

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Misc. Application No.655 of 2024

[Ali Adnan Sheikh v I.G. Police Sindh & 5 others]

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1. For order on office objection as at "A".
2. For hearing of main case.

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Mr. Abbad ul Hussanain, Advocate for the Applicant.
Mr. Ali T. Ebrahim, Advocate for the Respondents 5 and 6.
Mr. Tahir Hussain Mangi, APG.
PI Haji Liaquat Hussain of P.S. Boat Basin, Karachi.

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Date of hearing **19.05.2025**

Date of order **29.05.2025**

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Shamsuddin Abbasi, J.- Ali Adnan Sheikh son of Abid Hussain Sheikh, applicant, has impugned the order dated 13.05.2024, penned down by the learned Additional Sessions Judge-V, Karachi (South), through which he declined to issue direction to the official respondents to perform their statutory obligation, however, directed them to provide legal protection to the applicant within the ambit of law and dismissed the Criminal Misc. Application No.1450 of 2024, filed by applicant under Section 22-A, Cr.P.C.

2. Short but relevant facts of the case are that on 18.11.2005 one Mansoor Ali lodged FIR No.410 of 2005 at P.S. Boat Basin, Karachi, for offences under Section 506-B, 504 and 34, PPC against applicant and his father in which they were tried and convicted by the trial Court, which was set-aside in appeal and they were acquitted of the charge by the learned Appellate Court. Per the case of applicant, the FIR was false and vexatious and during trial the proposed accused Muzammil Ali Sheikh and Mustansar Ali Sheikh have recorded false statements against him and his father and based on their evidence, they were convicted but learned Appellate Court has acquitted them in appeal. The applicant in the first instance approached the local police for taking action against the proposed accused under Section 182, PPC and having failed to receive a response has invoked the jurisdiction under Section 22-A, Cr.P.C.

3. Report was called from SHO P.S. Boat Basin, Karachi. Per report of police the proposed accused are real uncles of Mansoor Ali,

complainant of FIR No.410 of 2005, and the parties were disputing over property and filed civil litigations against each other, pending adjudication in Courts.

4. The learned Ex-Officio Justice of Peace after hearing the parties' respective counsel and going through the report of police declined to issue direction to the SHO to lodge FIR of the applicant and dismissed the application under Section 22-A Cr.P.C., hence this Criminal Misc. Application.

5. The learned counsel appearing for the applicant contends that the applicant and his father were booked in a false FIR wherein the proposed accused have given false evidence and based on such statement the applicant and his father were convicted, but the learned Appellate Court found them innocent and they were acquitted of the charge, hence the proposed accused are liable to be prosecuted under Section 182, PPC. Next contends that learned Ex-Officio Justice of Peace has turned down the request of the application straight away without appreciating the governing rules and the guidelines laid down by the Hon'ble apex Court in its true prospectus. Per learned counsel, the impugned order has been passed in a mechanical manner without application of conscious judicial mind, hence the same is liable to be aside.

6. On the other hand, the learned counsel for the respondents 5 and 6 as well as learned APG have supported the impugned order and submitted that the learned Ex-Officio Justice of Peace after evaluating the record and police report has rightly dismissed the application under Section 22-A and the learned counsel for the applicant has failed to point out any illegality or material infirmity in the impugned order, hence no case for interference is made out.

7. I have heard the parties' respective counsel and perused the entire material available on record with their able assistance.

8. The grievance of the applicant is that one Mansoor Ali has lodged a false FIR No.410 of 2005 at P.S. Boat Basin, Karachi, under Section 506-B, 504 and 427, PPC, against him and his father, which was

recommended for disposal in “C” Class, but the learned Magistrate while disagreeing with the report of the Investigating Officer took cognizance of the offence and after a full dressed trial he and his father were convicted, relying on the evidence of Muzammil Ali Sheikh and Mustansar Ali Sheikh, and in appeal the Appellate Court found them innocent and they were acquitted of the charge. Pertinent to note that the applicant has neither sought any action against Mansoor Ali (complainant of FIR No.410 of 2005) nor cited him in the array of proposed accused in his application under Section 22-A Cr.P.C. He only cited Muzammil Ali Sheikh and Mustansar Ali Sheikh as proposed accused and sought initiation of proceedings under Section 182, Cr.P.C. for recording false evidence in the aforesaid FIR. Here it would be conducive to reproduce Section 182, PPC, which reads as under:-

"182. False information with intent to cause public servant to use his lawful power to the injury of another person. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant----

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person.....".

9. The above Section made it clear that when an information is lodged with bona fide belief and knowledge of its being true, it cannot be termed as false, if the same is not proved in accordance with the legal or procedural standard of proof. Such a complaint or information can be said to be ‘not proved’ and not ‘false’ so to attract the penal provision of Section 182, PPC. In the case in hand, the FIR was lodged and during investigation the same was recommended for disposal in “C” Class, but the learned Magistrate took cognizance of the offence and after a full dressed trial the applicant and his father were convicted, however, in appeal the conviction and sentence awarded to them was set-aside and they were acquitted of the charge.

10. The record is suggestive of the fact that after a thorough investigation, the Investigating Officer recommended disposal of the case in “C” Class and not in “B” Class, warranting initiation of criminal proceedings against complainant under Section 182, Cr.P.C. No doubt,

the conviction and sentence awarded to the applicant and his father by the learned trial Court has been set-aside and they were acquitted of the charge by the learned Appellate Court. A bare perusal of the acquittal order reveals that the learned Appellate Court acquitted the applicant and his father on the basis of contradictions in the statements of prosecution witnesses and did not record any finding as to falsehood of FIR, recording false evidence and initiation of criminal proceedings against complainant party. It is a well settled that acquittal of applicant and his father cannot be termed that the information given by the complainant was a false one. Usually the Courts while acquitting accused extended them benefit of doubt.

11. Under the scheme of law a person who lays information to police is entitled to have his case judicially determined before he is called upon to answer the charge of giving false information. Had there been a false FIR, there was no need to submit report under "C" Class by the Investigating Officer. In this backdrop, issuance of direction for initiation of proceedings under Section 182, P.P.C. against the complainant or his witnesses would amount to abuse of process of law more particularly when applicant has approached the Ex-Officio Justice of Peace after lapse of about 15 years of his acquittal by the learned Appellate Court. Even otherwise, the proceedings under Section 182 Cr.P.C. can only be initiated by a civil servant and no one can interfere and even a judicial direction for initiation of such proceedings cannot be issued just because of the bar imposed by Section 195, Cr.P.C., which provides that in all offences punishable under Sections 172 to 188, PPC, no Court can take cognizance except on a written complaint of the concerned public servant or some other public servant to whom he is subordinate. I am, thus, of the view that issuance of a direction to the SHO for initiation of criminal proceedings under Section 182, PPC, would be contrary to statutory provision of Section 195, Cr.P.C.

12. Considering the factual and legal position, as discussed above, I am of the view that the refusal by the learned Ex-Officio Justice of Peace to issue direction to the Station House Officer for registration of FIR does not suffer from any jurisdictional error or flaw. The impugned order, on the face of it, is just, proper and speaking one.

The learned counsel for the applicant has failed to point out any material illegality or serious infirmity committed by the learned Ex-Officio Justice of Peace while passing the impugned order, which in my humble view is based on fair evaluation of record, hence calls for no interference by this Court in exercise of its jurisdiction under Section 561-A, Cr.P.C.. In view thereof, this Criminal Misc. Application No.232 of 2025 is bereft of any merit stands dismissed.

JUDGE

Naeem / PA