

*ORDER SHEET*

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.

Cr. Misc. A. No. D – 368 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>20.02.2018.</u>	

Mr. Mazhar Hussain Kalwar, Advocate for applicant.  
None present for the respondents.  
Syed Meeral Shah Bukhari, A.P.G.

Through this criminal miscellaneous application applicant has assailed the legality and propriety of the order dated 31.3.2016, passed by the learned Judicial Magistrate-II Nawabshah, in Summary No.06 of 2016 Re: State v. Zahid Hussain & others under crime No.42 of 2015, registered at Police Station Gupchani whereby the learned trial court after hearing the parties' counsel disposed of F.I.R. under crime No.42 of 2015 Police Station Gupchani under 'C' class.

Facts necessary for the disposal of this case are that the applicant Aijaz Ali registered a criminal case against the private respondents alleging therein that on the day of incident the applicant was present at Survey No.180/1-A for demarcation the private respondents came there and after abusing filthy language accused Zahid Hussain Umrani took his pistol from his fold and made straight fire on him with intention to kill him which was missed whereas the other accused started areal firing. It reveals from the record that after due investigation the I.O. of the case has submitted report under section 173 Cr.P.C. in 'B' class but the learned trial Magistrate after hearing the parties converted and disposed of the same in 'C' class.

It is argued by learned counsel for the applicant that the impugned order passed by the learned trial court is bad in law as according to him the said order has been passed in haste manner without considering the F.I.R, the statements of prosecution witnesses recorded under section 161 Cr.P.C. but the learned trial Magistrate has passed the impugned order

while considering extraneous material which could not be appreciated. He further submits that the learned trial Magistrate should have taken the cognizance of the case in view of the contents of the F.I.R. as well as statements of prosecution witnesses but the learned Magistrate failed to consider this aspect and passed the impugned order which is liable to be set-aside. During the course of arguments he has also reiterated the same facts and grounds which he has urged in the memo of application.

Conversely, Syed Meeral Shah Bukhari learned Additional Prosecutor General Sindh, while opposing the aforesaid contentions submitted that the impugned order passed by the trial Magistrate is perfect in law and is a result of proper appreciation of evidence brought on record, which needs no interference.

We have given our anxious thoughts to the contentions raised at the Bar and have gone through the case papers so made available before us.

It appears from the record that the alleged incident took place on 16.12.2015 whereas F.I.R. was lodged on 22.12.2015, after the delay of 06 days for which no satisfactory explanation has been furnished. It also appears from the record though it is alleged that accused/respondent Zahid Hussain Umrani from his pistol has made straight fire upon the applicant/complainant but nobody from applicant/complainant side has received any injury. It is an admitted fact that the parties are already in criminal and civil litigation against each other which is pending before different courts, therefore, under the circumstances false implication of the respondents in this case with due deliberation and consultation could not be ruled out. It has also been brought on record that the prosecution witnesses in this case are also the witnesses in case No.118 of 2014, which is pending before the trial court hence the statements of prosecution witnesses cannot be considered trustworthy.

We have gone through the impugned order passed by the learned trial court and come to the conclusion that the learned trial court while

passing the impugned order has covered all the legal and factual points involved in this case.

In view of the above discussion we see no error or illegality in the impugned order warranting interference by this Court which is maintained. Accordingly this criminal miscellaneous application being devoid of any force is dismissed along with the listed application.

JUDGE

JUDGE

A.