

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Criminal Miscellaneous Application No.74 of 2013**

Date of hearing : 20.08.2013.

Date of decision : .08.2013.

Applicant Muhammad Abbas in person.

Respondent/State through Mr. Ali Hyder Saleem, APG.

**ORDER**

**IRFAN SAADAT KHAN, J:** This Criminal Miscellaneous Application (Cr.M.A.) has been filed against the order passed by the Ist Judicial Magistrate, Sujawal, dated 16.01.2013.

2. Briefly stated the facts of the case are that an FIR bearing No.71/2012 was registered under Sections 392 /215 /34 PPC at P.S. Sujawal, District Thatta. The learned Court while examining the said matter passed an order on 04.06.2012 whereby on the report of the I.O. filed under Section 173 Cr.P.C. the case was disposed of under “C” class. The said order was challenged before this Court in Cr.M.A. No.177/12 and the Hon’ble Judge vide order dated 28.11.2012 remanded the case back to the said learned Magistrate with the directions to call the complainant and witnesses and to hear them and then pass the appropriate order thereupon. The matter, therefore, again proceeded before the learned Magistrate, who once again vide order dated 16.01.2013 came to the conclusion, on the basis of the investigation conducted by the I.O. and after hearing the complainant and his witnesses and other facts, that since there is no change in position, the case is fit for disposal in “C” class and thereafter approved the case for disposal in “C” class and discharged the accused persons. It is against this order that the instant Cr.M.A. has been filed.

3. Applicant Muhammad Abbas is present and states that the order passed by the learned Court is incorrect and is liable to be set aside as the learned Magistrate

has acted in an arbitrary manner, without considering the facts of the case, and has erred in once again disposing of the case in “C” class, without considering the merits of the case. While elaborating his view point, he submitted that he appeared before the learned Magistrate a number of times but neither the applicant nor his witnesses were examined by him and in a cursory manner, on the basis of the report of the I.O., approved the case for disposal in “C” class.

4. Nobody has appeared on behalf of the accused persons though on the previous date in the presence of the counsel for the accused the matter was adjourned for today.

5. Mr. Ali Hyder Saleem, APG supported the order passed by the learned Magistrate and stated that the learned Magistrate has not only heard the applicant (complainant) but has also examined his witnesses and thereafter came to the conclusion that this is a fit case for disposal in “C” class, hence, the assertion taken by the applicant is misconceived that the case has been disposed of in a cursory and breezy manner. He, therefore, prays that the instant Cr.M.A. may be dismissed.

6. I have heard the applicant in person and APG at some length and have perused the record.

7. Perusal of the record reveals that the instant case was sent to the learned Magistrate by this Court, vide order dated 28.11.2012, to call the complainant (applicant) and witnesses of the case and hear them and then pass the appropriate order thereupon. Learned Magistrate, while disposing of the case, has categorically mentioned that eye witnesses namely Amoon s/o. Hussain Chandio and Abdul Jalil s/o. Jumoo Panwar have been examined, who have not supported the version of the complainant (applicant) in their statements under Section 161 Cr.P.C. It is also noted that there is also an inordinate delay of about 14 days in lodging the FIR, which is unexplained. He also observed that there is a personal enmity between the complainant (applicant) and the accused party, as a number of FIRs have been lodged by the rival parties on each other. It is also seen from the

impugned order that allegations were raised that the I.O. of the case has not recorded the statements under Section 161 Cr.P.C. of the complainant and his witnesses verbatim, however, it is strange to note that at no stage of time the applicant requested for transfer of investigation or re-investigation on the ground that their statements were not properly recorded by the I.O. It is also seen from the record that even before me not a single word has been stated by the applicant regarding faulty investigation or re-investigation of the case but his only allegation is on the conduct of the learned Magistrate. It is seen from the record that the learned Magistrate, in my view, has duly complied with the directions of this Court, given on 28.11.2012, and has not only called the complainant (applicant) and his witnesses but has also considered other aspects of the case and thereafter disposed of the case in “C” class. I, therefore, find no legal infirmity in the said order, passed by the learned Magistrate. This Cr.M.A. is found to bereft of any merit and is hereby dismissed.

JUDGE