JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.2581/2021

Hamid Khan

versus

The State & 02 others

Petitioner by:	Mr. Khurram Mehmood Qureshi and Mr. Abdul Rauf Qureshi, Advocates.
Respondents by:	Mr. Adnan Iqbal, Advocate for Respondent No.3. Mr. Zohaib Hassan Gondal, State Counsel. Raza Muhammad, S.I., P.S. Kohsar, Islamabad.
Date of Hearing:	13.10.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner seeks quashing of FIR No.324, dated 05.07.2021, under Section 489-F PPC, P.S. Kohsar, Islamabad.

2. Succinctly, the complainant respondent No.3 Mamoon-ur-Rasheed has lodged the above mentioned F.I.R with the allegation that he has business relationship with Hamid Khan Resident of Garhi Peshawar presently residing at Islamabad. The complainant entered into a partnership with the petitioner and at time of cancellation of the partnership, an agreement was executed vide agreement No. 2561, dated 26.04.2019. According to the terms of cancellation of partnership agreement the petitioner has to pay an amount of Rs. 21,950,000/- (Two Crore nineteen lac fifty thousand only). With regard to said payment, the petitioner issued post dated cheque No. 00000019, dated 26.04.2019, amounting to Rs. 1 crore, drawn at HBL IBB Rizwan Centre Branch, Islamabad in presence of Attaullah Khan, but later on the said cheque which was deposited by the complainant in his account No. 0302500191270001, Bank Islami Mangora Branch Swat, was returned due to insufficient balance.

3. Learned counsel for the petitioner contends that petitioner Hamid Khan established a firm under the name and style of M/s HK Enterprises which is involved in the project of CPEC, as such respondent No.3 Mamoon ur Rasheed entered into an agreement with the aforesaid firm on 07.05.2018 and invested an amount of Rs.9 Million at the ratio of profit and loss of 40% of petitioner and 60% of respondent No.3. However, the partnership agreement ended on 15.05.2019, whereafter the petitioner handed over three (03) guarantee cheques i.e. (i) Cheque No.00000016, amounting to Rs.5,450,000/-, dated 24.05.2019 (ii) Cheque No.00000020, amounting to Rs.6,500,000/- and (iii) Cheque No.00000019, amounting to Rs.10,000,000/-, dated 24.05.2019. When the petitioner performed his part and paid the due amount to Respondent No.3, the latter refused to return the guarantee cheques to the petitioner, rather presented the same for encashment, which were dishonored, as a result whereof, respondent No.3 got registered two FIRs i.e. FIR No.442, dated 28.09.2020, under Section 489-F PPC, P.S. Kohsar, Islamabad and FIR No.324, dated 05.07.2021, under Section 489-F PPC, P.S. Kohsar, Islamabad, per se, the latter FIR having been registered by the order of the learned Justice of Peace, Islamabad while accepting application under Section 22-A Cr.P.C.

4. Learned counsel for petitioner further contends that two cheques had been dishonored on same date but respondent No.3 lodged two separate criminal cases in the years 2020 and 2021 in different intervals of time, as such, respondent No.3 misused the process of law for twisting the arms of petitioner as a tool for recovery of amount and procured order for registration of FIR on the basis of concealment of facts; that the matter between the parties is of a civil nature but the learned Justice of Peace, Islamabad ignored this aspect and passed

direction for registration of an FIR against the petitioner, which is liable to be set-aside.

5. Conversely, learned State Counsel as well as learned counsel for respondent No.3 opposed the filing of instant writ petition on the grounds that after termination of the agreement between the parties, petitioner was under obligation to pay a sum of Rs.21,930,000/-, as such, the petitioner agreed to pay the same in installments but, he time and again failed to fulfill his commitment on one pretext or the other, as a result whereof, respondent No.3 got lodged the FIR against the petitioner; that the learned trial Court has rightly appreciated each and every aspect of the case and passed the order for registration of a criminal case against the petitioner in accordance with law.

