

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Crl. M.A.No.S- 1080 of 2018**

Mukesh Kumar Hindu.                      Versus.                      The State and others.

Mr. Saeed Jamal Lund Advocate for applicant.

Mr. Aneet Kumar Roopeja Advocate for respondents No.3 to 6.

Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General.

**Date of hearing:** 12-10-2020

**Date of Order:** 12-10-2020

## ORDER

**Aftab Ahmed Gorar J.**, Applicant Mukesh Kumar filed application before learned Sessions Judge/ex-Officio Justice of Peace, Sukkur under Section 22-A&B CrPC for a direction to SHO, P.S, Kandhra for registration of FIR for the alleged cognizable offence and vide order dated 19.09.2018, his application was turned down by 1<sup>st</sup> Additional Sessions Judge/ex-Officio Justice of Peace, Sukkur. The applicant by filing instant application has challenged the impugned order.

2. Learned counsel for the applicant argued that the impugned order is illegal and cannot be sustained in the law, as the application filed by the applicant prima facie discloses the commission of cognizable offence and as per provisions of Section 154 CrPC, the respondent No.2 is required and bound to register the FIR; that infact this is a counter case, in which both the parties sustained injuries, however, FIR of the proposed accused party was lodged bearing Crime No.75 of 2018 at P.S, Kandhara for offences under Sections 337A(i), 337F(i), 147,148, 149, 578 and 506/2 PPC against the

applicant and others and after full-dressed trial, the applicant Mukesh Kumar and others were convicted and sentenced vide judgment dated 04.10.2019, passed by learned 3<sup>rd</sup> Judicial Magistrate (MTMC), Sukkur, against which the applicant and others have preferred Crl. Appeal No.10 of 2019 before learned Sessions Judge, Sukkur, which is pending adjudication, but surprisingly the application of the applicant for registration of FIR in respect of injuries sustained by his brother in the same incident was refused by learned Justice of Peace without assigning any cogent reason though medical certificate was issued by the Medical Officer in favour of injured. Lastly, he prayed for setting aside of impugned order and issuing directions to the respondent No.2 to record the statement of applicant and lodge the FIR if a cognizable offence is made out.

3. On the other hand, learned counsel appearing on behalf of the respondents No.3 to 6/proposed accused supported the impugned order by contending that the application filed by applicant does not constitute any cognizable offence, as no such incident had ever occurred, as alleged by the applicant. He prayed for dismissal of instant application.

4. Learned Additional P.G for the State did not controvert the submissions made by learned counsel for the applicant.

5. After hearing the arguments and perusal of record, it reveals that this is a counter case, in which both the parties sustained injuries, however, FIR of the proposed accused party was lodged bearing

Crime No.75 of 2018 at P.S, Kandhra for offences under Sections 337A(i), 337F(i), 147,148, 149, 578 and 506/2 PPC against the applicant and others and after full-dressed trial, the applicant Mukesh Kumar and others were convicted and sentenced vide judgment dated 04.10.2019, passed by learned 3<sup>rd</sup> Judicial Magistrate (MTMC), Sukkur, against which the applicant and others have preferred Crl. Appeal No.10 of 2019 before learned Sessions Judge, Sukkur, which is pending adjudication, but the request of the applicant for registration of FIR in respect of same incident, in which his brother also sustained alleged injuries at the hands of proposed accused, was turned down vide impugned order without any legal justification and cogent reason despite the fact that medical certificate was issued by the Medical Officer in favour of the injured, as such the applicant was also entitled to have been given same treatment to that of proposed accused whose application for registration of FIR was allowed.

6. For what has been discussed above, I am of the opinion that learned counsel for the applicant has succeeded to make out a case justifying to set aside the impugned order by this Court by way of instant Criminal Miscellaneous Application. According, instant Crl. Misc. Application is allowed and the impugned order dated 19.09.2018, passed by learned 1<sup>st</sup> Additional Sessions Judge/ex-Officio Justice of Peace, Sukkur stands set-aside with directions to the respondent No.2/SHO, P.S, Kandhra to record the statement of applicant and lodge his FIR if a cognizable offence is made out.

**JUDGE**