IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D-3166 of 2025
and
Constitution Petition No. D-3167 of 2025
[Omer Farooq and another v. SHO P.S K.I. A and others]

Before.
Mr. Justice Zulfiqar Ali Sangi
Mr. Justice Nisar Ahmed Bhanbhro

Petitioners	:	Omer Farooq Khan and Farooq Ahmad through M/s. Salman Safdar and Khurram Lakhani, Advocates.
Respondents 1 to 3	:	Nemo.
Date of Hearing	:	10.07.2025.
Date of Short Order:		10.07.2025.

J U D G M E N T

Nisar Ahmed Bhanbhro, J. Through this single judgment, We propose to decide the fate of captioned petitions, as in both the petitions, common question of law is involved.

2. Petitioners Omer Farooq Khan and Farooq Ahmad, have filed these petitions under article 199 of the Constitution for quashing of FIRs bearing number 749/2019 and 751/2019 recorded at Police Station Korangi Industrial Area [KIA], Karachi for offence punishable under Section 489-F, 420, 34 PPC. After investigation, two separate reports under section 173 CrPC were submitted before the concerned Magistrate, which were accepted, cognizance under section 190 CrPC was taken and cases are pending trial before the Court of Learned Civil Judge & Judicial Magistrate VIII East Karachi (Trial Court).

3. Facts in brief of the Constitution Petition No 3166 of 2025 and 3167 of 2025 are that the Respondent No 2 Imran Hussain entered a contract for purchase of white refined sugar with M/S Kamaliya Sugar Mills Limited. For the purposes of timely delivery of sugar, the payments were made in advance. The amounts paid by the Respondent No 2 were secured through post-dated cheques issued by the Company and signed by its directors Farooq Ahmad and Omer Farooq Khan. Company failed to fulfill its commitment and did not supply refined white sugar to the Respondent No 2. A legal notice through Counsel was also issued to the company but to no avail. The cheques were presented before the concerned bank which were dishonored on account of insufficient funds. The Respondent No 2 took efforts for recovery of amount but failed therefore he appeared at Police Station Korangi Industrial Area and recorded two separate FIRs bearing number 749 of 2019 and 751 of 2019 for offences punishable under section 489 – F, 420, 34 PPC.

4. The usual investigation in the FIRs culminated in submission of separate reports under section 173 CrPC before concerned Magistrate. The accused (petitioners) were referred for Trial under section 512 CrPC showing them absconders. Learned Trial Court took cognizance of the cases under section 190 CrPC and issued process to secure attendance of the petitioners. On failure of the Petitioners to appear and face trial, Learned Trial Court issued warrants and took coercive measures for blocking CNIC and Passports, which compelled Petitioners to surrender. Petitioners through these Petitions have sought indulgence of this Court for quashing of FIRs.

5. At the very outset, Learned Counsel for the petitioners was confronted as to the maintainability of these petitions. As after the registration of FIRs, investigated was done and separate reports under Section-173 CrPC (challan) were submitted before Learned Trial Court. The Petitioners have an alternate and adequate remedy under the law to file an application under section 249 – A CrPC before Learned Trial Court for acquittal.

6. Mr. Salman Safdar Learned Counsel for the petitioners contended that the petitioner No. 2 Farooq Ahmed was an old-aged person and unable to walk, he resided in Lahore and could not attend Trial Court situated at Karachi. The FIRs were registered against the stale cheques; the petitioners were not signatories of the cheques; cheques were dishonored in year 2015 and FIRs were malafidely registered in the year 2019 after four years. He contended that the petitioners came to know about the registration of FIRs when the Trial Court seized with the matter ordered to block CNICs and Passports of the petitioners. He contended that the Petitioners were directors of a reputable company operating its business from Lahore in province of Punjab, therefore, FIR in the province of Sindh was without jurisdiction. He contended that dispute was that of civil nature and Respondent No 2 has already filed a summary suit for recovery of amount which is pending adjudication before Civil Court. He contended that the cheques were presented before the concerned bank for encashment beyond reasonable period of six months as such no criminal proceedings could be initiated based on "Stale Cheques". He contended that the Constitution Petitions were maintainable as the FIRs were illegally lodged and there was no likelihood of the conviction of the Petitioners, if the petitioners joined the Trial Court, they would face hardships, and it would result in the abuse of the process of law. He placed reliance upon the case of Ghulam Sarwar Zardari v. Piyar Ali alias Piyaro and another reported as 2010 SCMR 624; case of Miraj Khan v. Gul Ahmed and 3 others reported as 2000 SCMR 122; case of Hamid Khan v. the State and 2 others reported as 2022 MLD 31 and the case of Muhammad Munir Ahmed v. the State and another reported as 2010 MLD 1838. He pleaded that the case for indulgence of this Court was made out and the FIRs were required to be quashed.

