

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Miscellaneous Application No.S-20 of 2020

Applicant: Allah Warayo, through Mr. Shabeer Hussain Memon.

Respondent No.2: Waseem Abbas Shaikh

Respondent No.3: The State, through Ms. Sana Memon, Assistant Prosecutor General, Sindh.

Date of hearing: 12.02.2025
Date of decision: 12.02.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- The applicant has assailed the Oder dated 06.01.2020 which was passed by the learned Sessions Judge/ Justice of Peace, Dadu thereby dismissing the application under section 22-A&B(vi)(i) of the Criminal Procedure Code (Cr.P.C.) for registration of First Information Report (FIR) under section 154 Cr.P.C.

2. Applicant's case is that he extended friendly loan of Rs.650,000/- to Respondent No.2 for enhancement of his business of general store, in lieu whereof, Respondent issued a cheque No.11413085 from Account No.1287-0095-038196-01 maintained at Bank Al-Habib Phase II, Gulshan-e-Hadeed, Karachi. The said cheque was deposited by the applicant on 20.11.2019 in his bank account maintained at Bank Al-Habib Branch Dadu, which was dishonoured and returned to the Applicant along with bank memo dated 21.11.2019, containing the reasons as "*insufficient funds*" and "*payment stopped by drawer*". The matter was also placed before *nek-mard/ society elders* by the applicant, who spoke to the Respondent, but to no avail. Thereafter, legal notice was sent by the Applicant, which was not replied by Respondent. Left with no other remedy, the applicant filed application at Police Station A-Section Dadu for registration of FIR which was refused. Lastly, Application under section 22-A&B Cr.P.C. was filed before the learned Sessions Judge/ Justice of Peace, which was disallowed vide the impugned Order, which has been challenged herein. The application was dismissed on the premise that police station at District Dadu does not have the jurisdiction in the matter, since the cheque was issued by the respondent from his account maintained at Bank Al-Habib, Phase-II Gulshan-e-Hadeed, Karachi.

3. The moot question to be decided in this case would be that, for initiation of action against an offence of dishonour of cheque under section 489-F PPC., which place would be relevant for registration of FIR under section 154 Cr.P.C.? Section 489-F PPC. provides that:

“Dishonestly issuing a cheque.--- Whoever dishonestly issues a cheque towards repayment of a loan or fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque.”

4. Generally, for the purposes of initiation of action on a cognizable offence under section 154, Cr.P.C., it has to be seen by an officer Incharge of a police station, (a) that an application conveying certain information is placed before him, and (b) that the information pertains to commission of a cognizable offence. Section 154, Cr.P.C. is quite explicit and the officer in charge of the relevant Police Station is under a statutory obligation to register F.I.R. whenever information disclosing commission of a cognizable offence is provided to him¹. In this regard, neither the officer in-charge of a police station nor an ex-officio Justice of the Peace is obliged to afford an opportunity of hearing to the accused party, before registration of a criminal case or before issuing a direction in that regard^{2, 3}.

5. With respect to an offence under section 489-F PPC., an offence under section 489-F, PPC. is complete, when a cheque in respect of an obligation is dishonoured, and an endorsement from the bank is forthcoming^{4,5}. Furthermore, the defense plea *qua* issuance of a cheque as a guarantee or otherwise, could only be decided during the course of investigation and not otherwise at the stage of quashment of proceedings⁶.

1. 2004 SCMR 1123 '*Syed Qamber Ali v. Province of Sindh and others*'
2. PLD 2000 Lahore 208 '*Saeed Ahmad and others v. Naseer Ahmad and others*'
3. 2004 PCr.LJ 1214 '*Muhammad Aslam v. Additional Sessions Judge and others*'
4. 2021 PCr.LJ 1527 '*Dawood Abdul Ghafoor V. Justice of Peace and others*'
5. 2017 YLR 1548 '*Malik Sohail Aslam v. S.P. (Operations), Lahore and 3 others*'
6. 2011 SCMR 1937 '*Rana Shahid Ahmad Khan v. Tanveer Ahmad and others*'

6. As from the context of territorial jurisdiction in a case of dishonour of cheque, under section 489-F PPC, it has been held in the following three Judgments that, the drawee/ payee has the option or choice to initiate criminal proceedings at any of the two places, i.e. where the cheque was deposited for encashment or the place where it was dishonoured, since there was no legal bar or prohibition with respect there to^{7, 8, 9}.

7. That from the context of 'dishonesty' of drawer of a cheque, the same would materialize only at the time when the cheque is dishonoured, and therefore, time of occurrence would be reckoned from the date when the cheque was dishonoured and not from the date the said cheque was issued. The cause of action would accrue in favour of the complainant when the cheque was dishonoured and not at the time the same was issued, and the date of issuance is immaterial in such cases.¹⁰

8. On the functions of the Ex-officio Justice of Peace in cases of dishonour of cheques, the law settled by the Hon'ble Apex Court¹¹ that:

"The functions, the Ex Officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as described in clauses (i), (ii) and (iii) of subsection (6) of section 22-A, Cr.P.C, are *quasi judicial*, as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administration of ministerial on any account."

9. Applying the above discussed legal principles to the facts of the instant case, it appears that the applicant rightly approached the Police Station A-Section Dadu for registration of FIR, within the territorial limits whereof the cheque was deposited and dishonoured, but which was wrongly refused by

7. 2021 YLR 1436 '*Total Parco Pakistan Ltd. v. ADJ (West), Islamabad*'

8. PLD 2010 Lahore 60 '*Mazhar Hussain v. The State and 2 others*'

9. 2019 PCr.LJ 1558 '*Faqir Khan v. Bakhtawar Jan and 4 others*'

10. 2007 P Cr. L J 997 '*Shaukat Ali V. District Police Officer, Burewala Vehari & Others*'

11. PLD 2016 SC 581 '*Younas Abbas & others v. Addl. Sessions Judge Chakwal others*'

the concerned officer. As for the learned Ex-officio Justice of Peace he also failed to understand the issue and failed to apply correct legal principles, as discussed above, but acted in a mechanical manner without taking into consideration the basic law on the issue of territorial jurisdiction in offences falling under section 489-F PPC., but rejected the application under sections 22-A & B Cr.P.C. on factors which are extraneous to the issue in hand. For the foregoing reasons, the issue of territorial jurisdiction of the said offence at Police Station A-Section Dadu is made out by the applicant. Hence, the impugned Order dated 06.01.2020 is set-aside and application under sections 22-A&B, Cr.P.C. is allowed; and SHO Police Station A-Section Dadu is directed to entertain the application of the applicant and proceed strictly in accordance with law. The instant application under section 561-A Cr.P.C. is therefore allowed in the above terms. These are the detailed reasons for allowing this application on 12.02.2025, when the following short Order was passed:

“Heard learned counsel and learned APG at length. For reasons to follow, the instant application is allowed.”

10. Before parting with this Order, a note of appreciation for the diligence, professional conduct and valuable assistance as provided by the learned Assistant Prosecutor General, not only in this case, but in all cases represented by the learned officer before this Bench, which is highly commendable.

J U D G E

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Miscellaneous Application No.S-20 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

For hearing of main case.

12.02.2025

Mr. Shabeer Hussain Memon for Applicant
Ms. Sana Memon, Assistant Prosecutor General, Sindh.
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Heard learned counsel and learned APG at length. For reasons to follow, the instant application is allowed.”

J U D G E