

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.09/2023

Applicant : Mst. Fehmida Abul Hameed D/o Abul Hameed,
Through Mr. Muhammad Shahnawaz Khan,
Advocate

Respondent No.5 : through Mr. Ghulam Rasool, Advocate

The State : through Mr. Muhammad Mohsin Mangi,
Assistant P.G Sindh

Date of hearing : 28.04.2025

Date of order : 06.05.2025

ORDER

Khalid Hussain Shahani, J:- Through the instant application filed under Section 561-A, Cr.P.C. the applicant prays for setting aside the impugned order dated 25.10.2022, passed by the learned Ex-Officio Justice of Peace/Additional Sessions Judge-IV Karachi East, whereby Cr. Misc. Application No. 3727/2022 was dismissed.

2. Facts in brief are that the applicant, a widow who remarried Faheem Younus in 2021, claims to have purchased a Honda Vezel (Reg. No. LE-18A-743) using her own funds, though the vehicle was leased in Faheem's name as a benami arrangement. Following marital disputes, she retained possession of the vehicle. On 11.12.2021 and again on 13.12.2021, private respondents, allegedly aided by police officials of PS Gadap City visited her residence, threatened her, and coerced her into visiting the police station with the vehicle and documents. There, under duress and police pressure, she was allegedly forced to sign a compromise deed relinquishing the vehicle. The vehicle was taken from her custody and remains with the private respondents. Complaints to police authorities and legal notices went unanswered, allegedly due to collusion between the respondents and police.

3. The learned counsel for the applicant submitted that the petitioner was unlawfully deprived of her vehicle through criminal intimidation and deceit, despite being the rightful owner in possession. He contended that the police acted in collusion with the private respondents by refusing to register the FIR, in violation of Section 154 Cr.P.C. He challenged a purported compromise deed as forged and extorted under illegal detention, arguing that

it could not defeat the applicant's right to have the matter investigated. He further argued that the learned Justice of Peace passed the impugned order mechanically without appreciating the unrebutted documentary evidence and without addressing the serious allegations of cognizable offences, including cheating, forgery, and misappropriation. He prayed for interference by this Court under Section 561-A CrPC to prevent abuse of process and to secure the ends of justice.

4. Conversely, learned advocate for respondent No.5 stated that the respondent No.2 admitting taking of vehicle; he further argued that till yet the vehicle not with the bank and one Civil Suit is already filed for recovery. Learned advocate further added that the vehicle was leased out to one Zeeshan, who then sold out the same to one Faheem (husband of applicant and then Faheem Sold out the same to his wife) through an agreement dated: 22.11.2021; he further argued that the bank and customs are not party in the petition u/s 22-A Cr.P.C, now bank is impleaded as a party; there is no contract with the applicant; he further argued that till clear liability, no one can sale the property of bank. He further argued that the bank has filed the Suit No. 242/2024 before the Banking Court, which is decreed as ex-parte. Learned DPG for the State submitted that no document submitted by the applicant to prove her contention, hence he prays for dismissal of the instant application.

5. The record reflects that the vehicle in question was allegedly purchased by the husband of the applicant namely Faheem Younis, who had acquired the same through a lease agreement executed with Dubai Islamic Bank, Lahore. Subsequently he defaulted on the lease obligations, resulting in the bank initiating recovery proceedings. As a consequence, the vehicle has been repossessed by the bank and is presently under its control, pending auction to recover the outstanding defaulted amount. Additionally, inter-bank transfer slips produced on record suggest that respondent No.4 has claimed ownership of the said vehicle, further complicating the matter. It is also an undisputed fact that FIR No.1125/2022 under Section 489-F PPC has already been registered at Police Station Gaddap City against the husband of the applicant in connection with a financial dispute. Parallel to this, Suit No.242/2024, filed by the Dubai Islamic Bank for recovery of dues, stands decreed in its favour.

6. Furthermore, it is noted that respondents No.4 and 5 are the real siblings of the complainant in the aforementioned FIR, and the lodging of that FIR indicates prior litigation and animosity involving the applicant's spouse. As for the alleged compromise deed dated 13.12.2021, the authenticity and voluntariness thereof remain disputed. This Court, in the present criminal proceedings, is neither required nor empowered to render a finding on whether the said document was executed freely or under duress. Such issues fall within the realm of civil adjudication, and the applicant is at liberty to pursue appropriate remedy before the competent civil forum, should she so desire. Moreover, no prima facie evidence of the commission of a cognizable offence has been brought on record by the applicant that would warrant the registration of a criminal case against the private respondents. The applicant has failed to demonstrate how the possession of the disputed vehicle by the respondents, or any action on their part, constitutes a punishable offence under the Pakistan Penal Code. The dispute, as presented, is manifestly civil in nature and arises out of contractual and proprietary claims relating to the ownership and possession of a financed vehicle.

7. The learned Justice of Peace, while passing the impugned order, has rightly appreciated the legal and factual aspects of the matter and concluded that the applicant's grievance did not merit the direction for registration of FIR. Additionally, the application filed by the applicant under Section 22-A Cr.P.C. did not explicitly seek registration of a case under Section 154 Cr.P.C. but merely requested general legal action and protection. Article 4 of the Constitution guarantees to every citizen the protection of law and equal treatment under law; however, such protection must be invoked in accordance with the prescribed legal framework and not for ulterior purposes.

8. It is further pertinent to note that the vehicle in question is not registered in the name of the applicant, nor has she placed on record any ownership document in her favour to substantiate her proprietary claim. These circumstances, coupled with the pending and concluded civil and criminal proceedings involving her husband, strongly suggest that the present application is an attempt to pre-empt or counteract adverse legal consequences arising therefrom. The inference drawn is that the applicant has filed the application under Section 22-A Cr.P.C. with a view to neutralize the proceedings initiated by the private respondents.

9. Given the above, I find no substance in the arguments advanced by the learned counsel for the applicant. He has failed to make out a case warranting interference with the well-reasoned and lawful order passed by the learned Justice of Peace. Consequently, the instant application being devoid of merit stands dismissed. However, the applicant shall remain at liberty to avail such civil or proprietary remedies as are available to her under the law.

J U D G E