7. Heard arguments and perused the material available on record.

8. Contention of the Learned Counsel for the Petitioners that Petitioner No 2 was an old aged, cardiac patient, sick and infirm person and residing at Lahore, that Company was operating business in Lahore and FIR was registered at Karachi thus was without jurisdiction did not create any ground for quashing the FIRs or record acquittal of Petitioners or discharge them from the criminal case. It is axiomatic principle of law that the criminal cases are decided on own merits. The health condition or old age of a person facing criminal trial at the most can create a mitigating circumstance to inflict lesser punishment. The Petitioner cannot claim impunity from criminal charge for his old age. The cheques as per FIR were presented before a Bank in Karachi and dishonored at Karachi therefore, the offence was committed within the limits of Karachi and an FIR recorded at Karachi did not suffer from any jurisdictional error. On this score, the FIRs cannot be quashed.

9. The next contention of the Learned Counsel for the Petitioners that the cheques issued by the Petitioners were not presented before the concerned bank within reasonable time as such were "Stale Cheque" thus no FIR could be registered against the Stale Cheques. Admittedly, a cheque is a Negotiable Instrument as defined in Section 6 of the Negotiable Instruments Act 1881. According to Section 84(1) of the Negotiable Instruments Act, 1881, it is stipulated that a cheque must be presented for encashment within a reasonable time. The reasonable time for presentation of cheque under banking

trade and business in Pakistan spans over six months, thereafter, the Bank would not be under obligation to entertain the cheque. As per the Glossary of Banking Terminology available on the website of State Bank of Pakistan (www.sbp.org.pk) the "Stale Cheque" has been defined as under:

> ***"A Stale Cheque is a cheque that has been outstanding for an unreasonable time. A cheque may be outstanding for more than six months, and a bank may under its discretion refuse to honour such a cheque. A bank is under no obligation to a customer to pay a cheque, other than a certified cheque, after more than six months of its date, but it can charge its customer's account for a payment made thereafter in good faith."***

Stale Cheque in general terminology is a cheque which became outdated if remained outstanding beyond a period of Six months, such cheque may not be honored by the bank. In the case of the Petitioners, as per the information available at page 25 of the memo of Petition, Respondent No 2 was given three post-dated cheques, one cheque date 26.02.2015 which was presented to concerned Bank on 25.08.2015, Second Cheque dated 22.12.2014 which was presented to concerned Bank on 24.01.2015 and Third Cheque dated 26.04.2015 which was presented to concerned Bank on 26.10.2015. Impliedly, as transpired from record all the cheques were presented within the reasonable time of Six Months, as such did not fall under the definition of "Stale Cheque". All three cheques were dishonored for reason of insufficient funds. The Petitioners could not succeed to establish that the criminal proceedings against the Petitioners were initiated based on "Stale Cheques". The contention of the Petitioners failed to survive being without substance.

10. The contention of Learned Counsel for Petitioners that Respondent No 2 has initiated Civil Proceedings by filing suit for recovery of alleged amount, damages and specific performance pending adjudication before the Competent Civil Court and until the result in the civil suits, the criminal proceedings cannot sustain. Record transpired that the Respondent No 2 filed Summary Suit No 1827 of 2018 for recovery of amount, Suit No 1828 of 2018 for damages and Suit No 561 of 2019 for Specific Performance. For the same business transactions, he also recorded two separate FIRS. The issuance of cheque for repayment of an obligation may result in civil and criminal wrong, if not encashed by the Bank apparently for any fault on the part of account holder. If the cheque is dishonored on account of insufficient funds, the failure to repay an obligation would amount to civil wrong, for its recovery a civil suit would be competent At the same time, it would constitute a criminal offence within the meaning and definition of section 489 – F of the Pakistan Penal Code, inviting penal action under the criminal laws. Mere filing of civil suits by the Respondent No 2 for recovery of disputed amount and claim of damages would not in any manner absolve the Petitioners from criminal liability of failing to arrange the sufficient funds to honor the cheque. FIR cannot be straightaway quashed on the ground that a civil litigation between the parties was pending adjudication on the same subject matter. It is settled law that criminal proceedings are not barred in presence of civil proceedings and that civil and criminal proceedings can proceed simultaneously.

