

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. S-206 of 2025

(Musadiq Mujtaba Kolachi Baloch Vs. The State & others)

| Date | Order with signature of Judge |
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- 1. For Orders on office objection.
- 2. For hearing of main case.
- 3. For hearing of MA No. 1719/2025. (Stay)

ORDER.

05-06-2025.

M/s Imtiaz Ahmed Kolachi and Mansoor Hussain Maitlo, Advocates for the applicants.
Mr. Arshad Hussain Ghumro, Advocate for the respondent No. 4.
Mr. Muhammad Raza Katohar, Deputy P.G for the State.

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Ali Haider ‘Ada’,J:- Through this application, the applicant assails the order dated 24.03.2025, passed by the learned Additional Sessions Judge-IV /Ex-Officio Justice of Peace, Khairpur, in Criminal Miscellaneous Application No. 418/2025 titled Ali Gul vs. The State & others, whereby the said application filed by respondent No. 4 was allowed and the SHO, Police Station T.M. Khan, was directed to record the statement of respondent No. 4, (applicant before Justice of Peace), the Para No. 3 & 4 of said application are reproduce herein below for ready reference:

- 3. *“That the applicant running Karyana shop in Drib Mehar Shah (comes within jurisdiction of PS T.M Khan) as well as has friendly & business terms with proposed accused and one Najeeb s/o Abdul Shakoor Rid who are partners in business and they both used to purchase sugar from applicant on credit basis as well as proposed accused was working as Loan Officer in Khushhari Bank Limited Khairpur having employee No. 45646 and now he dismissed from his service/job.*
- 4. *That on 12-05-2024, applicant along with Noor Muhammad Ujjan and Irsahd Ujjan were sitting at Karyana shop, meanwhile at about 3.30 pm proposed accused along with his partner Najeeb Rid came there and purchased 100 bags of sugar at the rate of Rs. 7000/- per bag total amounting toRs.700,000/- then proposed accused issued cheque No. 06974991 dated 14-01-2024 amounting Rs. 700,000/- vide his account No.0108020302772096 of Kushhali Bang, Katchehry Road Beach Khairpur in presence of above witness as well as an agreement was reduced in between applicant & proposed accused, thenafter, proposed accused along with partner Najeeb Rid took away sugar bags.*

2. Learned counsel for the applicant submits that the application filed by respondent No. 4, Ali Gul, before the learned Ex-Officio Justice of Peace was

misconceived, as the disputed cheque in question actually pertains to one Ghulam Mujtaba, son of Ghulam Mustafa, by caste Jatoi and this plea was duly raised before the learned Ex-Officio Justice of Peace; however, the impugned order was passed solely on the basis of an Iqrarnama dated 12.05.2024. The said Iqrarnama allegedly reflects that the applicant, Musadiq Mujtaba, issued the cheque to respondent No. 4. The learned Ex-Officio Justice of Peace relied entirely on this Iqrarnama and on that basis, passed the impugned order, directing the SHO concerned to record the statement of respondent No. 4. He further submits that the provisions of Section 489-F, PPC are not attracted in the present case; hence, the impugned order is liable to be set aside and the instant application may be allowed.

3. On the other hand, learned counsel for respondent No. 4 submits that the application filed before the learned Ex-Officio Justice of Peace clearly stated that the present applicant had issued and handed over the cheque in question. It is contended that the Iqrarnama was executed by the applicant himself, wherein it was admitted that he issued the cheque. The Iqrarnama also contained his CNIC and service card; however, his caste was mentioned as Kolachi instead of Jatoi. It is further argues that the service card and other documents of the applicant, which were appended to the Iqrarnama, do not qualify as public documents; therefore, it can be presumed that the same were provided by the applicant himself. As regards the cheque, it has now come on record that the said cheque belongs to one Ghulam Mujtaba, son of Ghulam Mustafa, who has no business dealings with respondent No. 4 and the cheque may have been misused by the present applicant, Musaddiq Mujtaba, through fraudulent means, as he is serving as a loan officer in Khushhali Bank, where Ghulam Mujtaba is an account holder. He further contends that the learned Ex-Officio Justice of Peace has rightly passed a well-reasoned and speaking order.

4. Learned Deputy Prosecutor General for the State submits that, on the face of it, Section 489-F PPC is attracted against the drawer of the cheque. In the present case, since the cheque was allegedly issued by one Ghulam Mujtaba, the matter requires investigation. He submits that the question as to whether the cheque was in fact issued by the applicant can only be determined after

invoking the jurisdiction under Section 154 Cr.P.C; and such determination falls within the domain of investigation, which must follow due process of law.

