

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Misc. Application No.465 of 2024

For Applicant:	Mr. Abdul Majeed Khoso, advocate
For Respondent No.4:	Mr. Muhammad Waqas Hussain, advocate
For State:	Miss Hina, Assistant PG for State
Date of hearing:	21.03.2025
Date of judgment:	21.03.2025

JUDGMENT

Jan Ali Junejo, J:-- Through this Criminal Miscellaneous Application, the Applicant has sought setting aside of the Order dated 02-05-2024 (hereinafter referred to as the “Impugned Order”) passed by the learned Additional Sessions Judge-XI/Ex-Officio Justice of Peace, Karachi South, whereby directions were issued to the SHO, P.S. Arambagh, to register an FIR against the Applicant and others.

2. The present Criminal Misc. Application arises from a dispute where the complainant, M/s. The Paracha Textile Mills Pvt. Ltd., supplied oil products to Chase Retail Store on credit between 19-03-2020 to 15-01-2024, accruing an outstanding liability of Rs. 5,694,274/-. To settle this, Chase Retail Store issued eight cheques (Nos. 87965219 to 87965226, dated 14-06-2023 to 22-06-2023 for Rs. 700,000/- each, drawn on Bank Al-Falah, all of which were dishonored by the complainant’s bank (Habib Metropolitan Bank) due to insufficient funds. Following subsequent demands, the accused issued a cheque (No. 99965961, dated 18-03-2024)

and the same was dishonored. After persistent non-payment, the complainant sought FIR registration under Section 22-A & B Cr.P.C. before the Sessions Court, which was referred to the Additional Sessions Judge-XI/Ex-Officio Justice of Peace, Karachi South, to direct the SHO of P.S. Arambagh on 02-05-2024 to register an FIR against Chase Retail Store's owner and others including the present Applicant. Challenging this order as aggrieved, the Applicant has approached this Court under Section 561-A Cr.P.C. for its quashing, alleging misuse of process. The core issues involve the dishonor of cheques, subsequent negotiations, and the legality of the FIR directive under the cited provisions.

3. Mr. Abdul Majeed Khoso, learned counsel for the Applicant, argued that the Impugned Order is illegal, void, and an abuse of process as it mechanically directs FIR registration despite the Applicant having no nexus with the alleged transaction. He emphasized that the Applicant is merely an employee of Chase Retail Store, without any ownership, directorial role, or financial authority, and has neither issued, signed, nor delivered the dishonored cheques. Furthermore, the absence of privity of contract between the Applicant and the complainant eliminates any criminal liability, making the matter purely civil in nature, as evidenced by the pending Civil Suit No. 439/2024 before the XVth Senior Civil Judge, Karachi-South. He contended that Section 22-A, Cr.P.C. cannot be misused to turn civil disputes into criminal cases and cited PLD 2013 Sindh 488 and 2023 P.Cr.L.J 1588 in support. Additionally, the delay of nine months in filing the application under Section 22-A, Cr.P.C. suggests mala fide intent to harass the Applicant and pressurize the actual responsible parties.

4. Mr. Muhammad Waqas Hussain, learned counsel for the complainant (Respondent No.4), contended that the Impugned Order was passed in accordance with law, and the Applicant's role in financial dealings of Chase Retail Store justifies an investigation. He argued that the Applicant was actively involved in transactions with the complainant, and the FIR is necessary to determine the extent of his responsibility. He further submitted that the complainant's financial losses warrant a thorough probe, and the order for FIR registration was legally justified. Lastly, the learned counsel prayed for dismissal of the Criminal Misc. Application.

4. Miss Hina, learned Assistant Prosecutor General, supported the Impugned Order, arguing that the Criminal Miscellaneous Application is not maintainable as the Applicant's plea of non-involvement is a factual issue requiring police investigation. She emphasized that prima facie material exists to justify FIR registration, and the Court should not interfere with the process of investigation at this stage.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record with their assistance. The primary question before this Court is whether the learned Ex Officio Justice of Peace correctly exercised his jurisdiction under Section 22-A Cr.P.C. It appears that the Applicant has no privity of contract with Respondent No.4 (M/s. The Paracha Textile Mills Pvt. Ltd.). The alleged supply of oil products was made to Chase Retail Store, which is a separate legal entity. The Applicant was merely an employee of the store and had no direct or

