

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Miscellaneous Application No.S-297 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case
3. For hearing of M.A. No.4365/2023

08.04.2025.

Mr. Pervaiz Tariq Tagar advocate for applicant.

Ms. Sana Memon, Assistant Prosecutor General.

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MIRAN MUHAMMAD SHAH, J.- Applicant has challenged the Order of the learned Sessions Judge / Ex-Officio Justice of Peace Shaheed Benazirabad dated 04.05.2023 praying therein that the impugned Order has been passed without considering the facts and circumstances of the matter.

2. Brief facts of the case are that the petitioner claims to have purchased 10-00 acres of an agricultural land from Late Shah Ali, father of proposed accused No.1 to 3 on 24.12.2003, for a total sale consideration of Rs 15,00,000/- out of which he paid Rs.14,00,000/-, by a written agreement duly attested by Notary Public and it was agreed that remaining sale consideration of 1,00,000/- would be paid at the time of finalizing the deal as regards transfer of property. It is stated that account of a dispute over non-performance of the agreement, an incident took place for which Crime No.48 of 2005 was registered at Police Station B-Section, Nawabshah against the applicant, Late Adam Khan, Muhammad Ishaque and the applicants father namely Sona Khan. It is also stated that in 2010, an unfortunate incident took place in which applicant's uncle Adam Khan and Muhammad Ishaque along with his servant Nazeer Oad were killed for which Crime No.42 of 2010 was registered at Police Station Gupchani, on the complaint of the applicant. Accused in the said case were tried and convicted and an appeal against such conviction was also dismissed, and the matter is pending before Honorable Supreme Court. With such background, it is alleged that on 13.03.2023, at 4:30 p.m. proposed accused Qurban Ali son of Shah Ali, Farman Ali son of Shah Ali,

Yar Muhammad son of Shah Ali, Shahbaz son of Ghulam Mustafa and Rajab Ali son of Ghulam Mustafa emerged at the land purchased by the applicant situated at Deh Kari, Taluka Daur, District Shaheed Benazir Abad duly armed with weapons, resorted to aerial firing in order to terrorize the applicant and his people and extended them abuses and murders threats in case they pursued the matter relating to the land purchased by the applicant.

3. Learned Counsel for the Applicant has argued that the civil litigation is pending over this issue between the parties. He has filed copy of the Civil Suit on page 49 Annexure "A" which is pending in the Court of 1st Senior Civil Judge Nawabshah filed by the father of the present Applicant against Respondent No.1 and others where he sought declaration and injunction under Order VII Rule 1 CPC over a piece of land. Counsel states that only due to the said litigation the Respondent's side continuously approaching the learned Trial Court by filing applications u/s 22-A & B Cr.P.C to pressurize the present Applicant's party. Earlier Respondent No.1's side moved applications u/s 22-A & B Cr.P.C which were also allowed but resulting in acquittal of the Applicant's side. Now this is a third Application that has been moved and has been allowed which is impugned in this Criminal Miscellaneous Application. He states that the learned Trial Court without considering the facts of the case and the civil litigation pending has allowed Application of Respondent No.1 although Deputy Superintendent of Police Complaints Cell SSP Office, Shaheed Benazirabad had filed Report before the Trial Court stating that no such incident had taken place (he has produced the same Application annexed at page 39). In such circumstances, he prays that the said impugned Order may be set aside.

4. Learned APG present affirms the arguments of the Applicant's Counsel and states that indeed the civil litigation is pending and Order for lodgment of FIR is only offshoot of the said litigation.

5. Respondent No.1 is called absent nor his Counsel is present. That has been the case since past many dates. Matter is pending since last two years where there is only short point is involved.

6. I have heard the learned Counsel for the Applicant and learned APG. It is an admitted fact that civil litigation is pending between the Applicant party and the Respondent party since 2023 and is under adjudication and the case is purely of civil nature which is to be decided before the appropriate forum and constant lodgment of FIRs give impression that the applicant party is being pressurized for withdrawal of civil litigation so that the disputed land would be usurped by the other party. learned Trial Court also has erred in passing the impugned Order ignoring the Report filed by the DSP Complaint Cell SSP Office Shaheed Benazirabad as well as the contentions of the present Applicant that the civil litigation is pending although the learned Trial Court has stated in concluding para that civil litigation is pending, therefore, these untoward incidents are being occurring. In my opinion to resolve civil disputes/land disputes the forum of criminal jurisdiction should not be used because that only results in the wastage of prestigious Court time and delays the resolving old issues. In such situation, I hereby allow this Criminal Miscellaneous Application and set aside the impugned Order passed by the learned Sessions Judge Ex-Officio Justice of Peace Shaheed Benazirabad dated 04.05.2023.

JUDGE

Ali Haider