

## IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc.. Application No.119/2018

Applicant : Tha Rafay,  
through Mr. Aamir Mansoob  
Qureshi, Advocate.

Respondents : Province of Sindh & others  
None present for the Respondents.

Date of hearing : 30.05.2018

Date of decision : 20.06.2018

### ORDER

**NAZAR AKBAR, J.** Through this Cr. Misc. Application the applicant has challenged the order dated 15.09.2017 passed by VIIIth Addl. Sessions Judge Karachi, West whereby Cr. Misc. Petition No.1070/2017 under Section 22-A Cr.P.C filed by the applicant was dismissed. The petitioner has originally challenged the impugned order in constitution petition before the Division Bench of this Court. Subsequently it was converted into the instant Cr. Misc. Application.

The SHO concerned has filed his reply to this Cr. Misc. Application. I have heard learned counsel for the applicant. Learned counsel has referred to annexure-P at page 21, which is a written request to SHO SITE-A Karachi, West dated **7.1.2017**. However, after filing of application, he did not peruse it and tried to enter into settlement. The only request to the SHO was that cheque book of complainant may be recovered and the accused party be restrained not to

use of cheques forcibly taken away. Such complaint was filed on 07.1.2017 but letter to the Manger H.B.L was written after two days on **09.1.2017** to stop payment. In letter to the bank, it has been stated that cheque book has been stolen away from the office desk on **09.1.2017**. The application under Section 22-A Cr.P.C was filed on **30.8.2017** after delay of 8 months of sending letter to the SHO concerned. Therefore, the application under Section 22-A Cr.P.C was dismissed by Addl. Sessions Judge amongst other on the ground that the applicant himself has already been nominated by the respondent in FIR No.314/2017 under **Section 489-F PPC** and he is on bail. It was also observed by the learned Judge in the impugned order that requirement of giving direction to SHO depends on sufficient material before the Court that SHO has either refusal or reluctance to register the FIR. The learned counsel has not been able to dispute the following contents of the impugned order.

Moreover, the applicant had himself admitted that he after filing application tried to settle the matter and did not pursue the application. Most importantly, he had suppressed the facts of an FIR lodged against him which in reply to a query was answered in affirmative and he produced copy of FIR No.314/2017 which is lodged much earlier than filing of instant petition. This fact shows that applicant had not approached this forum with clean hands too and there is no explanation as to why he had remained silent from January till end of August 2017 as to same complaint.

Even otherwise, when the FIR of the proposed accused against applicant had been lodged, any directions at this stage would clearly hamper the merits of the said FIR. The applicant had a right to approach the I.O and produce his defense. However, at this stage, I do not see any merit in the instant application which is hereby dismissed accordingly.

In view of the above, no case is made out, therefore, this Cr. Misc. Application is dismissed.

**JUDGE**

*SM*