

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Miscellaneous Application No.102 of 2013

Date of hearing : 24.04.2013.

Applicant Ehsanullah Khan through : Ms. Naila Tabassum, Advocate.

ORDER

IRFAN SAADAT KHAN, J: This Criminal Miscellaneous Application (Cr.M.A)

has been filed with the following prayers:

“It is most humbly prayed that this Hon’ble Court may be pleased to call R&P of Crl. Case No.160/2010 pending trial before the Learned Court of ADJ IIIrd South Karachi and police file of FIR No.393/2007 of Boat Basin P.S. lying with the prosecution branch and after hearing pass order of quashment of proceedings against the applicant which is an open abuse of the process of Law as there is absolutely nothing against the applicant to prosecute him in the subject matter. It is further prayed that this Hon’ble Court may be pleased to declare the applicant as an innocent and implicated by police in the subject matter with mala fide intention.

Any other relief(s) which this Hon’ble Court deems fit and proper in the circumstances of the case may also be granted”.

2. Briefly stated the facts of the case that the respondent No.2 lodged FIR bearing No.392/2007, under Sections 302/435 PPC on 13.10.2007 at P.S. Boat Basin, Karachi against unknown persons, wherein it was averred that since the complainant could not contact his father, as his mobile phone was switched off, he contacted with the tracker company who informed him that car of his father bearing No.AGK-523 was found parked at Boat Basin roundabout. The complainant then reached the said spot when he received a phone call from his father’s friend namely Munawwar Shaikh that to come to Karachi Club as he has some information about his father. He met with him, who took the complainant to Jinnah Hospital, where he came to know that a person was murdered by cutting of his head, which is missing, and the corpse is lying in Edhi Centre. The complainant then went to Edhi Centre and identified the dead body as that of his father. He also came to know that the flat where his deceased father resides was also set on fire. Thereafter, he lodged the FIR against unknown persons for

committing murder of his father. On the next date of the incident Mst. Poonam Verma, Secretary of the deceased, was found in injured condition, when police interrogated her, she disclosed that one Humayyun Ali with his four accomplices, two male and two female, had murdered the father of the complainant. The police, therefore, started investigation in the matter. Subsequently, it came to the information of the police that the said Humayyun, who is stated to be main culprit, had gone to Dubai. The said Humayyun was subsequently arrested by the police, who thereafter was granted bail on the plea of alibi. The applicant, who is working in law enforcement agency, was contacted by the complainant to help him in getting justice. As per the averments of this application, when the applicant interfered in the matter, police got annoyed and pressurized Mst. Poonam Verma to name the applicant as one of the co-accused in the said incident and thereafter on the insistence of the police authorities Mst. Poona Verma involved the applicant in the commissioning of the offence. The applicant thereafter was arrested and subsequently was granted bail by this Court and thereafter the matter is proceeding before the trial Court and the present application has been filed with the prayer that the FIR may be quashed.

3. Ms. Naila Tabassum, Advocate has appeared on behalf of the applicant and submitted that due to enmity the name of the applicant has been involved in the commission of the said offence. She further submitted that there is no evidence available against the applicant to implicate him in commission of the present offence and only due to rift between the applicant and the investigation team the name of the applicant has been inserted. She further submitted that in view of the facts of the case the said FIR be quashed and the applicant be released from the said charge, as his due promotion has been stopped due to the reason that he has been nominated in the commission of an offence, whereas the applicant has nothing to do with the said offence. In support of her contentions, the learned counsel has relied upon the following decisions:

1. *Asif Ali Zardari Vs. The State (PLD 2008 Karachi 310)*
2. *The State Vs. Asif Ali Zardari and another (1994 SCMR 798)*

4. I have heard the learned counsel at considerable length and have perused the record and the decisions relied upon.

5. I specifically asked a question from the learned counsel that whether the proceedings before the trial Court are commencing in a transparent manner and smoothly without any delay, to which she categorically replied in an emphatic yes. I asked another question from the learned counsel that whether she has any grievance against the Presiding Officer (P.O), to which she gave reply in negative. However, the learned counsel reiterated that since the proceedings are likely to take some time, hence, the proceedings emanating from the instant FIR be quashed. It is strange to note that when the counsel appearing for the applicant has candidly conceded the facts that the trial Court is recording the evidences of all the prosecution witnesses and is proceedings efficiently and smoothly, without any delay, and a number of prosecution witnesses have been examined and a few witnesses are remained to be examined, what grievance she now has and why in the middle of the proceedings culminating before the trial Court the present FIR be quashed only on the premise that proceedings before the trial Court are likely to take some time. Indeed the proceedings before the trial Court would take some time as no P.O is expected to pass any order in a slipshod manner or without recording the evidences of the prosecution witnesses, defence witnesses and collecting other material required before coming to a conclusion in this regard. The learned counsel has also conceded the fact that the trial Court is proceeding with the matter regularly, efficiently and smoothly and that she has no complaint either with regard to the attitude or with regard to the manner in which the proceedings are being conducted by the P.O. Hence, when the learned counsel herself has no grievance against the P.O either in respect of the manner in which proceedings are being conducted or with regard to the attitude, the present Cr.M.A for quashment of the FIR appears to be wholly misconceived as how in the middle of the proceedings, which are taking place efficiently, smoothly and regularly, the present FIR be quashed. No plausible or satisfactory reply in this regard was furnished by the learned counsel.

6. In view of above discussion, the present Cr.M.A appears to be wholly misconceived, frivolous and devoid of any merit and the same is hereby dismissed in limine.

7. Above are the reasons of my short order dated 24.04.2013, whereby this Cr.M.A was dismissed in limine.

JUDGE

Tahseen/PA