Cr.M.A.No.248 of 2008

1. For Katcha Peshi
2. For hearing of MA 3911/08

ORDER

17.04.2009

Mr.Ghulam Sarwar Korai Advocate for the applicants.
Mr.Ali Hadier Dareshani advocate for the state.

By this application u/s 561-A Cr.P.C. the applicants have challenged the order dated 13th December 2008 passed by the learned Judicial Magistrate-I Ghotki, whereby the report u/s 173 Cr.PC submitted by the I/O in Crime No.20/08 u/s 395 PPC of P.S. Katcho Bindi was not accepted and he was directed to submit charge sheet within 15 days.

The case of the prosecution in brief is that on 15th June 2008, the complainant alongwith PW Abdul Karim and PW Qadir Bux was taking the cattles for grazing in Block No.6 Banghwar Wari Mor, where the present applicants duly armed with kilashnkoves and fire arm weapon intercepted him and snatched six buffaloes and two calf of the buffaloes as well as the cow etc. The complainant tried to lodge the FIR but did not succeed, therefore, he approached to the learned Sessions Judge u/s 22-A & 22-B Cr.PC whereupon the learned Sessions Judge directed the SHO to record the statement of the complainant and in case the cognizable offence is made out, the FIR may be registered. The FIR was thereafter registered and after investigation the I/O submitted report u/s 173 Cr.PC for disposal of the FIR in C-Class but the learned magistrate did not concur with the opinion of the investigating officer and directed him to submit the challan within 15 days, hence the present application.

I have heard Mr.Ghulam Sarwar Korai advocate for the applicants and Mr.Ali Haider Dareshani advocate for the state.

The learned counsel for the applicant vehemently contended that during the course of investigation no material was collected to implicate the applicants in the present crime, therefore, the I/O was competent to submit report for disposal of the case in B-Class and according to him the learned magistrate committed an error of law while refusing to accept the report of the investigating officer and directing him to submit the charge sheet, as such the order passed by the magistrate may be set aside and the report of the investigating officer may be accepted whereby the case may be disposed off in B-Class.

Mr.Ali Haider Dareshani learned counsel for the state vehemently refuted the arguments advanced on behalf of the applicants and has contended that the evidence of PW Abdul Karim and PW Qadir Bux is fully supported the evidence of the complainant and the investigating officer taken into consideration only the version of the defence witnesses which is not the spirit of law and non-suited the complainant at this stage of the proceedings. While defusing the arguments advanced by the learned state counsel, the learned counsel for the applicants

further contended that no recovery of weapon has been made during the course of investigation which may be considered as additional ground in support of disposal of case in B-Class.

I have considered the arguments advanced on behalf of the parties and have gone through the material available before me.

There could be no cavil to the proposition that the report u/s 173 Cr.PC must be submitted before the concerned magistrate and the magistrate has all the powers to examine the report u/s 173 Cr.PC and for the said purpose he may appraise the whole evidence collected by the investigating officer during the course of investigation and, in case, if from the appraisal of the evidence the magistrate comes to contrary view than the view expressed in the report u/s 173 Cr.PC, the magistrate is not obliged to accept the report submitted by the I/O and on the basis of such material brought before him the magistrate may pass appropriate order under the circumstances of the case. In the present case while examining the report u/s 173 Cr.P.C. the learned magistrate came to the conclusion that the case does not warrant its disposal in B-Class and there was some evidence which persuaded to the magistrate to take the cognizance of the matter. The I/O has simply non-suited the complainant on the ground that the witnesses of the complainant are interested witnesses but the I/O is not competent to express such opinion in support of disposal of case in B-Class. It is the prerogative of the court to determine as to whether the witnesses were interested witnesses or their testimony is liable to be considered under the circumstances of the case. The said opinion of the investigating officer that the witnesses produced by the complainant were interested witnesses supports the arguments advanced by the learned state counsel to effect that the I/O taken into consideration the version of the defence witnesses and has not submitted the report independently and honestly. From the discussion of the aforesaid legal proposition I am of the opinion that the learned magistrate did not commit any illegality or irregularity while dismissing the view of the I/O for disposal of the matter in B-Class and rightly directed him to submit the challan. It is pertinent to note that despite the direction of the learned magistrate the I/O did not submit challan so far. It is incumbent upon the magistrate to take appropriate legal action against the I/O for his default in non compliance of the direction.

With the aforesaid observation I do not find any merit in the present application which is hereby dismissed in limine alongwith the listed application.

JUDGE

Imran