

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

Criminal Misc. Application No.S- 362 of 2023

For Applicant:	Mr. Safdar Ali G. Bhutto, learned advocate
For Respondent:	Mr. Muhammad Ali Jagirani, learned advocate
For State:	Mr. Nazir Ahmed Bhangwar, learned DPG.
Date of hearing:	16.04.2025
Date of Order:	16.04.2025

ORDER

Jan Ali Junejo, J:- The instant Criminal Miscellaneous Application under Section 561-A Cr.P.C. has been filed by the applicant (proposed accused) to assail the order dated 31.10.2023 passed by the learned I-Additional Sessions Judge/Ex-Officio Justice of Peace, Larkana, in Criminal Misc. Application No. 1882 of 2023, whereby the application filed by Respondent No. 2 under Section 22-A(6)(i) Cr.P.C. seeking directions for registration of an FIR against the applicant was allowed. The impugned order directed the SHO, PS Taluka Larkana, to record the statement of Respondent No. 2 and register an FIR if a cognizable offence is disclosed.

2. The dispute arises from a transaction involving the sale of land bearing Survey No. 225, Deh Bughti, Taluka & District Larkana. Respondent No. 2 alleged that the applicant entered into an agreement dated 19.01.2022 to purchase the land for Rs. 5,24,10,000/-, paid Rs. 80,00,000/- as earnest money, and issued a cheque for Rs. 35,00,000/- dated 03.03.2023, which was dishonoured twice (on 03.03.2023 and 24.07.2023) with the endorsement "payment stopped by the drawer." Respondent No. 2 claimed that the applicant failed to honour the cheque despite demands, leading him to approach the police and subsequently the

court for FIR registration. The applicant contends that the land was purchased from Respondent No. 2's father, Khair Muhammad Malgani (recorded owner), and that Respondent No. 2 lacks locus standi. He further asserts that a civil suit (F.C. Suit No. 70/2023) is pending before the 2nd Senior Civil Judge, Larkana, seeking declaratory relief and cancellation of the agreement.

3. Learned counsel for the applicant argued that the dispute is purely civil in nature, arising from a contractual transaction, and criminal proceedings are being misused to coerce the applicant into settling the civil suit. It is further argued that Respondent No. 2 has no locus standi as the land is recorded in his father's name, and he is embroiled in a family dispute over ownership. It is further contended that the impugned order overlooks the pendency of the civil suit, which seeks cancellation of the agreement and recovery of amounts. The allegations are malicious and lack ingredients of a cognizable offence. Lastly, the learned counsel prayed for allowing of Criminal Misc. Application and setting aside of the Impugned Order.

4. Per contra, learned counsel for Respondent No. 2 and the learned APG argued that the dishonour of a cheque constitutes a cognizable offence, and the police are bound to register an FIR upon disclosure of such facts. The pendency of a civil suit does not bar criminal proceedings if a separate criminal liability exists. The applicant's contractual obligations (payment through cheques) and their subsequent dishonour attract criminal liability independent of the civil dispute. The impugned order is well-reasoned and aligns with *Hamid Khan v. The State (2022 MLD 31)*, which permits FIR registration for dishonoured cheques of the same transaction. Lastly they prayed for dismissal of the Criminal Misc. Application.

5. After carefully considering the detailed submissions made by the learned counsel for the Applicant, the learned counsel for Respondent No.2, and the learned Deputy Public Prosecutor (DPG) representing the State, as well as thoroughly examining the case records, it becomes evident that the legal position is well established: civil and criminal proceedings may run concurrently, provided the allegations reveal a distinct and independent criminal offence. The dishonour of a cheque, prima facie, constitutes an offence, and the pendency of a civil suit for contractual disputes does not immunize the applicant from criminal liability. The allegations of cheque dishonour, coupled with the applicant's alleged refusal to honour payment despite repeated demands, disclose a cognizable offence. The learned Ex-Officio Justice of Peace rightly directed the SHO to register an FIR if the statement of Respondent No. 2 substantiates the offence. The contention that Respondent No. 2 lacks locus standi is irrelevant at this stage. The issue of ownership and contractual validity is sub judice in the civil suit, but the criminal complaint pertains to the dishonour of a negotiable instrument, which is actionable irrespective of title disputes. The Impugned Order rightly places reliance on the case of *Hamid Khan v. The State (2022 MLD 31)*, wherein it was held that only a single FIR should be registered in instances involving multiple dishonoured cheques, provided that all such cheques originate from the same underlying transaction. No jurisdictional error or illegality is found in the reasoning. The applicant failed to substantiate allegations of malice or ulterior motive on the part of the Respondents. The mere pendency of a civil suit does not *ipso facto* render criminal proceedings malicious. The impugned order dated 31.10.2023 is legal, well-reasoned, and sustainable under the law. The civil suit and criminal proceedings shall proceed independently in accordance with law. Given the foregoing circumstances, the present Criminal Miscellaneous Application lacks merit, particularly in light of

the authoritative principle established by the Hon'ble Supreme Court of Pakistan in the case of **Seema Fareed and others v. The State and another (2008 SCMR 839)**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.

6. In view of the foregoing analysis and legal position, the present Criminal Miscellaneous Application filed by the applicant, having been found devoid of substance and lacking any tenable legal grounds, is hereby dismissed. The Impugned Order dated 31-10-2023 stands affirmed, and no case for interference by this Court is made out.

JUDGE

S.Ashfaq/-