or any other person] in body, mind, reputation or property, is said to "cheat".”*

10. Section 415 PPC defines the offence of cheating and has several illustrations, if, go through such illustrations even though same are not attracted.

11. As it is admitted that a civil litigation is pending before the parties and to take civil litigation converted into criminal litigation, such type of application is filed.

12. No doubt, the opinion of the Investigation Officer is *ipsi-dixit* but at the time of scrutiny of the material available on record, same shall be carefully examined and such exercise has been done by the learned Magistrate so, do not find any kind of irregularity or illegality in the impugned order; hence, Criminal Misc. Application in hand, is hereby dismissed. The Criminal Misc. Application No.351 of 2024 is de-tagged with this application and the office is directed to relisted the same.

**JUDGE**