

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Revision No. S – 08 of 2014

Date

Order with Signature of Hon'ble Judge

For hearing of main case

(Notice issued)

10.02.2020

Mr. Ghulam Shabbir Shar Advocate for the applicant / complainant
 Mr. Aijaz Ahmed Maitlo Advocate for private respondents
 Mr. Aftab Ahmed Shar, Additional PG for the State

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Amjad Ali Sahito, J;- Through instant Criminal Revision application, the applicant/complainant has impugned the order dated 11.01.2014 passed by learned 2nd Additional Sessions Judge, Khairpur, whereby his direct complaint for prosecution of the private respondents for offences punishable under Sections 302, 457, 365-B, 147, 148 and 149 PPC, has been dismissed.

2. The facts in brief are that the applicant/complainant filed direct complaint against the private respondents for their prosecution are that there was dispute over the transaction of money in between brother of applicant/complainant namely Muhammad Sadiq and private respondent Zakir, hence on demand for payment, the private respondents had threatened him for consequences. It is alleged that on 12.10.2013, the applicant / complainant along with his family members was sleeping in the house, when it was 11:00 pm, all of a sudden six armed persons intruded into his house, they wokeup and on electric bulb light saw and identified accused Zakir Hussain, Zawar Hussain, Muhammad Azam with pistols, Ali

Raza with hatchet, Khalilullah and one unknown accused having lathies. The accused persons asked Muhammad Sadiq, the brother of complainant that they had phoned him to come out but you did not respond, hence they will kidnap and murder him, they caught Muhammad Sadique and accused Zakir Hussain and Zavar Hussain tied his hands, whereas, accused Ali Raza and Khalil Ahmed tied his leg and started dragging him, who raised cries, the applicant/complainant and his nephew Sikander Ali and cousin Fida Hussain came there and within their sight accused Muhammad Azam fired pistol shot upon Sadiq Ali which hit on his chest and then took him away and after some moment, they came to know that accused persons have murdered Sadiq Ali and also did not hand over the dead body to him and then managed and lodged a false FIR. The deceased was retired from Pak Army, possessing good reputation. It is alleged that the applicant / complainant approached to Police Station for registration of his FIR, but his was not responded, hence he filed an application under Section 22-A & 22-B Cr.P.C seeking orders for registration of FIR, but the same was dismissed by the Ex-Officio Justice of Peace with direction to file direct complaint of the incident, hence he filed the instant direct complainant against the private respondents.

3. The learned trial Court in order to ascertain the truth, recorded the statement of the applicant / complainant, whereas, the matter was sent to the Civil Judge and Judicial Magistrate-I Mirwah, for conducting Preliminary Enquiry, who recorded the statements of the witnesses u/s 202 Cr.P.C namely Sikander Ali and Fida Hussain and then submitted such report. The

learned trial Court after going through the version of the applicant/complainant as well as his witnesses, dismissed the direct complainant vide impugned order dated 11.01.2014. The private respondents were noticed, who have filed their objections to the present Criminal Revision Application.

4. Learned counsel for the applicant/complainant contended the learned trial Court without considering the material aspects of the case has passed the impugned order in a hasty manner and has disbelieved the version of the applicant / complainant; that the version of the applicant/complainant is supported by the witnesses namely Sikander Ali and Fida Hussain and they have fully implicated the private respondents in their versions; that the learned trial Court ought to have issued the Warrants against the private respondents, but has discarded the version of the applicant/complainant duly supported by his witnesses at the preliminary stage after the preliminary enquiry. He lastly prayed that the impugned order is liable to be set-aside, and the trial Court may be directed to proceed the case by framing charge against the private respondents.

5. Learned DPG for the State and the private respondents prayed for dismissal of the instant Criminal Revision Application by contending that the applicant/complainant and the private respondents being the members of one and same family being the nephew and cousin of the applicant/complainant; that the private respondents are innocent; that there is contradiction in the version of the eye-witnesses because witness Fida Hussain has stated that accused Azam made fire upon deceased,

whereas, witness Sikander Ali has stated that accused Zakir Hussain has made fire upon deceased; that on the application u/s 22-A and 22-B Cr.P.C application, the SHO has furnished report in which it is stated that deceased Sadiq Ali was hardened criminal and he has sustained firearm injuries at the hands of his companions, whereas, such criminal record of the deceased was also submitted. They lastly contended that the impugned order passed by the learned trial Court is very much speaking, hence the same is liable to be maintained.

6. I have considered the arguments of the learned counsel for the respective parties and perused the record. In the first instance, the applicant/complainant filed an application u/s 22-A and 22-B Cr.P.C stating therein that there was dispute between private respondent and his brother deceased Sadique Ali over the payment of money, as his brother had given Rs.100000/- to the private respondent and on demand, threats were issued to him for dire-consequences. The learned Ex-Officio Justice of Peace called reports from the SHO and DSP Thari Mirwah, who in their report has stated that the deceased Sadique Ali was a hardened criminal, who has received the firearms from the hands of his companions. In his statement, the applicant/complainant has stated that he and his brother Sadiq Ali had given Rs.100,000/- which was outstanding against private respondent Zakir Hussain and others, but on demand threats were issued to them, but surprisingly the applicant/complainant was also available at the time of incident, neither the accused persons caused any injury to complainant nor tried to kidnap him but only kidnapped and murdered his brother Sadique

Ali. In their statements, the applicant/complainant and witness Fida Hussain have stated that accused Azam made straight fire upon deceased which hit on his chest, whereas, witness Sikander Ali has contradicted them by stating that accused Zakir Hussain made straight fire upon deceased, which create serious doubt about the presence of the applicant/complainant as well as the witnesses at the scene of the incident. The perusal of record further reveals that since the private respondents were dragging the deceased towards their houses, but it is surprising that neither the applicant/complainant being the brother of the deceased, witnesses Sikander Ali and Fida Hussain being nephew and cousin of the applicant/complainant neither tried to rescue the deceased nor chased the private respondents, therefore, in such circumstances, the presence of the applicant/ complainant as well as witnesses Fida Hussain and Sikander Ali at the place of incident is very much doubtful, hence their versions / statements are not reliable.

7. In view of the above, the impugned order dated 11.01.2014 passed by learned trial Court does not call for any interference by this Court, which is maintained. Consequently, the instant Criminal Revision Application is dismissed.

Judge