

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CrI. Misc. Application No. 57 of 2021

Date	Order with signature of Judge
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1. For orders on M.A. No. 1150 of 2021 (U/A).
2. For orders on office objection & reply of adv. at flag "A".
3. For orders on M.A. No. 1151 of 2021 (Ex/A).
4. For hearing of main case.
5. For orders on M.A. No. 1152 of 2021 (Stay/A).

03rd February 2021.

Mr. Abbas Rasheed Razvi, advocate for applicant.

Applicant preferred application under Section 249-A Cr.P.C. [Re- The State Vs. Taimoor Tariq] pending before the Model Trial Magistrate-II/XXII and Judicial Magistrate Karachi, East in Criminal Case No. 2264 of 2019. After hearing the parties such application was dismissed, which is impugned herein.

2. Being relevant operative part of impugned order is that:-

"I have heard learned counsel for the parties and perused the record. The point of argument which is taken by the learned counsel for the accused for allowing the instant application was that prior to lodgment of FIR applicant/accused filed suit for declaration and permanent injunction before the Court of Civil Judge Rawalpindi and concerned court has passed the order dated 24.09.2019 in which status-quo was granted in favour of applicant and the complainant side was restrained to use present cheque for legal proceedings. This Court called the report from 1st Civil Judge Rawalpindi in order to verification of status-quo of the present cheque through Honorable District & Sessions Judge Karachi East on 12.12.2020. The learned 1st Civil Judge Rawalpindi replied that there is no stay order for the stoppage of criminal or court proceeding on the disputed cheque."

4. Learned counsel for the applicant has relied upon case laws reported as 2010 SCMR 806 as well as PLD 2013 Sindh 488 and he has given emphasis that ingredients of Section 489-F are lacking in present case. He has also referred FIR which speak that:-

“The facts in brief of the FIR with reference of written application for lodgment of FIR to the SHO police station Ferozabad, Karachi against Taimoor tariq S/o Raja Tariq resident of House No. H-14, Crack Star Apartment, phase-II, DHA, Karachi for not paying outstanding and for issuance of the following bounced cheques and on demand of money, issuing murderous threats of murder and the cheques bearing No.1) 00021659, dated 31.03.2018 amounting to Rs. 14/7 Millions bank Askari Commercial Bank and cheque No.2) 00021660, dated 03.06.2018 Askari Commercial Bank, cheque bearing No.3) 00021661, dated 31.03.2019 amounting to Rs.14/7 Millions bank Branch Askari Commercial Bank and cheque No.4) 00021662, dated 31.09.2019 amounting to RS.14/7 Millions Bank Branch Askari Commercial Limited, dear Sir it is stated that I am law abiding and peace loving this complaint is against above noted person for not payment of outstanding and in this regard issued for above noted cheques of his account and the serial No.3 & 4 has been bounced and serial No. 1 7 2 he has promised that to issue pay order and cash but the above noted person failed to give the outstanding balance amount and against him FIR No.69/2019 Under Section 489-F police Station Civil Line, Quetta and he has filed the Bail application at there and before the Sessions Court at Quetta he has promised that will pay the outstanding immediately but failed to pay the outstanding and the accused further assured that to again deposit the cheque No.4 in the account and it would encashed (encashed) and I again deposited the said cheque in my account but could not encashed (encashed) and the accused has committed cheating and fraud and from his issued cheques the cheque of serial No.3 & 4 has been bounced and against cheque of serial No.1 & 2 he has failed to pay the same and now on demand of money he is issuing threats and hence the act of the accused falls under Section 489-F/420/506 PPC.”

5. It is settled principles of law that while deciding 249-A application trial court is bound to consider the evidence only gathered by the prosecution, after assessment of evidence if trial court reaches on the conclusion that there is no probability of conviction even if it is admitted *ipso facto*, court can acquit accused, whereas, in this case FIR reflects that applicant appeared in Sessions Court with undertaking that he will return the amount, hence, cheques again presented which too were bounced. Hence, trial Court has rightly dismissed the application. However, applicant has right to take all these pleas before the trial Court during the trial and the trial court shall consider the defence plea. Accordingly, Criminal Misc. Application is dismissed alongwith listed applications. Needless to mention that observations of this court and trial Court shall not come in the way of merits of the case of either party and trial court shall decide the case after recording of evidence in accordance with law.

J U D G E