6. Arguments heard, record perused.

7. Perusal of record reveals that petitioner has prayed for quashing of second FIR No.324, dated 05.07.2021, U/S 489-F PPC, P.S. Kohsar, Islamabad on the ground that earlier FIR No.442, dated 28.09.2020, U/S 489-F PPC, P.S. Kohsar, Islamabad was registered on the similar allegation on the basis of first cheque though the other two cheques were also dishonoured and available with the complainant/respondent No.3 but second FIR was lodged on the order of Ex-Officio Justice of Peace, Islamabad vide order dated 03.07.2021, whereby learned Ex-Officio Justice of Peace has categorically referred that ***"As regards, the claim of proposed accused with reference to the singularity of transaction, it can only be considered at a subsequent stage of investigation or trial."*** I have considered this aspect with the able assistance of learned counsel for the parties and has gone through the judgment reported as ***2019 MLD 636 (Sheikh Rehman Ahmed***

vs. Judicial Magistrate-II, South, Karachi and 2 others), whereby it was held that:-

> *7. It has been observed that during the course of business, cheques are issued and sometimes parties have intention to defer the payment and issuance of such cheques without arranging payments by the bankers are definitely 'issuing of cheque dishonestly', which attracts the offence of Section 489-F. The intention of legislator by inserting this penal section in PPC is to make the business transactions more credible and to punish those who used to issue cheques dishonestly. I am of the view that the said provision of law was not promulgated with intention to use the same as tool for recovery. In this respect reliance, may be taken from the case reported as Muhammad Afzal v. The State and others (2012 YLR 2780) wherein it is held as under:*
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> > *"The provisions of section 489-F, P.P.C. have not been promulgated for using it as a tool for recovery of the amounts due in business dealings for which the civil remedy has already been provided by law."*
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> *In the instant case, the cheques were dishonoured in the last quarter of the year 2015 while three earlier FIRs were lodged in a series at different police stations in the year 2016, meaning thereby that at the time of lodging of those earlier FIRs, the cheques of the present FIRs were already dishonoured and in possession of the Respondent No. 2 and he may easily lodge these FIRs simultaneously and/or he may describe these cheques in any of those earlier FIRs. However, he after getting decision of one FIR, lodging another FIR and in this way the Respondent No. 2 misused the process of law for twisting the arms of Applicant as a tool of recovery of amount due. This practice is certainly amounting to misuse the process of law, as such the same cannot be allowed. It becomes a regular practice that multiple post-dated cheques are obtained regarding some monetary obligations and after getting the same dishonoured by depositing in different bank branches, criminal cases are initiated one after another and in this way, the person who has issued the cheques is forced to enter into compromise on the conditions, which are sometimes unbearable for him. It*

> *is my considered opinion that the practice of using the provision of Section 489-F by some of the businessmen as the tool of recovery should be put an end. If it is proved that at the time of lodging of earlier FIR, the complainant was already having a bounced cheque of the same party and he avoided to lodge FIR with intention to use it at some future stage as a tool of recovery, then subsequent FIR should not be allowed and if the subsequent FIR is lodged then it is the duty of the concerned Judicial Magistrate to nip the evil in the bud by using the provision of Section 63, Cr.PC. However, those dishonoured cheques may still be used for the purpose of a suit for recovery as per law.*

