

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Misc. A. No.S-496 of 2018.

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For hearing of main case.

16.01.2019.

Mr. Ahsan Ahmed Qureshi, Advocate for the applicant.

Ms. Sobia Bhatti, A.P.G.

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ZULFIQAR AHMAD KHAN, J.- Through this criminal miscellaneous application under section 561-A Cr.P.C, applicant Saadullah has impugned the order dated 29.08.2018, passed by learned 7th Additional Sessions Judge/Ex-Officio Justice of Peace, Hyderabad, whereby Cr. Misc. Application No.2161 of 2018, filed by the applicant was dismissed.

2. Briefly, the applicant has filed Cr. Miscellaneous Application u/s 22-A(6) Cr.P.C, before the Court below, thereby seeking reinvestigation of Crime No.98/2018, registered at Police Station Husri, under sections 324, 337-A(ii), 337-L(ii), 506(2), 109 PPC on the ground that no such incident has ever taken place and the applicant has been implicated in the said crime falsely.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in the above criminal case due to old enmity; that though no such incident has ever occurred and the concerned police was not ready to lodge such false case, however, by making an application under section 22-A&B Cr.P.C, respondent No.4/complainant Shafi Muhammad succeeded to register the F.I.R; that concerned police without conducting fair investigation, collecting the relevant material and evidence on record as well as recording the statement of the applicant in his defence, challaned the case, which needs fair reinvestigation. He, therefore, requests that reinvestigation of the above crime may be ordered to be conducted by a good reputed police officer. He has placed his reliance on the cases of **Muhammad Yousaf v. The State and others** (2000 SCMR 453), **Muhammad Naseem v. SHO** (NLR 1996

Criminal 660), **Javid Iqbal v. Additional Inspector General of Police, Lahore and 4 others** (PLD 2008 Lahore 488), **Waris Khan v. Deputy Superintendent Custom, Mardan and another** (2001 PCr.LJ 660) and **Mirdad Khan v. Zahir Shah and 3 others** (2000 PCr.LJ 1739).

4. Learned APG supported the impugned order and contended that the trial Court has passed the said order while discussing entire facts of the case as well as relevant law, therefore, the impugned order needs no interference.

5. Heard the learned counsel for the applicant, learned APG for the State and gone through the material available on record.

6. Perusal of record reveals that initially the concerned police did not register F.I.R. of the complainant, however, on approaching the learned Ex-Officio Justice of Peace, his application under section 22-A&B Cr.P.C. was allowed and the subject F.I.R. was registered and after investigation concerned I.O. furnished challan before the Court of law against the applicant in his absentia u/s 512 Cr.P.C, therefore question of recording his statement in defence by police does not arise. It further reveals that during investigation evidence has been collected against the present applicant to proceed against him.

7. Admittedly, in the case in hand, after investigation challan has been submitted against the applicant before the Court of competent jurisdiction in his absentia where the case is being proceeded against the applicant, thereby the competent Court has taken cognizance of the case. The Honourable Apex Court has disapproved the reinvestigation and successive investigations of the crime. In this context, reliance is placed on the case of **Bahadur Khan v. Muhammad Azam and 2 others** (2006 SCMR 373), wherein the Honourable Supreme Court of Pakistan disapproved the system of reinvestigation or successive investigations and has held as under:-

" System of reinvestigation in criminal cases is a recent innovation which is always taken up at the instance of influential people and favourable reports obtained which in no way assist the Courts in coming to a correct conclusion, had created more complications to the Court administering the justice, therefore, expressed its disapproval of this system altogether and; successive investigation of the case."

8. In the case of **Muhammad Nasir Cheema v. Mazhar Javaid and others** (PLD 2007 Supreme Court 31), the Honourable Supreme Court of Pakistan has held that as the investigation report (Challan) had already reached the trial Court where trial had already commenced, changing of investigation or ordering further investigation in the matter thereafter was an exercise unsustainable in law. Further, the trial Court is appropriate forum for the applicant where he may shatter the prosecution case while cross-examining the prosecution witnesses as well as bringing the evidence and other material in defence at the time of recording his statement under section 342 Cr.P.C, and this would be a better course instead of ordering reinvestigation of the case in hand.

9. It is also pertinent to mention here that section 22-A(6)(ii) Cr.P.C. is meant for transfer of investigation and not for reinvestigation of a case, therefore, the very application moved by the applicant before the trial Court under section 22-A(6) Cr.P.C. itself was not maintainable, thus, the trial Court has rightly dismissed the said application.

10. The case law as cited by the learned counsel for the applicant is not attracted to this case, as the facts of those cases are quite distinguishable from the case in hand.

10. In the circumstances at hand, I am of the considered view that reinvestigation in this case after submission of the Challan and commencement of trial will not only be unwarranted, but it will definitely create more complications in the administration of justice, prejudicing the case of the prosecution. The applicant is an accused in the above case and all the pleas having been advanced by him in this application at the most would be defense pleas to be taken before the learned trial Court, if he so desires.

11. In view of above, the impugned order appears to have been passed by the trial Court while applying its mind and it is perfect on facts and law and does not call for any interference. Accordingly, this criminal miscellaneous application being misconceived is dismissed.

JUDGE