

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. D- 179 of 2018

Date of hearing	Order with signature of Judge
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For hearing of main case.

Before:

Mr. Justice Salahuddin Panhwar &
Mr. Justice Adnan Iqbal Chaudhry.

29-06-2018

Mr. A. R. Faruq Pirzada Advocate for applicant.

Mr. Abdul Rehman Kolachi, Deputy Prosecutor General a/w Muhammad Aijaz Bhatti, DSP/I.O of crime No. 20 of 2018 of P.S, Mehar-Dadu.

Mr. Qurban Ali Malano Advocate files Vakalatnama on behalf of respondent No.3.

ORDER

Salahuddin Panhwar, J. Through this Crl. Misc. Application, applicant has challenged the impugned order dated 24.02.2018, passed by learned Judge, ATC Naushehro Feroze, whereby he accepted the recommendations of I.O, who let off accused Sardar Ahmed Khan under section 497 CrPC and accused Burhan Chandio under section 169 CrPC by placing their names in column No.2 of the charge-sheet, submitted in crime No. 20 of 2018 of P.S, Mehar-Dadu for offences under sections 302, 504, 114, 109, 148, 149 PPC r/w section 6/7 ATA, 1997.

2. Facts of prosecution case, as set out in the FIR, are that complainant Pervaiz Ahmed (applicant) lodged FIR alleging therein that Mukhtiar Ahmed is his brother, whereas Karamullah Khan Chandio is his father, who was Chairman of U.C Baledi. One Sardar Khan Chandio son of Shabir Ahmed since long used to issue threats to his brother Mukhtiar Ahmed Khan Tamandar in respect of his collusion against him with the help of other Tumandars. He asked him to stop or to face consequences along with Tamandar Council and other family members. Such threats were conveyed through different people at different times. On 17.01.2018 in the morning, complainant along with his father Karamullah Khan, brothers Mukhtiar Ahmed Khan and Qail Hussain, Member District Council, cousins Aijaz Ahmed and Manzoor Ahmed were standing

outside their Otaq situated at road leading from police station towards Fareedabad, when at 09-00 a.m, two vehicles viz. one white Corolla Car No. BFZ-428 and another white Land Cruiser came and stopped, out of which six armed persons identified as 1. Ali Gohar Chandio with KK, 2. Ghulam Murtaza Chandio with repeater, 3. Sikandar Chandio with repeater, 4. Zulfiqar Chandio with repeater, 5. Ghulam Qadir alias Qadu Chandio with repeater and one accused Burhan Chandio was sitting in Land Cruiser and retracted down glass window of the car and instigated other accused that these people insptie of many warnings tried to insurrect against Sardar Khan therefore teach them a lesson and make example for others and kill them, on such instigation of Burhan Khan and at the instance of Sardar Khan, other accused opened fires and created terror among the people and accused Ghulam Qadir alias Qadu made fire of his repeater upon father Karamullah which hit him on his belly, his father grappled accused Ghulam Qadir during which other accused, namely, Ali Gohar with KK and Ghulam Murtaza with repeater fired in order to rescue Ghulam Qadir and one KK fire hit father Karamullah on right side of chest and other KK and repeater fire hit Qadu and both of them fell down, thereafter accused Murtaza fired with his repeater with intention to murder upon brother Mukhtiar Ahmed which hit him on left side of chest and accused Ali Gohar fired with his KK which also hit Mukhtiar Ahmed on his face and he fell down while screaming, thereafter accused Sikandar fired directly with his repeater with intention to murder upon his brother Qabil Hussain which hit him on his right side buttock who also fell down while screaming. Thereafter, all accused fired indiscriminately and raised slogans that whoever will revolt against Sardar he will also meet the same fate and went away in their vehicles towards western side. Then complainant party saw brother Mukhtiar Ahmed who sustained firearm injuries on his face and chest and father Karamullah sustained firearm injuries on his belly and chest and brother Qabil Hussain sustained firearm injuries on his buttock whom they shifted to Taluka Hospital, Mehar where father Karamullah and brother Mukhthiar Ahmed succumbed to injuries and brother Qabil Hussain was referred to Larkana by doctors. After proceedings at hospital, complainant party buried the dead bodies and in the evening received information regarding death of Qabil Hussain at Larkana, whose dead body was shifted to Taluka Hospital, Mehar and after its postmortem, complainant

came at P.S and lodged the FIR that accused in collusion with each other duly armed spread panic and terror and fired indiscriminately at the instance of Sardar Khan and on the instigation of Burhan Khan and have murdered Mukhtiar, Qabil Hussain and Karamullah and terrorized common men who shut their shops and ran away.

