

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR**

**Cr. Misc. Appln. No. S – 351 of 2020
Cr. Misc. Appln. No. S – 360 of 2020**

Date

Order with Signature of Hon'ble Judge

Priority case

1. For orders on office objection at flag 'A'
2. For hearing of main case
3. For hearing of MA No.3156/2021 (S/A)
(Notice issued)

30.08.2021

M/s Ali Gul Abbasi and Muhammad Zohaib Rajput Advocates for the applicants
in CrI: Misc. Appln. No.S-360/2020

Ms. Amber Iqbal Advocate for Applicant in CrI: Misc. Appln. No.S- 351/2021

Syed Sardar Ali Shah Rizvi, DPG for the State

>>>>>>...<<<<<<<<

ORDER

AMJAD ALI SAHITO, J- Through these two Criminal Miscellaneous Applications, the applicants/proposed accused have impugned the order dated 13.07.2020 passed by learned 3rd. Additional Sessions Judge/ Ex-Officio Justice of Peace, Mirpur Mathelo, whereby the application filed by the private respondent under Section 22-A(6)(i) Cr.P.C, was allowed.

2. It is the case of the private respondent that on 26.04.2020 at about 10:45 am when he was present in the Grocery shop of one Meer Shaikh situated at Bus stop Bago Daho within the premises of police station Belo Mirpur, when all of a sudden proposed accused persons namely Liaquat Ali, DSP Pano Akil, Inspector Shoukat Ali Arain, SHO P.S Dadloi, ASI Abid Hussain, HC- Imdad Ali, PC Muhammad Hanif, PC Asghar Ali and 3/4 unknown persons came there and apprehended him. They forcibly put him in police mobile and at the same time his cousin Zahid Hussain and nephew Ali Gohar also reached there, who tried to intervene, but the proposed accused taken him and on the way the proposed accused HC Imdad Ali and PC Muhammad Hanif robbed his two mobile phones, one Q-Mobile and another of Vego Tell, original CNIC and cash of Rs.15350.00. It is alleged that on the same date at 10:00 pm, proposed accused ASI Abid Hussain and HC Imdad Ali caught hold his right leg and proposed

accused SHO Shoukat Ali Arain of Police Station Dadloi fired pistol shot upon his right leg below the knee, as such he raised cries and started bleeding from the injuries. Thereafter a false FIR bearing Crime No.22/2020 was lodged against him at police station Dadloi showing fake police encounter for recovery of ladies, whereas, both the ladies namely Mst. Wazeeran Channa and Abida Sethar did not support the version of the FIR in their 164 Cr.P.C statements recorded on 28.05.2020 by 1st. Civil Judge and Judicial Magistrate, Pano Akil. Thereafter the private respondent approached the SSP Ghotki at Mirpur Mathelo, DSP Complaint Cell as well as SHO Police Station Belo Mirpur but all in vain, hence he approached the Court of Sessions Judge / Ex-Officio Justice of Peace, Ghotki and filed the application u/s 22-A(6)(i) Cr.P.C seeking directions for registration of his FIR, which was allowed.

3. It is contended by learned counsel for the applicants/proposed accused that no such offence has been committed by the proposed accused; that such enquiry was conducted by SSP, Khairpur in FIR No.22/2020 under section 324, 353, 392, 120-B, 365, 148 and 149 PPC of Police Station, Dadloi and connected FIR No.23/2020 u/s 23(i)A Sindh Arms Act in which it was surfaced that two ladies namely Mst. Wazeeran and Mst. Abidan were about to be kidnaped on honey trap by criminals in feminine voice but they were saved by the police but the CDR of the private respondent was close associate to a notorious criminal Manthar alias Rahib Shar, who was directly involved in the kidnapping of ladies; that no second FIR of the incident can be lodged in view of the dictum laid down by Honourable Apex Court in the case of **Mst.Sughra Bibi vs. The State (PLD 2015 Supreme Court 595)**. He lastly prayed that the impugned order may be set-aside.

