

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
L A R K A N A**

*Criminal Miscellaneous Application No.S-93 of 2017*

Mr. Safdar Ali Ghouri, advocate for the applicant.

Mr. Muhammad Noonari, D.P.G

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Date of hearing: 06-12-2018

Date of order: 06-12-2018

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**R D E R**

**KHADIM HUSSAIN TUNIO, J:** - Through this Criminal Miscellaneous Application filed under Section 561-A Cr.P.C, the applicant has assailed order dated 15.05.2017, passed by the learned 1<sup>st</sup>-Additional Sessions Judge Jacobabad passed in Sessions Case No.149 of 2013, re. State Versus Nazir Magsi and others, whereby DIGP Larkana has been issued directions to get an F.I.R registered against the applicant/Investigating Officer.

2. Precisely, facts of the prosecution case are that on 10.03.2011, the complainant Allah Rakhio Sarki lodged F.I.R with P.S Thull stating therein that on the eventful day, he, along with his brothers, was detained by the accused persons and were taken away in Datsun to police station Thull and then to bungalow of S.H.O Asif Ali. HC Manzoor Ahmed, HC Nasruallah, HC Muhammad Sallah and private person namely Nazir Ahmed Magsi tied up Manzoor Ahmed Sarki and hung him in the hook of ceiling fan and maltreated him. Manzoor Ahmed, not tolerating such treatment went unconscious on which complainant party raised cries and pleaded for mercy. Manzoor Ahmed had died

then and there. Thereafter, police personnel and private persons escaped from the scene. Complainant along with his brother Dost Mohammad unfastened the ropes tied to the dead body of Manzoor Ahmed, examined his injuries and while leaving his brother over the dead body, complainant went to P.S and lodged the F.I.R.

3. After registration of the F.I.R, investigation followed. Accused Nazir Ahmed Magsi was arrested while all the remaining seven accused were shown as absconders in the challan. N.B.Ws were issued against the absconding accused, but the same could not be executed as all the accused/absconders had shifted to an unknown place and there was no hope of them being arrested. As such, learned Civil Judge & Judicial Magistrate Thull was pleased to examine applicant/S.I.O and recorded his statement and thereafter ordered issuance for proclamation u/s 87/88 Cr.P.C against the absconding accused vide order dated 15.04.2011. Thereafter, during trial some of the accused sought their bail and one of the accused namely SIP Asif Ali Pechoho has been acquitted and trial was in progress. All of a sudden, learned trial court was pleased to conduct inquiries through police officers and finally vide impugned order dated 15.05.2017 ordered D.I.G Police Larkana for registration of F.I.R against applicant/S.I.O with the allegations that he is a perjurer and intentionally fabricated false evidence against police personnel to get them declared as proclaimed offenders. Hence, instant Cr. Miscellaneous Application was filed.

4. Learned counsel for the applicant has contended that the impugned order is illegal and unfair being a miscarriage of justice; that the role of the present applicant is of an investigating officer who was

posted as S.I.O; that initially there were five persons nominated in the F.I.R and subsequently the names of three unidentified accused were disclosed by the witnesses in their statements under Section 164 Cr.P.C; that the applicant had arrested accused Nazir Ahmed Magsi while the remaining seven accused had absconded away from the very date of incident; that as usual learned Magistrate/Civil Judge & Judicial Magistrate Thull was pleased to record the statement of applicant/S.I.O on oath and he disclosed the true facts regarding absconsion of all seven accused hence the proclamation proceedings were ordered to be issued against the absconding accused; that names of accused are disclosed in the statement u/s 164 Cr.P.C and all the accused are absent from their duties and absconding from the case and have shifted to an unknown place and it was a true statement given by the applicant on oath in the year 2011; that no opportunity had been afforded to the applicant before passing the impugned order and learned trial court had passed the impugned order under a wrong impression that the absconding accused were in police service, therefore, they should have been arrested. In the end, he has prayed for setting aside the impugned order.

5. On the other hand, learned A.P.G. for State fully supported the impugned order and opposed the present application.

6. Heard the learned counsel for the applicant, learned A.P.G. and perused the record with their assistance.

7. In order to reach a proper conclusion, it would be necessary to go through the relevant provision of law on the subject under section

191 P.P.C defines *perjury* or making false evidence which reads as follows:-

**Section 191. Giving false evidence**

*Whoever being legally bound by an oath or by an express provision of law to state truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true is said to give false evidence.*

**Explanation 1.**---*A statement is within the meaning of this section, whether it is made verbally or otherwise.*

**Explanation 2.**---*A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.*

**Section 193 P.P.C. Punishment for false evidence.**---*Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

*And whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.*

**Explanation 1.**---*A trial before a Court Martial is a judicial proceeding.*

**Explanation 2.**---*An investigation directed by law preliminary to a proceeding before a court of justice, is a stage of a judicial proceeding, though that investigation may not take place before a court of justice.*

The perjury has been defined in Black Laws Dictionary Eighth Edition as under:

"That an act or an instance of a person deliberately making material false or misleading statement while under oath".

Punishment for making perjury has been provided under section 193 P.P.C. which has already been reproduced hereinabove.

8. The careful examination of the above section would show that any action under section 193, P.P.C. can only be taken against any person after conclusion of trial, it means that any action taken during trial or at investigation stage would be violative of law. In the case in hand neither the applicant has given any false statement on oath before any court of law nor has he resiled from any previous statement made by him. Learned Magistrate recorded the statement of applicant as he was the Investigation Officer, while ordering the proceedings against absconding accused u/s 512 Cr.P.C. Mere deposition of a statement does not in any way constitute an offence punishable under section 193, P.P.C. nor it is scheme of law to launch a prosecution of perjury against any person before conclusion of trial, nor was the applicant cross-examined by any person before the magistrate. Nor was his statement challenged by anyone to be false or fabricated, that being prior to passing of the impugned order of the trial Court.

9. Not only this, the said statement of the investigation officer was recorded before the magistrate and it is well established position of law that proceedings perjury can only be started by the authority with whom the statement was record. Moreover, concerned court has to justify the circumstances which warranted legal action against the complainant and witnesses regarding giving

false evidence or fabricating evidence. Most importantly, the applicant had been condemned unheard and it is a ratio of precedents that show cause notice is required under the law before initiating criminal proceedings and the same will meet the spirit of “fair trial” as envisaged under Article 10-A of the Constitution of Islamic Republic of Pakistan.

10. For whatever has been discussed above, present Criminal Miscellaneous Application was allowed vide short order dated 06.12.2018 and impugned order was set aside while proceedings against the applicant were cancelled.

These are the reasons for the same.

**J U D G E**