

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
C.P.No.S-1133 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.

16.05.2016.

Mr. Wahid Bux Aajiz Leghari, Advocate for the petitioner.
Mr. M. Ishaque Khoso, Advocate for respondent No.2.
Mr. Allah Bachayo Soomro, Additional A.G

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Through this petition, the applicants have impugned order dated 14.7.2015 passed by the Judicial Magistrate-II at Matli, whereby, the report of the police authority under “C-Class” in crime No.25 of 2015 has been rejected by directing the Investigation Officer to submit the charge sheet in the prescribed form.

Counsel for the applicants submits that prior to instant FIR another FIR bearing No.30 of 2015 was registered in respect of the same offence at Police Station Tando Ghulam Ali and the learned Magistrate vide order dated 05.6.2015, had accepted the recommendation of the Investigating authorities for disposal of case in “A-Class” and therefore, the impugned order in respect of the same offence is un-lawful and without justification. He prayed that in the circumstances, the impugned order be set-aside and case be disposed of under “C-Class”, as recommended by the Investigating Agency.

On the other hand, learned A.A.G has opposed the instant application and submits that the Magistrate is not bound to accept the recommendations of Investigation Officer and in support of such contention he has relied upon a case of Safdar Ali vs Zafar Iqbal and others reported in 2002 SCMR 63.

I have heard the Counsel as well as learned A.A.G and perused the record. It appears that in this matter an FIR was registered bearing No.30 of 2015 on 15.3.2015, whereafter the Investigation Officer recommended the

learned trial Court to dispose of the case as “A-Class” on the ground that the FIR was lodged against unknown persons, whereas, the Investigation Officer was directed to continue with the investigation till arrest of real culprits. The complainant being dissatisfied had filed the application under Section 22-A and B Cr.P.C before the Justice of Peace/Ist. Additional Sessions Judge, Badin, who vide order dated 27.5.2015 directed the concerned S.H.O to record the statement of the complainant and if a cognizable offence is made out, then registered the FIR under Section 154 Cr.P.C. Such order of the learned Justice of Peace, was not challenged any further by the present applicants, whereafter, FIR No.75/2015 has been registered. Perusal of the record further reflects that the learned trial Court while passing impugned order has taken into cognizance and consideration the earlier FIR bearing No.30 of 2015 as well as the order passed earlier and has come to the conclusion that the Investigation Officer while preparing mashirnama has given his report in favour of the present applicants which the Investigation Officer was not required while preparing the mashirnama and therefore, according to the learned trial Court no proper investigation was being carried out in the matter rather circumstances were created favouring the present applicants. The learned Counsel for the applicants while confronted with this could not controverted such factual position on the ground. It is further noted in so far as disposal of crime No.30 of 2015 in “A-Class” is concerned, the same was only disposed of for the reasons that it was registered against unknown persons and has got nothing to-do with the present proceedings, whereas, Counsel for the complainant has also submitted that the complainant including two eye-witnesses have been examined as this matter pertains to murder under Section 302 and 34 P.P.C, whereas, the police officials are to be examined further. In so far as, the present application is concerned the only ground which has been urged upon by their Counsel is to the effect that once the matter was disposed of in “A-Class” no further proceedings could have been continued, however,

I am not inclined to agree with such contention as firstly the earlier case was disposed of in “A-Class” only because it was registered by the police officials against unknown persons, whereas, the present FIR has been registered pursuant to an application under Section 22-A and B Cr.P.C, and the order of learned Justice of Peace dated 27.5.2015 which has not been challenged any further by the present applicants, on the contrary they have proceeded with the trial and three witnesses have already been examined.

In view of hereinabove facts and discussion, I am of the view that present petition is misconceived, which is accordingly dismissed, however, the applicants are at liberty to approach the trial Court for any remedy as available to them in accordance with law.

JUDGE

