

(59)

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C.P. No.D-85 of 2016.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection as Flag 'A'.
2. For Katcha Peshi.

04.10.2016.

Mr. Mazhar Ali Mangan, advocate for the petitioner.

Mr. Khadim Hussain Khooharo, A.P.G along with Asghar Ali Kango,
SHO PS Kamber City.

Through instant petition, the petitioner has called in question order dated 13.01.2016, passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Kamber Shahdadkot @ Kamber, whereby the application filed by the petitioner being Crl. Misc. Appln. No.877/2015, under section 22-A & B, Cr.P.C was dismissed holding as under :

"It is the claim of the applicant that he had supplied the grain to the proposed accused persons who had issued the cheques in favour of applicant but I am at the humble view that such state of claim is not true as agitated by him, because such story has been opened by the proposed accused while submitting the "Iqrarnama" alongwith his reply, as such, cheques were issued in favour of applicant by the proposed accused against the liability to which was outstanding against the brother of proposed accused and all the cheques were handed over to applicant by the proposed accused as "Amanat". The bare reading of the contents of application does not constitute the cognizable offence as claimed by the applicant in the light specific provision of law so mentioned in section 489-F PPC and the applicant has privilege to file the suit for recovery of amount to which he is claiming before the competent Court of laws to redress the grievance and such type of litigation cannot be converted into criminal proceedings. I do not see any substance to issue the directions to the SHO to lodge the report against the proposed accused persons as prayed by the applicant and the same application is being disposed of accordingly".

Learned counsel for the petitioner has submitted that four cheques were issued by the proposed accused being amount of sale of paddy's and the same were dishonoured for want of insufficient balance in the account of proposed accused which is an offence squarely falls under section 489-F, PPC and since the concerned SHO i.e. SHO PS Kamber City, refused to lodge the FIR against the proposed accused. The petitioner filed Crl. Misc. Application No.877 of 2015 which was declined by the

learned Sessions Judge/Ex-Officio Justice of Peace, Kamber by observing that the alleged four cheques were issued by the proposed accused as "Amanat" which is pre-judgment findings of Ex-Officio Justice of Peace and the same has been given by him without jurisdiction as it is domain of the trial Court to determine nature of transaction, under which the alleged cheques were issued by the proposed accused.

The learned A.P.G also does not support the impugned order and submits that the circumstances under which the cheques were issued is to be determined by the Court concerned after recording pro and contra evidence of the parties. The petitioner is having both criminal as well as civil remedies as the alleged act and omission of proposed accused is also falls within the term of "offence" under section 489-F, PPC and equally the petitioner has right to file civil suit for the recovery of the amount.

SHO PS Kamber City has submitted his statement wherein he has stated that the petitioner did not approach him for lodging FIR and whenever he approaches him, he shall act in accordance with law.

There is no cavil to the proposition that whenever any act or omission falls within the definition of an "offence" as defined under section 40 of the Pakistan Penal Code and 4 (o) of the Code of Criminal Procedure, 1898 and for that besides the criminal liability there is also a civil liability, the aggrieved person has both forums to agitate his grievance in criminal as well as civil proceedings.

Availability of Civil remedy is not a legal bar to the maintainability of Criminal proceedings, because conviction for a criminal offence is completely a different matter from Civil liability.

In this case the contention of the petitioner is that proposed accused has issued four cheques against certain sale transaction which were dis-honoured and under Pakistan Penal Code it amounts to be an offence under section 489-F. We therefore, allow this petition by setting aside the impugned order and direct the SHO PS Kamber City that in case the petitioner appears before him and narrates the facts of a cognizable offence, he shall record the F.I.R in accordance with law.

The petition stands disposed of.

M. J. J. J. J.
Judge

Judge
04/10/2016