8. In view of above case law, learned counsel for the petitioner contends that instant FIR be quashed as there is apparent malafide on the part of complainant who was in possession of all cheques, which were dishonoured at the same time but he is using the same one after another when accused got post-arrest bail in the first case, he has now been entangled in the second FIR on the similar allegations. Now the question before this court is as to whether this court can exercise its jurisdiction in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with inherent powers of the Court U/S 561-A Cr.P.C. In such circumstances, the situation could be considered in the light of powers contained in Criminal Procedure Code as well as on the principle of equity whereas the substantive provision which deals with the proposition in hand is Section 154 Cr.P.C., Chapter XIV dealing with the information to the police and their powers to investigate any cognizable case whereas minimum requirement and obligation under the law upon the police officer incharge of the police station is to record ***every information*** relating to the commission of a cognizable offence if given orally or in writing to an officer incharge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and entered in a book to be kept by such officer, whereby

no distinction has been drawn qua the recording of such matter by the officer incharge of the Police station but the recent change in criminal jurisprudence dealing with the registration of second FIR plays a pivotal role in this case as such there exists no bar in laying the information one after the other to be recorded as FIR where a distinct or second cognizable offence is disclosed, then another FIR has to be registered as held in ***2010 MLD 128 (Muhammad Asif vs. Umar Farooq Khan, Inspector Police)***. However, if such information discloses the commission of separate cognizable offence, which is the pre-condition, then another F.I.R could be registered. The second or later information should not be merely an amplifying of first FIR, but is should be disclosure of different criminal offence such aspect is based upon the facts and circumstances narrated in the subsequent complaint.

9. While taking the proposition in hand the complainant was admittedly in possession of three different post-dated cheques issued by the petitioner/accused under the cancellation/termination of partnership agreement dated 15.05.2019. The details of the cheques are as under:-

(i) Cheque No.00000016, amounting to Rs.5,450,000/-, dated 24.05.2019, HBL Rizwan Centre Branch, Islamabad

(ii) Cheque No.00000019, amounting to Rs.10,000,000/-, dated 26.04.2019, HBL Rizwan Centre Branch, Islamabad.

(iii) Cheque No.00000020, amounting to Rs.6,500,000/-, dated 24.05.2019, HBL Rizwan Centre Branch, Islamabad.

Though the petitioner has claimed that he has paid the entire amount, but this court will not enter into the said arena of the case as it requires recording of evidence or is subject to proof, therefore, this court confines itself to the extent of registration of second FIR, when the cheques were dishonoured and first FIR

No.442, dated 28.09.2020 was registered by police station Kohsar on the same allegations. However, in order to understand the proposition the allegations in the both FIRs have been placed in juxtaposition as under:-

