

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr. Misc. Appln. No.S- 38 of 2021

| DATE | ORDER WITH SIGNATURE OF JUDGE |
|------|-------------------------------|
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1. For orders on MA-693/2021
2. For orders on MA-661/2021
3. For orders on MA-497/2021
4. For orders on office objection
5. For orders on MA-498/2021
6. For hearing of main case
7. For orders on MA-499/2021.

22.01.2021.

Mr. Zubair Ahmed Khuhawar, Advocate for applicant.

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Urgency granted.

It is contended by learned counsel for the applicant that the FIR lodged by the private respondent for allegedly maltreating him with intention to commit his murder by the applicant and others on proper investigation was recommended by the police to be cancelled under “C-class”, such recommendation has been ignored by learned trial Magistrate by taking cognizance of the incident against the applicant and others by way of order dated 12.01.2021, same being illegal is liable to be set-aside after due notice to the respondent.

The allegation against the applicant and others is that they in furtherance of their common intention caused “*Sarota*” and iron road blows to the private respondent with intention to commit his murder and then went away by maltreating and threatening him of dire consequences. Such allegation of the private respondent was substantiated by his witnesses. In these circumstances, the police was not justified to have made recommendation for cancellation of the FIR

of the private respondent under “C-class”. It is settled by now that the opinion of the police has got no binding effect on the Court. Learned trial Magistrate by way of impugned order has taken the cognizance of the offence well within his competence, apparently on the basis of material, which was made available before him, such order could not be said to be illegal only for the reason that it has been passed against the applicant and others.

In case of Muhammad Akber vs The State (1972 SCMR 335), it has been held by Hon’ble apex Court that;

“Even on the first report alleged to have been submitted u/s 173 Cr.P.C, the Magistrate could, irrespective opinion of the Investigating Officer to the contrary, take cognizance, if upon the material before him he found that a prima facie case was made out against the accused person. After all the police is not the final arbiter of a complaint lodged by it. It is the Court that finally determined upon the police report whether it should take cognizance of not in accordance with the provision of section 190(i)(b) of the Code of Criminal Procedure Code.”

In view of above, the instant Criminal Misc. Application is dismissed in limini along with listed applications with advise to the applicant and others to prove their innocence by joining the trial.

JUDGE