

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Misc. Application No.S-624 of 2023

Date	Order with signature of Judge
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1. For orders on office objection at flag `A`
2. For hearing of main case
3. For hearing of CMA No.5173/2023

06-10-2023

Mr. Safdar Ali Ujjan, Advocate for the Applicant
Mr. Ameenuddin Khaskkheli, Advocate for Resp: No.4
Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General

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Arbab Ali Hakro, J: Through this application, the applicant has impugned the order dated 23.08.2023, passed by learned Additional Sessions Judge/Ex-Officio Justice of Peace, Naushahro Feroze, whereby the application u/s 22-A & B, Cr.P.C, filed by respondent No.5, was allowed, directing the SHO concerned to record the statement of applicant/respondent No.5 and incorporate the same in the book 154 Cr.P.C., if it makes out case for cognizance offence.

2. Precisely, facts, as narrated in application under Section 22-A & B Cr.P.C., are that Respondent No.5 had borrowed Rs.40,000/- from the proposed accused namely Rahib Mashoori and to that regard, he had issued some cheques for security purpose out of which some cheques amounting to Rs.120,000/- were got encashed by said proposed accused; however, he demanded extra amount by saying that such amount was given on interest basis. Later on, Proposed Accused No.2 (present applicant) manipulated a story that Respondent No.5 had purchased buffalos from him and had given a cheque amounting to Rs.1400,000/-.

3. Learned Counsel for the applicant submits that a false story has been managed by Respondent No.5 before the learned Justice of peace for registration of FIR only to develop pressure

upon the applicant to withdraw the application filed by the applicant against respondent No.5 before the Justice of peace for registration of FIR; that the story mentioned in the application by the respondent No.5 is false fabricated and unbelievable and he has concealed the real facts and has not come with clean hand; that the impugned order is based on surmises and conjecture, which is liable to be set aside.

4. Learned Counsel for respondent No.5 and learned DPG submit that the learned Justice of Peace has rightly passed the impugned order. Learned Counsel for respondent No.5 submits that the applicant misused the cheque and demanded an interest in violation of the Sindh Prohibition of Interest on Private Loan Act 2023. Lastly, they submit that no illegality has been pointed out in the impugned order by the learned Counsel for the applicant; therefore, the application may be dismissed.

5. I have heard learned Counsel for the parties and have gone through the material available on record.

6. Perusal of the record reveals that in the memo of application under section 22-A, 22-B, Cr.P.C., respondent No.5 admitted the issuance of a cheque in favour of Rahib Mashori. It is also revealed that when the cheque was presented in the Bank, it was dishonoured as insufficient funds. In the contents of the memo of application, the respondent denied any transaction with the applicant, whereas the applicant claims that the cheque was issued by respondent No.5 for some consideration. Disputes between the parties cannot be resolved summarily. However, it requires evidence since the proceedings under section 22-A, 22-B, Cr.P.C., is quasi-judicial in nature, where leading of evidence is not permissible. I have meticulously examined the contents of the application, which do not constitute any cognizable offence which might necessitate the registration of FIR.

7. Reverting to the plea taken by the Counsel for respondent No.5 that the applicant is demanding an interest

amount, which violates the "Sindh Prohibition of Interest on Private Loan Act 2023"; apparently, ibid Act was promulgated on 18.07.2023, and it does not provide its retrospective effect whereas the dispute between the parties arose on 20.04.2023 thus such contention of learned Counsel of respondent No.5 has no force and if the applicant has any grievance, he may approach the civil Court.

8. In view of the above discussion, the impugned order is illegal, erroneous and learned Justice of the peace has committed illegality in passing the impugned order, which requires interference by this Court. Accordingly, this application is allowed, and the impugned order is hereby set aside.

JUDGE

Suleman Khan/PA