

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Criminal Miscellaneous Application No. S- 303 of 2024
(Muhammad Hassan Khan vs The State and others)

Date	Order With Signature Of Judges
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1. For hearing of MA No.4000/2024 (E/A)
2. For hearing of main case.

24-11-2025

Mr. Raj Ali Wahid, Advocate for applicant.
Ms. Amna Ansari, Additional Prosecutor General.

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Ali Haider 'Ada' J.- Through this Criminal Miscellaneous Application, the applicant assails the Order dated 28.11.2023 whereby his application under Sections 22-A and 22-B, Cr.P.C. seeking directions for registration of FIR was dismissed by the learned Additional Sessions Judge-VI, Karachi South/Ex-Officio Justice of Peace. Being aggrieved, the applicant has called the said order into question.

2. The case of the applicant before the learned Justice of Peace was that Respondent No.4/proposed accused was in a business partnership with the applicant, and during the course of such dealings he allegedly committed fraud, criminal breach of trust and embezzlement of partnership funds, thereby attracting penal consequences under the Pakistan Penal Code. It was thus contended that in terms of Section 154, Cr.P.C, the concerned police was under a statutory obligation to record the applicant's information and proceed in accordance with law. However, the learned Justice of Peace dismissed the application primarily on the ground that the dispute disclosed civil liability and that an agreement allegedly relied upon by the applicant reflected matters of admission not constituting any cognizable offence.

3. Learned counsel for the applicant submits that the observations of the learned Justice of Peace are mechanical and contrary to the settled parameters governing the exercise of jurisdiction under Sections 22-A and 22-B, Cr.P.C. He argues that the matter is not limited to a civil claim and that the allegations, taken at their face

value, clearly constitute cognizable offences falling within the ambit of the PPC particularly relating to criminal breach of trust and dishonest misappropriation. He further submits that if every act of embezzlement or misappropriation committed in a partnership, employment, or shareholding arrangement is to be treated solely as a civil dispute, it would render irrelevant the core purpose of criminal action and effectively grant a license to individuals to commit financial crimes within commercial setups with exemption, under the pretext of civil liability. It is argued that such an approach defeats the object of penal statutes, which are designed to maintain social order and deter wrongdoing across all sectors. Learned counsel, therefore, prays that the impugned order be set aside with directions to the concerned police to record the applicant's statement and, if cognizable offence is made out, proceed under Section 154, Cr.P.C. without being influenced by the impugned order.

4. It is noted from the record that notices were issued to Respondent No.4/proposed accused on 08.05.2024 to respond and put forth his version. Despite issuance of repeated notices and lapse of almost one year and six months, Respondent No.4 failed to appear before the Court. The service upon him stands duly effected, yet he chose not to join the proceedings. His continued non-appearance, despite service, amounts to willful default, leaving no option but to decide the matter in his non-appearance.

5. Learned Additional Prosecutor General submits that the matter ought to be placed before the police for verification of facts, as the police is the competent authority to examine the nature of allegations at the initial stage. She concedes that the Justice of Peace does not possess jurisdiction to evaluate the evidentiary worth of documents, nor can he assume the role of an investigating officer by examining the genuineness or legal effect of such documents. His authority is confined to determining whether, on the face of the complaint, a cognizable offence requiring police action is disclosed.

6. Heard the learned counsel and perused the material available on record.

7. The scope of jurisdiction vested in the Justice of Peace does not empower him to act as an investigating agency. His role is supervisory and preventive, meant only to oversee whether the grievance placed before him supported by the material available on record, prima facie discloses the commission of a cognizable offence or whether the application is actuated by malice, mala fide intent, or is filed merely to achieve an unlawful objective. Beyond such preliminary scrutiny, he cannot embark upon a detailed analysis of evidence nor can he render findings touching upon the merits of the dispute. In the present case, no observation or finding has been recorded in the impugned order to suggest that the applicant acted with mala fide intent or that his grievance is motivated by an ulterior design.

8. The Justice of Peace does not have the authority to assume the role of an investigator or prosecutor. His function is one of vigilance intended to redress the grievance of a complainant who has been denied his statutory right of reporting a cognizable offence. If a Justice of Peace were to undertake a trial, conduct a fact-finding exercise, prior to the registration of an FIR, it would, in effect, compel every complainant to first approach the Justice of Peace for clearance before seeking recourse to Section 154, Cr.P.C. Such a course is alien to the statutory scheme, contrary to legislative intent, and dissenting with the very design of the criminal justice process. Minutely scrutiny of a complaint, assessment of its evidentiary strength, or determination of its ultimate merit forms no part of the functions assigned to the Justice of Peace. His duty is confined to addressing the grievance arising from a refusal by the police to register a cognizable report and ensuring that the statutory mechanism is activated where appropriate. The above principles stand fortified from the dictum laid down in *Syed Qamber Ali Shah v. Province of Sindh & others* (2024 SCMR 1123), wherein the Honourable Supreme Court reaffirmed

that the Justice of Peace is not vested with the authority to encroach upon the investigative domain nor pre-judge the matter on merits.

9. Furthermore, there can be no dispute that the existence of a civil liability does not, by itself, extinguish or suspend the criminal liability arising out of the same set of facts. The law does not contemplate that merely because a dispute may also have civil consequences, the doors of criminal justice are to be shut indefinitely. It is a well-settled principle that civil and criminal proceedings may lawfully proceed side by side, and the availability of a civil remedy is not a bar to the initiation of criminal action where the alleged act, *actus reus*, squarely falls within the purview of a penal offence. In such circumstances, the aggrieved party is fully entitled to set the criminal law into motion, concurrently with any civil remedy that may also be available. Reliance in this regard is placed upon *Seema Fareed and others v. The State and another* (2008 SCMR 839), wherein the Honourable Supreme Court held that:

"It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction."

10. The material placed on record by the applicant, at this preliminary stage, prima facie indicates that Respondent No.4 has allegedly committed acts which require determination through a proper investigation. It is a settled proposition of law that the investigative process can only be set in motion once the foundational requirement under Sections 154 or 155, Cr.P.C, the incorporation of information is fulfilled. Without such statutory initiation, the investigation cannot lawfully commence.

11. In view of the above discussion and for the reasons recorded hereinbefore, this application is hereby allowed. Consequently, the impugned order dated 28.11.2023, passed by the learned Additional Sessions Judge-VI/Ex-Officio Justice of Peace, Karachi South, is set aside. The Respondent No.2, Station House Officer, Police Station Mithadar, Karachi, having territorial jurisdiction, is directed to record the statement of the applicant forthwith and, should the facts disclosed therein constitute a cognizable offence, to incorporate the same under Section 154, Cr.P.C. and thereafter proceed strictly in accordance with law.

In these terms, the application stands disposed of.

JUDGE

Amjad/PS