

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.166 of 2024

Applicant : Mahira Jawwad Qazi
through Mr. Faraz Faheem Advocate

Respondent No.1 : The State
through Mr. Neel Parkash Permar, DPG.

Respondent No.4 : Irshad Ali
through Syed Ahsan Imam Rizvi, Advocate.

Date of hearing : 24.03.2025

Date of order : 27.03.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant, Mahira Jawwad Qazi, has approached this Court under its inherent jurisdiction as provided under Section 561-A Cr.P.C., seeking judicial review of the order dated 04.01.2024, issued by the learned Additional Sessions Judge IX/Ex-Officio Justice of Peace, Karachi South. The aforementioned order pertains to Criminal Miscellaneous Application No.3544/2023, which had been filed under Sections 22-A and 22-B Cr.P.C., and was dismissed by the learned Justice of Peace.

2. Learned counsel for the applicant contended that the applicant had entered into a formal investment agreement with the proposed accused No.1, pursuant to which she invested a sum of Rs. 20 Million in a currency exchange business, under specific terms and conditions. It was asserted that the proposed accused had guaranteed the safety of the investment, including its refund, but subsequently misappropriated the funds without the applicant's consent, thereby breaching the contractual obligations. The proposed accused was further alleged to have made misrepresentations and induced the applicant to invest, while concealing material facts such as the State Bank of Pakistan's audit and regulatory breaches, which ultimately led to the suspension of the company's operations. As a consequence, the applicant sought the return of her investment, but was continuously misled by the proposed accused. Eventually, an Arbitrator

intervened and a cheque of Rs. 20 Million was issued to the applicant, which was dishonored upon presentation. Upon informing the proposed accused of the dishonor, the applicant was allegedly threatened with dire consequences. Faced with these circumstances, the applicant approached the SHO concerned, and subsequently filed an application before the Ex-Officio Justice of Peace, seeking registration of FIR on the basis of a disclosed cognizable offence.

3. Conversely, the learned counsel for the proposed accused, along with the Deputy Prosecutor General, produced documentary evidence to establish the existence of a prior business relationship between the applicant and proposed accused No.1. It was submitted that the cheque in question had been issued merely as a security instrument, rather than in fulfillment of a contractual obligation under the investment agreement dated 20.07.2022. The counsel further contended that the applicant initially invested Rs.7.5 million and later an additional Rs.12.5 million, under a profit and loss sharing arrangement. Pursuant to the agreement, profits were periodically paid to the applicant. Notwithstanding the suspension of the proposed accused's licensed currency exchange operation by the State Bank of Pakistan, he continued making payments to the applicant, having disbursed a total of Rs. 11,544,600, including a profit share of Rs. 1,952,000, routed through her husband, Muhammad Jawwad Qazi.

4. It was also submitted that a remaining balance of Rs. 6,408,000 was acknowledged as payable to the applicant; however, she allegedly demanded a greater sum in contravention of Clause 15 of the investment agreement, which was premised on profit and loss. Moreover, it was a mutually agreed term of the agreement that either party could terminate it by providing a three-month notice, upon which the counterparty would be obligated to return the invested amount. The applicant, in alleged violation of this clause, presented the cheque for encashment without issuing the requisite notice and with mala fide intent, which resulted in its dishonor. Furthermore, it was contended that the agreement contained an arbitration clause stipulating that in the event of any dispute, the matter would be referred to an Arbitrator or competent civil court for resolution. Instead of adhering to this agreed dispute resolution mechanism, the applicant chose to initiate criminal proceedings, purportedly with an intent to harass the

proposed accused. Hence, the respondents prayed for dismissal of the application.

5. In order for an offence under Section 489-F PPC to be deemed cognizable, the applicant asserts that the proposed accused No.1 received an amount of Rs.20 million. Although this assertion is not contested, the underlying transaction arose from a mutual agreement dated 20.07.2022 executed between the parties. A review of the terms of the agreement indicates that either party retained the right to terminate the arrangement by providing three months' prior written notice, thereby obligating the other party to return the invested amount. Notably, the applicant failed to serve such notice prior to approaching the SHO concerned and, subsequently, the Justice of Peace.

6. Moreover, the agreement expressly provided that any disputes arising between the parties would be resolved through arbitration or before a competent civil court. Thus, the dispute in question appears, on its face, to be of a civil nature and not one that warrants criminal proceedings. Consequently, the applicant's claim lacks legal sustainability and is devoid of merit.

7. Furthermore, to establish an offence under Section 489-F PPC, it is essential to demonstrate that the cheque was issued with fraudulent intent for the repayment of a loan or discharge of an existing legal financial obligation. In the present matter, there is no evidence indicating any dishonest intent or enforceable liability on the part of the accused, rendering the application deficient in the fundamental elements necessary for initiating prosecution under the aforementioned provision.

8. Therefore, the applicant lacks legal standing, primarily because the cheque in question was issued solely as a security instrument in connection with an agreement to resolve the dispute through arbitration. Its issuance was evidently linked to the arbitration arrangement rather than to the repayment of any existing debt or discharge of a legally enforceable obligation. The surrounding circumstances indicate that the cheque was intended to secure a potential future obligation, not to satisfy a present liability. As such, the essential elements required to invoke Section 489-F PPC are, on the face of it, lacking.

9. It is a well-established legal principle that the initiation of criminal proceedings must be grounded in credible and substantive evidence, and not on mere assumptions or unverified claims. Judicial scrutiny in such matters must strictly adhere to standards of fairness, due process, and evidentiary adequacy. The criminal justice system should not be misused as a mechanism for resolving private disputes or exacting vengeance. In the present circumstances, the application fails to meet the requisite legal threshold for judicial intervention.

10. The impugned order is based on a comprehensive and judicious evaluation of the material placed on record. Given the lack of substantive evidence and in view of established legal precedents that discourage reliance on speculative or retaliatory claims, there exists no valid ground for this Court to exercise its revisional jurisdiction. Consequently, the present Criminal Miscellaneous Application, being devoid of merit, stands dismissed.

J U D G E

Shahbaz/PA