

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT
W.P. No.3048 /2020

Total Parco Pakistan Limited
Versus
Justice of Peace/Additional Sessions Judge-West, and 2
others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	11.01.2021	Mian Imran Masood, Advocate for petitioner. Syed Ishaq Shah, learned State Counsel Ch. Muhammad Ayub Arbab Gujjar, Advocate for respondent No.2. Nawab Khan, SI with record.

FIAZ AHMAD ANJUM JANDRAN, J.-

Through the instant writ petition, petitioner impugns order dated 23.09.2020 passed by the learned Additional Sessions Judge-X/Ex-officio Justice of Peace, Islamabad-West, whereby application under Section 22-A & B Cr.P.C, filed by the petitioner was dismissed in the following terms:-

"3. As per the report submitted by Police, the subject cheque was never sent to Tarnol Branch of Bank Al-Falah and the same was produced before CPU, Lahore during clearance process, and since upon checking the online status of Bank Account sufficient amount was not available, the same got dishonoured accordingly.

4. In the purview of aforementioned position, no valid justification for lodging of an F.I.R at Police Station Tarnol, exists in

favour of the petitioner and as such, instant application stands dismissed being meritless."

2. Facts, relevant for the disposal of the instant writ petition are that petitioner lodged a complaint with respondent No.3/S.H.O Police Station Tarnol, Islamabad against the respondent No.2 with the allegations that in order to settle the outstanding amount as price of lubricants purchased, the latter issued cheque worth Rs.7.000/- million drawn on Bank Al-Falah, Tarnol Branch, Islamabad but the same stood dishonoured for want of funds. The local police refused to register an F.I.R whereupon petitioner filed an application under Section 22-A & B Cr.P.C but the same was dismissed vide impugned order, hence, instant writ petition.

3. Learned counsel for the petitioner contends that under the law, criminal action can be initiated at a place where the act was done or consequence ensued; that in the present case the cheque was dishonored for want of funds out of the account of respondent No.2 at Bank Al-Falah, Tarnol Branch, Islamabad; that respondent No.3 is duty bound to register the F.I.R and proceed further in accordance with law, therefore, impugned order is liable to be set aside. Learned counsel placed relied upon case law reported as **2019 P.Cr.L.J. 1558 (Peshawar) 2017 YLR 1548 (Lahore)** and **2018 P.Cr.L.J. 392 (Peshawar)**.

4. Learned counsel for the respondent No.2 argued that the cheque was never presented in the

concerned Branch at Islamabad; that it was a guarantee cheque; that police also verified the version of the respondent No.2; that the local police has no jurisdiction to register the F.I.R.

5. Learned State Counsel contends that no agreement pursuant to which cheque was issued has been presented and that the impugned order in the backdrop of the facts of the instant case is well reasoned and does not call for any interference.

6. Heard the learned counsel for the parties and examined the record with their able assistance.

7. For resolution of the question brought before the Court, it is imperative to go through Section 179 of the Code of Criminal Procedure (**'the Code'**), which reads as under:-

"179. Accused triable in district where act is done or where consequence ensues.: When a person is accused of the commission of offence by reason of anything, which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued."

8. The words "done and ensue" when examined and considered alongwith the police report, made basis for rejection of complaint by the learned Justice of Peace, it emerges that issue in matter of two aspects i.e. (i) subject matter i.e. cheque and (ii) question of law before the Court.

9. As regards to first query, the subject matter of the case has been carefully examined. It is clear that the cheque pertains to an account of Bank Al-Falah, Tarnol Branch Islamabad as the name of the Bank with stamp of the company/Firm of the drawer are clearly mentioned over it. In this eventuality, the law has to be set into motion at Islamabad as a consequential effect of dishonouring of cheque, pertaining to the Branch at Islamabad.

10. As for the second part i.e. question of law is concerned, same can be divided into two sub-queries, firstly the Court is of the view that although Justice of Peace is not bound to requisition the report from the concerned authority but when has been requisitioned then due weight is required to be given to it. At the same time, the Court is not expected to avoid its duty to respond to the question of law, if involved in the matter, as required by law.

