

IN THE HIGH COURT OF SINDH, AT KARACHI

Crl. Misc. Application No. 90 of 2013

Present:- Mr. Justice Irfan Saadat Khan, J.

Date of hearing : 10.04.2013.

Applicant through : Mr. Muhammad Ramzan, Advocate

ORDER

IRFAN SAADAT KHAN, J: This Criminal Miscellaneous Application has been filed against the order dated 02.03.2013 passed by the Judicial Magistrate, Karachi East.

2. Briefly stated the facts of the case are that on 20.05.2012 at about 0630 hours complainant Shahid Saleem (respondent No.7) lodged the FIR bearing No.122/2012, under Sections 324/34 at P.S. PIB Colony, stating therein that on 19.05.2012 he, after dropping his wife at his in-laws house, was coming back to his house in car bearing registration No.E-7582, at about 1330 hours. However, when he reached at Main University Road, near Qadri Coach, Old Sabzi Mandi, his neighbor Muhammad Farooq s/o. Abdul Ghaffar (present applicant) on his Honda Fifty motorcycle with another motorcycle, number whereof is not known, on which two unknown persons were available whom, according to him, he can identify on seeing, came in front of his car but the complainant did not stop his car and accelerated the same. However, the said persons with the intention to kill the complainant started firing upon him but somehow or the other he managed to escape away from the spot by saving his life and reached home and told the entire story to housemates whereupon his elder brother Shehzad Saleem informed the police on 15. The complainant then upon instructions of his elders approached the police station and lodged the instant FIR.

3. ASI Qaiser Abbas, respondent No.6, investigated the matter and submitted final challan No.79/2012, dated 05.06.2012, under Section 173 Cr.P.C., before the learned Court recommending for disposal of the case in “C” Class since,

according to him, there was a private dispute between the parties, on which the learned Court passed order for calling the parties. In the meantime complainant made application to the concerned authorities for transfer of investigation whereupon investigation was assigned to ASI Sajid Mehmood who reinvestigated the case. The learned Court then vide its order dated 11.01.2013, after considering the report in detail and on the recommendation of I/O ASI Sajid Mehmood reopened the matter and directed the I/O to produce fresh report under Section 173 Cr.P.C. within 15 days without any further delay. Being aggrieved with this order and the order dated 02.03.2013, whereby challan was accepted and case was registered, present Criminal Miscellaneous Application has been filed.

4. Mr. Muhammad Ramzan, Advocate has appeared on behalf of the applicant and submitted that if the order dated 11.01.2013 is examined it would be seen that this order comprises of three pages, however, learned Magistrate cancelled page No.3 of the said order without any justification. He states that since there is no provisions in the Criminal Procedure Code for reviewing own order and cancelling the same and the learned Magistrate vide her order dated 25.02.2013 has committed an error. He requested that the said orders passed by the learned Magistrate may be set aside and the proceedings of Sessions Case No.16/2013 may be quashed.

5. I have heard the learned counsel at considerable length and have perused the record. It is seen that the original order of IX Judicial Magistrate, Karachi East, dated 11.01.2013, comprises of three pages. However, the learned Magistrate after realizing her mistake passed the order dated 25.02.2013 whereby she cancelled the said page No.3 by categorically observing that due to rush of work the said mistake has crept in, however, the said page was kept in the file for record purposes. I specifically asked a question from the learned counsel that whether the contents given on page No.3 of the said order, available at page 63 of the file, have any relevancy with the present case. The learned counsel for the applicant candidly conceded that facts mentioned on page No.3 have neither any concern nor any relevancy with the present case. I also asked another question

from the learned counsel for the applicant that whether any advantage could be taken if by mistake due to rush of work the said page has been inserted in the order, which has no relevancy with the case and which subsequently has been rectified to which the counsel again has no reply to furnish. I further asked a question from the learned counsel that whether there is any material difference between the two orders of even dates i.e. 11.01.2013 except page No.3 of the earlier order, available at page 63 of the file, wherein two paragraphs are appearing having no relevancy and bearing with the case. Whereas in page No.3 of subsequent order, available at page 69 of the file, these two paragraphs are not appearing, but the decision by the trial Court announced in open Court was the same, which aspect also has been frankly conceded by the learned counsel.

6. So far as the contention raised by the learned counsel that subsequent order passed by deleting two paragraphs of page No.3 amounts to review of the order passed by the learned Magistrate, suffice to observe that since there is no difference in the decisions announced by the learned Magistrate, the contention raised that the learned Magistrate has reviewed her order is found to be baseless as the order passed earlier and subsequently had remained materially the same only with the exception that two paragraphs, which have no bearing with the case, have subsequently been deleted.

7. In view of the facts of the case no irregularity is found in the order passed by the learned Magistrate and the present Criminal Miscellaneous Application is found to be devoid of any merit and is hereby dismissed in limine alongwith all pending applications.

Above are the reasons of my short dated 10.04.2013.

Karachi.

Dated: 12.04.2013.

JUDGE