

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No. 328 of 2021

Present:

Justice Zafar Ahmed Rajput, ACJ
Justice Jan Ali Junejo

Applicant	:	Muhammad Farooq s/o Ch. Muhammad Abbas, through Mr. Furqan Ahmed Siddiqui, Advocate.
Respondent	:	Askari Bank Limited, through Mr. Mehmood Ali, Advocate.
		Ms. Shazia Hanjra, Deputy Attorney General, ("DAG") on Court's Notice
Date of hearing	:	<u>15.10.2025</u>
Date of order	:	<u>15.10.2025</u>

ORDER

JAN ALI JUNEJO, J.- This CrI. Misc. Application, under Section 561-A, CrPC, has been preferred by the Applicant/accused, Muhammad Farooq, impugning the order, dated 17.04.2021, whereby the learned Banking Court No. III, Karachi ("*Trial Court*") dismissed an application filed by the Applicant under Section 265-K, CrPC in *Criminal Complaint No. 01 of 2018*, ("*CrI. Complaint*"), filed by the Respondent, Askari Bank Limited, ("*Respondent-Bank*") under Sections 20(1)(b) & 20(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("*FIO*").

2. Learned counsel for the Applicant has submitted that the Respondent-Bank's case is fundamentally flawed and it does not disclose any criminal liability on the part of the Applicant. He has drawn our attention to paragraph 11 of the CrI. Complaint, which explicitly states that the Applicant has adjusted the principal amount of the Export Refinance Facilities ("*ERF*") availed by him. He has further submitted that the dispute is limited to the Respondent-Bank's unilateral calculation of

markup, which is a quintessential civil dispute of a financial character regarding the quantification of a debt, rather than a criminal act of fraud. He has also submitted that the Respondent-Bank has already invoked the civil remedy by filing Banking Suit No. B-30/2014 for the recovery of the markup amount, which is currently pending adjudication before this Court. Relying on the cases of National Bank of Pakistan through Attorney v. Sanaullah and others (2011 CLD 1013) and Syed Omar Nazar Shah v. Bank of Punjab and others (2019 CLD 707), he has added that the existence of a pending Banking Suit on the identical cause of action renders the parallel criminal proceedings malicious. He has further submitted that filing of the Crl. Complaint is an attempt to arm-twist and harass the Applicant into a settlement, thereby constituting a gross abuse of the process of the Court. He has further submitted that the alleged criminal liability is entirely contingent upon the prior determination of civil liability by the Court in Banking Suit; therefore, continuation of criminal proceedings is untenable in law and must be quashed under this Court's inherent powers envisaged by Section 561-A, CrPC. He has concluded by praying for the quashment of the criminal proceedings initiated by the Respondent-Bank under Crl. Complaint in order to prevent abuse of the process of the Court.

3. Conversely, learned counsel for the Respondent-Bank has opposed the Applicant's attempt to stifle the criminal proceedings by maintaining that the allegations, levelled in the Crl. Complaint, constitute a serious offence under the FIO; the Applicant's narrative is a caricature of facts, and paragraph 10 of the Crl. Complaint overtly alleges the default of principal amounts. In this regard, he has invited our attention to the voluminous documentary evidence, including finance agreements and Undertakings

executed by the Applicant. He has further maintained that the Applicant's conduct has gone beyond a mere banking/civil default in repayment of finance facility and has constituted a deliberate breach of undertakings and covenants regarding the use of the same, which has amounted to willful misappropriation of finance facility granted by a Financial Institution/ Respondent-Bank, squarely attracting the ingredients of "fraudulent misrepresentation" and "breach of obligation" under Section 20(1) (b) and violation of Section 20(2) of the FIO. He has also maintained that the pendency of a civil suit is no legal bar to the initiation or continuation of a criminal prosecution, which is designed to punish a wrong. In this regard, he has cited authoritative judgments of the Supreme Court in the case of Salman Ashraf v. Additional District Judge, Lahore and others (2023 SCMR 1292) and this Court in the case of Askari Bank Limited v. Tariq Chand (2022 CLD 1042), wherein, it has been held that the remedies under Section 9 (civil suit) and Section 20 (criminal prosecution) of the FIO are concurrent, independent, and distinct. He has added that the veracity of the allegations has to be tested through a full-fledged trial where the evidence can be appreciated in its entirety. In conclusion, the learned counsel has prayed for dismissal of the instant Application, urging that the Applicant's attempt to quash the criminal proceedings is misconceived and that the matter should proceed to trial to determine the truth of the allegations.

