

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Misc. Appln. No. S – 89 of 2018

1. For hearing of main case
2. For hearing of MA No.3226/2015

26.10.2020

Mr. Qurban Ali Malano Advocate for the applicants
Mr. Shahzado Dreho Advocate for respondent No.2
Mr. Shafi Muhammad Mahar, DPG for the State

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Aftab Ahmed Gorar, J:- The applicants by way of instant Criminal Miscellaneous Application under Section 561-A, Cr.P.C have impugned the order dated 01.04.2015 passed by learned Ex-Officio Justice of Peace/ IInd. Additional Sessions Judge Sukkur, on application under Section 22-A and B Cr.P.C, whereby he has directed SHO Police Station Airport Sukkur to record statement of the private respondent u/s 154 Cr.P.C

2. The operative part of the impugned order reads as under:-

“Concerned SHO is directed to record the statement of applicant, if cognizable offence is made-out within his jurisdiction, he should take action according to law, if during investigation version of the complainant becomes false, then action be taken against the complainant according to law.

SHO further directed (sic) not to arrest, humiliate, and harass any person till the tangible evidence come on record, application allowed/disposed of accordingly (sic)”

3. The facts in brief necessary for disposal of instant Criminal Miscellaneous Application are that the private respondent filed an application U/s 22-A and 22-B Cr.P.C, alleging therein that on 07.01.2015 at 1:00 am (midnight), she along with her sons namely Ahsan, Moula Bux, Abdul, Sadoro and Waleed and relatives namely Zahid and Asif were available in the house, all of a sudden the proposed accused Muhammad

Mithal Khakhrani, Ali Bux Shar and 50/60 police constables came in two Cars and about ten police mobiles duly armed with weapons raided and intruded in her house, started search. It is stated that the proposed accused robbed cash of Rs.450000/- (Four lacs and fifty thousand), five mobile sets and 05 Tolla gold, they also broken other articles and then arrested her five sons namely Ahsan, Moula Bux, Abdul, Sadoro and Waleedad, also beaten the women folk, on their cries, the neighbours gathered there and entreated the proposed accused in the name of Almighty Allah and Holy Messenger. Thereafter on the instigation of SHO Police Station Abad, her sons were put in the police mobile and kidnapped them, hence they are in the confinement of the proposed accused / police officials such news was also published in the Newspaper. Thereafter on 06.02.2015 private respondent filed Criminal Miscellaneous Application No. 59 of 2015 before this Court u/s 491 Cr.P.C which was disposed of on 17.02.2015, whereas, she had apprehension that her sons would be killed by the proposed accused. It is stated that after one month on 08.02.2015 the proposed accused SIP Ahmed Ali Halepoto, HC-Wazir Ahmed, PC Hafeez Ahmed, PC Lal Khan, PC Nazeer Ahmed, PC Muhammad Ali, PC Adam Khan, ASI Sahib Khan Kalwar and other police officials in collusion with Muhammad Mithal Khakhrani, Ali Bux Shar killed her son Ahsan by showing a fake police encounter by misusing their powers. Thereafter the private respondent approached the SHO Police Station Airport as well as SSP Sukkur for recording her statement u/s 154 Cr.P.C, but all in vain, hence she approached the Ex-Officio Justice of Peace, Sukkur by filing the instant criminal miscellaneous application, which was allowed vide order dated 01.04.2015, the SHO Police Station Airport Sukkur was directed to record statement of the private respondent u/s 154 Cr.P.C which the applicants have impugned before this Court, as stated above.

4. It is pertinent to mention that during pendency of the aforesaid Criminal Miscellaneous Application, the private respondent had also filed a Constitutional Petition No.D-653/2015 Re- Rehmat Bano vs. Province of

Sindh and others and vide order dated 09.03.2015 Inspector Ghulam Ali Jumani was appointed to make a thorough inquiry/investigation into the matter and furnish such report within a period of one month, despite passing the order by this Court, neither the petitioner/private respondent nor her witnesses appeared before the Inquiry Officer, ultimately such report dated 26.03.2015 was furnished by the Inquiry Officer, hence the said Constitutional Petition was dismissed for non-prosecution vide order dated 26.08.2016.

