

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.-1790 of 2023
[Muhammad Kashif & Another vs. Muhammad Faheem & Others]

Date	Order with signature of Judge(s)
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1. For hearing of CMA No.15184/2023..
2. For hearing of CMA No.13336/2023.
3. For orders on office objection at flag 'A'.

11.03.2024

Mr. Aamir Mansoob Qureshi, advocate for the plaintiffs.
Mr. Ahmed Masood, advocate for the defendant No.1.

1. By consent this application is allowed. Let amended title be filed within one week.

2. This is an application per order 39 Rules 1 and 2 CPC and seeks the following injunctive relief:

“It is respectfully prayed on behalf of the Plaintiffs above named that, for the facts and reasons mentioned in the accompanying affidavit, and in the memo of Plaint this Honourable Court may graciously be pleased to pass Orders thereby restraining Defendants, their officers, employees, Attorney’s or anyone else acting directly or indirectly from taking any coercive action against the Plaintiffs, indirectly from taking any coercive action against the Plaintiffs, threatening black mailing, involving in false criminal cases on the basis of Cheques allegedly issued by the Defendant No. 5 AND/OR creating any kind of harassment in any manner by any means till final disposal of instant suit.”

The affidavit in support thereof is devoid of any grounds, save for paragraph 3 that seeks to reiterate the contents of the plaint.

Per plaintiff’s learned counsel, this application ought to be allowed as the plaintiff apprehends being prosecuted for offences not attributable thereto. Agreements available at page 431, 453 and 472 are referred to show the commercial nature of the underlying relationships and it is contended that unless the application is allowed, the plaintiff shall be needlessly harassed. Reliance is placed upon the judgment reported as *PLD 2020 Sindh 678 (“Digri Sugar”)*.

Learned counsel for the defendant No.1 at the very onset submits that the present application offends section 56(e) of the Specific Relief Act, 1877, hence, merits outright rejection. Insofar as the authority cited, it is submitted the same is distinguishable because in the said facts and circumstances no criminal proceedings were pending, however, the same is not the case here. Learned counsel relies upon the judgment reported as 2023 CLC 100 (“*Atif Shabbir*”) to bolster his claim and also demonstrates that *Digri Sugar* has been duly appreciated therein. Insofar as the factual aspect is concerned, it is submitted that the defendant cannot be restrained from initiation of criminal proceedings, irrespective of the effect thereof. Learned counsel draws attention to page 377 of the file to demonstrate that an FIR that was lodged in particular circumstances was not confined to section 489-F PPC and included numerous other sections were also invoked therein.

Heard and perused. The primary issue before this Court is whether proceedings in criminal matters could be stayed / restrained. Section 56(e) of the Specific Relief Act 1877 specifically precludes such injunctive relief.

There is a right to initiate criminal proceedings bestowed upon the citizens and the law makes provision for the course to be followed once such proceedings have been initiated. While the law provides for success and failure of such proceedings, as well as the consequences thereof, this Court has not been assisted with any law that could denude a citizen of such rights.

Digri Sugar has appreciated section 56(e) and while maintaining its sanctity observed that it's not absolute. Paragraph 13 thereof observes that the rule remains dependent on the facts and circumstances, coupled with the discretion of the court; which otherwise cannot be curtailed.

The defendants' learned counsel alleged *inter alia* collusion, cheating, fraud and abetment and under *pari materia* circumstances *Atif Shabbir* maintained that no injunctive relief was merited.

The discretion of a court can never be unfettered and has to be exercised per settled judicial principles. The application seeks a restraint upon involvement in *false* criminal cases. Any restraint placed upon involvement in criminal cases, in this context, would judicially presume that such cases are false. This determination is for the court of competent criminal jurisdiction, post concluding appropriate proceedings, and under no circumstances within the remit of the civil court.

In the present facts and circumstances *Atif Shabbir* appears to be squarely applicable and no case is made out to dis-apply the mandate of section 56(e) of the Specific Relief Act 1877. Even otherwise, when subjected to the anvil of *prima facie* case, balance of convenience and irreparable harm, the scales do not favor the plaintiff.

In view hereof, this application is found to be misconceived and even otherwise devoid of merit, hence, dismissed.

3. To be considered on the next date. Adjourned.

Judge