4. Learned DAG has indorsed the contentions of learned counsel for the Respondent-Bank.

5. We have heard the learned counsel for the parties and have examined the material available on record with their assistance.

6. It may be observed that the inherent jurisdiction of this Court under Section 561-A, CrPC is extraordinary, equitable, and discretionary in nature, intended to be exercised sparingly to prevent abuse of the process of the Court or to secure the ends of justice. It is a well-settled principle that such power must be exercised sparingly and with great caution, and only in cases where the allegations do not disclose any offence even *prima facie*, or where the proceedings are patently *mala fide* or without legal foundation. The inherent powers under Section 561-A do not confer appellate or revisional jurisdiction, nor do they authorize the Court to embark upon an appreciation of evidence or to hold a mini-trial at the preliminary stage.

7. Reverting to the case in hand, it appears that the Respondent-Bank had sanctioned ERF-I & II amounting to Rs.1,050,000,000/- in favour of *M/s Amir Rice Export & Import Co*, the Applicant's solely owned business concern. The Applicant has allegedly committed breach of undertakings and fraudulent misrepresentation on the basis of which the finance facility was granted. The Respondent-Bank lodged the CrI. Complaint on 30.01.2016; the Trial Court recorded the statements under Section 200, CrPC of Mr. Zeeshan Ghani (*Branch Manager*) and Mr. Nazakat Rafique (*Law Officer*) on 16.05.2016, who, on oath, affirmed the facts of the CrI. Complaint, produced the relevant banking documents including finance agreements, offer letters and undertakings. They deposed that the Applicant intentionally and willfully defaulted and misappropriated the

Respondent-Bank's funds. Upon examination of the statements and the documents, the Trial Court, vide order dated 22.03.2018, finding that a *prima facie* case existed, admitted and registered the CrI. Complaint. Later, on 18.07.2019, the Applicant filed an application under Section 265-K, CrPC, seeking his premature acquittal on the plea that no offence was made out and the criminal proceedings could not proceed concurrently with the banking/civil suits. After hearing both sides, the Trial Court, vide impugned order, dismissed the said application, holding that the prosecution's case rested on documentary material raising disputed questions of fact necessitating evidence at trial, and that there was no basis to conclude that there was no probability of conviction of the Applicant.

8. The Applicant's prayer before the Trial Court was for his acquittal under Section 265-K, CrPC. This provision empowers a court to acquit an accused at any stage if, after hearing the parties, it records reasons that "*there is no probability of the accused being convicted of any offence*". The Trial Court has meticulously applied this test. The Court examined the statements of the Bank's attorneys recorded under Section 200, CrPC, and the financial documents presented with the complaint. It found that a *prima facie* case existed. The allegations, if proven, squarely fall within the ambit of Section 20(1)(b) and 20(2) of the FIO. The defence of the Applicant that the documents are forged, the markup is incorrectly calculated, and the entire transaction is civil in nature constitutes his version of events, which is a matter of defence to be raised during the trial.

9. The principal argument advanced on behalf of the Applicant that the criminal proceedings must await the outcome of the Banking/civil suit,

cannot be accepted as an absolute rule of law. We are of the view that the civil liability for recovery of finance under Section 9 of the FIO and criminal culpability under Section 20 are independent and distinct in scope, purpose, and consequence. A civil suit determines the contractual obligations and quantifies the amount due while the CrI. Complaint addresses the *mens rea* and fraudulent conduct of the borrower at the inception or during the subsistence of the finance facility. The mere pendency of civil proceedings, or existence of a contractual dispute, does not bar criminal prosecution if the allegations disclose the ingredients of fraud, misrepresentation, or dishonest intention.

