

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Misc. Appln. No. S-372 of 2025

Applicant : Muhammad Rofi Siddiq s/o Muhammad Siddiq
Through M/s Ahmed Ali Ghumro, Abdul Samee &
Ahsan Anwer, Advocates

Respondent No.2 Abid Zaman s/o Muhammad Shabeer
Through Mr. Badaruddin Indhar, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 22.09.2025
Date of Order : 06.10.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Through this application under Section 561-A of the Criminal Procedure Code, 1898, the applicant Muhammad Rofi Siddiq challenges the order dated 16.06.2025 passed by the learned Judicial Magistrate-II, Ghotki, whereby cognizance was taken against the applicant in Summary Proceedings No.16/2025 arising out of FIR No.369/2024 for offence under Section 489-F PPC, registered at Police Station A-Section, Ghotki.

2. The material facts emerging from the record reveal that the applicant Muhammad Rofi Siddiq issued a cheque bearing No.11806978 dated 15.11.2022 for Rs.1,35,00,000/- drawn on Bank Al Habib Saddar Branch Karachi in favor of one Shoukat Ali regarding an investment arrangement. The applicant made partial payments totaling Rs.92,00,000/- to Shoukat Ali and sought return of the cheque, but Shoukat Ali assured that it would not be presented. Subsequently, a dispute arose between the applicant and Shoukat Ali regarding (100-00) acres of land situated at Malir, Karachi. The applicant discovered that Shoukat Ali had allegedly committed fraud by altering the cheque date from 15.11.2022 to 15.05.2024 to circumvent limitation issues, as the amount had already been received by him. On 29.08.2024, anticipating potential criminal proceedings, the applicant filed Civil Suit No.1686/2024 before the learned IIIrd Senior Civil Judge, Karachi East for declaration, cancellation of cheque and permanent injunction. The learned Civil Judge granted a stay order restraining any adverse action including lodging of FIR against the applicant. Despite the civil court's restraining order, S.H.O P.S. Ghotki registered FIR No.369/2024 for offence under Section 489-F PPC on 08.09.2024 on the complaint of respondent No.2, Abid Zaman, who claimed to be operating under the business name "Shoukat & Co." The complainant

alleged that he had given a loan of Rs.15,00,000/- to the applicant in February 2024, and that the applicant issued the aforementioned cheque which was subsequently dishonored. The investigation officer conducted inquiry and submitted a report under Section 173 Cr.P.C recommending disposal of the case as "C" class, finding no incriminating evidence against the applicant. However, the learned trial court disagreed with the investigation officer's findings and took cognizance under Section 190 Cr.P.C. against the applicant vide the impugned order dated 16.06.2025.

3. Learned counsel for the applicant has advanced the registration of FIR was in clear violation of the stay order dated 29.08.2024 passed by the learned IIIrd Senior Civil Judge, Karachi East, constituting contempt of court. The cheque date was deliberately altered from 15.11.2022 to 15.05.2024 by Shoukat Ali to create a false cause of action. Documentary evidence including counterfoil, altered cheque copy and stop payment instructions dated 19.04.2023 support this contention. The cheque was originally issued to Shoukat Ali, not to complainant Abid Zaman. The complainant has no direct connection with the original transaction and appears to be acting in collusion with Shoukat Ali. While the complainant alleged dishonor due to insufficient funds, the bank memo clearly states "payment stopped by drawer," revealing contradictions in the complaint. The matter is essentially of civil nature involving business disputes and recovery, which should be adjudicated through civil proceedings rather than criminal prosecution.

4. The learned Additional Prosecutor General for the State contended that the essential ingredients of Section 489-F PPC are satisfied as there is issuance of cheque, its subsequent dishonor, and apparent obligation toward repayment. The offense under Section 489-F PPC is cognizable and the police were duty-bound to investigate upon receiving a complaint. The learned Magistrate exercised proper judicial discretion in taking cognizance despite the I.O.'s recommendation, as determination of guilt is within the court's domain. The registration of FIR and subsequent proceedings followed due process of law as envisaged under the Criminal Procedure Code.

