

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No.187 of 2021
Criminal Misc. Application No.253 of 2021

Date *Order with signature of Judge*

For hearing of Main Case.

03.02.2022

M/s. Jaffar Raza and M. Asad Iftikhar, Advocates.
[for applicant in CrI. M.A No.253/2021 and for respondent in CrI. M.A No.187/2021]

Mr. Nawabuddin Shar, Advocate.
[for applicant in CrI. M.A No.187/2021 and for respondent in CrI. M.A No.253/2021]

Syed Meeral Shah, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this common order, I propose to dispose of these two Criminal Misc. Applications bearing No.187 & 253 of 2021 as both arise out of one and same crime viz. FIR No.730/2020 registered with P.S Gulistan-e-Johar, Karachi, from the offences punishable under Sections 506/2, 337-A(v), 324 & 34 PPC.

2. The crux of FIR No.730/2020 registered with P.S Gulistan-e-Johar, Karachi, under Section 506, 337-A, 324 & 34 PPC, is that one Arshad and his sons Daniyal and Sameer, out of them, Arshad was having hatchet in his hand, Sameer was armed with iron bar and Daniyal was holding wooden bat in his hand. As and when, they reached, they started causing blows to applicant injured Tahir Iqbal Khan in order to commit his Qatl-e-Amd. To such effect, present FIR was lodged under Section 324 read with Section 34 PPC.

3. After registration of the case, FIR was assigned to I.O Muhammad Ashraf Almani / respondent No.5, for investigation, who after completion of legal formalities, deleted Section 324 PPC and has added Sections 337-A(v) read with Section 506/2 PPC. After completion of investigation and forming his opinion, I.O submitted his report in terms of Section 173 Cr.P.C before Civil Judge/Judicial Magistrate-XI, Karachi (East), who, after

hearing I.O and perusal of the police papers, accepted the report under section 173 Cr.P.C by concurring his opinion through his order dated 01.03.2021 which has been made impugned by the complainant as well as injured through Criminal Misc. Application No.253/2021; whereas, accused therein namely Arshad Khan @ Arshad Raheel has also questioned its legality through Criminal Misc. Application No.187/2021.

4. Learned counsel for the applicants in Criminal Misc. Application No.253/2021 contended that the I.O of the case for ulterior motives and with mala fide intention has deleted/changed the Sections which were mentioned in the FIR, particularly, he has deliberately omitted Section 324, P.P.C. in order to extend undue favor to the accused and get the case of the applicant weakened. He further contended that while committing the alleged offence the accused persons had used danda and iron bars which have been declared as lethal weapons by the Superior Courts and have held that such cases fall under Sections 307/324, P.P.C.. However, despite that the I.O. in the charge sheet has removed Section 324, P.P.C. deliberately at the instance of the accused and learned Judicial Magistrate has also approved such charge sheet without applying his own judicious mind to the factual as well as legal aspects of the case.

5. Learned counsel for the applicants/complainant as well as injured further submits that accused/respondent has been nominated with specific role of causing injuries to the injured under the FIR with intention to commit Qatl-e-Amd of the injured which prima facie constitutes an offence under Section 234 PPC; however, deletion of Section 324 PPC by the I.O is not warranted by the law as the injured had sustained grievous injuries on his person which is/are sufficient to hold that accused/respondent is responsible for committing attempt to murder as defined under Section 324 PPC. Lastly submits that ocular version also gets corroboration through medical evidence; hence, prays for grant of Criminal Misc. Application No.253/2021. He, therefore, submits that impugned order suffers from legal infirmities and is liable to be set-aside.

6. On the other hand, learned Addl. P.G, Sindh appearing for the State, supports the application in hand and opposes the impugned order on the ground that a prima facie offence in terms of Section 324 PPC was made

out; besides, DDPP had also recommended submission of challan under Section 324 PPC. Learned Addl. P.G, Sindh has drawn attention of the Court towards Annexure-E (available at page-41 of the Court file) where the opinion of DDPP is available, which reads as under;_

"In view of above facts and circumstances I am of the opinion that sufficient evidence available against the accused for commission of offences u/324/34 r/w section 337-A(ii) PPC therefore investigating officer is required to submit the report u/s 173 Cr.P.C against the accused persons before the court of judicial verdict as per law."

7. Learned counsel for accused Arshad Khan alias Arshad Raheel submits that injury allegedly sustained by injured Tahir Iqbal Khan is bailable, therefore, it does not constitute any offence under Section 324 PPC. He, therefore, opposes Criminal Misc. Application No.253/2021 and submits that Criminal Misc. Application No.187/2021 may be granted and Section 337-A(v) added by the I.O subsequently maintained by the Magistrate concerned may be deleted. He; however, admits that under the FIR complainant had categorically contended that accused nominated in the FIR, had caused injuries to injured Tahir Iqbal Khan, aims to commit his Qatl-e-Amd, which gets support from medical evidence.

