IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.283 of 2021

Muhammad Sharif Khoso, applicant through:	Mr. Ragib Ibrahim Junejo, advocate
The State, through:	Mr. Muhammad Noonari, DPG
Ali Raza Jatoi, respondent No.5 through:	Mr. Zahooruddin Mehsood, advocate
Date of hearing:	**30.12.2021**

O R D E R

Adnan-ul-Karim Memon, J: - Applicant has called in question the order dated 4.5.20201 passed by the learned XIIth Civil & Judicial Magistrate Karachi South, wherry learned judge did not agree with the report of Investigation officer, disposing of the F.I.R No. 24 of 2021 for offenses under section 337-A (i), 337-L (ii), 147, 149, 506, 34 PPC at Police Station City Court Karachi, as a canceled class and took cognizance of the matter and ordered to register the case against the accused persons. An excerpt whereof is reproduced as under:-

> *"Keeping in view of above discussion, I am not convinced with the opinion of investigation officer. Therefore, I take cognizance in this present case. I.O is directed to submit list of witnesses within 03 days. Let the case be registered against the accused persons. Issue notice to accused persons."*

2. Heard learned counsel for the parties and perused the material available on record and case-law cited at the bar.

3. The main contention of the learned counsel for the applicant is that multiple FIRs of the same incident could not be registered with a further assertion that injured person Mahar Ali Jatoi and other complainants/injured persons are habitual of obstructing the proceedings of the Courts in Sukkur and the same could be witnesses in the daily cases diaries f the case pending adjudication before Vth Additional District Judge Sukkur in Sessions Case No.134/2018 (re-State v. Abid and others). He further contended that the accused persons being diligent and having reason to be present in the premises of City Court as to appear in Session Case No. 24/2019 even otherwise acted in self-defense as envisaged in Sections 96 & 97 PPC as the Gonda element Mahar Ali Jatoi and other were there to attack accused persons just to deter than not to appear before the learned VIIth Additional & District Judge Central; that the impugned order is suffering from various defects and perversity, thus liable to be set aside; that no reason has been assigned to deviate from the judgment of the

Hon'ble Supreme Court. He prayed for setting aside the impugned order dated 04.05.2021 passed by the learned Judicial Magistrate in respect of Crime No.24/2021 of PS City Court Karachi. In alternate, he submitted that the subject case may be transferred to another Court of law having jurisdiction as the learned Judge has already formed the opinion in the case.

4. On the contrary, learned counsel representing respondent No.5 has raised the question of maintainability of the instant Criminal Miscellaneous Application on the premise that once the cognizable offense is committed, the police is bound to register the FIR under Section 154 Cr. P.C book; that the learned Magistrate has rightly taken cognizance of the matter on the police report which was based on the wrong notion; that the case of Mst. Sughra Bibi is altogether different and is not applicable in the present case. Learned counsel referred to the objections filed on behalf of the respondent No.5 and submitted that the report of I.O was disapproved by the learned ADPP and learned Magistrate disagreed with such opinion of I.O concerning disposing of the case under "canceled class"; that two different incidents have taken place by the different parties, therefore, the case of the applicant is liable to be discarded and the instant Miscellaneous application is liable to be dismissed. In support of contentions, he relied upon a copy of FIR No.248/2018 of PS Preedy registered for offenses under sections 365, 302, and 34 PPC and argued that the case of parties needs to be tried through evidence.

5. Obviously, criminal cases are decided based on the material so collected by the prosecution during the investigation, and the evidence recorded in the trial Court, and that too, after appraisal of evidence by it under the law applicable thereto. This Court cannot assume the role of an investigation agency or of a trial Court to deliberate upon the factual controversies involved in the present case in exercise of its jurisdiction under Section 561-A Cr.P.C. This view has been consistently enunciated by the Honorable Supreme Court that High Court ought to refrain from exercising inherent jurisdiction, during the investigation of a criminal case.

6. From the contents of the FIRs No.23 & 24/2021 lodged both the parties, primarily show that a cognizable offense has been committed. In such a scenario, ordinary course of trial before the Court ought not to be allowed to be deflected by resorting to the inherent jurisdiction of this Court as both the parties have to put their defense and the trial Court has to see pro and contra between the parties, therefore, restraining the learned trial Court not to proceed with one case and proceed with another case is no requirement of the law.

7. The Honorable Supreme Court has taken stock of the controlling effect of the FIR in its judgment in the case of *Mst. Sughran Bibi v The State* (**PLD 2018 SC 595**).

8. In the aforesaid case, the Honorable Supreme Court took note of three categories of the judgments. The first category of judgments allowed only one FIR for an occurrence and provided that all the subsequent statements to the police were to be recorded under section 161 of the Code of Criminal Procedure 1898 (Cr. P.C), and that the police officials were free to investigate the case. The net result of this category was that only one case was to be handled by the police, and consequently, only one trial had to take place (1st category).

9. The second category provided that the police were bound to register FIRs under section 154 Cr. P.C, hence multiple FIRs could be registered. The outcome of this approach was that it allowed the multiplication of criminal proceedings. Hence, multiple FIRs meant multiple cases, and multiple cases meant multiple trials (2nd category).

10. The third category left the matter to the circumstances of the case, thereby resulting in affirming the position of the 1st category, as a general rule, while treating the 2nd category as an exception (3rd Category).

11. Tracing back case law from colonial times, the Honorable Supreme quoted from a Privy Council (PC) case, in which the judges repelled the propensity to treat each statement as a separate information report, and thus established that only one FIR of an occurrence was permissible under the law. The following points of law were declared by the judgment:

> "(i) According to section 154 Cr.P.C. an FIR is only the first information to the local police about the commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.
> (ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.
>
> (iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.
>
> (iv) During the investigation conducted after 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.P.C. 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.

> (v) 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 find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.
>
> (vi) 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 investigating 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. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.
>
> (vii) Upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person."

12. Having discussed the brief facts, reasoning, and declared law points regarding the judgment, it becomes clear that multiplicity of registration of cases is an unhealthy practice from the point of view of efficiency of the criminal justice system.

13. Here the case in hand is quite different on the premise that a cognizable offense was committed under section 337-A (i), 337-L (ii), 147, 149, 506, 34 PPC, and the same could not be disposed of as canceled class on the analogy that it hit the judgment of the Honorable Supreme Court in the case of ***Mst. Sughran Bibi***, in my view the learned magistrate rightly took cognizance of the matter and ordered to register the case against the accused persons. Primarily, in such circumstances, the law is the clear that a cognizable offense cannot be brushed aside merely on the analogy that the offense has taken place in a series of the same incident for which the other party has already reported the matter to the police and the case has already been challaned before the competent Court of law. The cognizable offense has to be taken to its logical conclusion by the competent Court of law and it cannot be left at the mercy of Investigating Officer who may form his opinion either to dispose of the matter as a canceled class, `A` and /or `B` class. However, the learned Magistrate must agree or disagree with the report of the Police Officer and take cognizance of the matter as provided under section 190 Cr.P.C.

14. Therefore, keeping in view the peculiar facts and circumstances of the case and discussion made thereupon, the present Criminal Miscellaneous Application, being bereft of merits, hence dismissed. Let the learned trial Court proceed with the matter and decide the same within a reasonable time i.e. two months after providing the opportunity to both the parties by recording evidence.

15. These are the reasons for my short order dated 30.12.2021, whereby, I have dismissed the present Criminal Miscellaneous Application.

JUDGE

Zahid/*