FIR No.442, dated 28.09.2020, under Section 489-F PPC, P.S. Kohsar, Islamabad	**FIR No.324, dated 05.07.2021, under Section 489-F PPC, P.S. Kohsar, Islamabad.**
بخدمت جناب SHO صاحب کوہسار تھانہ اسلام آباد، جناب عالی مودبانہ گزارش ہے کہ سائل مسمی (مامون الرشید) رہائشی حیات آباد فضاگٹ منگورہ سوات کا ہوں اور مسمی حامد خان HK Enterprises کیساتھ تعلق کے بناء پر سائل نے کاروباری لین دین میں مبلغ (2,19,50,000) دیئے بعد میں سائل نے رقم کی واپسی کے مطالبہ پر مذکورہ حامد خان HK Enterprises کے سائل کو تین عدد HBL بینک کے چیکا دیئے ہیں جن میں سے چیکا نمبر 00000020 رقم -/65,00,000 روپے برانچ (IBB Rizwan Centre, Isb) کا دیا جو (dishonor) ہو چکا ہے مذکورہ سے dishonor چیکا کے بارے میں رابطہ کیا تو ٹال مٹول سے کام لے رہا ہے جو کہ تاحال سائل کی رقم واپس ادا نہ کی ہے اور اب انکاری ہے مذکورہ بالا نے سائل کی خطیر رقم ہڑپ کر کے سخت زیادتی کی ہے۔	بخدمت جناب SHO صاحب تھانہ کوہسار۔ جناب عالی! درخواست مراد کیے جانے قانونی کاروائی تحت دفعہ 489-F ت پ شامل حسب ذیل عرض کرتا ہے کہ سائل مامون الرشید ساکن محلہ حاجی محمد اسمعیل حیات آباد، مینگورہ سوات ایک معزز کاروباری شہری ہے۔ یہ کہ سائل کے مسمی حامد خان ولد عیسی خان ساکن کنکولہ ڈائخانہ واحد گڑھی پشاور، حال آفس واقع ستوت غیور شہید روڈ، مکان نمبر 5، گلی نمبر 32، F-8/1 اسلام آباد، رہائشی پتہ مکان نمبر 114، گلی نمبر 54، سیکٹر E-11/3 اسلام آباد سے کاروباری تعلقات تھے۔ حسب بابت سائل نے موصوف سے شراکت داری بھی کر رکھی تھی اور بوقت منسوخی شراکت داری موصوف نے سائل کے ساتھ ایک عدد معاہدہ اقرار نامہ بابت منسوخی شراکت داری نمبر 2561 مورخہ 26.04.2019 تحریر کیا۔ بمطابق منسوخی شراکت داری موصوف نے سائل کی رقم مبلغ -/2,19,50,000 روپے (دو کروڑ انیس لاکھ پچاس ہزار روپے) ادا کرنے تھے۔ اسی بابت موصوف نے سائل کو روبرو گواہان مسمی عطاء اللہ خان ولد حاجی محمد اسکھ رقم مذکورہ بالا کی عوض چیکا نمبری 00000019 مورخہ 26.04.2019 مبلغ -/1,00,00,000 روپے (ایک کروڑ روپے) حبیب بینک لمیٹڈ IBB رضوان سنٹر اسلام آباد حوالے کیا۔ بعد ازاں مقررہ وقت گزرنے پر جب سائل نے چیکا نمبری 00000019 اپنے اکاونٹ نمبر 0302500191270001 بینک اسلامی مینگورہ برانچ سوات میں جمع کیا۔ جو کہ میرے بینک نے مسمی حامد خان کے متذکرہ بالا بینک واقع HBL، رضوان سنٹر اسلام آباد لیشن کروانے کی غرض سے بھجوایا مگر یہ چیکا رقم ناکافی ہونے کی وجہ سے اسکے بینک سے ڈس آنر ہو کر چیکا واپس آگیا حامد خان مذکورہ نے یہ جانتے ہوئے کہ اسکے اکاونٹ میں رقم نہ ہے مجھے دھوکہ دہی کے لئے یہ چیکا دے دیا جو ڈس آنر ہوا۔

10. While considering the allegations in both the FIRs, it reveals that both the FIRs are emanating from the same allegation, even from the same transaction of cancellation of partnership deed based upon agreed amount of Rs.2,19,50,000/-. The first FIR is concerning the cheque No.00000020, amounting to Rs.65,00,000/-

whereas cheque earlier in serial number 00000019 in the subsequent FIR has been used. This aspect when confronted to the complainant he acknowledged that all three cheques were issued at the same time and all were dishonoured, even third cheque has not yet been utilized by the complainant for registration of FIR.

11. This background of the case reflects that two FIRs have been lodged by one complainant for the offence of dishonestly issuance of cheques in terms of Section 489-F PPC, as such cheques have been used as a tool to recover the amount, although the financial transaction or dispute relating to financial matters in a business transaction are treated to be dispute of civil nature and could only be resolved through ordinary court of plenary jurisdiction. It is apparent on record that the complainant respondent No.3 has intentionally not put forward his entire claim on the basis of three post dated cheques and only utilized first cheque in F.I.R No. No.442, dated 28.09.2020, U/S 489-F PPC, P.S. Kohsar, Islamabad, such aspect reveals that the complainant has either abandoned his claim or relinquishment of part of his claim as similar to Order II Rule 2 CPC, 1908, which provides that *the plaintiff shall include whole of the claim, which he is entitled to claim in respect of the cause of action and where plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

12. The above referred principles of CPC, 1908 are based upon the concept of transparency, fair play, propriety and reasonableness. The object of such principle is that all matters in dispute between the same parties arising and relating to same transaction should be disposed of in the same suit. By application of similar analogy, it is obligation of the complainant to lay down the complete set of allegations with every detail to the Investigation Officer and similarly the Investigation Officer is also under obligation to find out the truth qua the allegation, its background and complete set of facts, so that he may also

be able to stand beside the prosecution before the Court of law. Such action will help the Court to reach at just conclusion for and against the accused persons on the basis of true facts and complete claim.