11. The second important aspect is where F.I.R is going to be registered after the cheque is dishonoured, main thing is to be looked into is not whether the cheque was transmitted to the Tarnol Branch or not but is, whether the account of the drawer is being maintained at Islamabad or not and that subject cheque is of that account or not . When statutory provision (Section 179 of the Code) and the relevant case law on the subject is looked into, it guides to hold that initial/ basic requirement for setting the law into motion is the dishonoured cheque belongs to which Branch, where the account of drawer is being maintained, material parts of offence

committed and additional option was given to the payee that he may register the case where his/her account exists.

12. Technology has since long been advanced as evident from case in hand, the status of funds has been checked through online system in order to fetch information regarding availability of funds in the concerned account by the Head Office/Main Branch of the same bank for passing of the information to the payee. To base the findings on hyper technical grounds that cheque was not physically sent to the concerned bank at Islamabad is mere a technical function which has been exercised by way of online verification as contained in the memo but for all practical purposes the substance of the matter is 'dishonouring of cheque' pertaining to account maintained at Islamabad. In this view of the matter, question of law is responded in above terms.

13. In order to see, whether the impugned order in the backdrop of the instant case, is well reasoned, just and appropriate in accordance with the spirit of the provision of Section 22-A & B Cr.P.C. Guidance is taken from the case of "**Younas Abbas and others v. Addl. Sessions Judge Chakwal and others**" (PLD 2016 Supreme Court 581), wherein the Hon'ble Apex Court has graciously elaborated the functions of the Ex-officio Justice of Peace in following terms:-

"The functions, the Ex Officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with

things mechanically. His functions as described in clauses (i), (ii) and (iii) of sub-section (6) of Section 22-A Cr. P.C, are quasi judicial, as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administration of ministerial on any account."

14. In the light of ratio supra, the powers exercised by the Ex-officio Justice of Peace are **quasi judicial** where due application of mind is held to be **'sine qua non'**. The exercise, lend authority to the Ex-officio JOP to pass appropriate directions and every *lis* demands discretion and judgment.

15. It divulges from the record that respondent No.2 was a distributor of the petitioner and as per version of the respondent No.2, he issued a cheque drawn on Bank Al-Falah Tarnol Branch, Islamabad. The police report submitted before the learned Ex-Officio Justice of Peace indicates that Bank Al-Falah, Tarnol Branch, Islamabad has verified the cheque to be of the said Branch.

16. Inline with the above discussion, it is held that the petitioner deposited the cheque for encashment but as per online checking slip available at Page-13 of the file, the same cannot be encashed due to insufficient funds. Admittedly, the respondent No.2 is maintaining account at Bank Al-Falah Tarnol Branch, Islamabad for which he issued the cheque to the petitioner which could not be encashed for want

of funds, therefore, in such eventuality, respondent No.3 was duty bound to proceed in terms of Section 154 Cr.P.C as the slip (showing insufficient funds) entails account number of respondent No.2 against which the subject cheque was issued. The essential ingredient for constitution of offence under Section 489-F PPC after the dishonouring of cheque for want of funds pertaining to the account of respondent No.2 i.e. Bank Al-Falah, Tarnol Branch, Islamabad, is available in the instant case, therefore, there was no justification to dismiss the application of the petitioner filed under Sections 22-A & B Cr.P.C.

17. In the case of **“Faqir Khan v. Bakhtawar Jan and 4 others” (2019 P.Cr.L.J. 1558) (Peshawar)**, referred by learned counsel for the petitioner, the proposition besides facts were identical and it has been held that *it is upto the complainant to initiate criminal proceedings at any of the two places i.e. where the cheque was deposited for encashment or where it was dishonoured.*

18. Similarly the Hon’ble Lahore High Court in case law reported as **“Mazhar Hussain v The State & 2 others” (PLD 2010 Lahore 60)** has held that *no legal bar or prohibition existed on complainant/ drawee to initiate proceedings at any of the two places and both the police stations has got jurisdiction to register the F.I.R.*

19. In view of above, the instant writ petition is **allowed**, impugned order dated 23.09.2020 is set-aside and consequently, application under Section 22-

A & B Cr.P.C is allowed and respondent No.3 is directed to proceed in accordance with law.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.Ansari

Approved for reporting.