

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc Application No.S-01 of 2025.

Mst. Erum Taimoor Mughal
v.
SSP complaint Cell, Hyderabad & others.

Applicant : Mst. Erum Taimoor Mughal through Mr.
Faizan Ahmed Memon, Advocate.

Respondent No.3 : Through Mr. Muhammad Asif Arain,
Advocate.

The State : Through Mr. Shawak Rathore, D.P.G.

Date of hearing : 30.04.2025.

Date of Decision : 14.05.2025.

ORDER

Miran Muhammad Shah, J:- Through this Cr. Misc Application, the applicant Mst. Erum Taimoor Mughal has impugned the order dated 31.12.2024 passed by learned 8th Additional Sessions Judge/Ex-Officio Justice of Peace, Hyderabad in Cr. Misc Application No.6817 of 2024, whereby Cr. Misc Application filed by respondent No.3 for lodgment of FIR against applicant Mst. Erum Taimoor was allowed and directed to concerned SHO for lodgment of FIR.

2. The facts of the case are mentioned in the Cr. Misc Application and the memo of 22A&B Cr.P.C Application, which is also attached with this Cr. Misc Application, hence, needs not to reproduce the same here.

3. The learned counsel for the applicant argued that the impugned order is against the law & facts as well as misreading and non-reading of the reports and material available before learned trial Court, therefore, the same should be set-aside; that the learned Ex-Officio Justice of Peace had failed to apply judicial mind while passing the impugned order; that the respondent No.3 in paragraphs No.3 to 5 of her application had categorically mentioned that an agreement was signed and applicant had given three cheques out of

which one cheque was bounced and FIR was lodged which is pending adjudication and regarding that cheque a Summary Suit was also filed, but the learned trial Court in hasty manner had passed the impugned order without considering the material available before it; that the respondent No.3 relied on one agreement under which three cheques have been given and regarding such story one FIR is already in field lodged by respondent No.3 bearing FIR No.263 of 2024, therefore, second FIR cannot be registered on same cause of action. He relied upon the case law reported as 2022 MLD 31 and prayed that the impugned order may be set-aside and application in hand may be allowed.

4. The learned counsel for respondent No.3 has argued that the applicant had committed fraud with respondent No.3 and gave false & fabricated cheques by causing huge financial loss to her; that the applicant agreed to pay the loan amount to respondent in installments and regarding such liability she had issued cheques, which have been dishonored, therefore, the respondent No.3 approached learned trial court for lodgment of FIR and regarding previous transactions, all facts were mentioned in the application moved before learned trial Court; that no concealment of fact was made by the respondent No.3 and had approached learned trial court with clean hands as the respondent No.3 has caused huge financial loss and respondent No.3 had no other option but to approach the learned trial court; that the impugned order passed by the learned trial court is very much competent and same requires no interference. He relied upon the case law reported as 2004 P.Cr.L.J 1214.

5. The learned D.P.G for the State argued that the matter may be decided on merits and also conceded the fact that no second FIR regarding same chain of transaction can be lodged, however, at the most statement of respondent No.3 may be recorded in FIR earlier lodged by her.

6. Heard & perused.

7. After examining all the material available on record and hearing both the contesting parties i.e. applicant and respondent No.3 through their counsels, it transpires that the case is of dishonoring of certain cheques which were bounced during monetary agreement between the two parties. Though the agreement between them was purely of civil nature and between two

private parties yet since monetary transactions were involved and certain cheques were issued by one party to another resulting in criminal proceedings U/s 489-F PPC which is now through amendments been converted to a criminal liability due to continuous increase of bouncing of cheques in the country and as a result of dishonoring of civil liability. In the present case an agreement took place by consent between the applicant and respondent No.3 whose contents were encrypted in Urdu language which briefly stated that since a certain amount was lent by respondent No.3 to the applicant (party No.1) for which to return the said loan, this agreement took place whereby six cheques were issued, however, since all of the cheques were bounced there was a hot burn between the two parties and criminal cases were lodged against the loan taker. In order to resolve the controversy and bring back peace and harmony among the two parties, this agreement was made and new fresh cheques were issued by the loanee to the lender. Such agreement was made in the presence of witnesses and this issue was mutually resolved by signing this agreement, however, subsequent events again led to the bouncing of cheques and lodgment of FIRs, resultantly one FIR was lodged earlier for bouncing of the first cheque on 27.07.2024 U/s 489-F PPC, however, after bouncing of the second cheque, another Application U/s 22A&B Cr.P.C was filed obtaining an order from the Court of 8th Additional Sessions Judge/Ex-Officio Justice of Peace, Hyderabad (impugned order) and in this impugned order, the learned trial Court had directed the SHO concerned that if it appears to him that a cognizable case of FIR is made out, incorporate the same in 154 Cr.P.C. This was an illegality in the eyes of law, although the applicant before learned trial Court had in its para No.4 of her application had categorically stated that the FIR earlier has been lodged. The learned trial Court without considering that under the same agreement an FIR is already in field, it was absolutely no necessity to order for another FIR in a case which arose out of the same agreement. It was just a mere portion of the monetary transaction which was not being honored and once the breach was made, any other breaches of the same agreement will not fall into another category and will not transpire another litigation in case of civil nature and here the subsequent FIR also falls in the category of subsequent litigation, which is not permissible in the eyes of law. Even otherwise in the light of *Mst. Sughran Bibi* case all FIRs of the same incident are to be amalgamated into the one and the best remedy possible was that