13. The story narrated above in two separate F.I.Rs discloses same set of allegation based on same cause of action available to the complainant, who has misused his position with malafide, when he has not put forward his complete claim in terms of Section 154 Cr.P.C. neither the I.O has concluded the complete claim in the final report prepared under Section 173 Cr.P.C, despite the fact that the claim so lodged has been originated from same set of transaction.

14. In this regard vast powers have been extended to the incharge police station in terms of Rule 25, Chapter XXV (Investigation) of Police Rules, 1934, whereby FIR could be cancelled or even transferred from one police station to another police station or combinedly be investigated with other cases. The investigation of subsequent case be closed and FIR be disposed of being cancelled after having been found the same as false or based on mistake of fact or law, or dispute of civil nature or same set of allegation have been taken cognizance by the police authorities or by the Court as the case may be.

15. Police Rules, 1934 extend the powers to the officer incharge of the investigation to save public time, malafide and dishonesty of the complainant or in some cases it is the need of hour to consolidate different cases of same nature of same accused initiated from the same transaction to avoid any conflicting views by any two different police officers.

16. It is the duty of investigation officer to discover incriminating evidence and to collect and establish that story of incident contained in the FIR was correct as he was not controlled or guided by the contents of FIR rather it is his own authority to search for the truth and he may disagree with the version of FIR as it is expected from him to collect the information or to record any fresh information

or facts and he may arrive at its own conclusion as held in ***PLD 2018 SC 595 (Mst. Sughran Bibi vs. The State)***.

17. The Apex Court in above mentioned judgment has also held that ordinarily no person was to be arrested straightaway only because he had been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer felt satisfied that sufficient justification existed for his arrest. In *Sughran Bibi case supra,* the Larger Bench has laid down different guidelines to deal with the proposition. The relevant extract of direction is provided in Para-27(iv), (v), are as under:-

> *(iv) During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.*
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> *(v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."*

18. Hence, this court is of the view that if investigation has been conducted in a proper manner, the very registration of second FIR on the same allegation or amplification of first FIR is not permissible, even it has been held in ***Sughran Bibi case supra*** that if challan has been submitted before the trial court, which is in progress and second FIR regarding the same occurrence is not legally warranted.

19. Another important aspect has drawn the attention of this Court towards Sections 233, 234 and 235 Cr.P.C., which are as follows:-

> *233. Separate charges for distinct offences: For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately except in the cases mentioned in Sections 234, 235, 236 and 239.*
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> *234. Three offences of same kind within year may be charged together: (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.*
> *(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Pakistan Penal Code or of any special or local law:*
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> *Provided that, for the purpose of this section, an offence punishable under Section 379 of the Pakistan Penal Code shall be deemed to be an offence of the same kind as an offence punishable under Section 380 of the said Code, and that an offence punishable under any section of the Pakistan Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.*
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> *235. Trial for more than one offence: (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence- (2) Offence falling within two definitions: If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for; each of such offences. (3) Acts constituting one offence, but constituting when combined a different offence: If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts. (4) Nothing contained in this section shall affect the Pakistan Penal Code, Section 71.*

20. The above mentioned provisions spells out certain exceptions while dealing with the person accused of more than one offences of alike nature committed within a span of one year with same person or otherwise, are to be charged and tried jointly, this aspect if seen with the legal prism on the touchstone of joinder of charges, both the criminal cases have to be tried at the same time. In such scenario the very registration of second FIR or fresh FIR with

same allegation, investigation or final report in terms of Section 173 Cr.P.C is to be treated as an extra burden on the prosecution as well as upon the judicial system and further discloses the sinister design of the complainant based upon misuse of process of law.

