

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Misc. Appln. No.S- 390 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 26.04.2018 passed by learned 2nd Civil Judge and Judicial Magistrate, Rohri, whereby he has disposed of FIR Crime No.15 of 2018, under Sections 147, 148, 149, 447, 448, 511, 452, 506/2 and 504 PPC of Police Station Salehpat, under "C" class.

2. The facts of the prosecution case are that on 11.3.2018 at 1030 hours, the applicant/complainant lodged his FIR, alleging therein that he owned an area of 2-00 Acres out of Survey No.1130 situated in Deh Chak No.5, where his house and otaq are situated, whereas, he cultivates the remaining area, the private respondent Gul Muhammad used to threaten him for vacating the said property. On 10.03.2018 at

evening time, he was sitting in his otaq along with his friends Saen Dino and Naseer Hussain, it was 6:30 pm, there came private respondents Gul Muhammad, Mir Muhammad, Karam Khan, Sattar, Nabi Dino alias Goro, Habib, Ghulam Sarwar alias Bebo and Azeem, duly armed with weapons. Out of them, private respondent Gul Muhammad instigated the remaining private respondents, as such he was forcibly ousted from his Otaq and they occupied his Otaq, house and the landed property, thereafter on the advice of his brothers 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 Saen Dino and Naseer Hussain. 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 one day; 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 house and otaq of the complainant and dispossession / ousted him from Otaq, house and landed property; that the civil litigation is 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 is pending adjudication. The PWs Saeen Dino and Naseer Hussain 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 PW Naseer is not supporting the version of complainant and not only PW Naseer but also there is contradiction in the statement of PW Saen Dino and complainant as PW Saen Dino in his statement under Section 161 Cr.P.C stated that all accused came and ousted them from the Autaq and then they went away from there while complainant in FIR stated that all accused has beaten him and his friends by fists and punches, but such fact has skipped by PW Saen Dino. Moreover, it is also strange that neither complainant nor his witnesses has sustained any injury, though all accused were armed with deadly weapons and the complainant side was at their mercy. Further perusal of record also shows that accused Gul Muhammad has filed an appeal against Qalander Bux Shah which is pending before revenue authority, and the contention that complainant has lodged this FIR on the instance of Qalander Bux Shah, learned counsel for accused in support of such contention also submitted photocopy of FIR No.91/2017 which was lodged by Syed Qalander Bux Shah against present accused and in such FIR Qalander Bux Shah has shown present complainant as witness and his driver, which shows that there is a weight in the contention of the learned counsel for accused that complainant has lodged this FIR on the instance of Qalander Bux Shah, because accused Gul Muhammad has filed appeal against Qalander Bux Shah and instated of

contesting such appeal Qalander Bux Shah along with complainant tried to convert civil dispute into criminal only for pressurizing accused persons. It is also important to mention here that FIR lodged by Qalander Bux Shah crime No.91/2017 was also disposed of in 'C' class by this Court. Moreover complainant stated that accused persons has (sic) occupied his house and Autaq, but memo of site inspection doesn't shows (sic) that the place of incident is occupied 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 supported by the prosecution witnesses namely Saen Dino and Naseer Hussain on material aspects of the case, even then the Investigating Officer recommended the case for trial before the learned Magistrate. 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 26.04.2018, 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