

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Abdul Mobeen Lakho, J.

Cr. Rev. Application. No.273 of 2021

Jahanzaib Anwar	-----	Applicant
	Versus	
The State	-----	Respondent

Shaikh Javed Mir, advocate for applicant.
Mr. Muntazir Mehdi, Addl. P.G. a/w PI Asif Rauf SSP Office East
Karachi.

10.02.2022.

ORDER

MUHAMMAD IQBAL KALHORO J: Aggrieved by two orders dated 16.09.2021 and 21.10.2021 passed by learned ATC-II, Karachi in Spl. Case No.Nil bearing FIR No.204/2018 U/s 124-A, 125, 500, 505, 148, 149 PPC r/w section 7 ATA, 1997 of P.S. Boat Basin, Karachi rejecting applications of applicant for unblocking his CNIC and recalling NBWs in the said case, the applicant has filed this application seeking reversal of aforesaid orders.

2. It is stated that applicant is neither named as accused in the FIR nor cited as a witness in the final report submitted before the trial Court u/s 173 Cr.P.C. However, when on 30.10.2018 the matter was taken up by the trial Court, I.O. produced owner of the flat namely Malik Muhammad Ilyas and building supervisor who in reply to a court's query disclosed that of the flat where the alleged meeting conspiring against the State took place, applicant was tenant. On such disclosure, learned trial Court blocked his CNIC and ordered for his arrest without issuing even a showcause notice to him to explain his position. Subsequently, when applicant through his advocate filed applications for recalling NBWs and unblocking his CNIC, by means of aforesaid two orders, his applications have been dismissed.

3. Learned defence counsel has submitted that there is no material against the applicant; mere on disclosure by owner of flat that applicant was tenant of the flat where alleged meeting took place without any supporting evidence, an extreme action was taken against him by the trial Court without even affording him an opportunity to put up his case. He has relied upon PLD 2007 SC 31 and 2008 YLR 1462 to say that the trial Court cannot give directions to the I.O. to make

someone accused or strike off name of a particular accused from report u/s 173 Cr.P.C

4. I.O. is present and has submitted that during investigation nothing incriminating was found against the applicant and there is no evidence either that he was the tenant of flat where the alleged meeting took place or he was one of the participants.

5. Learned APG in view of such facts has not supported the impugned orders.

6. We have considered submissions and perused the material available on record and taken guidance from the case law cited in defence. It is an admitted position that the applicant is not cited as an accused nor any incriminating evidence has been found against him suggesting his nexus with the reported crime and offence. When the I.O. submitted report u/s 173 Cr.P.C, he did not even allude to any part of the applicant in the offence. In the circumstances, when any information regarding involvement of applicant was received by the trial Court through any source, the course available to it in law was to first issue a showcause notice in order to afford him an opportunity of hearing, get truthfulness of the information verified and after hearing all the parties concerned including the prosecution, if information was found cogent and reliable, join him as an accused. Only thereafter, if the applicant did not respond to the proceedings or orders of the trial Court, extreme action like blocking his CNIC and issuing warrant of arrest could have been taken against him. Without adopting such course, the trial Court has erred in taking hasty actions against the applicant by blocking his CNIC and issuing warrant of arrest against him without there being any request from the prosecution in this regard or verifiable and reliable evidence of his nexus in the offence. Therefore, we agree with learned defence counsel and learned Addl. P.G that impugned orders are not sustainable in law. As a result, we allow this Cr. Revision Application as prayed and set-aside the impugned orders.

JUDGE

JUDGE

A.K