11. This view is fortified by the judgment of Honorable Supreme Court of Pakistan in the case of Dr Sikandar Ali Mohiuddin Versus the Station House Officer and others reported in 2021 S C M R 1486, wherein it has been held as under:

> ***"8. There is no denial to this fact that the respondent has lost the civil litigation up to the High Court and finally Crl. R. No.8990/2019 adjudicated and decided vide judgment dated 17.01.2020 wherein the revision petition filed by respondent No.2 was dismissed having not pressed. As far as the controversy arisen out of the instant appeal is***

concerned the super structure raised by respondent No.2 claiming share in the land arising out of Khasra No.1004 situated in Mouza Gohawa Tehsil Cantt. District Lahore is concerned, the Fard Malkiat which is made basis for said share was found to be forged and fabricated initially during an inquiry conducted by EDO(R) on the application of the appellant. Apart from this aspect of the case, as the matter was of criminal nature, the same cannot be closed down with a stroke of pen on the ground that civil litigation is pending adjudication between the parties coupled with the finding in a police investigation. It is now settled that criminal as well as civil proceedings can go side by side if the same is spelled out on the basis of cogent foundation. It is admitted fact that the aforesaid crime report was lodged on the application of the appellant when the document in question was found forged and the same was based upon legal foundation."

12. In another case titled Seema Fareed and others versus The State and another reported in 2008 SCMR 839 Honorable Supreme Court has held as under:

"It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction."

13. Adverting to the contention of the Learned Counsel for the Petitioners that writ jurisdiction of this Court was still available to seek quashment of FIRs, though after investigation charge sheet under section 173 CrPC was filed and matter was pending adjudication before Learned Trial Court. This Court by virtue of the powers conferred under Article 199(1)(a)(ii) of the Constitution, is burdened with a task to take judicial review of the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a Local Authority. This Court under its powers of judicial review can declare such acts to be of no legal effect or validity, if satisfied, that the acts or proceedings were done or taken without lawful authority. The Officer In Charge of the Police Station performs functions in connection with affairs of province, if he finds that a complaint brought before him constituted an offence of cognizable in nature, he acts in compliance to section 154 CrPC, the investigation follows to find out truth or substance in the complaint, in order to form an opinion that the case may or may not be referred for Trial to the concerned Court for want of sufficient evidence. The acts of registering the FIR and conducting investigation by the officers of police, are subject to judicial review of this Court under Article 199(1)(a)(ii) of the Constitution. This Court under the powers of judicial review can declare such acts of the police officers, to have been done without lawful authority and of no legal effect, if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision, such as quashing the FIR and investigation proceedings. Powers vested under article 199 of the Constitution, in particular for quashing an FIR are exercised under exceptional circumstances, very sparingly and rarely, and only when the facts on record unequivocally indicated that no offence was committed by the accused; the registration of FIR was misuse of official capacity, there was no justification for allowing the prosecution

to continue, the proceedings in the matter would amount to an abuse of the process of law, and the dispute from the face of facts narrated in FIR appeared to be of civil nature and it was converted into criminal proceedings to harass and humiliate the accused persons. It would be fallacy of thought to treat High Court as an Appellate Authority against the actions taken by the police. The powers of this Court under writ jurisdiction are curative and corrective in nature and Court is saddled with a balancing task to do complete justice between the parties. The recourse to the constitutional jurisdiction of this Court can be taken at initial stage of registration of FIR. But once the matter has been duly investigated and report under section 173 CrPC has been submitted before the concerned Court then the proper course and adequate remedy available under the law is to surrender before the Trial Court and seek remedy provided under the code of criminal procedure. Perusal of record revealed that after registration of FIRs the subject matter of these petitions, investigation took its course and a report under Section-173 CrPC was submitted before Learned Trial Court. Filing of a report under section 173 CrPC before Learned Trial Court implied that sufficient material was collected during investigation to refer the accused for trial. Once the Trial Court assumed jurisdiction to conduct trial of the case, then appropriate remedy available under the law was to seek indulgence of Trial Court for acquittal by filing an application under section 249 - A CrPC or 265 – K CrPC as the case may be.

14. Honorable Supreme Court of Pakistan in the case of Director General Anti-Corruption Establishment Lahore and others Versus Muhammad Akram Khan and others reported in P L D 2013 Supreme Court 401 has held that:

> ***2. After hearing the learned Additional Advocate-General, Punjab appearing for the appellants and the learned counsel for respondent No.1 and having gone through the record of the case with their assistance we have found that through the impugned order the learned Judge-in-Chamber of the Lahore High Court, Lahore had partially quashed the relevant F.I.R. to the extent of respondent No.1 whereas partial quashing of an F.I.R. to the extent of some of the accused persons mentioned therein is a legal impossibility. Apart from that the impugned order had been passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore at a time when a Challan in the relevant criminal case had already been submitted before the learned trial court and the learned Trial court had already taken cognizance of the case. The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself."***

15. In the case of Ajmeel Khan Versus Abdul Rahim and others reported in PLD 2009 SC 102 Honorable Supreme Court has held as under:

> ***"6. Needless to emphasis, that functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can be tried upon a criminal charge. Quashment of FIR during investigation tantamount to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification. The police are under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 of the Code of Criminal Procedure to investigate a cognizable offence***

whenever a report is made to it disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police."

