

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Misc. Appln No. 379 of 2020

Date	Order with signature of Judge
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For orders as to maintainability of this application
as per order dated 11.8.2021

04.11.2021

Mr. Shahid Khan, Special Prosecutor Pakistan Railway Police
Ms. Rahat Ahsan, DPG
Mr. Zulfiqar Ali, advocate for respondent No.2

AFTAB AHMED GORAR, J.- This application has been filed by the applicant assailing the order dated 07.10.2020 passed by 1st Additional District & Sessions Judge, Karachi, (South) whereby the applicant No.3 was directed to record statement of respondent No.2 under section 154 Cr.P.C and register the FIR accordingly under intimation to the learned Ex-Officio Justice of Peace/ 1st Additional District & Sessions Judge, Karachi (South).

It is pertinent to mention here that though the directions were given to the applicant No.2 for recording statement of respondent No.2 and registration of the FIR who is SHO of Police Station Cannt. Pakistan Railway, however, record reveals that he was also involved in the offence by the respondent No.2.

Learned Special Prosecutor, Pakistan Railway Police submitted that the respondent no.2 was boarded on 08.9.2020 without a railway ticket who on demand of ticket by Special Ticket Examiner become annoyed and exchanged hot words hence he was issued memo of Rs.11,010/- which act of respondent No.2 fell under section 112 & 113 of Railway Act, 1890 hence was later reported to applicant No.2 who directed his subordinates to fetch the respondent No.2 under escort and get him to pay the fine in Railway Treasury when father of respondent No.2 arrived who paid the amount and took away his son. He submitted that though the above narrated story was brought to the

notice of the Ex-Officio Justice of Peace but it failed to appreciate the same. He also submitted that the Ex-Officio Justice of Peace passed the impugned order considering news clipping as well as inadequate medical reports, which is not warranted by law. He therefore, prayed that the impugned order passed by the learned Ex-Officio Justice of Peace is without consideration of proper facts and law hence the same is liable to be set aside.

Learned Deputy Prosecutor General supported the impugned order passed by the learned Ex-Officio Justice of Peace and stated that the respondent No.2 was mishandled by the applicants hence he was medically examined and such medical certificates are also available on record. She submitted that the impugned order is passed according to law and therefore, the instant application may be dismissed.

Learned Counsel for the respondent No.2 adopted the arguments made by the learned Special Prosecutor and further added that this is a case of highhandedness in which the respondent No.2 was not only mishandled but badly maltreated to the extent that injuries were also caused and the respondent No.2 gone unconscious and even lost his memory for a short-while which was later recovered. He submitted that the application is liable to be dismissed having no merits.

I have heard the arguments of learned Counsel for the applicant, the learned Deputy Prosecutor General and have gone through the record.

Learned Special Prosecutor, Pakistan Railway though argued the matter at length taking several stands, however, he failed to reply the Court query that since the applicant allegedly committed offence is to be dealt with in personal capacity as such the department is not responsible to protect evil acts of its officials therefore, how come the Prosecutor could assail the order of learned Ex-Officio Justice of Peace on behalf of the applicant No.2, he did not reply the same and started agitating other things. Be that as it may, learned Prosecutor even has

failed to point out any illegality and infirmity in the order passed by the learned Ex-Officio Justice of Peace.

I am of the firm view that department is not responsible to defend the evil acts, if any, committed by any of its officials and that has to be defended by the offender by its own, hence learned Special Prosecutor, Pakistan Railway Police is not competent to file this application against the impugned order passed against applicant No. 2 whose wrong doings are reported by respondent No.2 and he has failed to justify his appearance to defend the applicant No.2 despite repeatedly asked by the Court.

During hearing though the Special Prosecutor, Pakistan Railways argued the matter at length but his lengthy arguments did not point out any illegality or infirmity in the order passed by the learned Ex-Officio Justice of Peace.

In view of the above discussion, I am of the firm opinion that the impugned order dated 07.10.2020 passed by learned Ex-Officio Justice of Peace/1st learned Additional District & Sessions Judge, Karachi (South) is well reasoned and according to law, hence does not call for any interference, therefore, this Criminal Miscellaneous Application is dismissed and the impugned order is maintained. The applicant No.2 is directed to record statement of respondent No.2 under section 154 Cr.P.C and register the FIR, if cognizable offence is made out.

JUDGE