indirect contractual relationship with the Respondent No.4. The cheques in question were issued by Chase Retail Store and not by the Applicant. The bank account from which the cheques were drawn belongs to Chase Retail Store, and the Applicant has no ownership, control, or financial authority over the store's transactions. The Applicant is neither a director, partner, nor a shareholder of Chase Retail Store. He has no financial stake in the business, and there is no evidence to suggest that he was involved in issuing or authorizing the disputed cheques. The dishonored cheques were not signed, nor issued by the Applicant. His name does not appear as an authorized signatory in the bank records of Chase Retail Store. There is no record to the extent that he played any role in the issuance of these cheques. The Applicant was not involved in any financial dealings between Chase Retail Store and the Complainant (Respondent No.4). The transactions were conducted at the corporate level, and the Applicant had no decision-making authority in the company's financial matters. Since the Applicant had no control over the financial transactions, he cannot be held criminally liable for the dishonor of cheques issued by a third party. The Complainant (Respondent No.4) has wrongly implicated the Applicant in order to pressurize the actual responsible parties (i.e., the owners of Chase Retail Store) into settling the dispute. This is a clear abuse of process, and the Applicant should not be made to suffer for a matter in which he has no involvement. It has been observed that Section 22-A, Cr.P.C. has been frequently misused, leading to unwarranted legal actions in numerous cases. The legislative intent behind this provision was never to allow its indiscriminate invocation for harassing individuals who, in the course of their duties, take lawful actions against accused persons. Courts must

exercise caution and avoid mechanically entertaining applications under Sections 22-A & 22-B, Cr.P.C., without first assessing whether the applicant has approached the Court with clean hands or if the application is motivated by malice. Failure to do so could have serious consequences, particularly for law enforcement officers performing their official duties, as it may discourage them from taking necessary legal actions. The law must be interpreted in a fair and balanced manner, ensuring that its protection is extended to all individuals without being used as a tool for harassment or coercion. Reliance may be placed on the principle established by this Court in *Imtiaz Ahmed Cheema, v. S.H.O., Police Station Daharki, Ghotki & Others (2010 YLR 189)*, wherein it was emphasized that courts must exercise due diligence before directing the registration of an FIR. Reference may also be made to the case of *Jamil Ahmad Butt and another v. The State through Prosecutor-General, Sindh and others (2014 P.Cr.L.J. 1093)*, wherein this Court emphatically held that: “*There are instances of misuse of provisions of section 22-A, Cr.P.C. and, therefore, it is the duty of the Court that such misuse should be taken care of and such application should not be lightly entertained in a mechanical manner for direction to the police to register a statement of complainant and start prosecuting the alleged accused persons*”. It is a well-established legal principle that liability for actions rests solely with the individual who commits them. Consequently, imposing culpability on the Applicant for the conduct of the main accused—in the absence of prima facie cogent evidence—is legally indefensible. This aligns with the authoritative precedent set by the Supreme Court of Pakistan in *Ammad Yousaf v. The State & Another (PLD 2024 SC 273)*, wherein the Apex Court unequivocally affirmed that: “*Besides, if the alleged views*

orally expressed by the main accused during the live telecast are believed to be true and in violation of any reasonable restriction imposed by law, a question arises as to how the petitioner, can be held responsible for the act of the main accused, merely on the ground that he being a member of the administration of the broadcaster, is equally responsible. It is a settled principle of law that each person is responsible for his deeds and actions, hence, holding the petitioner responsible for the act of the main accused, without prima facie cogent evidence, is unjustified. Consequently, in the absence of a complaint by a competent authority to the extent of the offences of P.P.C., mentioned in section 196 of the Code and because of lack of the required material, initiating judicial proceedings against the petitioner is an abuse of the process of the Court. The manner in which the petitioner was proceeded against, amounts to inciting fear not only amongst the entire administration of the broadcaster, but will also have an impact upon rest of the print and electronic media, which will certainly obstruct their constitutional right. On the basis of the material available on the record, no case was made out against the petitioner. The fora below have ignored these constitutional, legal, and factual aspects of the case and have failed to exercise their mandatory inherent powers in favour of the petitioner, which is an illegality. Thus, in view of the above, the petition is converted into an appeal and is allowed. The impugned judgment of the High Court and that of the Trial Court are set aside. The proceedings initiated against the petitioner, pursuant to the above referred FIR are quashed to his extent. He is acquitted from the case". The underlining is supplied.

7. Upon thorough consideration of the preceding analysis, the following conclusions are reached:

1. The instant Criminal Miscellaneous Application is hereby allowed. Consequently:
 - The impugned order dated 02-05-2024 stands quashed to the extent of its applicability to the Applicant.
 - All consequential proceedings arising from the order, including directives for the registration of an FIR against the Applicant, are declared null, void, and legally unenforceable *ab initio*.
2. This judgment shall not operate to prejudice, invalidate, or impede the validity, operation, or continuation of the impugned order or any related proceedings concerning other accused persons. The rights, liabilities, and treatment of such individuals shall remain subject to and governed by applicable statutory and procedural law.

JUDGE