

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No. 1247/2024
(Allah Ditta Vs. Shadab Butt & others)

Applicant : Allah Ditta son of Rasheed
through Mr. Karamullah Qureshi advocate

Respondent No.1 : Shadab Butt
through M/s Harchand Rai and Muhammad
Nawaz, advocates.

State : The State
through Mr. Qamaruddin Nohri, DPG.

Date of hearing : 14.04.2025

Date of order : 21.04.2025

O R D E R

Khalid Hussain Shahani, J:- The Applicant Allah Ditta invokes the inherent jurisdiction of this Court, seeking interference with the order dated 13.11.2024, passed by the learned Additional District Judge/Ex-Officio Justice of Peace, Karachi East, in Criminal Miscellaneous Applications No.4807/2024 and 5088/2024, whereby the petitions filed by the applicant for issuance of directions to the police under Sections 22-A and 22-B, Cr.P.C. were dismissed.

2. The grievance of the applicant, as narrated in the petition, is that he was a lessee of Bank Al-Falah Limited under a hypothecation agreement and had been in possession of a vehicle bearing Registration No. BVU-3090 (Prince, Model 2022). It is alleged that the said vehicle was parked in a parking area when the proposed accused (respondent No.1), Shadab Butt, approached the applicant and, impersonating as a representative of the insurance company, took custody of the vehicle on the pretext of inspecting it. The applicant contends that the said vehicle contained several personal belongings, including a licensed 9mm pistol, two magazines, his arms license, cash amounting to Rs.190,000/-, and other valuables. Subsequently, the applicant came to know that the vehicle had been repossessed by Bank Al-Falah.

3. Learned counsel for the applicant has argued that the impugned order of the learned Ex-Officio Justice of Peace is erroneous and suffers from material illegality, inasmuch as it overlooks the fact that the applicant's allegations disclose the commission of a cognizable offence,

particularly in light of the alleged deceit and unlawful taking of both the vehicle and the valuables lying therein.

4. Conversely, learned advocates for respondent No.1 submitted written objections, categorically stating, respondent No.1 is/was an agent of Bank Al-Falah and had lawfully repossessed the vehicle in question pursuant to the directions of the bank authorities. It is his claim that the applicant had defaulted on monthly installments for three consecutive months commencing from June 2023, which entitled the bank, under the terms of the hypothecation agreement, to repossess the vehicle. In support thereof, he referred to Clauses 10 and 11 of the said agreement, which explicitly authorize the lessor or its agents to seize the vehicle in the event of default extending beyond fifteen days. He also produced a copy of the outstanding dues statement reflecting default on part of the applicant.

5. When queried by the Court as to whether any civil proceedings had been initiated by the applicant, learned counsel placed on record a copy of Civil Suit No. 97 of 2024, filed before the competent Banking Court against Bank Al-Falah, seeking relief in relation to the subject matter.

6. Upon careful consideration of the record and rival contentions, it appears that the real dispute between the parties is rooted in the contractual relationship governed by the hypothecation agreement. The allegations upon a closer scrutiny, do not disclose the foundational elements of a cognizable offence, particularly in view of the admitted default by the applicant and the existence of a clause permitting seizure by the lessor upon non-payment. The respondent's actions, whether right or wrong, appear to be anchored in an asserted legal entitlement stemming from the agreement rather than any criminal intent or unlawful gain. It is a well-settled principle of law that the extraordinary jurisdiction under Section 22-A, Cr.P.C., or the inherent jurisdiction under Section 561-A, Cr.P.C., cannot be invoked to convert a civil dispute into a criminal case. Courts must exercise circumspection before directing the registration of an FIR where the factual matrix discloses a primarily civil dispute already pending adjudication before a competent forum. The Hon'ble Apex Courts in numerous cases have consistently held that such remedies under the criminal procedure must not be used to pressurize the other party in a civil dispute, and that where a contractual breach or recovery of possession is challenged, the proper remedy lies before civil or banking courts, not the criminal fora.

7. The impugned order of the learned Ex-Officio Justice of Peace reflects due consideration of these settled principles. It does not suffer from any legal infirmity or perversity warranting interference by this Court under its inherent jurisdiction. On the contrary, the learned Judge has rightly refrained from converting a civil claim into a criminal prosecution.

8. Given the above, this Court is of the considered opinion that no case is made out for interference in the impugned order. The application being devoid of merits, stands dismissed.

J U D G E