

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Misc. Appln. No.S- 1176 of 2017

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

1. For orders on office objection at flag 'A'
2. For hearing of main case

**16.12.2019**

Mr. Nazir Ahmed Junejo Advocate for the applicant  
Mr. Mansoor Ahmed Shaikh Advocate for proposed accused  
Mr.Khalil Ahmed Maitlo, DPG for the State

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**Aftab Ahmed Gorar, J-** The applicant by way of instant Criminal Miscellaneous Application under Section 561-A, Cr.P.C, has impugned the order dated 28.11.2017 passed by learned Ex-Officio Justice of Peace / Sessions Judge Khairpur on application under Section 22-A and 22-B Cr.P.C, whereby she has dismissed the application of applicant.

2. The facts in brief necessary for disposal of instant Criminal Miscellaneous Application are that the applicant filed a criminal miscellaneous application u/s 22-A and B Cr.P.C seeking direction against SHO P.S Ahmedpur to record his FIR against the private respondents, that on 18.11.2017 at 4:00 pm, when he along with Shahban Ali, Nek Muhammad, Mst. Kazbano and Mst. Saforan were plucking the cotton crop in the lands of Shahban, whereas, his

daughter Mst. Majida aged 13 years was bringing tea for them and when she reached adjacent the lands of Shahban on the katcha path near Pir Inayat Fakir, where the proposed accused along with one unknown accused duly armed with pistols emerged and within their sight caused pistol butt blows on her head, the applicant party rushed for rescuing her, but the proposed accused escaped away. The applicant and witnesses saw that baby Majida was bleeding from her head, as such she was being taken to hospital for treatment but died on the way. Thereafter the applicant informed the Ahmedpur police and such letter was issued for postmortem and then on approach the SHO refused to record his statement, hence the applicant filed the application before the Sessions Judge / Ex-Officio Justice of Peace seeking directions, but the same was dismissed vide impugned order dated 28.11.2018, giving rise to the present application.

3. It is contended by learned counsel for the applicant that the proposed accused have committed a cognizable offence, therefore, they are liable to be prosecuted in accordance with law; that in the incident a girl of 13 years has been killed by the proposed accused; that the SHO P.S Ahmedpur has submitted report wherein it is stated that the deceased has been hit by buffalo; that the learned Ex-Officio Justice of Peace has given weight to the report of Police; that the

WMO, KMC Civil Hospital Khairpur has issued such postmortem report that the death has occurred due to head injury. In such circumstances, learned Ex-Officio Justice of Peace/ Sessions Judge Khairpur ought to have directed the SHO P.S Ahmedpur for registration of FIR against the private respondents for committing murder of baby Majida. He lastly prayed that the impugned order may be set-aside and the SHO Police Station Ahmedpur may be directed to record the statement of the applicant u/s 154 Cr.P.C.

4. Learned Deputy Prosecutor General as well as counsel for the proposed accused by supporting the impugned order sought for dismissal of the instant criminal miscellaneous application by contending that there was only injury which was caused to the deceased due to hit by the buffalo and such report is furnished by the SHO before the Ex-Officio Justice of Peace; that the applicant wants to rope the proposed accused in the false criminal cases; that the SHO has rightly refused to record his statement as the applicant has stated false facts before the police; that no such incident has taken place.

5. I have considered the above arguments and perused the record. The report of SHO Police Station Ahmedpur reveals that there is dispute over the landed property in between the applicant and the proposed accused, therefore, the applicant while using the foul

tactics intends to drag the proposed accused in criminal cases. The report further reveals that on 18.11.2017 the present applicant Ghulam Rasool has contacted duty Incharge HC-512 Rafique Ahmed of police station Ahmedpur through cellphone that his daughter Miss Majida has lost her life by hitting of the Buffalo of Nadeem Khuwaja / proposed accused No.3 and such entry No.18 dated 18.11.2017 was maintained at Police Station. In these circumstances, the learned Sessions Judge / Ex-Officio Justice of Peace has rightly passed the impugned order. The relevant portion of the impugned order is reproduced as under;

*“From perusal of police report, it reveals that on 18.11.2017 applicant informed HC Rafique Ahmed Lund through mobile phone that buffalo of accused hit the daughter of applicant Majida. In result thereof Mst. Majida died. Such fact was incorporated in roznamcha. Applicant has shown different version in the instant application. The law does not expect and required to allow the request of complaining person mechanically, blindly and without application of legal mind and justice of Peace is competent to examine complainant with full application of mind and is not supposed to accept and believe the same as gospel truth and if it is found that the allegation set up by the complaining person appears to be ridiculous or self-contradictory or vague or barred by law or offensive to public policy and accepted standards of morality. In the case of Rai Ashraf and others vs. Muhammad Saleem Bhatti and others, reported in P L D 2010 (SC) 691,*

*Honourable Supreme Court of Pakistan has been pleased to refuse to issue direction for recording of FIR on point of mala fide, leaving the parties to exhaust alternate remedy.*

*Equally efficacious and alternate remedy of filing the direct complaint is available with the applicant. He may file direct complaint if so advised. The application is accordingly disposed of.”*

6. In view of the above, the learned counsel for the applicant has failed to point-out any illegality or irregularity in the impugned order, accordingly, the instant Criminal Miscellaneous Application is dismissed. However, the applicant is at liberty to avail the alternate remedy by filing direct complaint, if so advised.

Judge

ARBROHI