21. This Court has observed the term "***same transaction***", which has been used in Section 235 Cr.P.C., though this term has not been defined in Cr.P.C. but the same has been explained in ***PLD 1957 W.P (Lahore) 290 (Ghulam Jilani vs. The State), ILR 42 Cal 957 (Amritlal vs. Emperor), PLD 1950 Lahore 288 (Ata Muhammad Khan Alvi and others vs. The Crown), 1971 PCr.LJ 762 (Khan Mohammad and 11 others vs. The State), 1997 PCr.LJ 1900 [Quetta] (Muhammad Azam vs.State)***, following principles have been settled:-

i. *The question whether certain acts or series of acts constitute same transaction is in each case a question of fact and no comprehensive formula of universal application can be laid down. To ascertain whether such acts are parts of the same transaction it would be essential to see whether they are linked together to present a continuous whole.*
ii. *The real and substantial test for determining whether several offences are connected together so as to form one transaction depends upon whether they are so related to one another in point of purpose, or as cause and effect or as principal and subsidiary acts, as to constitute one continuous whole.*
iii. *It seems, therefore, that the main test really be continuity of action.*
iv. *The following up of some initial act through all its consequences and incidents until the series of acts or group of connected acts comes to an end, either by attainment of the object or by being put an end to or abandoned. If any of those things happens the whole process is begun over again, it is not the same transaction but a new one, in spite of the fact that the same general purpose may continue.*
v. *There must be one continuous thread of common purpose running through the acts to support a joinder of charges in respect thereof.*
vi. *To ascertain whether a series of acts would form part of the same transaction the most important point to be considered is whether there was a common purpose and design and continuity of action.*
vii. *The circumstances which must bear on the determination of the question in each individual case whether certain acts constitute a single transaction are proximity of time, unity or proximity of place, continuity of action, community of purpose of design.*
viii. *An analysis of these cases would show that the offences, the question of whose being parts of the same transaction was involved in them, wore related to each other by a casual connection, and such connection seems to be absolutely necessary if two offences are to be treated as having been committed in the course of the same transaction.*

> *ix. The real and substantial test, then, for determining whether several offences are connected together so as to form the same transaction, depends upon whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts, so to constitute one continuous offence and another does not by itself necessarily import want of continuity, though the length of the interval may be an important element in determining the question of connection, between the two.*

22. Similarly, Part-6, Chapter XV of Cr.P.C. deals with the proceedings in the prosecution, whereby Section 179 Cr.P.C. is another example where acts of same transaction jointly constitute the same offence and that offence can be inquired into and tried within the limits of the Court under whose jurisdiction the act was done and ensued. The legislature has minimized the ambiguity in same set of cases arising out of the same transaction even in two districts to be inquired and tried at the same place by extending the powers in terms of Section 185 Cr.P.C. to the High Court reference has to be drawn ***PLD 2015 Balochistan 54 (Independent Media Corporation (Pvt.) Ltd. vs. Prosecutor General, Quetta) and 2017 P.Cr.LJ 46 Karachi (Munawar Hussain vs. Judge ATC-II, Lahore)***.

23. Now dealing with the peculiar situation as role of the I.O in such type of cases as well as of the trial court in the earlier FIR is to be treated in the following manner:-

i. 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 dishonored after the registration of first FIR.

ii. If second FIR has been lodged, the same should be cancelled by referring subsequent cheques through supplementary challan in the first FIR/case.

iii. If second FIR has not been registered and matter is pending before the Ex-Officio Justice of Peace, who is dealing with the case, he may pass an order/direction U/S 22-A(vi)