5. It is contended by learned counsel for the applicants that the private respondent has filed a false application seeking registration of FIR regarding the murder of her son Ahsan, whereas, the deceased Ahsan was required in 17 criminal cases of Districts Sukkur and Khairpur, whereas, he was died in a police encounter and such FIR bearing Crime No.23 of 2015 under Sections 399, 324, 353, and 402 PPC was registered at Police Station Cantt: Pano Akil on behalf of State by the applicant Ahmed Ali Halepoto. It is further contended that the private respondent in order to involve the present applicants in false criminal case is seeking directions for registration of her false FIR, just to create hindrance in their official duties. In that situation, learned Ex-Officio Justice of Peace/Ind Additional Sessions Judge Sukkur ought not to have directed the SHO Police Station Airport Sukkur for registration of FIR against the applicants for murder of deceased Ahsan Ali. It is contended that in Constitutional Petition No.D-653/2015, the enquiry ordered by this Court in the matter, in which the petitioner and her witnesses did not appear, consequently, the said petition was dismissed for non-prosecution vide order dated 26.08.2016. He lastly prayed for setting-aside the impugned order.

6. Learned counsel for the private respondent by supporting the impugned order sought for dismissal of the instant criminal miscellaneous application by contending that the applicants by misusing their official powers have first conducted raid at the house of the private respondent and apprehended her five sons so also robbed cash and gold ornaments

from her house and thereafter managed a false and concocted story of police encounter murdered her son Ahsan. He further contended that the applicants / proposed accused being police officials have committed a cognizable offence, hence they are liable to be prosecuted under the law.

7. Learned DPG for the State did not support the impugned order by contending that the learned Ex-Officio Justice of Peace while passing the impugned order has not considered the fact that the deceased Ahsan was required in number of criminal cases and was absconder, whereas, the applicants while performing their duties were deterred by the said Ahsan and others as such in the police encounter he was killed. In support of his contentions, he has relied upon the case of ***Imtiaz Ahmed Cheema vs. S.H.O Police Station Daharki and 2 others (2010 Y L R 189)***.

8. I have considered the above arguments and perused the record. The private respondent has sought for registration of a criminal case in respect of murder of her son Ahsan. The learned Ex-Officio Justice of Peace Sukkur while passing the impugned order has not considered the report furnished by the Station House Officer, Police Station Airport Sukkur, which shows that the deceased Ahsan was required in all 17 (seventeen) criminal cases of heinous nature registered in Districts Sukkur and Khairpur and in all the aforesaid crimes he was absconder/proclaimed offender. Since the deceased Ahsan was involved in a number of criminal cases, therefore, the learned counsel for the applicants has rightly argued that the private respondent just to drag the police officials in false criminal litigation has sought for registration of a false FIR regarding the murder of her son Ahsan by way of filing the application u/s 22-A and 22-B Cr.P.C before the Court of Ex- Justice of Peace, Sukkur. The perusal of record reveals that prior to this a like nature application u/s 22-A and B Cr.P.C was filed by Mst. Bakhtawar Vs. SHO Police Station Pano Akil and another, seeking registration of FIR regarding the same murder of Ahsan, which was dismissed vide order dated 09.03.2015 by the Court of learned Additional Sessions Judge (Hudood) / Ex-Officio Justice of Peace, Sukkur,

whereas, after dismissal of the aforesaid application, the private respondent by filing the instant application for the same relief has concealed the fact of dismissal of the earlier application. Furthermore, in Constitutional Petition No.D-653/2015 filed by the private respondent, and vide order dated 09.03.2015 Inspector Ghulam Ali Jumani was appointed as Enquiry Officer for conducting thorough probe into the matter, whereas, the private respondent and her witnesses did not appear before the said Enquiry Officer on the fixed date. I am also fortified by the case relied upon by learned DPG for the State (*supra*), wherein on identical and similar circumstances, the application u/s 22-A and 22-B Cr.P.C was dismissed. In these circumstances, impugned order dated 01.04.2015 could not be sustained. Consequently, the instant Criminal Miscellaneous Application is allowed and the impugned order is set aside.

Judge

ARBROHI