

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Miscellaneous No.S-934 of 2023
(Lal Khan Shar Vs. Baroch & others

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
-----------------	--------------------------------

1. For orders on O/objection at flag-A.
2. For hearing of main case.
3. For hearing of MA No. 7828/2023 (Stay)

Date of hearing and order 06.05.2024

Mr. Akhtar Hussain Malik, Advocate for applicant.
Mr. Muhammad Tariq Panhwar advocate for respondent No.1.
Mr Aftab Ahmed Shar Additional PG Sindh

ORDER.

Adnan-ul-Karim Memon J:- This Criminal Miscellaneous Application is directed against the Order dated 10.6.2023, whereby, the Justice of Peace/IIIInd Additional & District and Sessions Judge, Ghotki, in Criminal Misc. Application No.1493 of 2023 filed by the private respondent for registration of F.I.R against the applicant was allowed, which is the subject matter of the present Criminal Miscellaneous Application.

2. As per respondent, the applicant received loan of Rs.50,00,000/- (Fifty Lac) from the respondent and, issued him a cheque bearing No. 0069331200 of Faysal Bank Sadiq Abad Branch, dated: 17.10.2022 of Rs. 50,00,000/- which upon presentation, was dishonored on 18.10.2022. Upon reporting such fact, the applicant refused to return the loan amount. Compelling him to approach the Justice of Peace/IIIInd Additional & District and Sessions Judge, Ghotki, by filing in Criminal Misc. Application No.193 of 2023, which was allowed vide impugned order. an excerpt of the order is reproduced as under:-

“I have patiently heard the learned counsel for applicant, learned DDPP and also have gone through the material available on record. From the careful perusal, it transpires that the subject cheque bears the name of proposed accused as the account holder, who apparently seems to have issued the same to the applicant, which upon presentation, has been dishonored by the bank. The report of District Complaint Redressal Center Ghotki is also in favour of applicant. Thus, sufficient material is available on record which prima facie, supports the version of applicant. Consequently, the respondent No. 01 is directed to record the statement of applicant and if, from his statement, a cognizable offence is made out, such FIR be registered in accordance with law. Accordingly, instant application stands allowed.”

3. Mr. Akhtar Hussain Malik learned counsel for the applicant has argued that that the first information report (“**FIR**”) under the Criminal Procedure Code cannot be registered against the applicant a borrower of the loan based on interest, which are within the exclusive jurisdiction of civil court under recovery proceedings and the local police had no jurisdiction to register a criminal case on the application of the respondent-complainant.

4. On the other hand, Mr. Muhammad Tariq Panhwar learned counsel for the private respondent submits that cognizable offence was/is made out from the contents of the application of the complainant since the cheque(s) had been given by the applicant with the intent to defraud the complainant and has defended the order passed by the Justice of Peace and submits that dishonoring of a cheque(s) is a cognizable offence in terms of Section 489-F PPC and that there are only two things that an S.H.O. has to see in terms of Section 154 Cr.P.C. and these are that an application conveying certain information is placed before him and that the information pertains to commission of a cognizable offence. He submits that there are no other considerations statutorily prescribed for the registration of FIR and it is legal anathema to read words into a statute. At this stage the counsel for the applicant has referred to the statement of the applicant whereby it is shown that the private respondent has lodged dozens of the F.I.Rs against the persons to whom he provided loan on interest and after keeping them in jail he used to pressurize them to pay interest on principal amount which is illegal action on his part in terms of new legislation.

I heard the learned counsel for the parties and perused the record with their assistance.

4. At the outset, it may be noted that Section 489- F PPC does not distinguish or categorize reasons for creating the offence of issuance of a cheque that has been dishonored. It does not create a classification of cheques. Only that a cheque issued in respect of an obligation is dishonored. Since section 489-F PPC does not allow for any extraneous considerations to be taken into account before it can be triggered, it is in the nature of a self-executory provision, so to speak, and as long as a cheque in respect of an obligation is dishonored upon presentation and an endorsement to this effect is provided by the bank, the

offence is complete and the application narrating such an occurrence has to be acted upon in terms of Section 154 Cr.P.C. What was placed before Justice of Peace in the present matter was a cheque and a slip provided by the bank showing that the cheque had been dishonoured vide memo dated 18.10.2022.

5. Dilating further on the subject issue I have come across with the decision of the supreme court wherein it is held that under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace will assume and undertake a full-fledged investigation and enquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is aggrieved by refusal of a Police Officer to register his report. The offences have been categorized by the Cr.P.C. into two classes i.e., cognizable and non-cognizable. Section 154 of the Cr.P.C. lays down a procedure for conveying information to an S.H.O. with respect to the commission of a cognizable offence, while the provisions of Section 155 (1) of the Cr.P.C. articulates the procedure vis-à-vis a non-cognizable offence.

5. Keeping in view the anxiety of the parties so far as charging interest on loan amount, I have noticed that this Court has already settled the issue of charging interest on loans once for all by holding that "The Sindh Prohibition of Interest on Private Loan Act, 2023", is in the field. The enactment of Act 2023 has been made in order to make it possible to prosecute those person(s) who collect interest by taking advantage of people's compulsion, however it is

explicitly and unequivocally prohibited for the person charging interest on loans. In the Act 2023, comprehensive legislation on the subject has been made for covering all the aspects of the mischief of private money lending by prohibiting the business and practices of private money lending and advancing loans and transactions in Sindh, and in respect of matters ancillary thereto. Section 3(1) of the Act 2023 prohibits that no moneylender, either individually or in a group of persons, shall lend money for cars or any other purpose or advance loan to any person for the purpose of receiving interest thereon, nor shall carry on an interest-based transaction in Sindh. Whoever contravenes these provisions, either directly or indirectly, shall be punished with imprisonment of either description which may extend to 10 years, but shall not be less than three years, and shall also be liable to fine not exceeding Rs.1 Million. The same penalty applies to those who intentionally and willfully abet, engage, assist or aid the moneylender. Offence under this Act shall be cognizable, non- compoundable and non-bailable. However, complaint of such offence shall be made to the concerned Station House Officer for registration of the case against such person or group of persons under Section 6 of the Act 2023. Thus, strict compliance of above section is need of the hour. This Court, in order to curb such illegal practice of usury and to save the innocent peoples, Inspector General of Police I.G. Police Sindh was directed to ensure compliance of Section 6 of Act 2023. Let SSP concerned probe the conduct of the private respondent whether he is indulged in such affairs and violates the law then prompt action shall be taken against all persons in the District who are involved in such business, however if it found that their business transaction between the parties, he shall examine this aspect of the case, leaving the parties to approach civil court and if the private respondent insist for registration of F.I.R he may approach the concerned Magistrate under section 200 Cr.Pc and upon approach the same shall be decided in accordance with law.

J U D G E