10. The FIO consciously establishes two distinct and independent avenues for redressal. Section 9 (*ibid*) provides a civil remedy for the recovery of money, whereas Section 20 creates specific criminal offences. The Applicant's contention that the pendency of a civil suit ousts the jurisdiction for initiation of criminal proceedings is fundamentally misconceived. In the case of *Salman Ashraf (supra)*, the Apex Court of Pakistan has enunciated the principle that the civil and criminal proceedings pertaining to the same matter may proceed simultaneously. However, if the determination of criminal liability depends upon the ultimate outcome of the civil proceedings and it is difficult to distinguish between a bona fide civil claim and a criminal act, the criminal proceedings may appropriately be postponed until the conclusion of the civil matter. Conversely, where the subject matter of the civil and criminal proceedings is distinct, not intimately connected, or where the civil proceedings are instituted mala fide to delay or obstruct the criminal prosecution, the criminal proceedings ought not to be stayed. The Apex

Court has further observed that: *“It hardly needs reiteration that the object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender for the commission of an offence. It is, therefore, a well-established legal position in our jurisdiction that both the civil proceeding and criminal proceeding relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously. Although there is no bar to the simultaneous institution of both proceedings, the trial in the criminal proceeding may be stopped in certain circumstances. And the guiding principle in this regard is also well-defined. It is that where the criminal liability is dependent upon or intimately connected with the result of the civil proceeding and it is difficult to draw a line between a bona fide claim and the criminal act alleged, the trial in the criminal proceeding may be postponed till the conclusion of the civil proceeding. Thus, where either of these two conditions is not fulfilled, i.e., where the subject matter of civil proceeding and that of criminal proceeding are distinct, not intimately connected, or where the civil proceeding is instituted mala fide to delay the criminal prosecution, not bona fide, the criminal proceeding may not be stayed”.*

11. The argument of the Applicant that the CrI. Complaint has been lodged to pressurize him during the pendency of civil litigation, raises a question of motive, which itself is a factual inquiry requiring evidence. This Court cannot substitute its opinion for that of the Trial Court on such disputed matters.

12. The Applicant's reliance on paragraph 11 of the CrI. Complaint is selective. A holistic reading of the complaint, including the specific averments in paragraph 10 and the referenced undertakings, reveals allegations that go beyond a simple non-payment of markup. The Bank

has alleged that the Applicant, after availing finances against specific representations and undertakings, failed to utilize them for the intended purpose and misappropriated the funds. Whether these allegations are true is a matter of evidence, but they undoubtedly allege the necessary *mens rea* and *actus reus* for the offences under Section 20 of the FIO. The defence of the Applicant, including his challenge to the calculation of markup, constitutes his version of events, which is a matter for trial.

13. The case-law relied upon by the learned counsel for the Applicant are clearly distinguishable on facts. In both cases, the initiation of criminal proceedings was found to be directly and exclusively contingent upon the adjudication of a civil right, and there were no independent or specific allegations of fraud, deceit, or misappropriation. In contrast, the present matter is founded upon distinct and independent allegations involving misappropriation of the Respondent-Bank's finance facility for personal gain, coupled with breaches of various obligations and representations as contemplated under the FIO. The allegations, therefore, transcend a mere civil dispute and *prima facie* disclose elements of criminal liability. In this backdrop, the Trial Court has rightly rejected the application under Section 265-K, CrPC.

14. For the foregoing facts, discussion and reasons, we find that the Trial Court has committed no error, whether jurisdictional or legal, in concluding that it would be premature and inappropriate, at this nascent stage of the proceedings, to hold that the Applicant is not guilty or that there is no reasonable probability of his conviction. The impugned order is a well-reasoned and judicious determination, reflecting a proper

appreciation of the facts and a correct application of settled legal principles. It, therefore, calls for no interference by this Court in the exercise of its jurisdiction in terms of Section 561-A, CrPC.

15. Consequently, this CrI. Misc. Application being found to be devoid of substantive merit, is dismissed accordingly, with a direction to the Trial Court to proceed with the matter expeditiously as the same is old one of 2016 on its board. The Office is directed to transmit a copy of this order to the Trial Court for information and compliance.

16. These are the detailed reasons of our Short Order, dated 15.10.2025.

JUDGE

ACTING CHIEF JUSTICE