

**IN THE HIGH COURT OF SINDH AT KARACHI***Present : Omar Sial, J*

Crl. Misc. Application No. 18 of 2023  
Crl. Misc. Application No. 137 of 2022

Applicant : Shaikh Farrukh Saleem  
through Mr. Raj Ali Wahid Kunwar, Advocate

Complainant : Arsalan Khan  
through Mr. Zahid Abbas Malik, Advocate

Respondent : The State  
through M/s. Faheem Hussain Panhwar, Addl.P.G.  
and Zahoor Shah, DPG

**Dates of hearing : 3<sup>rd</sup> & 5<sup>th</sup> May, 2023**

**Date of order : 16<sup>th</sup> May, 2023**

**ORDER**

**Omar Sial, J:** Shaikh Farrukh Saleem has challenged an order dated 16.02.2022 passed by the learned 4<sup>th</sup> Additional Sessions Judge, Karachi East, whereby an application under section 249-A Cr.P.C. was dismissed and an order dated 22.12.2022 passed by the learned 3<sup>rd</sup> Additional Sessions Judge, Karachi East, whereby Criminal Revision Application filed under section 435 and 439-A Cr.P.C. was dismissed.

2. On 12.03.2021 a person by the name of Arsalan Khan lodged F.I.R. No. 200 of 2021 against Shaikh for an offence under section 489-F P.P.C. Arsalan recorded that he is in the business of importing electronic items from abroad and then selling them in the country. On 22.11.2019, Shaikh, who ran a business under the name International Impex, gave a cheque of Rs. 5,000,000 to Arsalan on account of some business dealings between the 2 individuals. The cheque bounced hence the F.I.R.

3. Learned counsel for the applicant has argued that the parties had business dealings, which business dealings ran into disputes at some stage. The once friendly relationship turned sour. Learned counsel has argued that

the accounts between the 2 parties were settled and as a matter of fact it was Arsalan who owed Shaikh money. Learned counsel has also referred to other F.I.R.'s which have been registered by the parties. One area where learned counsel has stressed on is an ostensibly glaring anomaly in the date of the cheque that was dishonored. The date on the cheque is of the year 2020 whereas the date on its counter foil is 2018. Counsel has also argued that Faysal Bank has also issued a letter that in itself vindicates the applicant. To the contrary, learned counsel for the complainant and the learned Addl.P.G. have supported the impugned order.

4. I have heard the learned counsels for the applicant and the complainant as well as the learned Addl.P.G. My observations and findings are as follows.

5. The accounts between the parties pertaining to their business relationship, as put forward by the applicant are disputed by the complainant. The complainant must be given an opportunity to put forward his stance in this regard. The counter foil the learned counsel refers to showing a different date, at the end of the day is record produced by the applicant himself. What the applicant says to be the position cannot be accepted as gospel truth. The complainant must be given an opportunity to produce evidence to rebut the same. He cannot be stifled unheard. I have also skimmed through the letter issued by Faysal Bank dated 13.07.2021. This letter prima facie shows that a mistake was made by the Bank while issuing the memo of dishonoring the cheque. According to the Bank the memo had stated that the cheque was returned due to insufficiency of funds but that in fact there was also amendments made on the cheque which were not properly authenticated. Once again, the contents of the letter do not necessarily mean that the amendments to the cheque were made by the complainant.

6. I agree with the learned trial judge that the above are all matters which need to be decided after recording of evidence. One observation however that the learned trial court made which was that as a charge had

not been framed, the application under section 249-A was pre-mature. This would not be correct. The language used in section 249-A Cr.P.C. is that the section can be invoked if the charge is groundless (which would necessarily be after the framing of the charge) or if there is no possibility of conviction at “any stage of the case.” This would mean that at any time after cognizance is taken an application under section 249-A Cr.P.C. would be maintainable. Reference in this regard may also be made to **Rasool Khan and others vs Haji Banaras Khan and others (PLD 2004 SC 364)**.

7. Crl Misc App No. 137 of 2022 is dismissed. The applicant may repeat the application after the complainant and the bank representative have been examined at trial.

8. As regards Crl. Misc. App. No. 18 of 2023, in view of the fact that Crl Misc App No. 137 of 2022 has been dismissed, the former application may be put up for hearing after notice to all concerned on a date to be decided by the office of the court.

JUDGE