

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Misc. Application No. S-226 of 2020

Date	Order with signature of Judge
12.11.2021	

Mr. Ghulamullah Memon, advocate for applicant
Mr. Illahi Bux Jamali, advocate for respondents No. 4 to 6
Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

Date of hearing: 12.11.2021
Date of announcement: 26.11.2021

ORDER

KHADIM HUSSAIN TUNIO, J:- Through captioned criminal miscellaneous application, the applicant has challenged the order dated 16.04.2020, passed by the Consumer Protection Judge/Judicial Magistrate, Naushahro Feroze, in Crime No. 285/2019, registered at Police Station Naushahro Feroze, u/s 420, 406, 447 and 506 PPC, whereby the learned Magistrate agreed with the report of I.O and disposed of the case under "C" class.

2. Allegedly, the complainant/applicant was renting out two shops to the accused Bashir Ahmed and Arif Memon. Accused Arif Memon had handed the shop's possession over to Bashir Ahmed while he was gone. The complainant/applicant sold out the two shops and on 05.10.2019, when he along with Shabeer Ahmed and Ghulam Nabi reached the complainant's sold-out shops, they saw accused Bashir Ahmed, Arif Memon and Muhammad Saleh illegally occupying the shops, to whom the complainant disclosed that the said shops had been sold, but the accused persons refused to vacate the shops. As such, the complainant got the FIR lodged on 19.11.2019.

3. During investigation, I.O recommended the case for disposal under "C" class and learned Judicial Magistrate, Naushahro Feroze, agreeing with the report of I.O, disposed of the case under "C" class.

4. Learned counsel for the applicant has contended that that the order passed by the learned Judicial Magistrate, Naushahro Feroze is bad in law and facts and he has passed the impugned order without applying his judicious mind and only relied upon the opinion of the police; that the I.O has not conducted a fair and impartial investigation of the matter; that the PWs have fully supported the version of complainant in their 161 Cr.PC statements, but the Investigation Officer, with malafide intentions, has submitted report u/s 173 Cr.P.C for disposal of the case under "C" class; that police opinion is not binding upon the court; that the accused have committed the offence; that the sale agreement present on record by the proposed accused is forged and a managed one. Lastly, the learned counsel for the applicant prayed that the impugned order may be set-aside.

5. Learned counsel for the respondent Nos. 4 to 6 and learned Additional Prosecutor General have, in one voice, supported the impugned order passed by the learned Consumer Protection Judge.

6. I have heard the learned counsel for the respective parties and perused the record.

7. At the very outset it would be observed that it is well-established law that a Magistrate is not expected to blindly follow the investigation conducted by the police, as undoubtedly *ipse dixit* of police is not binding on Magistrate. Of course, the Magistrate is legally bound to apply his judicious mind to the material brought before him and then form his opinion about the matter, however, after applying his judicious mind to the material placed before him, if he is of the view that the opinion formed by the I.O in the report U/S 173 Cr.P.C is just and appropriate, he is fully competent to accept the report and dispose of the case as proposed by the I.O. Perusal of the record shows that the case was thoroughly investigated by the Investigating Officer and the learned Consumer

Protection Judge/Judicial Magistrate has passed an elaborate and speaking order while considering the fact that the purported offence involves a civil dispute for which the proposed accused had filed F.C Suit No. 107 of 2019 before the Court of Senior Civil Judge-I, Naushahro Feroze and had also produced an agreement to sale pertaining to the shops/land in dispute for which they had allegedly paid Rs. 5,000,000/- as earnest money. This proves that the parties are already at loggerheads with each other. As far as the contention of learned counsel for the applicant regarding the sale agreement produced by the proposed accused being forged is concerned, it cannot be established by either this Court or even by the learned Judicial Magistrate at the time of disposing of the case under "C" class. The only Court to come to the conclusion whether the sale agreement is forged or not is the Civil Court having jurisdiction after examination of the evidence of the parties. The learned Magistrate does not appear to have committed any illegality while passing the impugned order.

8. In the light of above facts, circumstances and discussion, captioned criminal miscellaneous application is dismissed and the impugned order dated 16.04.2020 passed by learned Consumer Protection Judge/J.M Naushahro Feroze is upheld.

J U D G E