

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-454 of 2025

Applicant : Arsalan Ali s/o Khuda Bux, Sahito
Through Syed Tanveer Abbas Shah, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 13.11.2025
Date of Order : 13.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Arsalan Ali, invokes inherent jurisdiction of this court seeking to set aside the impugned order dated 28th January, 2025 passed by the learned Sessions Judge/Ex-Officio Justice of Peace Naushehro Feroze in Cr. Misc. Application No.60/2025, whereby an application filed by him under Section 22-A and 22-A for according directions to SHO for registration of FIR was dismissed.

2. The facts of the case are that the respondent No.5 was a friend of the applicant and a government employee in the Education Department. According to the applicant, the respondent No.5 informed him that he had purchased a plot and owed an outstanding amount of Rs.600,000/- to the owner, and requested the applicant to pay said amount promising to return it after his retirement benefits were released. On 5th September 2024, the applicant paid Rs.600,000/- in cash to the respondent No.5 in the presence of two witnesses and received a cheque No.50599918 dated 5th December, 2024 drawn on NBP Branch Kandiaro. When the cheque was presented for payment on the due date, it was dishonored on 19th December, 2024 due to insufficient funds. Thereafter, the applicant approached the respondent No.5 for payment, but he allegedly refused and issued threats. The applicant then approached the police for registration of FIR, but the SHO refused. Subsequently, the applicant filed the application before the learned Sessions Judge which was dismissed vide the impugned order. The learned Sessions Judge in the impugned order carefully examined the material on record including the statements recorded by the police and made several important observations which

are germane to the consideration of the present application. The learned Sessions Judge found that according to the version of the respondent No.5, he had obtained a loan of Rs.600,000/- from the father of the applicant, who was engaged in the business of lending money on interest (*viyaj*). The respondent No.5 had given the cheque in question as a security against that loan. The learned Sessions Judge further observed that there exists a dispute between the parties regarding payment of interest, as the applicant's father was allegedly charging interest on the private loan, which is prohibited under the Sindh Prohibition of Interest on Private Loans Act 2023.

3. The learned Sessions Judge also applied the well-settled principle of law as laid down by the Hon'ble Supreme Court of Pakistan in the case of *Mian Allah Ditta v. The State and others* reported as (2013 SCMR 51), which clearly provides that every transaction where a cheque is dishonored may not constitute an offence. The foundational elements to constitute an offence under Section 489-F PPC are the issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and lastly that the cheque is dishonored. The learned Sessions Judge concluded that the applicant had failed to establish the transaction as narrated in the memorandum of his petition and therefore; no substance existed to direct the SHO to register an FIR as per the verbatim of his application.

4. The applicant has preferred the present application contending that the impugned order was passed in a hasty manner without applying judicial mind, that the actual facts have been ignored, that the cheque and memo were not considered, and that the respondent No.5 has committed a heinous offence and is liable to be convicted. The applicant also submits that he is at liberty to pursue concurrent remedies under civil and criminal law.

5. After careful consideration of the submissions advanced by the learned counsel for the applicant and the respondent, and after examining the impugned order in light of the applicable legal principles, this Court is of the

considered view that the impugned order does not warrant interference under Section 561-A Cr.P.C.

6. Section 561-A Cr.P.C preserves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, this power is to be exercised sparingly and only in exceptional cases where it is clear that the subordinate court has acted without jurisdiction or there has been a manifest error of law or a glaring miscarriage of justice. The High Court cannot ordinarily assume the role of a trial court and reappreciate evidence or examine facts de novo. The applicant's contention regarding concurrent civil and criminal remedies is not entirely accurate in its application to the facts of the present case. While it is true that civil and criminal remedies can be pursued concurrently in cases where distinct and separate offences are committed, this principle cannot be extended to clothe every civil dispute with criminal overtones merely because a negotiable instrument is involved. The Supreme Court of Pakistan has consistently held that not every transaction where a cheque is dishonored constitutes a criminal offence under Section 489-F PPC.

7. The critical question in the present case is whether the foundational elements of Section 489-F PPC have been satisfied. *First*, was the cheque issued with dishonest intent? *Second*, was the cheque issued towards repayment of a loan or fulfillment of an obligation? *Third*, was the cheque dishonored upon presentation? The applicant's case, on his own showing, is that the respondent No.5 requested him to pay Rs.600,000/- on a borrowing basis and promised to return it after receiving retirement benefits. The respondent No.5's version, on the other hand, is that he obtained a loan of Rs.60,000/- from the father of the applicant and the cheque was given as security for that loan.

