

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Misc. Appln. No.S- 821 of 2018

Date	Order with Signature of Hon'ble Judge
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Hearing of case

1. For orders on office objection at flag 'A'
2. For hearing of main case
(NBWs issued
Letter issued to SSP Naushahro Feroze)

15.02.2021

Mr. Qurban Ali Shar Advocate for the Applicant
 Mr. Sabir Ali Samo Advocate for proposed accused
 Mr. Aftab Ahmed Shar, Additional PG for State

ORDER

Aftab Ahmed Gorar, J: The applicant by way of instant criminal miscellaneous application under Section 561-A, Cr.P.C has impugned order dated 11.09.2018 passed by learned Ex-Officio Justice of Peace / Sessions Judge, Naushahro Feroze, on application under Section 22-A and B Cr.P.C, whereby he has dismissed the said application on the ground that the alleged abductee / injured Ali Hassan, was involved in criminal cases.

2. The facts in brief necessary for disposal of instant criminal miscellaneous application are that as per applicant on 06.09.20218 at 4:00 pm, the proposed accused being police officials along with three unknown persons duly armed with deadly weapons by committing trespass in his house, and on the instigated of proposed accused No.1, the remaining proposed accused took his brother Ali Hassan and threw him in police mobile and went away. The applicant accompanied his witnesses and rushed to Police Station Qamaruddin Chandio and requested the proposed accused / SHO for registration of his FIR, who demanded illegal gratification of rupees five lacs, which he could not fulfill, hence threats for "*half fry or full fry*" were issued to the applicant. Thereafter on the next day in the morning the applicant came to know that his brother Ali Hassan has been caused firearm

injuries “*half-fried*” by the proposed accused persons by making fire upon his right leg knee and was admitted in PMCH Nawabshah. The applicant along with his witnesses went to PMCH Nawab Shah, where he saw that his brother Ali Hassan was admitted there, and doctor advised / referred the injured to Vascular Surgeon at Karachi, hence he shifted his injured brother to Karachi, then again he approached the SHO for registration of his FIR, which was not lodged, but on the contrary threats were issued to him, therefore, he sought for direction against SHO Police Station Qamaruddin Chandio for recording his FIR by way of filing Application u/s 22-A and 22-B Cr.P.C, which was dismissed vide order dated 11.09.2018, the applicant has impugned the same before this Court by way of instant criminal miscellaneous application, as stated above.

3. It is contended by learned counsel for the applicant that the proposed accused have committed a cognizable offence by trespassing into the house of the applicant duly armed with deadly weapons, abducted the brother of applicant Ali Hassan and kept him under wrongful confinement; that the proposed accused / SHO Police Station Qamaruddin Chandio on approach of the applicant demanded a huge amount from the applicant, which he could not pay resultantly, the detainee Ali Hassan was caused firearm injury “*half-fried*” on the knee of his right leg, which has resulted in amputation of his right leg due to vascular injury caused by the proposed accused; that the proposed accused in order to justify their criminal act have managed and lodged false series of criminal cases i.e. Crime Nos.256/2018, 257/2018 and 258/2018 at same Police Station; that the date of incident shown in the FIR No.257/2018 is 07.09.2018, whereas, the injured was admittedly in the PMCH Hospital Nawabshah on 06.09.2018 one day prior to the said incident; that the proposed accused have committed a cognizable offence, therefore, they are liable to be prosecuted under the law. Learned counsel by contending so sought for setting aside of the impugned order dated 11.09.2018 and issuing directions to SHO Police Station Qamaruddin Chandio

for recording the statement of the applicant into book u/s 154 Cr.P.C as per his verbatim.

4. Learned counsel for the proposed accused sought for dismissal of the instant Criminal Miscellaneous Application by contending that the impugned order is well-reasoned and liable to be maintained; that the alleged injured Ali Hassan is involved in criminal cases one lodged by a private person, whereas, two FIRs i.e. Crime No.257/2018 and 258/2018 have been registered by the police on behalf of State; that the applicant in order to unnecessarily drag the proposed accused in false criminal cases is seeking registration of false FIR.

5. Learned Additional PG for the State did not support the impugned order by contending that as per the discharge Card issued by the Department of Orthopaedics, Peoples Medical College & Hospital, Nawab Shah, Shaheed Benazirabad, the alleged injured Ali Hassan was admitted in hospital on 06.09.2018, whereas, the FIR Crime No.257/2018 lodged by proposed accused No.1 showing the date of alleged encounter i.e. 07.09.2018 at 0130 hours, which falsify the version of the police; that the proposed accused being police officials have committed a criminal offence, therefore, they are liable to be prosecuted under the law.

6. I have considered the arguments of learned counsel for the applicant, proposed accused as well as learned Additional PG for the State and have gone through the record.

7. The allegations levelled by applicant against the proposed accused is that of illegal trespassing into his house, apprehending his brother, the alleged injured Ali Hassan and then causing firearm injury on his right leg knee, which resulted in amputation of his leg. In this regard, the applicant has placed on record such certificate issued by Dr. Qamar Raza Brohi, at Zohaib Medicare Society, Nawabshah. The proposed accused attempted to justify their criminal act and got registered the FIR No.257/2018 regarding police encounter and injuries to Ali Hassan and recovery of a robbed motorcycle in Crime No.256/018 lodged by one Ali Gul

Zardari, whereas, the date of incident shown in the FIR No.257/2018 is 07.09.2018, whereas, the alleged injured was already admitted in PMCH, Nawab Shah on 06.09.2018. In that situation, learned Ex-Officio Justice of Peace / Sessions Judge, Naushahro Feroze was ought to have issued directions to SHO Police Station Qamaruddin Chandio to record statement of applicant as per his verbatim and same may be incorporated into book u/s 154 Cr.P.C.

8. In view of above, the instant Criminal Miscellaneous Application is allowed, the impugned order dated 11.09.2018 passed by learned Ex-Officio Justice of Peace / Sessions Judge, Naushahro Feroze is set-aside. The applicant shall appear before the Respondent No.1 / SHO Police Station, Qamaruddin Chandio along with certified copy of this order. The SHO concerned consider his complaint and register the same and investigate in accordance with law.

Judge

Ihsan