5. Learned counsel for the Respondent No.2, argued that the cheque was issued as security for a genuine business transaction and its dishonor caused financial prejudice warranting criminal action under Section 489-F PPC.

6. This Court's inherent jurisdiction under Section 561-A Cr.P.C. is well-established to prevent abuse of process and secure the ends of justice.

However, such power must be exercised sparingly and only in exceptional circumstances. The Supreme Court in *Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan* (PLD 1971 SC 677) held that inherent jurisdiction spans over judicial orders and not mere investigative steps. Section 489-F PPC criminalizes dishonest issuance of cheques toward repayment of loans or fulfillment of obligations which are subsequently dishonored. The essential ingredients are: (1) dishonest issuance of cheque, (2) for repayment of loan or obligation, and (3) dishonor upon presentation.

7. The Supreme Court in *Mian Allah Ditta v. The State* (2013 SCMR 51) categorically held that "*every transaction where a cheque is dishonored may not constitute an offence*". The foundational elements require dishonest intent, specific purpose of loan repayment or obligation fulfillment, and subsequent dishonor. The civil court's stay order dated 29.08.2024 specifically restrained lodging of FIR against the applicant. The registration of FIR in violation of this judicial order raises serious concerns about contempt of court. While there is no universal principle mandating stay of criminal proceedings pending civil litigation, courts must exercise discretion where criminal liability depends on civil dispute resolution. In *Muhammad Aslam v. State* (2017 SCMR 390), the Supreme Court observed that there is no invariable rule requiring stay of criminal proceedings pending civil suit decision, but discretion should be exercised to prevent prejudice to the accused.

8. The material on record reveals several disturbing factors i.e. the applicant has produced counterfoil showing original date as 15.11.2022, altered cheque copy showing manipulation to 15.05.2024, and stop payment instruction dated 19.04.2023, which prima facie supports the allegation of fraudulent alteration. If the cheque was genuinely issued in May 2024 as claimed by the complainant, the stop payment instruction in April 2023 would be inexplicable. The original cheque was issued to Shoukat Ali, not to complainant Abid Zaman. The complainant's sudden emergence after the civil stay order suggests potential collusion. The I.O.'s "C" class recommendation based on investigation findings cannot be lightly dismissed without cogent reasons. The discrepancy between claimed insufficient funds and actual "payment stopped by drawer" reason raises credibility questions.

9. In *Abdul Rasheed v. The State* (2023 SCMR 1948), the Supreme Court emphasized that dishonest intent is fundamental to Section 489-F prosecution. The Court in *Shabir Muhammad v. State* noted that mere dishonor without proof of dishonest intent cannot sustain conviction. The

Islamabad High Court in various judgments has consistently held that Section 489-F does not fall within the prohibitory clause of Section 497 Cr.P.C., making bail the rule rather than exception, emphasizing the need for careful scrutiny of dishonest intent.

10. The sequential events like civil litigation, stay order, emergence of new complainant with tenuous connection, and FIR registration in violation of judicial restraint collectively suggest potential abuse of legal process. The doctrine established in *Gulam Mustafa v. State* (1999 YLR 1616) requires courts to prevent such abuse while exercising inherent jurisdiction.

11. Having carefully considered the arguments, material on record, and established legal principles, this Court finds that the impugned order suffers from fundamental legal infirmities. The learned trial court erred in taking cognizance while ignoring the civil court's stay order, the I.O.'s findings, and the apparent contradictions in the prosecution case. The emergence of a complainant with questionable nexus to the original transaction, coupled with documentary evidence of date alteration, raises serious doubts about the bona fides of the complaint. The matter appears to be essentially civil in nature involving recovery disputes rather than criminal dishonesty. The apparent violation of the civil court's stay order and the subsequent registration of FIR constitute abuse of legal process warranting interference under Section 561-A Cr.P.C. Accordingly, this application is allowed with directions that the impugned order dated 16.06.2025 passed by the learned Judicial Magistrate-II, Ghotki is hereby set aside. The respondents are restrained from taking any coercive action against the applicant in connection with the aforementioned FIR. The civil proceedings before the learned IIIrd Senior Civil Judge, Karachi East shall continue to their logical conclusion without any interference from criminal proceedings.

J U D G E