rather than ordering a fresh FIR on the ground that “SHO is duty bound to lodge an FIR if a complaint is made and the case is made out” and learned trial Court without going into the deeper appreciation of the case and without considering the fact that the FIR over the same agreement remains pending in the police file in a haphazard manner ordered for lodgment of second FIR. The learned trial Court should have directed the SHO concerned to record the statement of the applicant/respondent No.3 and made her statement as part of the FIR lodged earlier rather than ordering for fresh FIR. However, this is an anomaly which is visible on the face of impugned order. Also the counsel for the respondent No.3 has placed his reliance on the case of *Muhammad Aslam v. Additional Sessions Judge and others*, reported as 2004 P.Cr.L.J 1214, which reads as under;

“---Ss. 22-A & 154---Constitution of Pakistan (1973), Art.199--Constitutional petition---Hearing of accused not necessary in proceeding under Ss.154 & 22-A, Cr.P.C.---Police Officer is under statutory obligation under S.154, Cr.P.C., to register a case on receiving information relating to commission of a cognizable offence without entering into inquiry and without hearing the accused persons---Failure of the concerned Police Officer to register a complaint so made amounts to failure to discharge statutory obligations which attracts provisions of S.22-A, Cr.P.C.---Since no hearing was needed for proceeding under S.154, Cr.P.C., consequently the Sessions Court was under no obligation to hear the accused while seeking enforcement of the said provisions---Impugned order did not suffer from any legal infirmity---Constitutional petition was dismissed accordingly.”

8. However, counsel for the applicant has placed his reliance on the case of *Hamid Khan v. The State & 2 others* reported as 2022 MLD 31, which reads as under;

“(c) Criminal Procedure Code (V of 1898)---

---Ss.22-A (6) & 154---Penal Code (XLV of 1860), S.489-F---Dishonouring of cheque---Second FIR, quashing of---Scope---Guidelines to police officers---Petitioner/accused sought quashing of second FIR for dishonour of second cheque issued during same transaction for which earlier one FIR had already been registered---Validity---Held, second FIR could not be registered in cases of same transaction like cheques of same series originating on same cause of action, whether dishonoured or not or subsequently dishonoured after registration of first FIR---If second FIR was lodged the same should be cancelled by referring subsequent cheques through supplementary challan in

first FIR/case---If second FIR was not registered and matter was pending before Ex-Officio Justice of Peace, who was dealing with the case, he could pass order/direction under S.22-A (6), Cr.P.C. to investigating officer of the first case, who had already registered the FIR or had submitted final report under S.173, Cr.P.C., to file supplementary challan in that first case on the basis of such new facts of cognizable offence emanating from the same incident / transaction like dishonoured cheque---If police officer had also registered second FIR, he could convert final report in terms of S.173, Cr.P.C. as supplementary report of first FIR while considering offence of same transaction, must submit supplementary challan in the same court without recourse to arrest of accused---Where different dishonoured cheques were still with complainant, which had not been used against same accused originating from same transaction and series of cheques, which were basis of first FIR, in such situation no further F.I.R. could be registered and police officer should not proceed in those cases, rather should refer the parties to Court of competent jurisdiction under the law by way of filing of civil suit for recovery---Officer incharge of police station should not entertain every such application of subsequent dishonoured cheque of same accused by facilitating complainant as helping in or becoming tool of recovery---Police officers were duty bound to refer the parties to Court of competent jurisdiction or directed the matter to concerned police station for recording of entire complaint in police diary with reasons that already FIR has been lodged and complainant did not disclose other cheques of same transaction due to his ill-will and mala fide---If trial of first FIR was already concluded then police officer should not register second FIR in any manner of the same transaction or series of offences which had already been adjudicated upon the basis of same set of allegations---High Court quashed second FIR as the same was abuse of process and complainant had right to recourse to remedy of recovery provided under law---Constitutional petition was allowed, in circumstances."

9. After going through both the case laws submitted by the counsels of respective parties in their support, it could be seen wherein categorically case laws relied upon by the counsel for the applicant is very identical to this present case and categorically explains the position of the second FIR and the case law submitted is also based on Section 489-F PPC the dishonoring of cheques, whereas the case in hand is also of dishonoring of cheque. In above such circumstances, it is fairly clear that the learned trial Court's order of another FIR lodging would be tantamount to abuse of process of law. Since the investigation continues, the contents of 2nd FIR be recorded by way of recording statement of the respondent No.3. Hence, amalgamating both the

bounced cheques into one case for proceeding it further. Therefore, the present impugned order passed by the learned 8th Additional Sessions Judge/Ex-officio Justice of Peace, Hyderabad does not hold its footing on any legal proposition and is liable to be set-aside. I, therefore, **allow** the present Cr. Misc Application No.S-01 of 2025 by setting aside the impugned order dated 31.12.2024 passed by the court of learned Additional Sessions Judge-VIII, Hyderabad in Cr. Misc Application No.6817 of 2024.

10. The respondent No.3 is at liberty to record her statement before the concerned police official, who is investigating the FIR No.263 of 2024 with a request to amalgamate her statement into ongoing investigation.

JUDGE

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