

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-605 of 2024

Applicant: Thardeep Microfinance Foundation through its Authorize Person namely Pardeep Kumar s/o Saroopo, registered company having its Head Office at Bungalow No. 79/ 145 Tando Mai Mahan, Defence Phase-1, Hyderabad Through Mr. Nawaz Ali Rajpar advocate.

Respondents: 1. S.S.P, Tharparkar.
2. SHO P.S Mithi.
3. The State.
Through Mr. Ghulam Abbas Dalwani.

Proposed accused: Mohan Lal s/o Kaanji Mal
Through Mr. Kanjimal Meghwar advocate.

Date of hearing: 03.06.2025.

Date of Order: 03.06.2025.

ORDER

Jan Ali Junejo, J.— This Criminal Miscellaneous Application, filed under Section 561-A, Cr.P.C., seeks to assail the order dated 28-10-2024 (hereinafter referred to as the “Impugned Order”), passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Tharparkar at Mithi, whereby Criminal Miscellaneous Application 627/2024, filed by the applicant under Sections 22-A and 22-B, Cr.P.C., was dismissed. The applicant, Thardeep Microfinance Foundation, feeling aggrieved by the said dismissal, has approached this Court seeking a direction to the Station House Officer (SHO), Police Station Mithi, to record its statement under Section 154, Cr.P.C., and to register a First Information Report (FIR) accordingly.

2. The brief facts leading to the present application are that the applicant, Thardeep Microfinance Foundation, extended Enterprise Loan for Cloth shop to a group identified as “Kaveeta Bai Group”. As a guarantee for this loan, the proposed accused, Mohan Lal S/o Kaanji Mal, issued a cheque bearing No. 81164580 for an amount of Rs.243,752/-. The applicant’s case is that upon the alleged default of the borrowers, the said cheque was deposited on 26-08-2024

but was subsequently dishonored due to insufficient funds. Following the dishonor and the proposed accused's failure to respond to a legal notice, the applicant moved an application under Section 22-A and B Cr.P.C. before the learned Sessions Judge/Ex-Officio Justice of Peace, Tharparkar @ Mithi, seeking a direction for the registration of an FIR against the proposed accused for an offense under Section 489-F PPC. This application was dismissed vide order dated 28-10-2024, leading to the present Criminal Miscellaneous Application.

3. The learned counsel for the applicant, Mr. Nawaz Ali Rajpar, contended that the Impugned Order dated 28-10-2024 is contrary to law and equity and was passed without due application of judicial mind. He submitted that the applicant, *Thardeep Microfinance Foundation*, had extended Enterprise Loan for cloth shop to a group known as "Kaveeta Bai Group". In support of this loan, the proposed accused, Mohan Lal son of Kaanji Mal, issued Cheque No. 81164580, amounting to Rs. 243,752/-, as a guarantee. Upon default by the borrowers, the applicant presented the said cheque for encashment on 26-08-2024; however, it was dishonored due to insufficient funds. Despite issuance of a legal notice, the proposed accused failed to respond, thereby compelling the applicant to seek registration of an FIR under Section 489-F, PPC. The learned counsel argued that any aggrieved person has a legal right to have his statement recorded under Section 154, Cr.P.C., and that the role of the Ex-Officio Justice of Peace in such cases is limited to directing the SHO to comply accordingly. He submitted that the learned Sessions Judge failed to appreciate the criminal implications of the dishonored cheque and erred in treating the matter as purely civil. He, therefore, prayed for the present Criminal Miscellaneous Application to be allowed and the SHO to be directed to register the FIR.

4. On the other hand, the learned counsel for the proposed accused, Mr. Kanjimal Meghwar, strongly opposed the application. He contended that the

dispute is inherently civil, revolving around the recovery of a loan amount, and that the applicant is attempting to give a criminal color to a civil liability. He further submitted that a substantial portion—specifically half—of the total loan has already been repaid by Kaveeta Bai Group, a material fact that was knowingly concealed by the applicant in its applications under Sections 22-A and 22-B, Cr.P.C. In view of these submissions, the learned counsel prayed for the dismissal of the present Criminal Miscellaneous Application.

