

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR  
**Cr. Misc. Appln. No.S- 41 of 2021**

**Priority case**

1. For hearing of main case
2. For hearing of MA No.391/2021 (S/A)  
 (Letter issued for report  
 Report received)

**05.03.2021**

Mr. Mushtaque Ahmed Abbasi Advocate for the applicants/proposed  
 accused

Mr. Abdul Jabbar Soomro Advocate for respondent respondent

Mr. Zulfiqar Ali Jatoi, Additional PG for the State

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**ORDER**

**Aftab Ahmed Gorar, J;** The applicants/proposed accused by way of instant criminal miscellaneous application under Section 561-A, Cr.P.C have impugned order dated 16.01.2021 passed by learned Ex-Officio Justice of Peace / Illrd. Additional Sessions Judge Mirpur Mathelo, on application under Section 22-A (6)(i) Cr.P.C filed by the private respondent, whereby he has directed SHO Police Station Mirpur Mathelo to record statement of the private respondent u/s 154 Cr.P.C

2. It would be conducive to reproduce the operative part of the impugned order as under;-

*“In view of the facts, circumstances, and case law as discussed above, I am of the estimate opinion that the information as contended in the instant application is relating to the cognizable offence. Consequently, the application in hand stands allowed. The respondent No.1 SHO of PS Mirpur Mathelo is hereby directed to record the statement of applicant and if the cognizable offence is made out, he should incorporate it in the book u/s 514 Cr.P.C. If the FIR is registered, the accused will not be arrested until and unless the tangible evidence is*

*collected, connecting the accused with the commission of the offence. In case, the FIR is found to be false during the investigation, the SHO may prosecute the application under section 182 PPC."*

3. The facts in brief necessary for disposal of instant criminal miscellaneous application are that as per the private respondent the proposed accused by committing fraud have managed a false sale agreement dated 03.07.2020 of the private respondent in respect of the sale of his landed property with the proposed accused No.1 Muhammad Ramzan by putting his counterfeit signature and wrong CNIC number and have filed a Suit in the Court of Law, also issued threats to the private respondent to withdraw the said litigation, if any. The stamp vendor has also sworn an affidavit that the stamp paper of the alleged sale agreement was stolen from him, whereas, on the date of alleged issuance of the stamp paper he was at Karachi for the treatment of his ailing mother. The private respondent when approached the SHO Police Station Mirpur Mathelo seeking registration of his FIR, which was not recorded by SHO, therefore, he sought for direction against SHO Police Station Mirpur Mathelo for recording his FIR, which was issued accordingly by way of order dated 16.01.2021 which the applicants/proposed accused have impugned before this Court by way of instant criminal miscellaneous application, as stated above.

4. It is contended by learned counsel for the applicants /proposed accused that no incident as alleged by the private respondent has taken place and the private respondent in order to satisfy his enmity with applicants/proposed accused has sought for issuance of direction against SHO Police Station Mirpur Mathelo to record his FIR without any lawful justification; that although the civil litigation is also pending between the parties over the landed property; that the learned Ex-Officio Justice of Peace while passing the impugned order did not consider the material

placed before him by the applicants/proposed accused; that from the facts as narrated in the memo of criminal miscellaneous application no such cognizable offence is made-out. He lastly sought for setting-aside of the impugned order. In support of his contentions, he relied upon the cases of ***Muhammad Khan v. Province of Sindh and others (2018 MLD 142); Muhammad Siddique v. The State and another (2018 MLD 1947) [Sindh Larkana Bench]; Alla-ud-din v. SHO and others (2016 Y L R 272) [Lahore]; Muhammad Imran Aslam v. Additional Sessions Judge, Khushab and others (2014 P Cr. L J 162)[Lahore] and Muhammad Zahid Ayubi v. The State and another (2009 Y L R 550) [Karachi].***

5. Learned counsel for the private respondent prayed for dismissal of instant criminal miscellaneous application by contending that the impugned order is well-reasoned; that the proposed accused by managing a false sale agreement in respect of the landed property of the private respondent by mentioning his wrong CNIC number and putting counterfeit signature, thus have caused loss to him; that the stamp vendor has also sworn his affidavit that the said stamp paper was stolen from his office, whereas, on the date of alleged purchase of the stamp paper, he was at Karachi for treatment of his ailing mother; that the proposed accused have committed a cognizable offence, therefore, they are liable to be prosecuted in accordance with law. In support of his contentions, he has relied upon the cases of ***Haji Sardar Khalid Saleem v. Muhammad Ashraf and other (2006 SCMR 1192); Muhammad Akram v. Additional Sessions Judge / Justice of Piece Islamabad (PLD 2013 Islamabad 45) and Muhammad Yakoob v. Illrd. Additional Sessions Judge & Ex-Officio Justice of Peace, Hyderabad and others (2020 MLD 1028)[Sindh Hyderabad Bench].***

6. Learned Additional PG for the State did not support the impugned order by contending that there is civil dispute pending between the parties, therefore, the applicant first should pursue the said litigation and then he

has remedy to lodge the criminal case either by approaching the concerned Police Station or by way of filing direct complaint of the incident.

7. I have heard the learned counsel for the applicants/proposed accused as well as private respondents and learned Additional PG for the State and perused the record.

8. The allegation which is levelled by private respondent against the applicants/proposed accused is that of managing a false sale agreement dated 03.07.2020 of the private respondent in respect of his landed property by putting his counterfeit signature as well as mentioning wrong CNIC number on the stamp paper which was alleged stolen from the Stamp Vendor. The Stamp Vendor has also sworn such affidavit by stating the fact that on the relevant date, he was at Karachi for treatment of his ailing mother. The facts given by the private respondent constitutes a cognizable offence. The parties may be disputed but such dispute may not be a reason with the private respondent to involve the applicants / proposed accused in a false case. In that situation, the learned Ex-Officio Justice of Peace / IIIrd. Additional Sessions Judge, Mirpur Mathelo was right to order SHO Police Station Mirpur Mathelo to record statement of private respondent u/s 154 Cr.P.C, if the applicants / proposed accused are having a feeling that they are being involved in a false case by the private respondent then they could prove their innocence by joining the investigation. There is no cavil to the proposition as laid down in the *case-law* relied upon by learned counsel for the applicants / proposed accused but it has no relevancy to the facts and circumstances of the case in hand.

9. In view of above, it could be concluded safely that impugned order is not calling for any interference by this Court by way of instant criminal miscellaneous application. It is dismissed accordingly.

Judge