

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-554 of 2025

Applicant : Lal Chand son of Umed Mal
Through Mr. Shafique Ahmed Khan, Advocate

Proposed accused : Nand Lal Panhwaar S/o Kheto Mal
Through Mr. Sikander Ali Junejo, Advocate

The State : Mr. Mansoor Ahmed Shaikh, DPG for the State.

Date of hearing : 02.10.2025

Date of order : 13.10.2025

ORDER

KHALID HUSSAIN SHAHANI, J.- Applicant Lal Chand has invoked inherent jurisdiction of this court being aggrieved by the order dated 10th September, 2025 passed by the learned IInd Additional Sessions Judge, Sukkur, in Criminal Misc. Application No.2664 of 2025, whereby his application under Sections 22-A(6)(i) and 22-B, Cr.P.C, for registration of FIR against Nand Lal Pahnwaar was dismissed.

2. The brief facts reveal that on 15th February 2025, the proposed accused approached the applicant at his tailoring shop and requested a loan of Rs.40,00,000 (Rupees Forty Lac) for SSD Garments business. The applicant claims to have handed over the amount in the presence of witnesses, and in return, the proposed accused issued cheque No. SA-58366440 dated 7th August 2025 for Rs.40,00,000 (Rupees Forty Lac) drawn on Sonehri Bank Limited. Upon presentation on 7th August, 2025; the cheque was dishonored due to insufficient funds. The applicant sought police registration of a case, which was declined, prompting him to approach the learned Justice of Peace who also dismissed his application.

3. Learned counsel for the applicant submitted that the dishonor of a cheque constitutes a cognizable offence under Section 489-F, PPC, and the learned trial court erred in dismissing the application without proper consideration of the legal requirements. He argued that mere issuance and dishonor of a cheque *prima facie* establishes the offence, and the question of dishonest intent and liability should be determined after evidence is adduced at trial.

4. The learned Deputy Prosecutor General duly assisted by Mr. Junejo, learned counsel for the proposed accused Nand Lal, supported the impugned order, contending that the trial court correctly found that the applicant failed to establish the essential ingredients of Section 489-F, PPC, particularly the element of dishonest intent and existing obligation, and that the circumstances suggested the cheque was given as security rather than for discharge of liability.

5. Upon careful consideration of the material on record and the law laid down by the superior courts, this Court finds merit in the applicant's contentions. In *Mian Allah Ditta v. The State* (2013 SCMR 51), the Supreme Court held that while every transaction involving a dishonored cheque may not constitute an offence, the foundational elements of Section 489-F, PPC, are issuance of cheque with dishonest intent, the cheque being towards repayment of loan or fulfilment of obligation, and dishonor of the cheque. However, the Supreme Court in *Muhammad Sultan v. The State* (2010 SCMR 806) clarified that the mere issuance and dishonour of a cheque establishes a *prima facie* case, and the burden shifts to the accused to prove arrangements with the bank or lack of dishonest intent.

6. The learned trial court appears to have exceeded its jurisdiction under Section 22-A, Cr.P.C., by conducting a detailed inquiry into the merits rather than limiting itself to ascertain whether the information disclosed a cognizable offence. In *Younas Abbas v. Additional Sessions Judge* (PLD 2016 SC 581), the Supreme Court held that the Justice of Peace performs *quasi-judicial* functions but must exercise discretion judiciously. The Court must determine whether the allegations, if proved, would constitute a cognizable offence, not whether they are true or false.

7. In the present case, the allegations clearly disclose that a cheque was issued, it was dishonoured upon presentation, and it was allegedly issued for discharge of a monetary obligation. The very act of issuing a cheque implies dishonesty when it bounces due to insufficient funds, as held in various superior court judgments. The question whether the cheque was given as security or for

discharge of liability, and whether there was dishonest intent, are matters of evidence to be determined after a proper investigation and trial.

8. The learned ex-officio justice of peace erred in distinguishing the present case from the established legal position. Unlike the cases relied upon by the trial court where specific factual circumstances negated the offence, here the basic ingredients of Section 489-F, PPC, are prima facie satisfied. The fact that the cheque belongs to an old series or that there was prior transaction between parties does not automatically negate the cognizable nature of the offence. These are matters of defence to be raised and proved at trial.

9. Furthermore, the learned ex-officio justice of peace failed to appreciate that Section 489-F, PPC, creates a cognizable offence, and once the essential ingredients are prima facie disclosed, registration of FIR becomes mandatory under Section 154, Cr.P.C. The discretion under Section 22-A(6), Cr.P.C., is to be exercised only to prevent abuse of process, not to conduct a mini-trial on merits.

10. For the foregoing reasons, the impugned order dated 10th September, 2025 is hereby set aside. Accordingly, Station House Officer PS A-Section Sukkur is directed to record the statement of applicant in pursuance of section 154 Cr.P.C and if a cognizable case made out, lodge FIR and dispose of the same in accordance with the law.

Criminal Misc. Application No.S-554 of 2025 is accordingly allowed.

J U D G E