3. Learned counsel appearing on behalf of applicant/complainant contends that Investigating Officer has not properly conducted investigation and he was in league with respondents No.2&3, as such he let off them by placing their names in column No.2 of the charge-sheet and such recommendations were accepted by the trial court by impugned order without appreciating material available on record judiciously. He next contends that the PWs have fully supported the version of complainant recorded in the FIR. He prayed for setting aside the impugned order and taking of cognizance of the matter.

4. Learned DPG for the State while adopting the arguments advanced by learned counsel for applicant did not support the impugned order.

5. This Crl. Misc. Application was presented on 02.03.2018. Notices were issued and on the next date i.e. 28.03.2018, Mr Athar Abbas Solangi Advocate filed Vakalatnama on behalf of respondents No.2&3. On 12.04.2018, learned APG sought time due to non-availability of police papers. On 03.05.2018, learned counsel for respondents filed reply, however, on 17.05.2018, counsel for applicant was not available but by order dated 26.06.2018 directions were issued with regard to arrest of absconding accused, protection of complainant witnesses and their families as well matter was adjourned with intimation notice to learned counsel for respondents. On 28.06.2018, associate of learned counsel for respondents sought time on the plea that his senior is not well and contended that he will argue this matter today, hence this matter was adjourned for today. Today, Mr. Qurban Ali Malano Advocate files Vakalatnama on behalf of respondent No.3 alongwith Mr. Asif Abdul Razazaq Soomro Advocate and further seeks time as well as he submits application of Mr. Asif Abdul Razaque Soomro Advocate that due to death of his maternal uncle he is unable to proceed with the case, however, Mr. Malano represented other accused in Crl. Transfer Application No. D- 54 of 2018.

6. Admittedly, this is a case of heinous in nature, three innocent persons were murdered in front of their house. Allegations against the respondents/accused are that one accused was annoyed with social activities of deceased persons. Being Sardar, he on many times issued threats of dire consequences to the deceased persons. Even such news were published in newspapers prior to this incident. During investigation, I.O placed names of Sardar Khan Chandio and Burhan in column-II of the charge-sheet on the plea of alibi, such report was submitted before trial court and learned trial judge by impugned order accepted the Challan. It would be conducive to refer impugned order of trial court which is that:

“Heard Investigation Officer in person, learned APG for the State and perused police papers, which shows that the allegations against accused Sardar Ahmed Chandio are that he has abetted co-accused for commission of the offence but the complainant and witnesses have not disclosed date, time and place of abetment. The contents of FIR shows that accused Burhan was present at the place of incident in his car and he instigated other accused persons for commission of the offence. I.O has recorded statements of independent persons from place of incident who were shop keepers and hotel owner, they in their statements have not stated a single word regarding presence of accused Burhan and abetting/instigating other accused persons for commission of offence. I.O has also recorded the statement of one Mumtaz Ali Chandio where accused Burhan has stayed night in between 16th and 17th January, 2018 at his otaq at Qasimabad. I.O has also collected CDR of cell phone of accused Burhan, which shows his presence at Qasimabad Hyderabad at the time of innocent.

In view of above stated facts and circumstances I.O has let off accused Sardar Ahmed Khan under section 497 Cr.P.C and accused Burhan Chandio under section 169 Cr.P.C and placed their names in column No.2 of challan-sheet while he recommended for taking cognizance against accused Sikandar Chandio, Ali Gohar Chandio, Ghulam Murtaza Chandio and Zulfiqar Ali Chandio. The recommendation of I.O is accepted”.

7. I.O present in court emphasizes copy of Challan showing therein that co-accused were having connection with respondent No.2/accused Sardar Khan Chandio. Even mobile was secured and message description is shown in the Challan. On query, I.O contends that as per his opinion

accused Sardar Khan Chandio is accused, therefore, he has placed his name in column-II of the charge-sheet and as per his training persons named in column-II of the Challan are also accused and it was upon the trial court to examine this aspect. Since allegations against respondent/accused Burhan Chandio is that he was available at the site and instigated other accused persons to commit murder and on his instigation, three innocent persons lost their lives. Material witnesses have supported such plea as well. In investigation, connection of co-accused persons with respondent/accused Sardar Khan is established. At this juncture, it is relevant to mention that plea of alibi cannot be considered during investigation and pre-trial verdict cannot be announced. Even during trial, if plea of alibi is taken under Qanun-e-Shahadat, accused persons are required to substantiate that plea by recording of evidence, hence accused cannot be benefited during investigation or at the stage of trial. Trial court's order reflects that same is completely against the norms of criminal administration of justice. Learned trial judge has failed to examine copy of Challan wherein conversation of respondent/accused Sardar Khan Chandio with co-accused persons is visible, hence we are of the view that this is a case wherein accused are required to be joined. Reference can be made to the case of Muhammad Sher v. The State (2013 SCMR=====).

8. Accordingly, instant CrI. Misc. Application stands allowed and impugned order dated 24.02.2018 is set aside. Respondents No.2&3/accused are directed to be joined as accused in the trial.

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