

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P.No.D- 1902 of 2016

DATE	ORDER WITH SIGNATURE OF
JUDGE	

09.08.2017.

Mr. Rafique Ahmed, Advocate for the petitioner.
Syed Kamran Ali, Advocate for respondents No.2 and 3.
Mr. Allah Bachayo Soomro, Additional A.G.
Mr. Shahid Shaikh, D.P.G. for the State.

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Through this petition, the petitioner has assailed the order dated 29.02.2013 passed on application u/s 22-A & B Cr.P.C, moved by petitioner, whereby his application was dismissed on the ground(s) that the issue between the parties is over the property which is of civil nature and that the petitioner intends to convert the same into criminal litigation; that earlier FIR No.195/2011 was registered on the same issue hence such application was dismissed.

2. It is further revealed that allegedly proposed accused annexed a forged application with the petition, stamped by the SHO P.S. B-Section Hyderabad thereby claiming to have approached to the police authorities and also filed the Criminal Miscellaneous Application for legal action against the proposed accused which was disposed of with direction to the petitioner that he shall approach the proper forum. Such letter is available at Page 71. On the application of the applicant the SSP Hyderabad issued direction whereunder, the Senior Superintendent of Police Crime Branch, Hyderabad submitted that this issue needs inquiry and clarifications hence both the applications were sent back to the SSP Hyderabad however, it is yet not clear that whether any action was taken by the SSP

Hyderabad to ascertain the facts as pleaded by the petitioner or otherwise. Meanwhile, the petitioner filed application u/s 22-A & B Cr.P.C. (Criminal Miscellaneous Application No.28/2011) which was disposed of vide order dated 29.12.2012 with direction to the concerned police station for recording of the statement. Such statement was recorded and the same was converted in FIR No.195/2011 u/s 468, 470, 471, 473, 34 PPC. After the investigation, such report was submitted under section 173 Cr.P.C. before the concerned Magistrate. By order dated 15.03.2012 such report was not accepted on the ground that in case any forged or false information is received by the police station, the only concerned police station is competent to move against the delinquent person not the complainant hence the same was disposed of under 'C' class. Admittedly, the petitioner failed to challenge that order and again moved, in question, Criminal Miscellaneous Application No.285/2013, that was declined by order dated 28.02.2013.

3. *Prima facie*, the case of the petitioner is that the proposed accused filed an application with bogus police stamp of the police station for which *act* he moved applications, including Crl. Misc. appln. No.28/2011, and admittedly in consequence thereof an FIR was recorded, which *however* was cancelled by Magistrate concerned. Counsel for the petitioner vehemently contends that it is the fault of investigation that if only the police was competent then they were required to have come forward to file the case against the proposed accused hence on this ground his earlier FIR was *wrongly* disposed of therefore, having no other option he has moved another application u/s 22-A & B Cr.P.C.

4. Heard and perused the record.

5. We are of the considered view that second application was incompetent under the law when already his application on the same ground was allowed but same could not bring the *desired* results. The negligence on part of the police to record an FIR is an *entirely* different thing and cannot be compared to a grievance of *defects* into investigation because same was found by legislature to be a *denial* to a mandatory obligation therefore, Ex-Officio Justice has *specifically* been vested with jurisdiction to issue such *appropriate* directions. It is a matter of record on same *grievance* (complaint) the appropriate direction was issued by Ex-Officio Justice of Peace but mere failure of one to have desired *result* would not be sufficient to allow him to repeat such application. In case, there was any defect in the investigation, he was competent to assail that investigation before the proper forum or even if he was aggrieved with order of the Magistrate whereby FIR was disposed under 'C' class then he (petitioner) was required to have challenged the same. He (petitioner) *however* opted not to do so thereby letting both actions/orders to attain finality. Accordingly, the instant petition, being not tenable in law, is dismissed. However, since the application before the police was also moved by the petitioner, he would be competent to pursue his remedy before the same forum, if so advised.

JUDGE

JUDGE