Cr.P.C. to the I.O of the first case who has already registered the FIR or has submitted the final report under Section 173 Cr.P.C. to file supplementary challan in that first case on the basis of these new facts of cognizable offence emanating from the same incident/transaction like dishonoured cheque in terms of Section 489-F PPC on the basis that I.O of the first FIR is negligent and has not performed his duties qua the investigation of the case to unearth every information as required under the law.

iv. If the police officer has also registered the second FIR, he may convert the final report in terms of Section 173 Cr.P.C., as supplementary report of the first FIR while considering the offence of same transaction and shall submit supplementary challan in the same court without recourse to arrest of accused as held in ***Sughran Bibi case supra***.

v. In case where other different dishonoured cheques were still with the complainant, which were not used against the same accused person originating from the same transaction and series of the cheques, which are the basis of first FIR, in such situation no further FIR could be registered and police officer shall not proceed in those cases, rather refer the parties to Court of competent jurisdiction under the law by way of filing of civil suit for recovery.

vi. Officer incharge of police station shall not entertain the every such application of subsequent dishonor cheque of same accused by facilitating the complainant as helping in or becoming tool of recovery, if such activity has been noted, SP (Investigation) or SSP or SDPO shall take notice of these

issues and pass appropriate directions to the officials concerned.

vii. Any such issues if come into the notice of senior police officers that any complainant is intended to get registered second, third or fourth FIR on same series of cheques, the senior police officers are duty bound to refer the parties to the court of competent jurisdiction or may direct the matter to the concerned police station for recording of the entire complaint in police diary with reasons that already FIR has been lodged and the complainant has not disclosed other cheques of same transaction due to his ill-will and malafide, then refer the parties to the competent court.

viii. In cases arising out from same transaction, the trial court of the first FIR shall also pass speaking order in terms of Sections 233, 234, 235, 239 Cr.P.C. while considering subsequent cheques being joinder of charges as they were based upon same transactions.

ix. If trial of first FIR has already been concluded then police officer shall not register second FIR in any manner on the same transaction or series of offences which have already been adjudicated upon on the basis of same set of allegations.

24. Keeping in view the above position, apparent malafide of the complainant is lurking on record in this case and even this court is of the view that the complainant has admittedly withheld the information from the I.O of first criminal case FIR No.442, dated 28.09.2020, U/S 489-F PPC, P.S. Kohsar, Islamabad in order to use the police authority as a tool to settle the score with accused person/petitioner, such action on the part of complainant is admittedly

based upon malafide and is considered to be carving out a way to misuse and abuse of process. In such scenario, this court is equipped with powers in terms of Section 561-A Cr.P.C. to quash such kind of actions which are apparently based upon false pretext. The extraordinary exceptional circumstances are the pre-requisite for exercise of the powers U/S 561-A Cr.P.C. or where no offence is made out from circumstances, even though alternate remedy in terms of Section 249-A or 265-K Cr.P.C. is available, in order to save the accused petitioner from the rigors of protracting trial, especially when the entire issue is of civil dispute, it is better to quash the FIR as held in ***2000 SCMR 122 (Miraj Khan vs. Gul Ahmed)***.

25. The circumstances of this case fully covers the grounds of quashing of FIR as held in ***2016 P.Cr.L.J 1144 (Faisal Iqbal vs. State), 2014 P.Cr.L.J 487 (Zulfiqar Ali vs. SHO, PS Model Town, Gujranwala), 2009 SCMR 141 (Muhammad Aslam (Amir Aslam) vs. DPO Rawalpindi)*** and ***PLD 2018 SC 595 (Mst. Sughran Bibi vs. The State)***.

26. In view of above, instant writ petition is ***ALLOWED***, the very registration of FIR No.324, dated 05.07.2021, U/S 489-F PPC, P.S. Kohsar, Islamabad is to be treated as abuse of process and the same is hereby ***QUASHED*** accordingly. However, complainant may have the right to recourse to the remedy of recovery provided, under the law.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: **21.10.2021.**

JUDGE

Approved for reporting.

Zahid.