16. The Legislature has empowered Criminal Courts to exercise inherent jurisdiction conferred under section 249 – A or 265 – K CrPC and acquit the accused of the charge at any stage of the proceedings. The legislative wisdom to empower Criminal Courts to nip in the bud the criminal proceedings aimed to protect the integrity of criminal justice system, to avoid the abuse of process of the Court; to safeguard an accused person from the agony of a purposeless, malicious, protracted and frivolous prosecution; more importantly to secure the ends of justice. If Trial Court does not concede to the request of accused of acquittal under section 249 – A or 265 – K CrPC, he may assail the orders of Trial Court before this Court under its revisional jurisdiction conferred under section 435 of the Code or under the inherent powers conferred under section 561 – A CrPC. This Court, can quash a judicial proceeding pending before any subordinate criminal court by exercising inherent powers under section 561-A, CrPC, if found that it was necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, such powers were not exercised in run off a mill manner, unless the accused person has first availed his remedy before the Trial Court by invoking its jurisdiction under section 249-A or 265-K CrPC as the case may be. The exercise of the powers directly by High Court under section 561 – A CrPC without first moving the Trial Court would amount to substituting the powers of Trial Court, which practice is never acceptable under the law. The appropriate remedy available to the Petitioners under the facts and circumstances of the present case was to approach Learned Trial Court but instead they chose to file Constitution Petition before this Court, which cannot be granted as the same would tantamount to throttle the prosecution, and will offend the fundamental rights of the Respondent No 2 guaranteed under article 10-A of the Constitution. In both the petitions, the Petitioners have prayed for quashing of FIRs and no prayer for quashing the proceedings pending before Learned Trial Court has been made, which renders the petition defective itself.

17. In the case of Muhammad Farooq Versus Ahmed Nawaz Jagirani and others reported in PLD 2016 Supreme Court 55 Honorable Supreme Court of Pakistan has been pleased to hold as under:

"11. The remedy under Section 561-A, CrPC is not an alternate and or substitute for an express remedy as provided under the law in terms of Sections 435 to 439, Cr.P.C. and or Sections 249-A or 265-K, CrPC, as the case may be. One cannot be allowed to bypass and or circumvent the ordinary remedy in normal course of the event. In the case of Maqbool Rehman v. State (2002 SCMR 1076) in paragraph 6 thereof, it was held that "normally, High Court does not exercise inherent jurisdiction unless there is gross miscarriage of Justice and interference by the High Court seems to be necessary to prevent abuse of process of court or to secure the ends of justice. Jurisdiction under section 561-A, Cr.P.C is neither alternative nor, additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary course of Criminal Procedure. This kind of jurisdiction is extraordinary in nature and designed to do substantial justice. It is neither akin to appellate nor the Revisional Jurisdiction."

18. In the present case, material available on the record demonstrated that Petitioners issued cheques for repayment of an amount which was taken in advance for payment of goods. The cheques were dishonored by the concerned bank for the reason of unavailability of sufficient funds. The Trial Court is seized with the matter where the cases are pending adjudication since last more than six years. Learned Trial Court adopted coercive measures to procure the attendance of petitioners, but the conduct of petitioners revealed that they were still unwilling to join trial, which act on their part cannot be appreciated at all. Question as to the innocence or guilt of the petitioner would be addressed through evaluating the evidence of parties. This Court under its writ jurisdiction cannot undertake the exercise of evaluating evidence collected by the police during Investigation as it will involve the disputed questions of fact. This case also involved the factual controversy, rendering the petition not maintainable on that score too. High Court, in exercise of its constitutional jurisdiction under Article 199, cannot resolve factual controversies as held by the Honorable Supreme Court in the cases of Mst. Tayyeba Ambareen and another versus Shafqat Ali Kiyani and another (2023 SCMR 246), Amir Jamal and others versus Malik Zahoor-ul-Haq and others (2011 SCMR 1023) and Fida Hussain versus Mst. Saiqa and others (2011 SCMR 1990).

19. With due reverence the case law relied upon by the Learned Counsel for the Petitioners are distinguishable from the facts and circumstances of the present case as such are distinguishable.

20. Sequel to the above discussion, We are of the considered view that the writ petitions for quashment of FIRs were not maintainable in presence of an alternate and adequate remedy available under the law, no case for indulgence of this Court under its writ jurisdiction under article 199 of the constitution is made out, these Petitions therefore fail and are accordingly dismissed in *liminie* along with pending applications if any. These are the reasons for our short order passed in the earlier part of the day.
Office to place signed copy of the order in the connected petition.

JUDGE

JUDGE

Ayaz Gul