

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

C.P No.D-1832 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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For Katchapeshi
For hearing of M.A No.9807/16.

26-09-2017.

Mr. Bhagwan Das Bheel, Advocate for the petitioners
Mr. Suleman Dahri, Advocate for respondent No.3
Mr. Shahid Shaikh, learned A.P.G
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Through instant petition, petitioners have prayed as under:-

That this Honourable Court may be pleased to set-aside the impugned order dated 02.07.2016 in Cri:Misc:Application No.815 of 2016 passed by the learned 2nd Additional Sessions Judge, ShaheedBanazeerabad/respondent No.2.

2. At the outset, it is contended that respondents filed application u/s 22-A & B Cr.P.C alleging therein that applicants (proposed accused) were beating two persons; when Dado Shaikh arrived there, they disclosed that they are not beating to Roshan Ali, infact he has fallen from the motorcycle therefore, they are rescuing him, whereas Dado Shaikh found that Roshan Ali was not alive.
3. Counsel for petitioner contends that this is case of accident, complainant party approached SSP ShaheedBenazeerabad through application, on his application enquiry was conducted, wherein statement of independent witness was recorded. On such statement it was surfaced that this is not a case of murder and Roshan Ali died due to road accident on motorcycle.
4. Learned counsel for complainant contends that respondent No.3 narrated his story before the concerned police, but they refused to lodge the

F.I.R and enquiry conducted by S.S.P without lodging F.I.R has no value and can't be acquitted with the investigation.

5. Heard and perused the available material.

6. The *Code* does not recognize a *pre-inquiry* nor is such pre-inquiry requirement of law or *procedure* to bring the law into motion. The *Code* provides mechanism for bringing law into motion on receipt of commission of cognizable offence and *even* non-cognizable offence. The *Code* does provide a mechanism to inquire into cause of *death* even on complaint of accidental matter (s) but none requires involvement of Senior Superintendent of Police or *permission* even. It is *duty* of the Officer-in-Charge of Police Station *only*. Thus, it is strange that how pre-trial conducted by the police officer when no F.I.R was registered. Needless to add that even if there is a *failure* on part of the officer-in-charge of police station which results in compelling aggrieved to approach *superior* authority (SSP) and such application / complaint is forwarded / marked to officer-in-charge police station. Such course would always be taken to act in accordance with law i.e to bring the law into motion as it *demand*s. Prima facie, it appears that act of the police officials is based on malafide intention and ulterior motive *least* there is clear departure from mandatory obligation (s) hence, S.S.P ShaheedBanazeerabad shall conduct enquiry and those who failed to lodge the F.I.R despite a narration of commission of cognizable offence be dealt with in accordance with law. Needless to mention here that every Station House officer is required to record the statement of any informer, if cognizable offence is made out, he *without* any hesitation shall incorporate the same in the book provided under Section 154 Cr.P.C. Since, such direction was issued by the Ex-Officio Justice of Peace which is strictly in accordance with law as it is duty of the agency to uncover the crime and examine the evidence for proper disposal of the

complained offence, therefore, impugned order deserves no interference.

Accordingly petition stands disposed of.

JUDGE

JUDGE

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