

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Application No.S – 373 of 2026

(Zabeeullah v. The State and others)

Date of hearing : **03.08.2026**

Date of decision : **03.08.2026**

Mr. Muhammad Ali Napar, Advocate for applicant.
Mr. Safdar Ali Kanasro, Advocate for respondent No.5.
Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General, Sindh.

ORDER

Arbab Ali Hakro, J. – Through this application under Section 561-A Cr.P.C, the applicant has assailed the order dated 03.06.2026, passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Khairpur, in Criminal Miscellaneous Application No.1400/2026, whereby the application filed by respondent No.5, Mushtaque Ahmed, under Sections 22-A(6)(i) and 22-B, Cr.P.C, was allowed. In consequence, the S.H.O., Police Station Babarloi, was directed to record the statement of respondent No.5 and to proceed strictly in accordance with law, with the further stipulation that, if a cognizable offence is disclosed, an FIR shall be registered, but the accused shall not be arrested unless supported by cogent material collected during the investigation.

2. Learned counsel for the applicant has contended that the impugned order passed by the learned Ex-Officio Justice of Peace is illegal, unlawful and without lawful authority; that the Court below has acted in a slipshod manner, without assigning cogent reasons and without adverting to the objections filed on behalf of the applicant. He has further urged that the learned Ex-Officio Justice of Peace, failed to appreciate a material discrepancy in the pleadings of respondent No. 5, inasmuch as in the memo of application under Sections 22-A and 22-B, Cr. P. C., respondent No. 5 himself averred that the cheque issued by the son of the applicant was presented before the concerned bank and dishonoured vide memo dated 17. 07. 17.07.2025 due to insufficient funds, whereas the date of the said cheque was mentioned as 20. 10. 20.10.2025. Learned counsel has argued that the cheque could not have been presented and dishonoured prior to its issuance date, and that this crucial factual aspect, which goes

to the root of the matter, was wholly ignored by the learned Ex-Officio Justice of Peace while passing the impugned order. He submits that such discrepancy casts serious doubt upon the version of respondent No. 5; nevertheless, the Court below failed to examine the same and mechanically directed the police authorities to proceed for registration of FIR. He has further contended that the dispute between the parties is purely civil in nature, arising out of business transactions pursuant to an agreement dated 30.04.2024, under which the cheque in question was issued only as security and not towards discharge of any legally enforceable liability. Learned counsel has argued that the ingredients of the offence under Section 489- F, P. P. C. are not attracted; however, the learned Ex-Officio Justice of Peace failed to appreciate this aspect and mechanically directed registration of FIR. He has further submitted that the applicant has already approached the civil Court for declaration, settlement of accounts, and permanent injunction, whereas respondent No. 5 is attempting to employ criminal proceedings as a tool for recovery of a disputed amount. Hence, the impugned order is liable to be set aside.

3. Conversely, learned counsel for respondent No.5, while supporting the impugned order, has submitted that respondent No.5 supplied wheat worth Rs.15,000,000/- to the applicant and his son, for which cheques were issued. On presentation, the cheques were dishonoured due to insufficient funds and a dormant account. He has contended that a clear cognizable offence is made out against the applicant and that the learned Ex-Officio Justice of Peace rightly exercised jurisdiction under Sections 22-A and 22-B, Cr. P.C, by directing the concerned police to proceed in accordance with law. He has further urged that the present application has been filed merely to frustrate the lawful process of registration of FIR and is liable to be dismissed.

4. Learned Deputy Prosecutor General has supported the impugned order and submitted that the order passed by the learned Ex-Officio Justice of Peace is in accordance with law, inasmuch as the said Court has merely directed the concerned S.H.O. to record the statement of respondent No.5 and to proceed further strictly in accordance with law if a cognizable offence is made out. He has further submitted that the disputed questions of fact are to be determined by the investigating agency after

registration of FIR and that the applicant cannot seek quashment of proceedings at this preliminary stage.

5. Heard the arguments and perused the material on record.

6. Upon a meticulous appraisal of the record, it appears that the order under challenge suffers from a conspicuous lack of reasoning. The Ex-Officio Justice of Peace merely directed the SHO to record the statement of respondent No.5 and to proceed in accordance with law, without addressing the objections raised by the applicant or the documentary material placed before him. Such an approach is inconsistent with the quasi-judicial character of the functions entrusted to the Justice of Peace under Section 22-A(6) Cr.P.C, as elucidated by the Supreme Court of Pakistan in the case of Younas Abbas¹.

7. The applicant has specifically pointed out a material discrepancy, namely that the cheque dated 20.10.2025 was allegedly dishonoured on 17.07.2025, a factual impossibility that casts serious doubt on the veracity of respondent No.5's version. Moreover, the applicant has produced an agreement dated 30.04.2024, demonstrating that the cheques were issued as security in the course of business dealings, not in discharge of any legally enforceable liability. The pendency of a civil suit for declaration, settlement of accounts and injunction further underscores the civil nature of the dispute. These aspects were neither adverted to nor evaluated by the Justice of Peace, thereby rendering the order non-speaking and mechanical.

8. The law is settled that criminal process cannot be employed as an instrument for the recovery of civil claims. Section 489-F P.P.C applies only where a cheque is issued towards repayment of a loan or the fulfilment of an obligation, not where it is issued merely as security. The Ex-Officio Justice of Peace, before directing the registration of an FIR, must satisfy himself that the ingredients of a cognizable offence are prima facie made out. His failure to do so amounts to an excess of jurisdiction. However, an outright dismissal of respondent No.5's application at this stage may also prejudice his right to seek redress if a cognizable offence is indeed disclosed.

¹ PLD 2016 Supreme Court 581

9. In these circumstances, the ends of justice would be better served by remanding the matter to the learned Ex-Officio Justice of Peace, Khairpur, with directions to rehear the parties, consider the objections and documentary evidence, and pass a speaking order in accordance with law. This course ensures that respondent No.5's grievance is adjudicated upon with due application of mind, while safeguarding the applicant against mechanical directions for FIR registration. It also accords with the parameters laid down in the case of **Younas Abbas** (supra), which require the Ex-Officio Justice of Peace to exercise his powers within defined limits and upon satisfaction that sufficient material exists.

10. Accordingly, the impugned order dated 03.06.2026 is set aside. The matter is remanded to the learned Ex-Officio Justice of Peace, Khairpur, who shall rehear the parties, evaluate the objections and the documentary record, and pass a reasoned and speaking order strictly in accordance with law. It is clarified that the Ex-Officio Justice of Peace shall apply a judicial mind to whether the ingredients of Section 489-F, P.P.C., are prima facie attracted, and shall not mechanically direct the registration of an FIR without such satisfaction.

J U D G E

Naveed Ali