8. This fundamental contradiction in the statements recorded by the police reveals that there exists a bona fide dispute of fact between the parties

regarding the nature of the transaction. In such a situation, it is not the function of the Court or the police to jump to a conclusions of criminal dishonesty without a proper investigation which would clarify the real nature of the transaction. However, the critical issue that emerges from the impugned order is that the respondent No.5 has admitted that he obtained a loan, whether from the applicant directly or from the father of the applicant, and that he has given a cheque against that loan. The outstanding question is whether the respondent No.5 did so with dishonest intent or whether the cheque was indeed given as a security against the loan. These are factual questions which require investigation and cannot be prejudged at the stage of FIR registration.

9. Moreover, the learned Sessions Judge has taken into account another crucial aspect of the case, which is that the respondent No.5 has raised a serious allegation that the applicant's father was involved in the business of charging interest on private loans, which is a criminal offence under the Sindh Prohibition of Interest on Private Loans Act 2023. The learned Sessions Judge has accordingly directed the SHO to conduct an inquiry in this respect and if there is any substance in the allegation, to take strict legal action against the responsible person. This shows that the learned Sessions Judge has applied judicial mind and considered the interests of justice by identifying a potential criminal offence that may itself be the subject of investigation and prosecution.

10. The applicant's allegation that the learned Sessions Judge passed the impugned order in a hasty manner without applying judicial mind and ignoring the cheque and memo is not supported by the impugned order itself. A plain reading of the impugned order reveals that the learned Sessions Judge has carefully considered the police report, the statements recorded, the evidence of the cheque and memo, the contentions of both parties, and the applicable law before arriving at his conclusion. The order demonstrates judicial reasoning and application of law to facts.

11. Furthermore, the learned Sessions Judge has correctly held that the applicant is at liberty to exhaust adequate remedy by filing a direct complaint under Section 200 Cr.P.C if he believes that a cognizable offence has been committed. This is not a denial of justice but rather a correct application of the criminal procedure, which provides that in cases where the police refuse to register an FIR and the applicant challenges such refusal before the Ex-Officio Justice of Peace and the same is rejected, the applicant still has the remedy of filing a direct complaint before the Magistrate who can take cognizance of the offence independently and proceed with the matter.

12. It is also pertinent to note that the applicant has mentioned in his application that he has previously filed Cr. Misc. Application No.117/2025 before this Court which was dismissed in non-prosecution vide order dated 21st July, 2025. This repeated approach to different forums for the same purpose after already having received a judicial determination from the learned Sessions Judge, who is an Ex-Officio Justice of Peace, raises concerns regarding the applicant's adherence to principles of res judicata and abuse of process of court. An applicant cannot be permitted to forum shop and approach multiple courts for the same relief after having already approached the competent forum and received a reasoned judicial determination.

13. In the circumstances of the case, the learned Sessions Judge has correctly applied the law laid down by the Supreme Court of Pakistan in *Mian Allah Ditta v. The State* (2013 SCMR 51) and correctly found that the applicant has failed to make out a cognizable offence on the material available on record. The impugned order is sustainable both on the facts and the law. There is no manifest error of law, no abuse of process, and no miscarriage of justice that would warrant interference by this Court under Section 561-A Cr.P.C.

14. In view of the above discussion and for the reasons recorded hereinabove, this Court is of the view that the impugned order dated 28th January, 2025 passed by the learned Sessions Judge/Ex-Officio Justice of Peace

Naushehro Feroze does not warrant interference. The learned Sessions Judge has correctly applied judicial mind to the facts and circumstances of the case and has correctly applied the law as laid down by the Supreme Court. The findings recorded by the learned Sessions Judge regarding the absence of the foundational elements of Section 489-F PPC are justified and well-reasoned. The applicant has been advised of the alternate remedy available to him, and he can pursue the same if he believes he has a case to make out. Accordingly, this application under Section 561-A Cr.P.C is hereby dismissed. The order passed by the learned Sessions Judge/Ex-Officio Justice of Peace Naushahro Feroze dated 28th January, 2025 in Cr. Misc. Application No.60/2025 is upheld and confirmed. The applicant is directed to pursue his remedy, if any, by filing a direct complaint before the competent Magistrate under Section 200 Cr.P.C, where his case shall be considered on its merits independently by the Magistrate concerned.

15. It is further clarified that the observations made by the learned Sessions Judge regarding the conduct of inquiry into the allegation of charging interest on private loans as per the provisions of the Sindh Prohibition of Interest on Private Loans Act 2023 shall be strictly implemented by the investigating authorities. It is also clarified that this order does not preclude the applicant from pursuing civil remedies available to him under the civil law for recovery of the amount in question. Let copies of this order be sent to the learned Sessions Judge/Ex-Officio Justice of Peace Naushahro Feroze and to the SSP Naushahro Feroze for information and compliance.

J U D G E