5. The learned counsel for the State, Mr. Ghulam Abbas Dalwani, endorsed the arguments advanced by the learned counsel for the proposed accused. He emphasized that the applicant's conduct suggests an attempt to misuse the criminal justice system for purposes of harassment rather than legitimate legal recourse, and supported the dismissal of the application.

6. This Court has carefully considered the arguments advanced by the learned counsel for both parties and meticulously perused the available record. The core of the applicant's claim rests on the dishonor of a cheque provided as a guarantee for a cloth shop loan. It is pertinent to note that the applications filed under Sections 22-A and B Cr.P.C. before the learned Sessions Judge and subsequently this Criminal Misc. Application before this Court, state that the cheque was given as a guarantee/surety in case the borrowers committed default in repayment of the loan amount. However, a critical omission in the applicant's pleadings is the absence of any specific averment regarding the alleged default by the "Kaveeta Bai Group" in repaying the loan. While it is stated that the cheque was dishonored, the foundation for the encashment of the guarantee, the default by the primary borrowers, is not clearly established in the application. More significantly, during the course of arguments before this Court, the learned counsel for the proposed accused explicitly stated that half of the total loan amount has already been repaid by the "Kaveeta Bai Group". This assertion was unequivocally admitted by the learned counsel for the applicant, who, however, contended that mark-up on the said loan was still outstanding.

This admission is a pivotal factor in the determination of this application. The cheque issued by the proposed accused was for the total loan amount of Rs. 243,752/-. If, as admitted, half of this amount has already been repaid, the encashment of the full cheque would undeniably result in an overpayment and unjust enrichment of the applicant. This disparity clearly indicates that the applicant has not approached this Court with clean hands, as the material fact of partial repayment was consciously withheld in their initial application. The primary purpose of Section 22-A and B Cr.P.C. is to ensure that genuine grievances requiring criminal investigation are not stifled by the inaction of police authorities. However, it is equally important that this provision is not exploited to settle civil disputes or to exert undue pressure through the initiation of criminal proceedings where the facts primarily point towards a contractual or monetary dispute. The current scenario strongly suggests a civil dispute concerning the recovery of a loan and settlement of accounts, rather than a clear-cut case warranting criminal prosecution under Section 489-F PPC at this preliminary stage. The alleged offense under Section 489-F PPC pertains to dishonestly issuing a cheque with knowledge of insufficient funds or with the intent to defraud. While a dishonored cheque can be a component of such an offense, the admitted partial repayment of the underlying debt significantly alters the complexion of the matter, making it primarily a matter of civil recovery and accounting. The learned Sessions Judge, in his impugned order, correctly observed that *“purely it is a monetary dispute among the parties. The proper course is for filing suit for recovery as well as settlement of the account”*. This finding is amply supported by the facts presented before this Court, particularly the admitted partial repayment. Directing the police to register an FIR in such circumstances would undoubtedly cause unnecessary harassment to the proposed accused and would amount to converting a civil litigation into a criminal one, a practice deprecated by superior courts. Reliance is respectfully placed upon the dictum laid down by the Honourable Supreme Court of Pakistan in the case of ***Munawar Alam Khan v. Qurban Ali Mallano and***

others (2024 SCMR 985), wherein the Apex Court was pleased to observe as follows: “*Having heard the petitioner and scanned the material available on the record, we observe that there are many precedents regarding misuse of provisions of Sections 22-A and 22-B, Cr.P.C. and it is the prime duty of the Court that such misuse be taken care of and application filed should not be lightly entertained and decided in a mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute the accused*”.

7. In view of the foregoing detailed findings and reasons, particularly the undisputed fact that a substantial portion of the loan has already been repaid by the principal borrowers, coupled with the applicant’s apparent attempt to suppress this material fact, this Court finds no legal or factual justification to interfere with the well-reasoned Impugned Order passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Tharparkar at Mithi. The instant Criminal Miscellaneous Application, being devoid of merit and seemingly aimed at employing the criminal process for the recovery of a civil liability, is accordingly dismissed.

JUDGE

Saleem