

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.51 of 2023

Applicants : i. Muhammad Muzammil son of Muhammad Shoaib
ii. Muhammad Shoaib son of Qasim Ahmed,
Through Mr. Sardar Sher Afzal, advocate

Respondent No.1 : Muhammad Umar Farooq Durrani
Through Sardar Abdul Hameed, Advocate

Respondent No.2 : The State
Through Mr. M. Mohsin Mangi, APG Sindh.

Date of hearing : 28.04.2025

Date of order : 05.05.2025

O R D E R

Khalid Hussain Shahani, J: - Through the instant application filed under Section 561-A, Cr.P.C., the applicants seek quashment of Criminal Appeal No.52 of 2022, which is presently pending adjudication before the learned Additional Sessions Judge-IV, Karachi East. The said appeal impugns the judgment dated 12.12.2022 passed by the learned XXII Judicial Magistrate, Karachi East, in Criminal Case No.789 of 2022, whereby the applicants were convicted and sentenced for offence under Section 489-F PPC.

2. The brief facts necessary for disposal of the present application are that the applicants were prosecuted on the complaint of respondent No.1, who alleged that the applicants being proprietor/owner of Hajveri Textile had issued a cheque which, upon presentation, was dishonoured due to insufficient funds. Despite repeated demands, the applicants allegedly failed to discharge the claimed liability. Consequently, after conclusion of trial, the learned trial Court convicted and sentenced the applicants. The applicants, being aggrieved, preferred Criminal Appeal No.52 of 2022, which is pending before the appellate forum. During the pendency thereof, the present application has been filed invoking the inherent jurisdiction of this Court on the ground that the proceedings are vexatious, malicious, and constitute an abuse of the process of law.

3. Learned counsel for the applicants contends that the conviction is based on insufficient and unreliable evidence; that the cheque in question was

issued as a security instrument in respect of a commercial arrangement and not in discharge of any legally enforceable debt; and that the initiation and continuation of proceedings against the applicants is driven by mala fide intent. He further submits that in a connected matter; Criminal Appeal No.53 of 2022, arising out of the same transaction and based on identical evidence, the applicants have been acquitted vide judgment dated 07.01.2023 passed by the learned Xth Additional Sessions Judge, Karachi East. It is their case that Criminal Appeal No.52 of 2022, being similarly situated, should also be quashed on the basis of parity, or that the applicants be deemed entitled to acquittal as a matter of course.

4. Learned Deputy Prosecutor General, assisted by learned counsel for the complainant, has opposed the application and submits that the conviction has been recorded after a full-fledged trial upon appreciation of evidence, and the applicants are already availing the statutory appellate remedy. It is further argued that the present application, under the guise of invoking inherent jurisdiction, seeks premature adjudication on the merits and attempts to bypass the appellate forum. It is contended that no extraordinary or exceptional circumstances exist to justify quashment of proceedings by this court under inherent jurisdiction.

5. At the very outset, the contention of the applicants' counsel that Criminal Appeal No.52 of 2022 is liable to be quashed merely because the connected Criminal Appeal No.53 of 2022 has culminated in acquittal, is misconceived. The assertion that identical facts and evidence are involved does not ipso facto render the pending appeal liable to be quashed. Each criminal case must be adjudged on its own merits and record. The fact that Criminal Appeal No.52 of 2022 was transferred from one court to another does not affect its maintainability or the applicants' obligation to pursue the statutory remedy already availed.

6. The powers conferred upon this Court under Section 561-A Cr.P.C. are indeed broad but are to be exercised with circumspection, only in rare and exceptional cases where compelling reasons exist to prevent abuse of process or to secure the ends of justice. It is trite law that where an adequate alternate remedy is available, such as an appeal or revision, the inherent jurisdiction should not be invoked as a substitute for the statutory process.

7. In the instant matter, the applicants have already exercised their right of appeal under the law, which provides a complete forum for redress of grievances, including reappraisal of evidence and legal evaluation. The appellate court is fully empowered to examine whether the ingredients of the offence under Section 489-F PPC are made out and whether the cheque in question was issued in discharge of a legally enforceable obligation. No rule of law supports the proposition that pendency of an appeal disentitles the appellate court from rendering an independent determination merely because appellants have been acquitted in a separate proceeding.

8. No material irregularity, illegality, or patent miscarriage of justice has been shown to exist which would warrant premature interference with the appellate proceedings. The application is not supported by any cogent ground to invoke the extraordinary jurisdiction of this Court under Section 561-A Cr.P.C., and appears to be an attempt to frustrate the adjudicatory process by circumventing the forum of appeal.

9. In view of the foregoing, the application is wholly misconceived and devoid of legal merit. Accordingly, the same is dismissed, along with all pending miscellaneous application(s). The learned counsel for the applicants is cautioned to be vigilant in future and to refrain from filing applications lacking legal foundation or maintainability, as such conduct results in unnecessary burden upon the judicial system.

J U D G E