Cr.Misc.Application No.177 of 2008.

Dahar. . . . . Applicant.

Versus.

SIO Investigation Team
Police Station, Wasti Jiwan Shah
Taluka Uburo, District Ghotki. . . . Respondents.

For Katcha peshi.

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07.04.2009. Mr.Shamsuddin N. Kobher, advocate for applicant.
Mr.Ali Haider State counsel.

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ARSHAD NOOR KHAN, J.-By this application, the applicant has questioned the order dated 25.08.2008 passed by the learned Judicial Magistrate, Ubauro whereby he has approved the report in 'C' Class in Crime No.91/2008 of Police Station, Wasti Jiwan Shah under Section 395, PPC.

The facts leading to the present application in brief are that the applicant filed application under Section 22-A, Cr.P.C before the leaned Session Judge, Ghotki seeking direction against the police officials to record his FIR. The learned Sessions Judge granted the prayer of the applicant with the direction that in case if the report of

the applicant proves false, action against him, may be taken under Section 182, PPC. The FIR thereafter was registered in pursuance of the order passed by the learned Sessions Judge and thorough enquiry was conducted wherein the Investigating Officer recorded the statements of complainant, Kaloo alias Dhani Bux and Dilbar son of Amir Bux as well as the statements of independent witnesses of the locality namely Allah Wadhayo Mochi and Eidan Bhatti and after recording the evidence, he found that there was no proper corroboration of the evidence of complainant and PW Kaloo, who was his own witness, has contradicted him whereas independent witnesses of locality namely Allah Wadhayo Mochi and Edan Bhatti have not supported the occurrence in any manner, therefore, he submitted report in 'C' Class before the Magistrate who after examination of the whole material brought before him, accepted the report vide order impugned herein.

I have heard Mr.Shamsuddin N. Kobher, learned counsel for the applicant and Mr.Ali Haider learned State counsel.

The learned counsel for the applicant vehemently contended that the Investigating Officer mainly relied upon the version of the defence to the effect that the accused were not present at the tie of incident and they had taken the plea of alibi whereas the ocular evidence of complainant and his witnesses, has not been taken into consideration and the same mistake has also been committed by the learned Judicial Magistrate while accepting the report of the Investigating Officer and the order passed by the Judicial Magistrate, being against the evidence available on record

may be recalled and Investigating Officer may be directed to submit the challan against the accused.

The learned State counsel while refuting the arguments advanced on behalf of the applicant, has pointed out that the PW Kaloo has given different version to the version given by the complainant and the evidence of the independent witnesses has not supported the alleged occurrence and as such the order passed by the Judicial Magistrate, is perfect and legal.

I have considered the arguments advanced by the learned counsel for the parties and have gone through the material available before me.

At the very out-set there is no dispute to the proposition that earlier to the present FIR, the FIR against the brother and close relatives of the present applicant, has been registered through the respondents and the criminal case is pending adjudication before the competent Court as such just to create defence in that criminal case registered by the respondent against the brother and relatives of the applicant, he has come forward for their rescue for registration of the present FIR, which subsequently proved false. The PW Kaloo who is his star witness has not supported the occurrence and has given a different version as contained by him in his application before the learned Sessions Judge, Ghotki. The evidence of complainant and PW Kaloo is therefore materially contradicting each other and adversely on the bonafide of the present applicant to lodge the FIR against respondent. The Investigating Officer has also recorded the statements of independent witnesses of the locality namely Allah Wadhayo Mochi and Edan Bhatti, who in their evidence have denied the occurrence and have stated

that no such occurrence was ever committed. The evidence of the independent witnesses of the locality is also not supported the case of the prosecution and it appears that the evidence which has com on record would finally not result in conviction of the respondents and filing of the challan and proceeding with the case against the accused would not bring fruitful attempt but would be an abuse of the process of the Court. The learned Magistrate after appraisal of whole evidence brought before him, has rightly accepted the report whereby disposing off FIR in 'C' Class, I do not find any material infirmity or illegality in the order passed by the learned Magistrate and the application is therefore dismissed in *limine*.

JUDGE

Akber.

Approved for reporting.