

ORDER SHEET**IN THE LAHORE HIGH COURT, LAHORE**

JUDICIAL DEPARTMENT

WRIT PETITION NO.28918 of 2012.**Habib Bank Limited****Versus****Capital City Police Officer
Lahore. Etc.**

S. No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge and that of Parties, counsel, where necessary
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07.07.2015. **Mr. Hassan Iqbal Warraich, Advocate for the petitioner.**
Malik Waseem Mumtaz, Addl. Advocate General.

This writ petition has been filed by Habib Bank Limited, through its Manager, for compliance of the order dated 16.10.2012 passed by the Ex-Officio Justice of Peace/Additional Sessions Judge Lahore. And, for a direction, to the respondent No.2/ Station House Officer, Police Station Misri Shah, Lahore to register a criminal case against the respondent No.3/Rana Muhammad Arif, respondent No.4/Rana Muhammad Nadeem and respondent No.5/ Mst. Fakhara Arif. The Petitioner-Bank has further sought for a direction from this Court that the respondent No.1/ Capitol City Police Officer, Lahore be directed to proceed against respondent No.2/Station House Officer, Police Station Misri Shah, Lahore, under the section 155-C of The Police Order, 2002, as ordered by the learned Additional. Sessions Judge, Lahore vide order dated 01.11.2012.

2. Brief facts of the case are that respondent No.3 Rana Muhammad Arif, respondent No.4 Rana Muhammad Nadeem and respondent No.5 Mst Fakhara Arif obtained a finance facility of Rs.45.000 Million from the Petitioner-Bank through mortgage of immovable

properties and creation of hypothecation charge on certain moveable assets. That on 26-09-2012, when the Manager of the Petitioner-Bank went for a survey to inspect the said hypothecated stock of the Petitioner-Bank, which had been handed over to the respondents No.3 to 5 as a trust, it was unearthed that respondents No.3 to 5 had misappropriated a major portion of the hypothecated stock. The bank approached the respondent No.2/SHO Police Station, Misri Shah, Lahore, for registration of a criminal case against respondents No.3 to 5, but the case was not registered. The petitioner then moved an application under Sections 22-A & 22-B of Cr.P.C. before the learned Addl. Sessions Judge/Ex-Officio Justice of Peace, Lahore, which was disposed of vide order dated 16.10.2012 with a direction to the respondent No.2 /SHO Police Station Misri Shah, Lahore to record the statement of the petitioner and proceed in accordance with law. The respondent No.2/SHO Police Station Misri Shah, Lahore did not comply with the said orders. The Petitioner-Bank then filed another application under sections 22-A, 22-B of Cr.P.C before the Ex-Officio Justice of Peace, Lahore who after calling a report from the respondent No.1/Capitol City Police Officer, Lahore disposed of the said application with a direction to the respondent No.1 to personally look into the matter and ensure the compliance of the order dated 16.10.2012. And also, to proceed against the respondent No.2/SHO Police Station Misri Shah, Lahore under section 155-C of The Police Order, 2002. But till date none of the orders of the Ex-Officio Justice of Peace Lahore, have been complied with.

3. Parawise comments were submitted by respondent No.2/SHO Police Station Misri Shah, Lahore in this Court on 22-12-2012 in which it has been stated that the case pertains to the Police Station Badami Bagh, Lahore and is

not in the territorial jurisdiction of Police Station Misri Shah Lahore, therefore the Petitioner-Bank should present the orders of the Ex-Officio Justice of Peace, Lahore before the SHO, Police Station Badami Bagh, Lahore so that the orders of the Ex-Officio Justice of Peace, Lahore could be complied with according to law. But since the year 2012 this Writ Petition is pending before this Court and strangely the Petitioner-Bank never submitted the orders of the Ex-Officio Justice of Peace Lahore to the concerned Police Station that is, Police Station Badami Bagh, Lahore.

4. The learned counsel for the petitioner contends that respondents No.1 and 2 have shown utter disregard to the successive orders passed by the Ex-Officio justice of Peace Lahore by not registering a case against respondents No.3 to 5. He further contended that under the law an option is given to the bank to register a criminal case against a private person under the general law or before the Special Court under section 5 of the Offences in Respect of Banks (Special Courts) Ordinance, 1984 or register a case before the Banking Court under section 7 of the Financial Institutions (Recovery of Finances), Ordinance 2001. Reliance has been placed on *Industrial Development Bank of Pakistan and others Vs. Mian Asim Fareed and others* (2006 SCMR 483) and *Shaukat Ali and others Vs. The State and others* (2012 C L D 1).