5. Heard learned counsel for the parties and perused the material available on record.

6. It is a well-established principle of law that when an aggrieved person appears before the police functionaries, such authority is legally bound to record the version of the informant without any unjustified delay. In the present case, Respondent No. 4 initially approached the concerned police station; however, when his grievance was not redressed, he then approached the learned Ex-Officio Justice of Peace by invoking the remedy available under Sections 22-A and 22-B of the Cr.P.C, which obligates the Justice of Peace to assess the matter in a judicial, manner and upon a prima facie evaluation of the material placed on record, the learned Ex-Officio Justice of Peace is empowered to issue directions in accordance with law, including but not limited to, directing the concerned SHO to record the statement of the complainant. Such exercise of jurisdiction is not merely administrative in nature, but a quasi-judicial act aimed at safeguarding the fundamental rights of access to justice and fair investigation. In support of this view, reliance is placed on the case of ***Syed Qambar Ali Shah v. Province of Sindh and others (2024 SCMR 1123)***, wherein the Honourable Supreme Court of Pakistan held that:

“9. We have examined the impugned order of the High Court and, in paragraphs 6 and 7, several observations are made as a fact-finding forum which directly affected the merits of the case. It seems to us that the learned High Court had assumed the role of an investigator and passed certain observations to declare the case false which is beyond the purview of the jurisdiction of the High Court under Section 561-A, Cr.P.C. It is well-known that the inherent jurisdiction conferred under Section 561- A, Cr.P.C., cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities, but it is meant to protect and safeguard the interest of justice to redress grievances of aggrieved persons for which no other procedure or remedy is provided in the Cr.P.C. Despite everything, the ends of justice inescapably denote justice as administered and dispensed with by the courts but not justice in an abstract and intangible notion. In the case of Ghulam Muhammad v. Muzammal Khan [PLD 1967 SC 317], this Court had occasion to point out that the power given by section 561- A, Cr.P.C., can certainly not be so utilized as to interrupt or divert the ordinary

course of criminal procedure as laid down in the procedural statute. The matter only relates to the simple implementation of the order passed by the Justice of Peace which was only confined to the recording of the statement of the complainant before the S.H.O. but what we have perceived is that the matter was dragged unnecessarily for the last many years and the order passed in October 2015 is at a standstill and unimplemented.

10. The mere registration of FIR does not insinuate the conviction but as a rider, it is clearly provided under Section 169 of the Cr.P.C. that if upon an investigation, it appears to the officer incharge of the police-station, or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial. While Section 173 Cr.P.C. inter alia provides that as soon as the investigation is completed, the officer incharge of the police station shall, through the Public Prosecutor, forward to a Magistrate empowered to take cognizance of the offence on a police-report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and communicate, in such manner as may be prescribed by the Provincial Government. Furthermore, in the present context of the case where the respondents allegedly claim that no case was made out and the Justice of Peace exceeded his jurisdiction, it would be pertinent to point out the genre of the "A", "B" and "C" Class Reports under Section 173, Cr.P.C. The Police Report under "A" class indicates that the FIR is true but the accused persons are untraced, or there is no clue whatsoever about the culprits or property, or the accused is known but there is no evidence to justify his being sent up to the Magistrate for Trial, while report under "B" class denotes that the FIR is maliciously false or frivolous and no case is made out against the accused persons, whereas the report under "C" class refers to when the criminal case was filed due to mistake of fact or if offence complained about is of a civil nature. Had the opportunity been afforded to the Investigating Officer to carry out investigation according to the statement of the petitioner, he could perform his duties to ascertain whether any prima facie case is made out, and obviously if no case was made out then the Investigating Officer could file the report in the Court in the relevant Class. Being fully cognizant to such law and procedure, the learned Justice of Peace, while allowing application under Section 22-A, Cr.P.C., directed the S.H.O. Police Station 'A' Section, Ghotki, to record the statement of the petitioner and if a cognizable offence is made out, then register the FIR with the rider that the proposed accused should not be arrested without collection of tangible evidence and if during investigation, the FIR is found to be false, the police will be at liberty to initiate action against the complainant (petitioner) as required under Section 182, Cr.P.C.

