

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Misc. Application No.S-558 of 2024
(Muhammad Siddiqu Kandhro Vs. The State & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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- 1. For hearing of main case.
- 2. For hearing of CMA No. 4693/2024 (Stay)

13-03-2025.

Mr. Manzoor Hussain Mahesar, advocate for the applicant.
Mr. Athar Hussain Abro, advocate for the private respondent.
Syed Sardar Ali Shah Rizvi, Addl: Prosecutor General.

ALI HAIDAR “Ada”, J.-. The applicant by preferring the instant Crl. Misc. Application has impugned order dated 14-09-2024 passed by learned III-Additional Sessions Judge/Ex-Officio Justice of Peace, Khairpur, whereby he has directed the police to record statement of Respondent for purpose of FIR with regard to issuance of cheque, issued by applicant.

2. The nutshell of the case is that the respondent No.3 moved an application on the point that the applicant issued one cheque bearing No. 63809294, dated 11-01-2024 vide his account for amounting to Rs. One million as the same was dishonored on 12-01-2024 through memorandum on account of insufficient balance as he failed to fulfill his obligation in business transaction.

3. Learned counsel for the applicant contends that Ex-Officio Justice of Peace did not consider his plea as no transaction was made between the parties, his cheque was stolen by respondent then he managed the cheque and presented before concerned Bank and with ulterior motives

succeeded to get the memorandum. Finally he prays for set-aside the order of Justice of Peace.

4. On the other hand learned counsel for the respondent No. 3 submits that the applicant committed the offence falls u/s 489-F PPC and plea of stolen of cheque is concocted in order to save his skin, otherwise such fact is not true.

5. Learned Addl: PG for the State by supporting the impugned order has sought for dismissal of instant Crl. Misc. Application by contending that the cheque has been issued by the applicant dishonestly in favour of the respondent No. 3 and matter requires investigation and the same be carried after registration of FIR.

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

7. Section 489-F PPC inserted by Ordinance LXXXV of 2002 dated 25-10-2002 as the same 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”.*

8. For attracting the provisions of section 489-F PPC, it has to be showed that cheque was issued with dishonest intention and the purpose to repay a loan to fulfill an obligation and in the instant matter the cheque was dishoured on its presentation. The learned Ex-Officio Justice of Peace after perusal the material allowed the application with direction that the statement be recorded, if, cognizable offence is made

then incorporate such statement in registered u/s 154 Cr.P.C. At this stage, the defence plea of the respondent No.3 that his cheque was stolen and managed requires investigation and on such aspect it is crystal clear that the person can take his defence plea before investigation officer. It is prime duty of Investigation officer to collect evidence from all corners and till then no arrest should be effected unless a tangible evidence was collected by investigation agency.

9. 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 respondent No. 3, 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).

“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).

10. In view of foregoing reasons, no illegality or irregularity seems in order passed by learned Justice of Peace, therefore the instant Crl. Misc. Application stands dismissed together with listed application.

J U D G E