

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Crl. Misc. Application No. S-293 of 2018

**BEFORE
MR. JUSTICE ARSHAD HUSSAIN KHAN**

Mr. Ghulam Muhammad Barejo, Advocate for the Applicant.
Mr. Mumtaz Ali Panhwar, Advocate for Respondents 1 to 15.
Mr. Muhammad Noonri, D.P.G for the State.

Date of Hearing : 29.08.2019
Dated of Order : 29.08.2019

ORDER

ARSHAD HUSSAIN KHAN, J.- Through this criminal misc. application the applicant has challenged the order dated 19.08.2019, passed by learned Special Judge Anti-corruption (Provincial), Larkana in direct complaint.

2. Briefly stated the facts of the present application are that the applicant is a government contractor and is registered with Pakistan Engineering Council. It has been stated that the applicant was awarded the contract by respondent No.1 for construction of link road from Shahdadkot Kamber Road to village Abdul Qadir Khoso, measuring 0/0-0/5 mile worth Rs.50,59,000/ and contract work for construction of Link Road from Shahdadkot-Kamber to Road village Abdul Qadir Khoso measuring 0/0-0/5 mile (retaining wall & re-decking of slab over culvert) in the sum of Rs.599,235/- and in this regard the work orders were also issued to the applicant. It has been further stated that the applicant pursuant to the terms of the contract has completed the 80 percent work of the scheme and in this respect he received only Rs.700,000/-. It has been stated that the applicant met respondents 1 and 2 for his remaining bills but he was asked for payment of Rs.300,000/- as bribe. Upon such demand, the applicant arranged the said amount and in presence of his two sons, it has been given to respondents 1 and 2 namely; Ghulam Shabir and Mubeen Sangi. It has been stated that the respondents despite receiving said amount have

failed to release the remaining amount of the contract to the applicant upon which he filed a direct complaint in the Court of Special Judge Anti-Corruption, Larkana, on 31.5.2018. The said complaint was subsequently heard on 19.10.2018 and the learned Special Judge after hearing the counsel and perusal of the material available on the record dismissed the said complaint, which order is impugned in the present proceedings.

3. Upon notice of this case, the respondents filed objections /comments while denying the allegations levelled in the present criminal misc. application have stated that total worth of scheme was Rs.66 lacs out of which Rs.51 Lacs was in respect of road scheme and Rs.15 Lacs were for earth work and during the work, official respondents passed bills and an amount of Rs.7,00,000/- were given to the applicant. It has been stated that the present applicant had earlier also filed direct complaint against the respondents, however, the said complaint was subsequently withdrawn by the applicant on 21.08.2015 where after the applicant again, after a lapse of three years, on the same facts and ground, filed second direct complaint which, after preliminary enquiry, was dismissed by the learned Special Judge Anti-Corruption (Provincial) Larkana. It has been further stated that the order impugned in the present proceedings is just, proper and within the parameters of law, hence does not warrant any interference by this Court through the present proceedings.

4. Learned counsel for the applicant, during the course of arguments while reiterating the contents of application has contended that learned trial court while passing the impugned order mainly relied upon preliminary enquiry, which is based on false and fabricated documents. He further contended that the official respondents have fraudulently misappropriated the funds of the government hence they have committed corruption. He also contended that the learned trial court while passing the impugned order has failed to take into account the contention of the learned counsel for the applicant during his arguments and lastly contended that the order impugned is not sustainable in law and is liable to be set aside with special cost.

5. On the other hand, learned counsel appearing on behalf of the respondents submits that the order impugned in the present proceedings is in accordance with law and the same is not liable to be set aside. Further contended that on the similar facts and grounds the applicant had already filed a direct complaint in the year 2015, which was subsequently withdrawn without seeking any permission from the court to file a fresh complaint and again on the same facts and grounds filed the direct complaint in the year 2018, which was rightly dismissed by the learned Special Judge Anticorruption (Provincial), Larkana. Learned counsel further contended that the present criminal misc. application is not maintainable and is liable to be dismissed.

6. I have heard learned counsel for the parties as well as perused the material available on the record. From the record, it appears that the applicant had earlier filed direct complaint before the Special Judge Anti-Corruption (Provincial), Larkana; Paras 5 and 7 of the same for the sake of ready reference are reproduced as follows:-

“5. That Sir, I demanded for amount of work on which the above named officials/accused demanded bribe of Rs.400,000/- (Rs.Four Lac only) in respect of final payment of my above work of constructions and I have bribed amount of Rs.400,000/- (Rs. Four Lac only) in presence of witnesses namely each:- i) Nizam-u-ddin s/o Zain-u-ddin Banglani & ii) Laloo s/o Gul Behar Banglani both r/o Village Gul Bahar Banglani Taluka Thul District Jacobabad and above named accused taken bribe amount in presence of witnesses and promised that they will give final payment bill within few days. But the above named given me less amount of Rs.1600,000/- (Rs: Sixteen Lacs only) by way of lum sum and not issued final bill.”

“7. That again above named accused/officials demanded bribe and given them bribe of Rs.150,000/- (Rs. One Lac fifty thousand only) in respect of preparation of final payment bill in year 2014 in presence of above named witnesses and above named accused taken bribe amount in presence of above named witnesses and promised to give final payment of my construction work.”

