

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Misc. Appln. No.S – 417 of 2018

Date	Order with Signature of Hon'ble Judge
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For hearing of case

- 1. For orders on office objection at flag 'A'
- 2. For hearing of main case
(Process issued)

22.11.2019

Mr. Shabbir Ali Bozdar Advocate for the Applicant/complainant
Mr. Abdul Sami Kalhoro Advocate for private respondents
Mr. Khalil Ahmed Maitlo, DPG for the State

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Aftab Ahmed Gorar, J; The applicant/complainant by way of instant Criminal Miscellaneous Application has impugned order dated 24.04.2018 passed by learned 2nd Civil Judge and Judicial Magistrate, Rohri, whereby he has disposed of FIR Crime No.18 of 2018, under Sections 147, 148, 149, 447, 448, 506/2 and 504 PPC of Police Station Salehpat, under "C" class.

2. The facts of the prosecution case are that on 15.3.2018 at 2100 hours, the applicant/complainant Muhammad Ibrahim lodged his FIR, alleging therein that he owned an area of (13-13) Acres out of Survey Nos.1093 and 1095 situated in Deh Chak No.5, Ali Nawaz and others are also Khatedaers in the said property, the private respondent Islam Magsi used to threaten him for vacating the said property. On

03.01.2018 at morning time, he along with Muhammad Paryaland Ali Gohar were rotating the water, it was 10:00 am, there came private respondents Islam, Gul Muhammad, Aleem, Irshad, Khalid, Meer Muhammad and Arbab, duly armed with weapons. Out of them, private respondent Islam instigated the remaining private respondents, as such they all caused kicks and fists to him, but was rescued by the witnesses. The private respondents pointed pistols and threatened him for leaving the landed property, as such due to scare of weapons he left the lands, whereas, the private respondents occupied the land and standing wheat crop, thereafter he went to police station and lodged the FIR as stated above. On investigation, police challaned the private respondents for trial but the learned Magistrate did not agree with the recommendations of the Investigating Officer and disposed of the case under 'C' class.

3. It is contended by learned counsel for the applicant/complainant that the learned trial Magistrate has disposed of the FIR lodged by the applicant/complainant without lawful justification by making irrelevant observations; that the private respondents have committed a criminal offence; that after registration of the FIR the Investigating Officer has collected sufficient material as such submitted challan against the private respondents for their trial; that the version as set out in the FIR by the applicant/complainant is fully supported by the prosecution witnesses Muhammad Paryal and Ali Gohar. He lastly prayed for

setting aside of the impugned order with direction to learned trial Magistrate to take cognizance of the offence in accordance with law. In support of his contentions, he has relied upon the cases of ***Abdul Hafeez Junejo v. The State (2010 Y L R 470)*** and ***Amanat Ali v. 1st Civil Judge & J.M Daharki and 2 others (2015 Y L R 2312)***.

4. It is contended by learned DPG for the State and learned counsel for the private respondents that the FIR has been lodged with unexplained delay of 02 months and 12 days; that there is no injury sustained either by the complainant or by the prosecution witnesses, though the private respondents allegedly armed with weapons and allegedly assaulted upon the applicant / complainant and dispossessed / ousted him from the landed property; that the civil litigation was pending adjudication between the parties; that Investigating Officer failed to collect sufficient material, whereas, the applicant/complainant in order to satisfy his grudge with the private respondents is intending to involve them in this case falsely. They lastly sought for dismissal of the instant Criminal Miscellaneous Application by supporting the impugned order.

5. I have considered the above arguments and perused the record.

6. Admittedly, there was civil dispute between the parties and such litigation before the revenue forum was pending adjudication. The PWs Muhammad Paryal and Ali Gohar have given contradictory versions in

their statements recorded by the Investigating Officer under Section 161 Cr.P.C. The learned Magistrate was right to disagree with the report of the police submitted under Section 173 Cr.P.C. It would be conducive to reproduce the relevant portion of the impugned order, which reads as under;

“After hearing both the parties and perusal of the record available. It is observed that there are three FIRs has been lodged against same accused persons in just two to three weeks at same police station, as Crime No.15/2018, 18/2018 and 22/2018. Further it is also on record accused side has filed an appeal against one Qalander Bux Shah, which is pending before Deputy Commissioner Sukkur. Further it is also on record that Qalander Bux Shah has also lodged an FIR Crime No.91/2017 against same accused in which Qalander Bux Shah has shown complainant of Crime No.15/2018 as his driver and such FIR has been disposed of in ‘C’ class. Therefore, the link of such false FIR and lodging these three FIRs against same accused one by driver of Qalander Bux Shah also supported the contention of learned counsel for accused that complainant of this FIR is also servant of Qalander Bux Shah. Moreover, in support of contention that there is dispute over village land learned counsel has submitted some newspaper cutting which are showing that accused side has protesting against illegal occupation of their land. So far as material evidence is concerned it is observed that there is delay of more than 2 month (sic) in lodgement of FIR which also create doubt on the versin of complainant. Moreover, it is also strage that neither complainant nor his witnesses has sustained any injury, though all accused were armed

with deadly weapons and the complainant side was on their mercy. Moreover, complainant stated that accused persons has occupied his land but memo of site inspection doesn't show that the place of incident is occupied by accused and accused were present there."

7. There was insufficient material brought on record by the Investigating Officer, whereas, the version of applicant / complainant as set out in the FIR is not in line with the statements of the prosecution witnesses namely Muhammad Paryal and Ali Gohar on material aspects of the case, even then the Investigating Officer recommended the case for trial before the learned Magistrate. Almost three FIRs i.e. Crime No.15, 18 and 22 of 2018 registered against the private respondents within a period of one week. The learned Magistrate while exercising its discretionary powers has rightly passed the impugned order, which does not call for any interference by this Court, consequently the impugned order dated 24.04.2018, is maintained. The case-law which is relied upon by learned counsel for the applicant/complainant is on distinguishable facts and circumstances hence cannot be relied upon. The instant Criminal Miscellaneous Application is dismissed.

Judge