ORDER SHEET THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Appln No.260 of 2021

Date Order with signature of Judge

Priority Cases.

- 1. For Hearing of Main Case.
- 2. For Hearing of MA No.4551/2020.

07th May, 2021.

Mr. Munir Ahmed Malik advocate for the applicant.

Syed Meeral Shah, Addl. P.G. a/w SI-Rao Rafiq PS Darakhshan and Muneer Ahmed DSP, Investigation, Clifton.

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Precisely relevant facts are that FIR No.80/2020, under Section 489-F/420/406/468/471/34 PPC registered at PS Artillery Maidan was investigated. After investigation interim report under Section 173 Cr.PC was submitted before the learned Magistrate, who passed order dated 06.11.2020 postponed the cognizance against the absconding accused while accepting the report with direction to Investigation Officer to arrest absconding accused with the help of NADRA. Accordingly, second report was submitted with recommendation that accused persons including respondent No.4 who has left country has committed offence, hence, report was submitted. On that report learned Magistrate passed order dated 10.04.2021 while discussing the investigation paper in depth and issued pre-trial judgment by exonerating some of the accused persons namely Syed Mehsam Raza Zaidi, Omer Shahzad, Nidrat Mandkhan and Azam Amjad Malik. Accordingly, cognizance was taken against accused Dr. Shahzad Naseem whereas, other accused persons were exonerated/discharged with the surety of Rs.2 Million each due to insufficient evidence.

Admittedly by order dated 06.11.2020 interim order was accepted with direction to arrest the absconding accused person, however, in second

order, learned Magistrate issued pre-trial verdict for which he was not competent to do so when police report was having same stance. Learned counsel for the applicant has relied upon 2006 P.Cr.L.J 518 [Karachi], PLD 2016 Sindh 300, 2013 YLR 1948 and 2017 MLD 1306. It is settled principle of law that once interim report is submitted and proceedings have been initiated on that report, the same cannot be overturned by the same Magistrate. Hence, impugned order dated 10.04.2021 is set-aside. Cognizance be considered as taken by order dated 06.11.2020 and learned Magistrate refer the matter to concerned court for trial.

M.Zeeshan

JUDGE