

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Agha Faisal, J.

Cr. Rev. Appl. No.57 of 2021

Mazhar Saleem & another -----Applicants

Versus

The State ----- Respondents

Khawaja Shams ul Islam, advocate for applicants.

Mr. Habib Ahmed, Spl. Prosecutor ANF.

13.04.2022.

ORDER

MUHAMMAD IQBAL KALHORO J: Applicants, accused in Special Case No.44/2014 pending in Special Court CNS, Karachi arising out of FIR No.07/2011 U/s 6,9 Control of Narcotics Substance Act, 1997 of P.S ANF-II, Karachi, have filed instant revision application for setting aside impugned order/diary sheet dated 18.01.2021 and a complaint made by P.W. Khalid Bashir to the Presiding Officer against defence counsel.

2. We have heard learned counsel for the parties and perused material available on record. Learned counsel Khawaja Shams-ul-Islam has, mainly, argued that the impugned order is illegal and unsustainable, may be set-aside because it contains stricture against defence counsel which is going to prejudice outcome of the trial against the applicants, who have been falsely implicated in this case by P.W. Khalid Bashir, who on account of his failure to appear in the court for evidence was severely censured by the trial court on so many occasions.

3. Mr. Habib Ahmed, learned Special Prosecutor ANF submits that learned Presiding Officer, the author of impugned case diary has been transferred and now the case is pending before some other Presiding Officer as such this Application has become infructuous.

4. This revision application has been filed by applicants against a case diary in which apparently no adverse inference or observation

has been made against them, nor their right to a fair trial has been abridged in any manner. Learned Presiding Officer has recorded the events which occurred before her on that particular day at the time of recording evidence of P.W. A.D. Khalid Rasheed. She has not given her mind or recorded any opinion over the same or any issue pending in the trial, let alone passing stricture against any one including defence counsel, to give rise to a necessity of setting aside the same. The said case diary for convenience is reproduced hereunder:-

“Special case is called. Accused Mazhar Saleem and Amir Saleem are present on bail. P.W. A.D. Khalid Rasheed and HC Abdul Shakoor are present. Process Server submitted compliance report regarding appearance of P.Ws. SPP for ANF and associate of Mr. Shamsul Islam, Advocate are present. Examination in chief of PW1 Khalid Rasheed is recorded partially at Ex.6 who produced documents as Ex.6/A to 6/P. It is to be noted that during examination in chief of P.W1 A.D. Khalid Rasheed Mr. Shams ul Islam, advocate entered into court room alongwith his 4 to 5 juniors and interrupted by saying that P.W.1 Khalid Rasheed is misleading this court and his evidence has already been recorded. However his this statement is contrary to record. Learned advocate went on to contend that same PW is absconder so he must be punished and spoke in ridiculous manner that diazepam injections (case property viz. 654000 diazepam injections containing in 377 cartoons) are easily available in a market. There after he started attack on the integrity of PW1 A.D Khalid Rasheed, however, undersigned tried refrain him and asked not to pass such derogatory remarks for PW1 then learned advocate turned towards undersigned misbehaved and also attacked upon the sanctity of institution (judiciary) and passed derogatory remarks and he used his full energy and created a scene in order to protract the proceedings and left the court room by saying that tomorrow he will cross examine the PW1. In the meantime SPP submitted that case property is on the way comprising on two trucks and difficult to reach in time and requested for reservation of further examination in chief for want of case property. PW1 also submitted an application regarding misbehavior of D.C which is placed on record at Exh.7. In view of such circumstances reference be made to Hon’ble High Court for transfer of this case.

It is to be noted that learned defence counsel left Court room by saying that tomorrow he will appear however his associate was present therefore case is adjourned to 19.1.2021 for further proceedings.

Both accused present on bail are directed to attend the Court on next date of hearing.

For further proceedings.

**Sd/ Judge
Special Court-I (C.N.S), Karachi**

5. It is noted that said Presiding Officer Ms. Tasneem Sultana, learned Sessions Judge, vide letter dated 19.01.2021 made a reference to the Registrar of this court requesting for transfer of the case, mainly due to the said incident, to some other court. In the said reference she has reproduced narration of said incident in tautology and therefore, in any case, it has become a part of the record.

6. But, be that as it may, said learned Sessions Judge is no more Presiding Officer of the said court and has been replaced by some other Sessions Judge. Recording of an incident in the manner as it happened in the court by the Presiding Officer in the case diary, in our humble view, does not amount to passing of a stricture, particularly when no expression to demean stature of defence counsel has been made either. Insofar as complaint against defence counsel is concerned, a copy of which is available at page 293, no order seems to have been passed by the trial court which could be said is amenable to jurisdiction u/s 435 and 439 CrPC. The revision application is maintainable only when some order on an application or otherwise in respect of some issue or controversy is passed by the Court below to the detriment of either party in the case, and which is not legally sustainable. In the present case, prima facie, no order has been passed by the learned trial court on the application moved by P.W. against defence counsel. More so, this application has been filed by the applicants, who, legally speaking, do not seem to be aggrieved by the impugned case diary in any manner. Learned counsel for applicants insists that the incident had not occurred as is reflected in the impugned diary. This contention, being factual one, we are afraid cannot decide while exercising revisional jurisdiction. We, therefore, do not find this Revision Application competent on merits and dispose it of accordingly. However, learned Presiding Officer of the court shall decide the said case independently without being influenced by the impugned case diary.

JUDGE

JUDGE

A.K