

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Ali Haider "Ada"

Crl. Misc. Appln. No.632 of 2024

Applicant : Rashid Ahmed Siddiqui s/o Mujeebuddin Siddiqui.
Through Mr. Saad Fayyaz, advocate.

Respondents : 1. The State
2. Naik Muhammad Lashari, I.O and
6. Senior Superintendent of Police, Malir, Karachi.
Through M/s Mumtaz Ali Shah Asst. Prosecutor General
and Rabia Khalid, Asstt. Attorney General, Sindh.
3. Muhammad Saleem son of Not known
Through Rana Khalid Hussain, Advocate.
4. Asif Ali son of Abdul Rasheed.
5. Syed Ahsan Ali Shah s/o Syed Zahoor Hussain Shah
Both respondents called absent without any intimation.

Date of hearing : 18.02.2025.

Date of Order : 18.02.2025.

ORDER

ALI HAIDER ADA-J:- Through this application, the applicant, who is an accused in FIR No.395 of 2023 for offences under Section 462-B, 462-C, 379 and 34 PPC at police station Bin Qasim seeks relief. The applicant/accused is aggrieved and dissatisfied with the order dated 26.02.2024 passed by the learned Civil/Consumer Judge & Judicial Magistrate Malir, Karachi.

2. In a nutshell, the prosecution's case is that on 10.12.2023, the police, accompanied by the complainant party, arrived at the place of the incident as stated below:-

"The complainant verbally reported that I am residing at the above mentioned address, and is a retired Chief Warrant Officer of the Air Force, and now serves as an Assistant Security Officer at PARCO PECO company. Our company is a joint venture between Pakistan and Abu Dhabi, which transports oil through an underground pipeline from Karachi to Machhike to Sheikhpura, passing through the jurisdiction of your police station. Since August 2023, we suspected that a clamp was attached to the pipeline and oil was being stolen. Since then, we were searching for this clamp. On 22.11.2023, our line worker informed us that there might be a clamp near Port Qasim Railway Station. Subsequently, we conducted excavations at various locations but found nothing. Today, at 12.00 O'clock. We suspected a clamp was attached at the 1+800 Kilometer mark of our line. Consequently, I, Major Iftikhar, Supervisor Majid Khan and Line worker Muhammad Nawaz arrived at the site and with the help of the pipeline maintenance team excavated above the pipeline. After digging approximately 7 feet deep, we uncovered the pipeline, which had two clamps attached. One clamp had a high-pressure hydraulic pipe connected to it, which was running underneath the railway line towards Afif Zara package Warehouse. The police had the warehouse gates opened, and upon removing the debris on the left side of the gate within the boundary wall, a 3-feet deep excavation revealed the high-pressure pipe. Further excavation inside the warehouse uncovered approximately 626 feet of high-pressure pipe buried 6 inches under the floor, running alongside the

boundary wall. The pipe's diameter is one inch. A tunnel of approximately 118 feet has been dug from the clamp to inside the warehouse, from which 118 feet of pipe was recovered the total length of the pipe is 744 feet, with several joints in between. Further information revealed that Afif Zara Package Warehouse belongs to a person name Rashid. I claim that Rashid, the owner of the warehouse, along with his unidentified accomplices, has jointly tampered with our pipeline by attaching a clamp and installing a pipe to steal oil. Further clamp removal operations are underway at the site. Please take legal action. Report heard and found correct."

3. During the investigation, the Investigating Officer submitted the final challan, whereby the applicant, namely Rashid Ahmed Siddiqui, was let off. However, the learned Magistrate did not agree with the findings of Investigating Officer and passed an order dated 26.02.2024, took cognizance against the applicant/accused and others. Hence, this application.

4. Learned counsel for the applicant/accused submits that actually there is one Tenancy Rent Agreement which is available at page No.53, shows that the property was handed over to co-accused Asif Ali and by Rashid Ahmed Siddiqui Director of M/s Afeef Zara Packages Ltd. Asif Ali admitted to possessing the property by virtue of the rent agreement and subsequently transferred it to one Ahsan through a partnership deed. He further submitted that the co-accused persons were already involved in such kind of practices and should be held for facing trial instead of the applicant/accused. The learned Magistrate passed the order without properly considering the material available on record, which supports the applicant's/accused case. Lastly he prays that no recovery was made from the applicant/accused, who, as the owner of the property, has no connection with the alleged offence. He is merely a Director of M/s Afeef Zara Packages Ltd. And had handed over the property in question to the co-accused for business purposes. Therefore, at the time of the incident, he was not in possession of the property.

5. Learned counsel for respondent No.3 submits that a rent agreement was executed, in which a public functionary was also involved. He argues that they are aggrieved by the opinion of the Investigating Officer, which led them to file an application for re-investigation. Consequently, senior police officials were nominated as a Joint Investigation Team (JIT) vide order dated 24.01.2024. The agreement between the applicant/accused and Asif Ali, as placed on record by the learned counsel for the applicant/accused, is disputed by the learned counsel for respondent No.3. He contends that, at the time of the bail application, these documents were produced without a date and without fulfilling the necessary legal formalities. He further argues that all the documents were fabricated and manipulated. Additionally, even if the documents indicate that the applicant/accused is the landlord of the property, as shown on page No.53, they do not exonerate him from liability.

6. On the other hand, the learned AAG, Sindh, submits that the agreement mentioned and placed at page No. 53 does not specify the purpose for which the property was given to the co-accused, despite the applicant/accused being the owner/director of M/s Afeef Zara Packages Ltd. He further argues that the applicant/accused was aware of the offence in his official capacity and has supported the impugned order. The learned AAG further submits that the offence in question is of a heinous nature and also involves the interest of the Federal Government. He contends that the arguments advanced by the learned counsel for the applicant are baseless and not permissible at this stage. Lastly, Assistant Attorney General submits that she adopts the arguments of the learned Assistant. Prosecutor General, Sindh, and fully supports the impugned order.

7. The matter pertains to offences under Sections 462-B and 462-C PPC. The learned counsel for the applicant/accused contends that he has supporting documents on which the investigating agency relied instead of the learned Magistrate. For a proper conclusion, these documents should now be considered at this stage of the trial by invoking the remedy available under Section 342 Cr.P.C. Furthermore, if reliance is placed solely on documentary evidence, the right to connect such documents with other properties must be acknowledged. However, the investigating agency has remained silent on this aspect and has failed to provide reasons for not addressing any objections from the complainant regarding these documents. The exercise of power under Section 561-A Cr.P.C., though co-exhaustive in nature. At this stage, the learned Magistrate has merely taken cognizance based on the material available on record. Therefore, any material supporting the prosecution cannot be disregarded at this stage.

8. In my opinion, the instant Criminal Misc. Application is dismissed.

~~JUDGE~~

Manthar Brohi