The said complaint was subsequently withdrawn by the applicant on 21.08.2015. and the relevant portion of the said order for the sake of ready reference, is reproduced as under:-

“ORDER
21.8.2015

The complainant above named has filed the instant complaint against the accused. The statement of

complainant was recorded u/s 200 Cr.P.C and direct complaint was sent to the Circle Officer, ACE, Kamber-Shahdadkot for preliminary enquiry and report who has submitted report that during P.E complainant has not produced his witnesses in support of his complaint. It is further submitted that complainant has filed affidavit during preliminary enquiry that he did not want to proceed further. The law permitted to the complainant to withdraw complaint at any stage, therefore, in the above situation no prima-facie case is made out hence the instant complaint is dismissed u/s 203 Cr.P.C.”

Record also reflects that on the same facts, the complainant again filed direct complaint in the year 2018 and the relevant portion whereof is reproduced as under:-

“.....The total worth of scheme was 66 lac out of them 51 lac rupees was in road scheme and 15 lac were for earth work. During the work, official's respondents passed bills for an amount of seven lac rupees in the favour of complainant. After that complainant 80% completed the scheme work. Meanwhile complainant met with official's respondents No.1 & 2, for remaining bills and official's respondents said to him you pay us three lac rupees as bribe then we will prepare your bills. After that complainant arranged the same amount, and in presence of his son 1.Kajlo, 2.Shamsuddin, complainant gave three lac rupees to Ghulam Shabir and Muqem Sangi. The same amount were counted by Muhram and Hadi Bux Bhutto, and directed to Azizullah & Saifullah to prepare his bills. After that complainant visited many times to the office of officials respondents and they kept him on hallo hopes. After that complainant has come to knowledge that all above officials respondents fraudulently misappropriated the amount of complainant, amount used in personal use and misused their powers in official capacity.”

Upon receipt of said direct complaint on 31.05.2018, the learned special Judge Anti-Corruption, in order to ascertain the truth or the falsehood of the complaint, sent the matter to the concerned Circle Officer, Anti-Corruption Establishment, Kamber, with the directions to hold a preliminary enquiry and submit report within 30 days. Subsequently, the report was sent and upon the said report the learned trial court passed the order, which is impugned in the present proceedings. Relevant portion of the said order, for the sake of ready reference, is reproduced as under:-

“I have considered the arguments of learned counsel for the complainant and perused the material available on record. From the perusal of material it shows that complainant himself admitted that he had given Rs.3,00,000/- (Three lacs) to the respondents /accused as bribe for preparation of remaining bill of contract work.

Prior to this complainant had filed direct complaint before this court on 10.6.2015 and same was sent for preliminary enquiry to the Circle Officer ACE Kamber-Shahdadt wherein the complainant had filed his affidavit that some amount of contract work done by him has been given to him, therefore, he is not ready to proceed with complaint further, which was dismissed by this Court vide order dated: 21.8.2015. Previous complaint was filed against 5 (five) persons i.e. Muharam Abbasi Supervisor, Azizullah Abbasi Head Clerk, Abdul Hadi Assistant Engineer, Engineer Choudhri Muhammad Muqem and Clerk Aijaz Abbasi but the present complaint has been filed against 6 (six) persons i.e XEN Ghulam Shabir Panhwar, Executive Engineer Muqem Sangi, Hadi Bhutto SDO Roads, Muharam Ali Abbasi Supervisor, Azizullah Kalhoro Clerk and Saifullah Channa Clerk. In previous complaint he claimed that he had paid illegal gratification of Rs.4,00,000/- to one Muharam and, in complaint in hand he has claimed that he has paid bribe amounting to Rs.3,00,000/- to Ghulam Shabir and Muqem. The complainant in his statement recorded u/s 200 Cr.P.C has given different version that amount of Rs.3,00,000/- was paid by him to Muharram Abbasi. The complainant has neither given date, time, place, month or year of payment of illegal gratification to the respondents. The complainant has falsified his own case by stating different amount of bribe i.e Rs.3,00,000/- and Rs.4,00,000/- to different respondent. The complainant without exhausting the remedy available under the law even not approached the high ups of the respondents nor approached to the officers of Anticorruption Establishment directly has filed the instant complaint before this Court. The witnesses given by the complainant in the complaint are his sons. It is well settled principle of law that complainant is bound to show prima-facie case against the respondents for which complainant has failed hence no prima-facie case is made out against the respondents therefore instant complaint is dismissed u/s 203 Cr.P.C.”

7. Record transpires that the applicant had withdrawn the earlier direct complaint without seeking any permission to file any other complaint, however, the applicant again filed direct complaint without mentioning and giving any reference to the earlier complain, which he had withdrawn. Record also reflects that the applicant has taken contradictory stance in the present complaint as compare to the previous complaint. The applicant has also failed to mention in the instant application any illegality or irregularity of the learned Anti-Corruption Court in passing the impugned order. From the perusal of order impugned, it reflects that the same has been passed by the trial court in accordance with law and after proper application of judicial mind. The record also does not reflect that the applicant has filed any

proceeding for recovery of his remaining amount of construction work of subject contract.

8. In view of the above circumstances, I am of the opinion that the impugned order of the learned trial court is quite legal and warranting no interference. Hence, this Criminal Miscellaneous application has no merit and as such is liable to be dismissed.

Foregoing are the reasons for my short order dated 29.08.2019 whereby instant Criminal Miscellaneous Application was dismissed with no order as to cost.

Judge

Abid H. Qazi**