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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA

Criminal Revision Appln. No. S- 14 of 2015

Applicants : Nazir Hussain Brohi & another
through Mr. Abdul Hakeem Brohi, Advocate.

Respondent No.1 : Muhammad Ishaque Brohi,
through Mr. Abdul Rehman A. Bhutto, Advocate

Respondent No.2 : The State, through Mr. Khadim Hussain
Khooharo, D.PG.

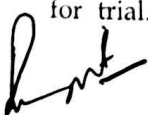
Date of Hearing: 15.08.2016

Date of Order: 15.08.2016

ORDER

Zafar Ahmed Rajput, J. This Criminal Revision Application under Section 435, 439, Cr.P.C read with Section 561-A, Cr.P.C is directed against the order dated 27.1.2015 whereby the learned Additional Sessions Judge, Shahdada Kot, District Kamber-Shahdada Kot, while allowing an application, filed by the respondent No.1/complainant, namely, Muhammad Ishaque under Section 193, Cr.P.C, directed the applicants namely, Nazeer Hussain and Abdul Ghafoor to join the case as accused to face the trial in Sessions Case No.37/14, arising out of Crime No.55/2013, registered at Police Station B-Section, Shahdada Kot under Section 302, 114, 324, 34, PPC.

2. Briefly stated, facts are that, on 01.10.2013 the respondent No.1 named above, lodged aforementioned FIR implicating four persons. After investigation, the SHO concerned submitted the challan showing the applicants/accused in Column No.2 with blue ink, as persons not sent up for trial. Thereafter, the respondent No.1 filed an application under



Section 193, Cr.P.C with a prayer that the applicants/accused be joined as co-accused. The learned trial Court/Additional Sessions Judge, Shahdadkot allowed the said application vide impugned order observing that the applicants are nominated in the FIR with role of instigation to co-accused Abdullah for committing the murder of deceased, namely, Liaquat Ali and the version of the complainant is supported by the statements of the PWs, therefore, prima facie, case is made out against the applicants. It is against this order, the instant Criminal Miscellaneous Application has been preferred by the applicants/accused.

3. The learned counsel for the applicants has mainly contended that there is enmity between the applicants and complainant and for that reason the applicants have falsely and malafidely been implicated in this case by the complainant and when this fact transpired during course of the investigation after recording statements of independent witnesses the Investigating Officer sought opinion from the SSP and; thereafter, the challan was submitted before the learned Judicial Magistrate, Shahdadkot placing the names of the applicants in Column No.2 of the challan. The learned counsel has further contended that the learned trial Court without recording evidence of any witness of the prosecution passed the impugned order, which is against the settled principles of law. In support of his contention, the learned counsel has relied upon the case of Inayatullah and 04 others v. The State & another (1999 P.Cr.L.J 731) , Muhammad Khan v. Haji Ghualm Qadri Brohi & another (1996 P.Cr.L.J 99) and S. Akhtar Sher v. The State and another (1991 MLD 1977).



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4. On the other hand, learned counsel for the respondent No.1 and learned DPG for the State have fully supported the impugned order. They have maintained that since there was direct evidence of instigation against the applicants/accused and they were nominated in the FIR and the prosecution witnesses also corroborated the contents of the FIR in their statements recorded under Section 161, Cr.P.C, the applicants/accused were implicated in this case by the trial Court upon the application of the respondent No.1/complainant and, therefore, the impugned order does not suffer from any illegality requiring interference of this Court under its revisional jurisdiction. They have placed reliance on the case of Safdar Ali v. Zafar Iqbal and others (2002 SCMR 63).

5. Heard the learned counsel for the applicants as well as learned counsel for respondent No.1 and DPG for the State and perused the material available on record.

6. It is an admitted position that the applicants are nominated in the F.I.R with specific role of instigation to co-accused Abdullah for committing the murder of deceased, namely, Liaquat Ali and the version of the complainant is duly corroborated by the statements of the eye witnesses recorded under section 161, Cr.P.C. Hence, the perusal of the impugned order reveals that the record was duly examined by the learned trial Judge before passing of the impugned order and thus it can be inferred safely that the same has not been passed in a mechanical manner or arbitrarily. There is no cavil to the proposition that the accused placed in column No.2 of the challan cannot be summoned by the trial Court to face the trial and there is no legal bar whatsoever that at first instance the evidence should be recoded to ascertain as to whether the prima facie case



is made out against them. Reliance in this regard may be placed on the case of Safdar Ali (supra). The impugned order is neither perverse nor capricious and being unexceptional it does not call for any interference under revisional jurisdiction of this Court. I, therefore, dismiss this revision application being devoid of any merit.


Judge

Abid H. Qazi/