ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Miscellaneous Application No.S-351 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

30.05.2022

Mr. Abdul Waheed, Advocate for applicant.
Mr. Amanullah Memon, Advocate for the respondent No.1.
Mr. Shahzado Saleem Nahiyoon, Additional Prosecutor General, Sindh.
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The facts in brief necessary for disposal of instant miscellaneous application are that the applicant was blessed with a son, he died soon after his birth; such death was attributed by the applicant to the negligency of the private respondents. On the basis of such allegation, he by making an application u/s: 22-A&B Cr.P.C sought for direction against the police to record his F.I.R. It was dismissed by learned Sessions Judge/Ex-Officio Justice of Peace Dadu vide order dated 31.05.2021, it is impugned by the applicant before this Court by way of instant criminal miscellaneous application.

It is contended by learned counsel for the applicant that the cognizable offence has taken place, therefore, learned Ex-Officio Justice of Peace ought not to have been dismissed the application of the applicant. By contending so, he sought for setting aside of the impugned order with direction to police to record statement of the applicant for purpose of F.I.R.

Learned Additional Prosecutor General for the State and learned counsel for the private respondent by supporting the impugned order have sought for dismissal of instant criminal miscellaneous application by contending that it was pre-mature birth and death of the baby was natural.

Heard arguments and perused the record.

As per police report, the death of the son of the applicant was not for any negligency on the part of the private respondents. If for the sake of arguments, it is believed to be so then the applicant was having a remedy to have reported such negligency to Sindh Health Care Commission or alternatively to have filed a direct complaint of the incident before the Court having jurisdiction. None of the remedy so available was exhausted by the applicant for no obvious reason. In these circumstances, learned Ex-Officio Justice of Peace was right to dismiss the application of the applicant by way of impugned order, which is not calling for any interference by this Court by way of instant criminal miscellaneous application, it is dismissed accordingly.

JUDGE

Muhammad Danish*,

during course of pendency of Civil Suit by making application under section 476 Cr.P.C sought for prosecution of the private respondents for allegedly having committed an offence punishable under section 466 P.P.C for having forged a power of attorney and for presenting illegal documents for identification, it was dismissed by learned Senior Civil Judge, Tando Allahyar vide order dated 19.06.2019 which was impugned by the applicant by preferring a revision application, it was dismissed by learned Sessions Judge Tando Allahyar vide order dated 25.11.2021, which is impugned by the applicant before this Court by preferring the instant criminal miscellaneous application u/s: 561-A Cr.P.C.

It is contended by learned counsel for the applicant that both Courts below by refusing to take cognizance of the alleged offence against the private respondents have committed wrong which could only be made right by this Court.

Heard arguments and perused the record.

The documents alleged to be forged have been used in civil litigation. In that situation, as per the mandate contained by section 195 Cr.P.C, it is the Trial Court alone which has to form its opinion with regard to such documents being genuineness or otherwise after due trial which obviously the applicant is found to be defeating for one or other reason. In these circumstances, learned Courts below have committed no wrong by dismissing the application of the application which could be made right by this Court in exercise of its inherit jurisdiction by way of instant criminal miscellaneous application, it is dismissed with costs of Rs.10,000/-