7. In the present matter, it is apparent that the learned Ex-Officio Justice of Peace was apprised of the fact that the disputed cheque allegedly did not

pertain to the applicant, Musaddiq Mujtaba, but rather belonged to one Ghulam Mujtaba, the learned Justice of Peace, upon examining the documents presented including the Iqarnama, the cheque in question, the CNIC, and the service card bearing the identity of the applicant formed a view that a cognizable offence was, *prima facie*, disclosed. The applicant's averment is that the cheque does not belong to him, whereas Respondent No. 4 maintains that the cheque in question was provided by the applicant, Musaddiq Mujtaba, and further asserts that Ghulam Mujtaba, who now claims ownership of the cheque is also an account holder at the same bank where the applicant Musaddiq Mujtaba, was serving as a loan officer and that the cheque of Ghulam Mujtaba is being used as a shield to obscure the applicant's liability., Further, respondent No. 4 asserts a possible misuse of the banking relationship and lends credence to the assertion that the applicant may have utilized the cheque in question in a manner inconsistent with lawful banking practices, thereby attracting scrutiny under criminal law.

8. Significantly, Ghulam Mujtaba voluntarily appeared before this Court and claimed ownership of the cheque, ostensibly to exonerate the applicant. However, this circumstance, rather than conclusively resolving the issue, raises further suspicion, particularly in light of the allegation that Ghulam Mujtaba is acting under the influence or direction of the applicant, possibly to obstruct the enforcement of a financial obligation. The purported relationship between the applicant and Ghulam Mujtaba, as well as the sequence of events, warrant close scrutiny and do not, at this stage, justify a conclusive finding in the applicant's favor.

9. So far as the question regarding the nature and applicability of the offence is concerned, it is a prime responsibility to determine whether a cognizable or non-cognizable offence is made out lies with the Incharge of the concerned police station. Upon receiving information from the informant, it is the statutory duty of the Station House Officer to record the version under Section 154 Cr.P.C, if it discloses a cognizable offence, or to proceed under Section 155 Cr.P.C, in case of a non-cognizable matter. The SHO is then obliged to assess the material facts to determine the applicable provisions of substantive law, which are to be entered into the relevant column of the FIR.

10. There is no cavil to the legal proposition that Section 489-F PPC specifically applies to circumstances where a person, being the lawful owner or drawer of a cheque, issues the same with dishonest intent towards the fulfillment of a financial obligation or liability. The essential ingredients include: (i) issuance of a cheque, (ii) with dishonest intention, and (iii) for the discharge of an obligation, which subsequently is dishonoured. In the present case, the applicant contended that Section 489-F PPC is not attracted as he denies ownership of the cheque, asserting instead that it belongs to one Ghulam Mujtaba. However, where contested facts and serious allegations of misuse and manipulation of financial instruments are involved, the matter must be thoroughly examined through proper investigative channels. The respondent No. 4 cannot be deprived of his statutory right to have his version recorded merely on the basis of a defence raised by the applicant.

11. It is well-recognized in the jurisprudence of the Superior Courts that the powers conferred upon an Ex-Officio Justice of Peace under Sections 22-A and 22-B Cr.P.C, include issuing directions for recording the statement of the complainant, where the circumstances disclose commission of a cognizable offence or where a dispute requires probe through the investigative process. Reliance is placed on the case of *Muhammad Bashir v. Station House Officer, Okara Cantt (PLD 2007 SC 539)*.

12. Therefore, where respondent No. 4 has presented a prima facie case involving allegations of financial misconduct, supported by documentary evidence, thus, the matter requires the police to initiate proceedings under the proper legal framework. Whether or not the cheque was in fact issued by the applicant or Ghulam Mujtaba is a factual dispute that necessitates investigation. Furthermore, even if Section 489-F PPC is ultimately found to be inapplicable, the Incharge Police Station or Investigating Officer remains fully competent to invoke any other relevant provision of the Pakistan Penal Code, depending on the outcome of the statement of respondent No. 4, once it is recorded by the police. It is established that the registration of an FIR is not merely a procedural requirement but a statutory and substantive right guaranteed under Section 154 of the Code of Criminal Procedure, 1898. The principle of *Primus Relatus de*

Crimine, means the first account of a crime serves as the basic for initiating the criminal justice process.

13. As, the contention raised by the applicant, that respondent No. 4 should be barred from having his statement recorded is untenable in law. The appropriate course is to allow the legal procedure to proceed in accordance with the statutory mandate.

14. For the foregoing reasons, the instant Criminal Miscellaneous Application stands disposed of with a direction to the SHO, Police Station T.M. Khan, to record the version of respondent No. 4 in accordance with law, and thereafter, to determine the applicability of the relevant provisions of law in light of the facts disclosed.

J U D G E