8. I have heard learned counsel for the applicants, Addl. P.G, Sindh and the counsel for respondent/accused and perused record minutely.

9. The main grievance of the applicants/complainant as well as injured is with regard to the omission/deletion of Section 324 PPC from the FIR in the charge sheet. The contention of learned counsel for the applicants/complainant gets support from contents of the FIR. In order to make proper evaluation as well as assessment of such grievance, it would be advantageous to reproduce Section 324 PPC, which reads as under;_

"324-whoever does any act with such intention or knowledge, and in such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment for either description of a term which may extend to ten years, and shall also be liable to fine, and, hurt is caused to any one by such act, the offender shall be liable to the punishment provided for the hurt caused."

10. From the perusal of above Section it transpires that there are two limbs of the said Section i.e. (i) that if any act is done by anyone with

intention or knowledge that by such act he could be held guilty of committing Qatl-i-amd of any person, then he would be punished for a term which may extend to ten years and shall also be liable to fine; and (ii) if any hurt is also caused to any person by such act of the offender, he shall also be liable to the punishment provided for such hurt caused by him. Thus, it is crystal clear that for holding such offender to be guilty of offence under Section 324, P.P.C., it is not necessary that the victim should necessarily sustain injuries, on the other hand if any intentional attempt is made to commit Qatl, without causing any injury to the victim, even then such offender would be guilty of committing offence under Section 324, P.P.C. Reference can be had from the case of Ghulam Hussain v. The State reported in 1982 SCMR 1113(2).

11. Further, it also appears that the learned Judicial Magistrate while accepting the report/ charge sheet under Section 173, Cr.P.C. has not applied his own judicious mind to such report and has accepted the same in a mechanical manner although it is well settled principle of the law that the Magistrate is not bound by the report submitted by police under Section 173, Cr.P.C. and he may or may not agree with the conclusions reached by Investigating Officer. What he is obliged to do under the law, is to apply his own judicious and independent mind to the material placed before him and form his own opinion about the matter. There are plethora of judgments on this point; however, for the time being reference is made to only one case decided by this Court which is reported as Mohammad Shahid Khattak and another v. The State (PLD 2013 Sindh 220) wherein it was held as under:

"It is now well settled that Magistrate is not bound by the report submitted by police under section 173, Cr.P.C. and he may or may not agree with the conclusions reached by Investigating Officer. Nothing was provided in Section 190, Cr.P.C. to prevent a Magistrate from taking cognizance of case under clause (b) of Section 190, Cr.P.C. in spite of police report. The Magistrate was only required by law to apply his independent mind to the material placed before him and form his own opinion about the matter."

It is settled principle of Criminal Administration of Justice that for establishing act of making attempt to commit any offence/crime, intention and/or knowledge of the offender is to be seen and it is not necessary that the offender must succeed in his attempt to accomplish his act of

committing such offence/crime. Reliance can be placed upon the case of *ABDUL MAJID Versus The STATE (1973 SCMR 108)*. In instant case, offenders had not only succeeded in making attempt to commit Qatl-e-Amd of the injured but had also caused him severe injuries through weapons viz. iron bar as well as wooden Dandas etc. The injuries allegedly sustained by the injured have been corroborated by the medical version and therefore, it is for the trial Court to determine the veracity of the allegations after recording evidence of the prosecution witnesses.

12. In the light of above discussion as well as factual position of record, I am of the opinion that I.O had wrongly deleted/omitted Section 324 PPC as from contents of the FIR a prima facie offence under Section 324 PPC was constituted, therefore, Judicial Magistrate concerned did not apply his independent mind to the material placed before him and form his own opinion according to ocular evidence as well as medical evidence, therefore, acceptance of police opinion by the Magistrate is unjustified. Consequently, impugned order is not maintainable.

13. The upshot of above discussion is that removal of Section 324 PPC as mentioned in the FIR and non-mentioning of said Section in the charge sheet/challan by the I.O is illegal and unlawful. Consequently, Criminal Misc. Application No.253/2021 filed by the applicants/complainant as well as injured is hereby allowed. Resultantly, impugned order dated 01.03.2021 passed by learned 11th Judicial Magistrate, Karachi (East) to the extent of removal/deletion of Section 324 PPC is hereby set-aside. Whereas, Criminal Misc. Application No.187/2021 filed by accused Arshad Khan @ Arshad Raheel is hereby dismissed. Accordingly, learned Judicial Magistrate is directed to return case papers to I.O of the case with directions to submit fresh report in terms of Section 173 Cr.P.C in the light of discussion made hereinabove. Applications stands disposed of accordingly.

Office to place copy of this order in connected application.

JUDGE

Zulfiqar/P.A