

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 803 of 2023

Date	Order with signature of Judge
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For hearing of main case
For hearing of MA No. 12505/23

21.11.2023

Mr. Muhammad Ramzan Tabassum advocate for the applicant
Mr. Faran Sardar advocate for respondent No.3
Mr. Talib Ali Memon Assistant PG

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Sheikh Muhammad Imran Ahmed has assailed the legality of the order dated 03.10.2023 passed by the learned IIIrd Additional Sessions /Ex Officio Justice of Peace West Karachi in Criminal Petition No. 3012 of 2023. For convenience's sake, the relevant portion of the order dated 03.10.2023 is reproduced as under:-

“I have gone through the material available on record including police reports. The applicant has made grave accusations in his application against the proposed accused along with proof. The SHO PS has indicated his willingness go follow any orders given by the Ex. Officio Justice of Peace in accordance with the law. Based on the information presented, it seems that the applicant has a strong case for having his statement is recorded.

The application in hand is allowed. SHO of PS Site-A is directed to record the statement of the petitioner under Section 154 Cr. P.C. on production of original cheques, dishonor memo, etc under intimation to this Court, and entrust the same to competent police officials for investigation in accordance with the law.

Needless to mention here that this order shall not screen out any individual from lawful actions..”

2. Brief facts of the case are that respondent No.1 applied Section 22-A & B Cr. P.C for registration of the FIR under Section 489-F PPC against the applicant on the facts and grounds mentioned in the said criminal petition; that the applicant issued three cheques No. 0000000034 of Rs. 1500,00/- Cheque No. 0000000035 of Rs. 1500,000/- and Cheque No. 0000000036 of Rs. 18,20,000/- and on presentation the said cheques were dishonored and the applicant demanded amount from proposed accused but he failed.

3. The learned counsel for the applicant has submitted that the applicant has paid the entire amount to respondent No.3 as such there was no occasion for him to present the cheque to the concerned Bank, however, he did so just to cause harm to the reputation of the applicant despite knowing the fact that he received the payment as disclosed in the paragraph of the memo of application. He further submitted that this matter is of a civil nature and that respondent No.3 wants to drag the applicant into the crime under Section 489-F PPC which is even otherwise not attracted as such the direction issued by the learned trial Court will prejudice the case of the applicant as SHO concerned will be in sole discretion to play at the hands of the complainant who is now at daggers

drawn with the applicant. He prayed for allowing the Criminal Miscellaneous Application.

4. Mr. Talib Ali Memon APG assisted by the learned counsel for respondent No.3 has contended that the trial Court has not made any illegality or irregularity in the impugned order, therefore he prayed for dismissal of the instant Criminal Miscellaneous Application. Learned counsel for respondent No.3 has submitted that even if there is no direction of the Court, the S.H.O. has no authority to refuse to record the statement of the complainant in the relevant register irrespective of its authenticity/correctness or falsity of such statement; that S.H.O. has no authority to refuse to register FIR under any circumstances. He may refuse to investigate a case but he cannot refuse to record FIR. He further submitted that the check against the lodging of false F.I.Rs was not the refusal to record such F.I.Rs, but the punishment of such informants under Section 182, P.P.C., etc. which should be, if enforced, a fair deterrent against misuse of the provisions of Section 154, Cr. P.C. He next argued that the plea raised by the learned counsel for the applicant that no FIR could be registered under Section 489-F PPC when he allegedly paid the entire amount to the respondent on the aforesaid plea he submitted that his aspect could be taken care of when the Investigation takes place, which has been restricted by this Court vide order dated 20.10.2023. He next argued that there would be no harm if the statement of the complainant is recorded by the concerned SHO under the law.

5. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged cheque and payment thereof, allegedly received by the private respondent therefore, judicial propriety demands that the aggrieved party may take resort of appropriate remedy under the law where he would be at liberty to bring the material to prove his case, in such a scenario this Court cannot substitute its view at this stage whether a cognizable offense is made out or otherwise in the circumstances of the case as the parties submit their point of view for and against and insist that special oath may be taken from the respondent No.3 to the effect that whether he had received the full payment of cheque or otherwise if this is the position of the case, this matter cannot be left to the discretion of the SHO to register the FIR under Section 489-F PPC and it is open for the complainant to file a Direct Complaint and if filed the same shall be decided on its own merits and in the meantime if the Judicial Magistrate concerned feel it better he may refer the case to the police for investigation.

6. This Criminal Miscellaneous Application is disposed of in the above terms.

JUDGE

