

IN THE HIGH COURT OF SINDH AT KARACHI

CR. MISC. APPLICATION NO.182/2018

Applicants : Aquil Usman Dhadak and Rafiq Usman Dhadak,

Respondents : Muhammad Saleem and others,

Mr. Khawaja Shamsul Islam advocate for applicants.

M/s. Abdul Wahab Baloch, Muhammad Qasim and Umar Awan
advocates for respondent No.3.

Mr. Waseem Akhtar, Assistant Attorney General.

Mr. Siraj Ali Chandio, Addl. P.G.

Date of hearing : 14th February and 5th March, 2019

Date of announcement : 8th March, 2019

ORDER

SALAHUDDIN PANHWAR, J. Through instant criminal miscellaneous application, attorney of the accused Aquil Usman Dhadak and Rafiq Usman Dhadak, seeks quashing of FIR No.140/2018 u/s 420, 468, 470, 380, 34 PPs registered at PS Clifton, Karachi.

2. Relevant facts of the FIR are that Complainant lodged FIR alleging that Bungalow No.11/2, Khaiban-e-Shamsher, Phase V, D.H.A. Karachi is in the name of his wife namely Nasreen Yousuf Naz; that they are residing out of Pakistan since 30/31 years, in the month of November 1999, they came to Pakistan and came to know that one Aquil Usman Dhaduk and his brother Rafiq Usman Dhaduk, Mariam with the convenience of each other prepared fake documents, on basis of fake signatures of his wife prepared forged sale deed and disclosed the property in their names, that they have filed the Suit

bearing No. 553/2000 which is still pending, that on 24.05.2018 one of his friend Waheed alongwith his family was on way for MacDonald's and he saw one truck was inside of the bungalow by loading the articles material was going out, that he informed the complainant, as complainant was not feeling well due to such reason he did not register FIR on 29.05.2018, he filed written complaint to the concerned PS and then he filed the application before the 2nd Additional District & Session Judge Court for registration of FIR, for recording of statement under Section 154 Cr.P.C against Aquil Usaman Dhaduk and Rafiq Usman Dhaduk, that the both person on the basis of fake and forged thumb impression and signed succeeded to get prepared forged documents in their name.

3. Learned counsel for attorney *inter alia* contends that FIR in question is illegal; civil litigation is pending, in civil proceedings various orders were passed; accordingly applicant received possession of the property through Nazir after preparation of inventory; applicant also filed an application for depositing the rent which was allowed. Besides, he filed contempt application wherein show cause notices were issued. Order whereby FIR was registered in application under section 22-A Cr.P.C is *ex parte*.

4. In contra learned counsel for respondents (complainant) contends that attorney Usman Dhadak has no *locus standi* to file instant miscellaneous application; attorney has no right to come in the court on behalf of accused persons in criminal matter; accused persons have not approached this court, they are fugitive of law hence an stranger cannot be heard. It is further contended that first information cannot be quashed; this is only an information regarding commission of a cognizable offence hence by exercising powers under

section 561-A CrPC, information received by competent officer cannot be quashed as in case I/O is of the opinion that information is false, remedy is provided under section 182 CrPC wherein complainant can be booked hence instant petition is not maintainable.

5. Heard and pursued the record.

6. At this juncture it would be conducive to refer the case of Sughran Bibi v. State (PLD 2018 SC 595) wherein the objective of the FIR has been reaffirmed as **“FIR is only the first information to the local police about commission of cognizable offence”**. I shall feel quite safe in saying that mere lodging of an FIR never binds the I.O to believe such words as *gospel* truth but to take the same as **suspicion** which (suspicion), if within judgment of SHO, requires an investigation only then things shall proceed further. Every grievance requires to be responded by quarter concerned hence SHO has been left with no authority to straight away decline or disbelieve an *informant* nor to bring the law into motion (start investigation) on mere words but things have well been balanced by legislatures through induction of Section 157 of Code. This has been the reason that provision of section 154 of the Code brings the SHO under mandatory obligation to record statement of an *informant* regarding commission of cognizable offence while the provision of section 157 of Code vests discretion in same person i.e SHO to start investigation or otherwise. Here reference may well be made to case of Abida Parveen v. DSP & Ors (2012 P Cr.LJ 1861) wherein such legal position was reaffirmed as:-

“3. .. The SHO was bound to record the statement of the petitioner under section 154 Cr.P.C and then to take further proceedings under the relevant provisions of law. The SHO instead of recording the statement of the petitioner under section 154 Cr.PC has straightaway proceeded to take proceedings under section 157 Cr.PC which are illegal. The

former provides for recording of F.I.R. at the instance of complainant while section 157 Cr.P.C deals with the procedure for investigation of cognizable offence. The later provisions leaves it to the judgment of the police to refuse to investigate in certain cases but this power should not be confused with his initial responsibility to record the F.I.R. The SHO has no choice but to record an F.I.R. although, he has discretion in making investigation..

I would also add here that start of investigation *even* is on **'suspicion'** hence normally it has never been insisted that mere start of investigation into a cognizable offence should immediately result in arrest of the person, named in the FIR rather it has always been advised by honourable Apex Court that arrest, *normally*, should be on basis of substantive material and not merely on basis of FIR. Thus, rights of the accused and obligations of the I.O have been balanced well. Such principle has again be reaffirmed in the case of Sughran Bibi supra as:

“Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigation officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934.”

I shall proceed further and would find myself protected in adding that lodgment of FIR; commencement of investigation and even arrest of the accused can never be the *ultimate* conclusion that allegations are proved and investigation shall necessarily result in sending up the accused to face the trial but there are other legal possible disposal of the FIR which are **'disposal of crime as false (B class)** and **'disposal of crime as cancelled class (C-class)'** . Such investigation *even* can even bring initiation of legal proceedings against the *informant*. Therefore, I would add that *normally* an FIR, having obtained sanction of Section 157 Cr.PC, be not quashed as the same may amount interference in investigation (statutory obligation)

particularly when the same even can bring the consequences of **quashing** i.e disposal under false class.

7. Reverting to merits of the case, while keeping in view the above settled legal positions, I find from perusal of record that FIR is with regard to commission of fraud as alleged, therefore, it would never be advisable to take the role of investigator thereby deciding the legality or otherwise of document nor allegation of fraud or otherwise could be determined by this Court. Learned counsel for applicant has placed bundle of documents pertaining to civil litigation for which it would suffice to say that while exercising jurisdiction under section 561-A Cr.P.C this Court is not supposed to stamp legality or otherwise to a document or a claim particularly when same is subjudice before civil court of law. It would always be safe to let the investigating officer to continue with investigation and then to make a legal disposal which, too, without being influenced from what has been asserted in FIR but completing investigation as instructed in case of *Sughran Bibi* supra as:

During the investigation conducted after the registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.PC in the same case. **No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case;**

During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules 1934 “It is the duty of an investigating officer to**He shall not commit himself prematurely to any view of the facts for or against any person.**”

Thus, I find the instant petition meritless which, otherwise, is also not tenable for the simple reason that a stranger, even under cloth of attorney, has no right to seek quashing of FIR. Reference can be

made to the case reported in PLJ 2016 Criminal (Karachi) page 274. He, *however*, has a right to appear before the Investigating officer for helping the I.O in bringing the truth on surface. Accordingly, instant criminal miscellaneous application is dismissed.

8. While parting, it is added that the Investigation Officer shall proceed further pursuance of FIR, however no arrest shall be made unless tangible evidence is collected.

J U D G E

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