

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Revision Appln. No. S – 03 of 2021

Date

Order with Signature of Hon'ble Judge

Hearing of case

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

12.03.2021

Mr. Faisal Shams Advocate for the applicant

Mr. Ghulam Murtaza Korai Advocate for private complainant

Mr. Shafi Muhammad Mahar, DPG for the State

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Aftab Ahmed Gorar, J: Through instant Criminal Revision Application, the applicant Aijaz Ali Halepoto has challenged the impugned order dated 17.12.2020 passed by learned Special Judge Anti-Corruption (Provincial) Sukkur Division Sukkur, on the application u/s 193 Cr.P.C filed by the complainant/private applicant namely Muhammad Arif Memon for joining the present applicant, which was allowed.

2. The facts necessary for disposal of instant Criminal Revision Application are that FIR No.01/2014 was lodged by Agha Muhammad Eidan Pathan, Circle Officer, ACE Sukkur on behalf of the State at Police Station, ACE Sukkur for offences under Sections 420, 161, 467, 468, 471, 34 PPC r/w Section 5(2) Act-II of 1947 on the application of one private persons namely Muhammad Arif Memon, that some dispute erupted between accused Rao Muhammad Shakir 16.5% shareholder in Sukkur Township Sukkur and remaining partners, which were being managed and looked-after by the private applicant Muhammad Arif Memon and during inquiry it was surfaced that the present applicant Aijaz Ali Halepoto being the Assistant Commissioner (New) Sukkur along with his other companions committed fraud with the other partners as well as general public by issuing sale certificates, hence such FIR was registered.

3. That after usual investigation, the charge-sheet was filed in the Court of learned Judge, Anti-Corruption (Provincial) Sukkur Division Sukkur by placing the name of applicant/accused in column No.2 being innocent, which was accepted vide order dated 04.10.2014. Thereafter the private complainant Muhammad Arif Memon filed an application u/s 193 Cr.P.C for joining the let-off accused Aijaz Ali Halepoto, which was allowed vide order dated 17.12.2020, hence the applicant has preferred instant criminal revision application.

4. It is, inter alia, contended by learned counsel for the applicant that he is innocent and has not committed any offence, but he has performed his duties in accordance with law; that the learned trial Judge in the first instance has accepted the challan, whereas, on the application filed by the private complainant has joined him, though the trial has not yet commenced; that the learned trial Court ought to have joined the applicant in trial after recording evidence of the prosecution witnesses, if some material is brought on record against him then he would have been joined in the trial; that the learned trial Judge while passing the impugned order has did not consider the material facts available on record for dismissing the application u/s 193 Cr.P.C. He lastly prayed for set-aside the impugned order dated 17.12.2020.

5. Learned DPG for the State as well as learned counsel for the private complainant prayed for dismissal of the instant criminal revision application by contending that there is sufficient material available on record for joining the present applicant in the trial, although the trial has not yet commenced, but it is not sufficient to disbelieve the material which is available on record; that the applicant in connivance with private persons as well as the officials of revenue department has issued Sale certificate, thus has caused loss to the general public as well as the private complainant being the partner of Rao Muhammad Shakir.

6. I have heard the learned counsel for the applicant/accused as well as learned DPG for State and learned counsel for private complainant and

have perused the material available on record. It would be conducive to reproduce the relevant portion of the impugned order, which reads as under;

“The main contention of the prosecution is that specific role has been assigned to the present accused that he (accused Aijaz Ahmed Halepoto) countersigned the sale certificates which were issued on the basis of fraudulent material, further that the witnesses have supported the FIR but the investigation officer has placed the name of accused Aijaz Ahmed Halepoto without seeking approval from ACC-I, which is mandatory as provided under rule 4(iii)(b). On the other side the contention of learned defence advocate is that the challan has been accepted.

It is admitted position that the name of present applicant/accused has been placed in column No.2 without seeking approval from the relevant committee, thus mandatory provision of law has been violated. According to FIR, the specific role has been assigned to the present accused Aijaz Ahmed Halepoto that he while his posted as Assistant Commissioner (New), Sukkur countersigned, the sale certificates which are alleged to have been issued frequently. In these circumstances I am of the considered view that the sufficient material is available for trial of accused Aijaz Ahmed Halepotogo.”

7. In view of the above, the learned trial Court has rightly allowed the application u/s 193 Cr.P.C filed by the private applicant/complainant directing the applicant/accused Aijaz Ali Halepoto to join the trial. Consequently, the impugned order is maintained and the instant Criminal Revision Application is dismissed.

Judge