

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2392 of 2014

Plaintiff : Muhammad Muzammil Afzal Bhatti,
through Mr. Zayyad Khan Abbasi, Advocate

Defendant: : Muhammad Shahab Saqib and two Others through
Mr. Shaikh Liaquat Hussain, Advocate

Date of Hearing : 13th January, 2015

ORDER

CMA No.16218/2014

NAZAR AKBAR, J.-- By this order I intend to dispose of application under Order XXXIX Rule 1 and 2 CPC (CMA No.16218/2014) filed by the plaintiff with the prayer that the defendants may be restrained from presenting cheques for encashment issued by the plaintiffs or lodging false criminal cases on the basis of cheques or interfering in the lawful business by the name and style “Asad Stone Crush Plant”, situated at Nooriabad, Jamshoro, Sindh.

2. Brief facts for the purpose of this application are that the plaintiff has filed suit for declaration, cancellation, rendition of accounts, damages and permanent injunction against the investors, the defendant No.1, to whom the plaintiff has issued different cheques of an amount of Rs.7 Million as security for return of his investment in his own business. However, the plaintiff claims that subsequently they entered into a fresh agreement, cancelling the earlier agreement and claimed that the amount of Rs.7 Million was decided to be returned by the plaintiff to the defendant in the shape of crush material and even rate was also fixed. The defendant did not return the cheques and therefore the Plaintiff has closed the bank account from which bank account the cheques were issued by the plaintiff to

the defendants and filed this suit by claiming that the plaintiff is having a dispute of accounts against with defendants and the defendants should not encash the said cheques. In the plaint the plaintiff himself prayed that auditors be appointed for examining the accounts. The plaintiff for non-refund of cheques of Rs.7 Million has claimed damages to the tune of Rs.50 Million and under the cover of this suit the plaintiff seeks pre-empt prosecution for under section 489-F PPC.

3. In the counter affidavit the defendants have specifically denied the execution of any agreement or *Iqrarnama*, which obviously will be decided after recording of evidence. Since the executants have categorically denied the execution of the documents, the burden to establish by positive evidence that such agreement has been entered into by and between the parties is on the plaintiff.

4. The plaintiff has chosen a civil forum for redressal of his grievance through the suit against the defendant and nobody can restrain the plaintiff from bringing the suit against the defendants, no matter now frivolous it may turn out to be at the end of the day. Similarly, it is upon the defendants to choose a proper forum available to them in accordance with law for the redressal of their grievance. The defendants have specifically pointed out that the plaintiff is involved in many other cases of similar nature in which he obtained investment by different persons for his business and defaulted. The Defendant has specifically stated that FIR No.730/20913 was lodged against the plaintiff by one Imdad Ali in similar circumstances.

5. Learned counsel for the plaintiff has failed to bring any case law directly on the point that in terms of Order XXXIX Rule 1 and 2 CPC the defendants can be restrained from taking a lawful course for redressal of their grievance. It is settled principle of law that the civil proceedings and criminal proceedings are independent from each other. No criminal Court while passing any order, even of

conviction of a plaintiff, can defeat the plaintiff's right to pursue a civil remedy against the complainant. Similarly, plaintiff by filing a suit cannot restrain the defendants from lodging the FIR if the case is made out. It goes without say that nobody is supposed to file/lodge a false case against anybody on the earth and if he makes such a blunder of lodging a false FIR, the victim will obviously be entitled to avail a remedy in criminal Court for prosecuting the complainant by lodging a case in terms of section 182 PPC, which reads as under:

“182.--False information with intent to cause public servant to use his lawful power to the injury of another person: Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant :-

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to three thousand rupees or with both.

In view of the above facts, *prima facie*, the plaintiff has no case to restrain the defendants from taking a legal course for redressal of their grievance. Therefore, this application is dismissed.

JUDGE