

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Misc. Appln. No. S- 74 of 2021

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

01.03.2021

Mr. Shabbir Ali Bozdar Advocate for the Applicant/accused
Mr. Muhammad Rehman Khan Durrani Advocate for private
respondent
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for
State

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ORDER

Aftab Ahmed Gorar, J- The applicant/accused by way of instant Criminal Miscellaneous Application has impugned Order dated 26.01.2021 passed by learned 1st Additional Sessions Judge / (MCTC), Sukkur, in Criminal Revision No.03 of 2021, thereby maintained the Order dated 24.12.2020, passed by learned Civil Judge & Judicial Magistrate-III / (MCTC), Sukkur on the application u/s 227 Cr.P.C filed by the applicant/accused seeking alteration in the charge framed by the trial Court in case outcome of FIR Crime No.57 of 2019 of Police Station ‘A’ Section Sukkur for offences u/s 489-F and 420 PPC.

2. It is contended by learned counsel for the applicant/accused that the charge framed by the learned trial Court is defective and contrary to the facts, as the charge does not contain all the material particulars as to time, place as well as specific name of the alleged offence, the manner in which the offence was committed; that the two courts below while passing the impugned orders did not consider the aforesaid factual position. He lastly prayed that the impugned orders passed by two Courts below are liable to be set-aside.

3. Learned Additional PG for the State as well as learned counsel for the private respondent / complainant have not opposed the instant Criminal Miscellaneous Application by contending that, if this Court deems fit that the charge is defective and misleading and is against the facts, such directions may be issued by setting-aside the impugned orders passed by two Courts below and directions may be issued to trial Court for altering of the charge in accordance with mandatory provisions of Section 222 Cr.P.C.

4. I have heard the learned counsel for the applicant/accused, private respondent / complainant and learned DPG for the State and also considered the material available on record.

5. The charge framed by learned trial Court is not in accordance with the mandatory provisions of Section 222 Cr.P.C, which were not taken into consideration by the two Courts below while passing the impugned orders. It would be conducive to reproduce the charge framed by the trial Court against the applicant/accused dated 25.10.2019 as under;-

“That, secondly you accused dishonestly issued cheque dated 15.10.2018 of Rs.80,00,000.00 which on presentation thereof, was dishonoured and you, thereby, you have committed an offence punishable under section 489-F PPC within the cognizance of this Court.”

6. The bare perusal of the charge reflects that it has not been framed in accordance with the mandatory provisions of Section 222 Cr.P.C, which provides that the charge shall contain all material particulars as to time, place as well as specific name of the alleged offence, the manner in which the offence was committed and particulars of the accused so as to afford accused opportunities to explain the matter, with which he is charged and the purpose of

providing such opportunity is that the person against whom such charge is framed should prepare his case accordingly and may not be misled in preparing his defence plea. I have carefully perused the charge framed by the trial Court against the accused, it is found that the same is not framed in accordance with the mandatory provisions of Section 222 Cr.P.C. Consequently, the instant Criminal Miscellaneous Application is allowed and the impugned orders passed by two Courts below do not sustain, the same are set-aside. The trial Court is directed to amend the charge against the applicant/accused in accordance with provisions of Section 222 Cr.P.C.

7. Apart from above, if it is supposed that the accused is convicted and sentenced under the charge framed by learned trial Court and in appeal, the matter is remanded back to trial Court on the ground of defective charge for retrial, definitely the accused will undergo double agony. I am afraid that this very important aspect of the case was ignored and not considered by the two Courts below while passing the impugned orders in hasty manner without applying judicious mind.

Judge