

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Application No.S-62 of 2025.

Muhammad Asif v. SP Complaint Cell, Hyd & others.

Applicant : Muhammad Asif through Mr. Mansoor Ali Jatoi,
: Advocate.

Respondent : The State through Ms. Sobia Bhatti, A.P.G for the State.
Respondent No.3 (Imran Hassan) is present in-person.

Date of hearing : 07.03.2025.

Date of Decision : 07.03.2025.

ORDER

Miran Muhammad Shah, J:- Through this application, the applicant has impugned the order dated 30.01.2025 passed by learned 5th Additional Sessions Judge, Hyderabad, whereby Cr. Misc Application filed by respondent No.3 (Imran Hassan) against applicant was allowed by learned trial court for FIR as well as legal protection.

2. To understand the controversy of the case in hand, the brief facts are that the respondent No.3 (Imran Hassan) had filed 22A&B Cr.P.C Application before learned District & Sessions Judge, Hyderabad which was subsequently transferred to the court of learned 5th Additional Sessions Judge, Hyderabad for its disposal in accordance for law, praying therein to direct the concerned official respondents i.e. SP Complaint Cell, Hyderabad & SHO PS City, Hyderabad for FIR against proposed accused (applicant) as well as legal protection. For convenience the operative part of order of learned trial court is reproduced as under;

"I have heard the applicant in-person, learned Advocate for proposed accused & perused the record carefully. The applicant has advanced same facts of application as arguments. He has further argued that the proposed accused is his brother in-law, who has taken an amount Rs.11,50,000/- from him for purchasing gold, but the proposed accused neither gave any gold to him, nor returned back amount of gold, who only returned amount Rs.260,000/- to him out of Rs.11,50,000/-, and he did not give any gold to the applicant and committed fraud & cheating with him. He has contended that on demand of remaining amount, the proposed accused issued threats of causing death to him and for implicating him in false cases. He has prayed to direct concerned police authorities to lodge FIR against the proposed accused and provide legal protection to him. The learned Advocate for the proposed accused has contended that the applicant and proposed accused are relatives to each other, and the proposed accused has already filed Insolvency Petition, which is pending, who has not committed any offence as mentioned in the application, but there is civil nature dispute in between both parties. He has prayed to dismiss application in hand. From the above discussion & contents of application, it appears that the applicant has made

out a case of cognizable offence, while the concerned SHO has not mentioned in his report that he has recorded statement of the applicant in respect with fraud, cheating and issuance of threats for causing death by the proposed accused to the applicant. In above circumstances, the SHO PS City, Hyderabad is directed to record statement of the applicant and proceed further in the matter strictly in accordance with law. While providing legal protection to the applicant by police is his Constitutional Right, therefore, the respondent No.2 is directed to provide legal protection to the applicant in accordance with law against harassment (if any) caused by the proposed accused, and this order for providing protection shall not affect any other cases/matters/complaints if filed by parties against each other or pending before any competent Court of law/forum. The concerned SHO is directed to submit such compliance report regarding legal protection provided to the applicant within seven (07) days. The application stands disposed of accordingly.”

3. The notices were issued to learned A.P.G for the State as well as private respondents. Upon service of notice, the private respondent No.3 appeared in-person.

4. The learned counsel for the applicant has argued that the learned trial court order which has been impugned through this Cr. Misc Application is based upon hasty manner decision, but not on the basis of its merit as well as without going through the record and factual position, the learned trial court has erred to pass the impugned order which is not sustainable in the eyes of law, and requires interference of this court as there are so many contradictions in the application moved to SP complaint cell as well as 22A&B Cr.P.C Application moved by respondent No.3. He further contended that the matter from its face appears to be of civil nature on the business transaction, but the respondent No.3 by twisting facts with malafide intention get favourable order from learned trial court which is liable to be set-aside. Lastly, prayed that the order of learned trial court may be set-aside and application in hand may be allowed.

5. The learned A.P.G for the State as well as respondent No.3 present in-person have supported the impugned order and submitted that the learned trial court had rightly passed the impugned order, as the applicant had cheated the respondent No.3 by taking advantage of close relation with respondent No.3. Lastly prayed that the Cr. Misc Application in hand may be dismissed.

6. Heard & perused. After hearing of the parties and after perusing the court record, it is crystal clear that the dispute between the two parties is purely of civil nature. There were transactions of gold as well as certain money transactions taking place, which of course do not fall within the ambit of any criminal offence. It seems the applicant wants to drag the private respondent No.3 into criminal litigation so to extract any alleged money amount from him. The respondent No.1 had also filed a statement before learned trial court stating in that the matter is of purely civil nature and of money transaction. He also had stated in his report that no cooperation was made by the applicant concern for dealing with the matter or recording of his statements. It is settled principle of law that matters of civil nature should not be dragged into criminal litigation, whereas in this case there is a clear indication that there has been done so. The

learned trial court had erred in asserting the situation and has not been proper in passing the impugned order for lodgment of FIR. This matter at the most would be dealt and litigated under Civil Court hierarchy, therefore, I am of the opinion that this civil dispute does not require any criminal proceedings. I therefore, allow this application and set-aside the order dated 30.01.2025 of learned 5th Additional Sessions Judge/Ex-Officio Justice of Peace, Hyderabad. Application allowed.

JUDGE

ALi.