ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. S-99 of 2025

(Sikandar Ali Lund Vs. DSP Complaint Cell Naushahro Feroz & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

O R D E R.
30-05-2025.

Mr. Muhammad Sulleman Kalhoro advocate for the applicant.
Mr. Subhan Ali Zardari, advocate for proposed accused.
Mansoor Ahmed Shaikh, DPG for the State.

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Ali Haider 'Ada',J:- The applicant has assailed the order dated 24-12-2024, passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Naushahro Feroze, in Criminal Miscellaneous Application No. 4958/2024, titled Sikandar Ali vs. DSP Complaint Cell Naushahro Feroze & others, filed under Sections 22-A and 22-B Cr.P.C. The said application, which sought directions for registration of an FIR against the proposed accused, was dismissed. Aggrieved by the dismissal, the applicant has preferred the instant Criminal Miscellaneous Application.

2. Learned counsel for the applicant submits that the dispute between the parties arose out of a business transaction, wherein the proposed accused issued a cheque in favor of the applicant. Upon presentation before the concerned bank, the said cheque was dishonored with the endorsement of insufficient balance. He further contends that the learned Ex-Officio Justice of Peace, without properly considering this vital aspect, dismissed the application, thereby depriving the applicant of his lawful right to seek registration of an FIR.

3. On the other hand, learned counsel for the proposed accused submits that the proposed accused has already lodged FIR No. 132/2025, registered under Sections 506(2), 504, and 34 PPC against the present applicant at Police Station Moro on 26-04-2025. He further contends that the cheque in question was issued to the applicant merely as a security

instrument; however, the applicant has allegedly misused it with mala fide intentions. In support of his contentions, learned counsel has filed certain documents along with a statement, which are hereby taken on record.

4. Conversely, the learned Deputy Prosecutor General is of the view that a prima facie offence under Section 489-F PPC is made out, as sufficient material is available on record to connect the proposed accused with the alleged offence relating to the issuance of the cheque in discharge of a financial obligation, coupled with dishonest intention. He further submits that the defence raised by the proposed accused, that the cheque was issued merely as security is unsupported by any documentary evidence. Not a single document has been produced to substantiate the claim that the cheque was issued in lieu of a security arrangement. Therefore, at this stage, the applicant is entitled to have his version recorded and the matter requires proper investigation in accordance with law.

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

6. Before proceeding to analyze the facts of the case, it is pertinent to refer to the relevant provision of law. For ready reference, Section 489-F of the Pakistan Penal Code is reproduced as under:

> *489—F Dishonestly issuing a cheque-"Whoever dishonestly issues a cheque towards re-payment of a loan or fulfilment of an obligation which is dishonored on presentation, shall be punishable with imprisonment which may extended 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".*

7. The legislative intent behind the promulgation of laws dealing with the dishonor of cheques is twofold: firstly, to promote public confidence in the banking and financial systems by ensuring that commercial transactions are conducted in a dependable and legally enforceable manner; and secondly, to discourage and penalize fraudulent or irresponsible conduct by individuals who issue cheques without

maintaining adequate funds in their accounts. Such legal provisions serve not only to safeguard the integrity of financial dealings but also to uphold the rule of law by ensuring accountability in monetary obligations. The dishonor of a cheque, particularly when issued in the context of a business transaction, warrants legal scrutiny and appropriate action under the criminal justice system.

8. Further, in case of ***Muhammad Sultan Vs. The State (2010 SCMR 806),*** it is held by Apex Court that:

"A perusal of sections 489-F, P.P.C reveals that the provisions will be attracted if the following conditions are fulfilled and proved by the prosecutions;---

(i) Issuance of cheque;
(ii) Such issuance was with dishonest intention;
(iii) The purpose of issuance of cheques should be:---
  (a) To repay a loan; or
  (b) To fulfill an obligation (which in wife term inter alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds person to same performance.
(iv) On prosecutions, the cheques is dishonored.

9. In the instant case, the record reveals that the stance of the applicant is that the cheque in question was issued by the proposed accused in connection with a business transaction and in discharge of a financial obligation. However, upon presentation before the concerned bank, the said cheque was dishonored with the endorsement of insufficient balance. Conversely, the proposed accused contends that the cheque was issued merely as a security instrument and not against any enforceable obligation. From a bare perusal of the cheque and accompanying documents, it is evident that there is no indication on the face of the cheque suggesting that it was issued as 'security' or conditional in nature. As, mostly in business transactions, bank instruments such as cheques are presumed to have been issued in discharge of a lawful obligation, unless the contrary is established through cogent evidence. The dishonor of a cheque, especially for insufficient funds, prima facie constitutes a cognizable offence and raises serious allegations of dishonest intention on part of the drawer.

10. Furthermore, the defence raised by the proposed accused, that the amount was given on interest or that the cheque was issued as security involves factual controversy and disputed questions of fact, which cannot be resolved without proper investigation. At this preliminary stage, such matter requires examination by the Investigating agency. The jurisdiction under Section 154 Cr.P.C. is meant to facilitate the registration of a cognizable offence and where a party alleges the commission of a cognizable offence and supports the same with documentary material, the police is duty bound to record the statement under Section 154 Cr.P.C and proceed in accordance with law.

11. The section 489-F PPC is a cognizable offence, therefore, only on the defence plea, even did not support with any cogent evidence has no ground to expel the version of applicant, who acted being as complainant. Reliance is placed on case *of* ***Malik Sohail Aslam Vs. Superintendent of Police (Operation), Lahore and 3 others*** **(2017 YLR 1548),** it has been held that:

> "We *are unanimous in our view that admittedly the cheque were dishonored and dishonored slips are attached with the record but this material aspect perhaps escaped notice of the learned Single Judge-in-Chambers. Guidelines in this respect can also be sought from "Younas Abbas and others Vs. Additional Sessions Judge, Chakwal and others" (PLD 2016 Supreme Court 581).*

12. Further reliance is placed on the case of ***Qazi Faisal Wajid vs. Munir Ullah Khan and others, 2013 PCr.LJ 400,*** wherein the elaborated upon the legal distinction regarding a cheque issued as a security/ guarantee.

13. In 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 aninvestigation, 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 aliaprovides 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.*

14. It is the prime obligation of the Ex-Officio Justice of Peace to meticulously examine all relevant documents and after applying a prudent and judicious mind, issue necessary directives to the relevant authorities who have neglected to discharge their statutory responsibilities.

15. It is also well-settled that the registration of an FIR is not merely a procedural formality but a statutory and fundamental right, recognized 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.

16. In view of the foregoing reasons, the instant Criminal Miscellaneous Application is allowed. Consequently, the impugned order dated 24-12-2024, passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Naushahro Feroze, is hereby set aside, the Station House Officer, Police Station Moro, is directed to record the statement of the applicant in his verbatim.

17. The instant Criminal Miscellaneous Application stands disposed of in the above terms.

J U D G E