4. Conversely, learned counsel for the private respondent and DPG for the State supported the impugned order and prayed for dismissal of instant Criminal Miscellaneous Applications by contending that the affidavits of Mst. Wazeeran and Mst. Abidan are available at pages 41 to 47, which disclose that neither they were abducted nor recovered by the police and even they have stated that no such incident of encounter has taken place, as alleged by the proposed accused. It is further

contended that the private respondent was abducted from kiriyana shop by the proposed accused and then by caused him pistol fire on his right leg below knee by the proposed accused Shoukat Ali Arain and a false FIR of police encounter was registered against him. Lastly, it is contended that the version as narrated in the memo of application is supported by the medical certificate.

5. In response to notice, the SSP Khairpur has filed his statement, stating therein that he has only conducted inquiry but he has no concern with the investigation of Crime No.22 of 2020 u/s 324, 353, 392, 120-B, 365, 148 and 149 PPC of Police Station, Dadloi whereas, the investigation was conducted by ASI Ghulam Mustafa Mirani, therefore, in order to verify whether he has recorded the statement of injured Jam Liaquat Ali during investigation, notice was also issued to ASI Ghulam Mustafa Mirani, who is present in Court today states that he has recorded his statement but no finding has been given in the challan.

6. I have heard the learned counsel for the applicants/proposed accused, counsel for private respondent Jam Liaquat Ali as well as learned DPG for the State and perused the record. It appears from the record that the proposed accused being SHO and his subordinates posted at Police Station Dadloi apprehended the private respondent and robbed his two mobile phones, original CNIC and cash from his possession and then kept him under wrongful confinement at police station and at 10:00 pm (night), the proposed accused HC Imdad Ali and ASI Abid Hussain caught hold of him, whereas, the proposed accused Shoukat Ali Arain made direct fire on his right leg below the knee and then by showing a fake police encounter lodged FIRs No.22 and 23 of 2020 under sections 324, 353, 393, 120-B, 365, 148 and 149 PPC and Section 23(i) A Sindh Arms Act at police station, Dadloi, respectively. The version as setout in the FIR No.22/2020 by the complainant SHO Shoukat Ali Arain of Police Station Dadloi is belied by both the ladies namely Mst. Wazeeran and Mst. Abidan allegedly recovered after an encounter. The affidavits sworn by both the ladies before learned Sessions Judge, Sukkur in which they denied their recovery after a police

encounter. In case of Mst. Sughra Bibi (*supra*), the Honourable Supreme Court of Pakistan in para-27(iv) has held as under;-

- (iv) *“During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.*
- (v) *During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."*

7. The case of the private respondent is that on 26.04.2020 at about 10:45 am, when he was present in the kiryana shop, the police officials forcibly kidnapped and brought him at police station and robbed two mobile phones, cash and original CNIC from him and on the same date at about 10:00 pm, whereas, proposed accused ASI Abid Hussain and HC Imdad Ali caught hold his right leg and proposed accused SHO Shoukat Ali Arain of Police Station Dadloi fired pistol shot upon his right leg below the knee and blood started oozing. In view of the judgment cited (*supra*), it was duty of the Investigating Officer to investigate the matter from all possible angles while keeping in view all the versions of the incident. In the present incident both the ladies namely Mst. Waziran and Mst. Abidan who have been allegedly abducted by the private respondent / complainant were recovered after an encounter have sworn their affidavits before the Court of learned Sessions Judge, Sukkur in Criminal Bail Application No.643/2020 in para-2 of their respective affidavits have stated that neither they were called by the private respondent nor abducted or recovered by the police and no such incident of encounter took place. Seemingly, the Investigating Officer has not considered all the facts but in order to save the police officials who have registered a false criminal case of fake police

encounter as well as causing firearm injuries to the private respondent on his right leg below knee and to dig-out the truth nor he has given any suggestion in the report under section 173 Cr.P.C filed before the Magistrate concerned. In the circumstances, at this stage the version of the private respondent / applicant cannot be disbelieved. Consequently, the instant criminal miscellaneous applications are dismissed and the impugned order dated 13.07.2020 passed by 3rd. Additional Sessions Judge / Ex-Officio Justice of Peace, Mirpur Mathelo is maintained. Respondent No.2 / SHO Police Station Belo Mirpur is directed to comply with the order dated 13.07.2020. DIG Police Sukkur is directed that after registration of FIR, the same shall be handed over to the SSP rank Officer for conducting the fair and impartial investigation.

Judge

ARBROHI