5. The learned Addl. Advocate General facilitated the arguments given by the learned counsel for the petitioner.

6. Arguments have been heard and record has been perused with the assistance of the learned counsels.

7. Special Banking Laws have been enforced to deal with all matter pertaining to Banks. It is an accepted rule that Special Law will override the General Law. In most

Special Laws there are provisions that in case if a procedure is not prescribed in the Special Law then the General Law will be followed. Section.5 of the Offences in Respect of Banks (Special Courts) Ordinance, 1984 says the same and nowhere does it say that the Banks have a choice to first avail the remedy under General Law or Special Law. Section 5(8) of the Offences in Respect of Banks (Special Courts) Ordinance, 1984 is reproduced as under:

S.5(8) “A Special Court shall in all matters with respect to which no procedure has been prescribed by this Ordinance, follow the procedure prescribed by the Code for the trial of the cases by Magistrate”.

The Financial Institutions (Recovery of Finances) Ordinance 2001 is a complete code. And nowhere does it say that in matters relating to Banks, the Banks had a choice to avail General or Special remedy. Relevant portions of Section 7 of the Financial Institutions (Recovery of Finances) Ordinance 2001 are reproduced as under:

S.7(1)(b) “in the exercise of its criminal jurisdiction, try offences punishable under this Ordinance and shall, for the purpose have the same powers as are vested in a Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898):

provided that a Banking Court shall not take cognizance of any offence punishable under this Ordinance except upon a complaint in writing made by a person authorized in this behalf by the financial institution in respect of which the offence was committed.

S.7(2) A Banking Court shall in all matters with respect to which the procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908), and the Code of Criminal Procedure, 1898 (Act V of 1898).

S.7(3) All proceedings before a Banking Court shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code(Act XLV of 1860), and a Banking Court shall be deemed to be a Court for purposes of the Code of Criminal Procedure, 1898 (Act V of 1898).

Section 20 of the Financial Institutions (Recovery of Finances) Ordinance 2001 is a provision relating to certain offences.

8. The Financial Institutions (Recovery of Finances) Ordinance 2001 is a complete Code, provided for Banking Courts and deals with any offence. The application filed under sections 22-A & 22-B of Cr.P.C before the Ex-Officio Justice of peace, Lahore by the Petitioner-Bank through its Manager for registration of an FIR against the respondents No. 3 to 5, was done with *mala fide* intentions, as the law is clear that the remedy to be availed was through the Banking Court under the Financial Institutions (Recovery of Finances), Ordinance 2001.

9. The learned counsel for the Petitioner-Bank has relied upon two cases mentioned above but both the cases cited are regarding quashing of an FIR and not regarding an application filed before the Ex-Officio Justice of Peace under sections 22-A & 22-B of Cr.P.C. Hence the cases cited above are not applicable to this case in hand and are distinguishable. The Petitioner-Bank during the same period availed one remedy before the learned Banking Court, against the respondents No.3 to 5 by filing a suit for damages against their factory "**M/S Rana Aluminum Industry**", claiming an amount of Rs.48,500,000/- as damages. It is difficult to comprehend that why the Petitioner-Bank is insisting to register an FIR through Ex-Officio Justice of Peace when the remedy exists before the learned Banking Court.

10. The law is very clear that all matters relating to Bank have to be dealt by the learned Banking Courts. Therefore, the Petitioner-Bank had no authority or justification to file an application under sections 22-A & 22-B of Cr.P.C before the Ex-Officio Justice of Peace, Lahore

and the Ex-Officio Justice of Peace had no authority/jurisdiction to entertain the application of the Petitioner-Bank. Reliance is placed upon *Tariq Hameed and 2 others Versus Additional Session Judge and 5 others'* [2015 MLD 1188(Lahore)] and *Muhammad Asif Nawaz Versus Additional Sessions Judge/Justice Of Peace Multan and 2 others* [2014 P.Cr.L.J 1 (Lahore)].

11. In view of what has been deliberated upon, the instant writ petition is dismissed and both the orders passed by the Ex-Officio Justice of Peace Lahore dated 01.11.2012 and 16.10.2012 are set side as being *coram non judice*. The Petitioner-Bank may file an application before the befitting forum.

A.Rehman

(Erum Sajad Gull)
Judge

Approved For Reporting

Judge