

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Application No. 137 of 2025

Applicant : Muhammad Rizwan Qureshi
Son of Muhammad Usman Qureshi
Through M/s Nasir Rizwan Khan, M.S Anjum &
Chaudhary Bashir Ahmed, Advocates.

Respondent : The State
Through Mr. Muhammad Mohsin Mangi, APG

Date of hearing : 22.04.2025

Date of order : 05.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Muhammad Rizwan Qureshi has invoked the inherent jurisdiction of this Court against an order dated 03.12.2024, passed by Court of learned IXth Judicial Magistrate, Karachi Central, in a case bearing crime No. 558/2024, offence u/s 405 & 420 PPC of Police Station Liaquatabad, Karachi, whereby cognizance was taken despite submission of a "C" Class report by the investigating officer and directions were accorded for submission of supplementary report.

2. Precisely, the facts giving rise to this application are that the complainant (Respondent No.2) lodged FIR referred hereinabove on 02.11.2024, alleging criminal breach of trust and cheating in relation to a property transaction that took place in the year 2020, wherein the applicant is said to have received substantial sale consideration but subsequently sold the subject property to a third party without refunding the amount to the complainant. The complainant also claimed to have invested further amounts towards construction of the property.

3. Upon investigation, the police submitted a final report on 18.11.2024, opining the disposal of the case under "C" Class, stating that the matter appears to be of civil nature, and no evidence was available to substantiate the allegations of criminal breach of trust attracting ingredient of Section 406 PPC. The section was accordingly deleted. The report was endorsed by the District Public Prosecutor, who also opined, the dispute was essentially civil, and advised closure of proceedings. However, by impugned order, the learned Magistrate declined to accept the said report and directed the I.O. to submit a supplementary report/challan.

4. It is pertinent to observe that prior to the lodging of FIR No. 558/2024, the complainant had approached various police forums through applications dated 08.09.2023 and also filed Cr. Misc. Application No. 2155/2023 under Sections 22-A and 22-B Cr.P.C. seeking registration of FIR, which was dismissed by the learned Vth Additional Sessions Judge, Karachi Central, on the pretext that the matter was of civil nature vide order dated 30.10.2023. A subsequent challenge before this Court in Cr. Misc. Application No. 889/2023 also failed, as the complainant did not press the same vide order dated 11.10.2024..

5. The record reflects repeated attempts by the complainant to invoke criminal jurisdiction, despite earlier findings by competent forums that the dispute was civil in nature. Moreover, the Investigating Officer, upon due inquiry and after recording statements of witnesses including the complainant and the applicant, found no incriminating evidence to establish entrustment or dishonest misappropriation, essential ingredients for the offence under Section 406 PPC. Even as to Section 420 PPC, no cogent material surfaced to demonstrate fraudulent inducement at the inception of transaction, which is sine qua non for attracting that provision.

6. It is a settled principle of law that Sections 406 and 420 PPC operate in distinct legal domains and cannot be simultaneously attracted to the same factual transaction. Section 406 PPC relates to *criminal breach of trust*, which presupposes entrustment of property and its dishonest misappropriation or conversion. In contrast, Section 420 PPC pertains to *cheating*, involving deception prior to or at the inception of the transaction. Where the transaction is contractual or based on mutual understanding without fraudulent inducement, and where dispute arises post-transaction, the matter falls squarely within the realm of civil dispute. Courts have consistently deprecated the tendency of giving criminal colour to civil disputes. Reliance is placed on the case of **Lt. Col. (Retd) Baqar Nawab Vs. Syed Muhammad Hassan Tauheed (2021 P.Cr.L.J 545)** wherein it was held,

“Further, the careful perusal of the provisions of law reveals that an accused person cannot be prosecuted and punished simultaneously under sections 406 and 420, P.P.C. for the reasons that in case of criminal breach of trust/criminal misappropriation, the aggrieved person voluntarily delivers the accused, whereas in case of cheating, he is deceitfully induced by the accused to part with the property. The aforesaid cannot reconcile. In case of criminal breach of trust, the accused is supposed to become dishonest from the very beginning, and in case of the entrustment of property to him. It, therefore, become

abundantly clear that commencement, location and distinction of mens rea for offence of cheating punishable under section 420 and criminal misappropriation punishable under section 406, P.P.C. are entirely different.”

7. It is also noteworthy that the impugned order dated 03.12.2024 does not reflect any judicial reasoning or examination of the police record to justify taking cognizance despite the clear findings of the investigation and opinion of the DPP. Such mechanical direction to submit a supplementary report/challan without addressing the legal and factual merits is not sustainable in law and amounts to unnecessary harassment of the applicant.

8. Given the above, it is manifest that the dispute arises from a contractual transaction relating to sale of immovable property. There is absence of any evidence to show initial fraudulent intent. Prima facie elements of criminal breach of trust are not made out. The repeated resort to criminal forum after rejection by Sessions Court and DPP points to mala fide intent and vagueness of order in discussion upon the distinctions of section 406 & 420 PPC, the impugned order is arbitrary, mechanical, and an abuse of process of law. Resultantly, this Criminal Miscellaneous Application is allowed. The impugned order dated 03.12.2024 passed by the learned IXth Judicial Magistrate Karachi Central is hereby set aside. The learned IXth Judicial Magistrate, Karachi Central, is directed to re-examine the entire material available on record and to pass a well-reasoned and speaking order afresh in accordance with law.

J U D G E