

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Miscellaneous Application No.S-489 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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24.12.2021

Mr. Mushtaque Ahmed Memon advocate for applicant.

Mr. Nazar Muhammad Memon, Addl.P.G Sindh.

Mr. Ghulam Asghar Mirbahar advocate for respondent No.5.

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MUHAMMAD IQBAL KALHORO,J- Applicant filed an application before learned Sessions Judge / Ex-officio Justice of Peace Tando Muhammad Khan reporting an incident occurring on 02.06.2021 whereby respondents duly armed with weapons came over the lands of the applicant situated in Deh Sunn Taluka Bulri Shah Karim. Out of all the respondents, respondent Faisal Mughal armed with a pistol made straight fire upon the applicant but he ducked down and saved himself. Thereafter, all the respondents threatened the applicant party and dismantled watercourse No.16BL. When applicant along with his kamdar tried to intervene, his kamdar Muhammad Soomar was beaten by the respondents. The harries working in the nearby fields were attracted who intervened and saved the applicant party. Thereafter, respondents making aerial firing left the scene but did not forget to issue threats to the applicant.

2. It is argued that applicant initially tried to get the FIR of the incident registered at police station by approaching SHO PS Tando Muhammad Khan but he refused to oblige and finally the application was filed before learned Ex-officio Justice of Peace which has been dismissed by impugned order. Learned counsel further states that respondents have committed multiple cognizable offences and as far as dismantling of watercourse is concerned, it has been admitted by the assistant executive engineer Gaja Sub-Division in his evidence recorded in some other criminal case which is pending before learned Civil Judge and Judicial Magistrate concerned.

3. On the other hand, learned counsel for respondents has refuted the imputation and has submitted that parties are already in litigation over the very matter i.e. watercourse; civil suit is already pending between them; first time the matter was reported by the applicant after one month viz. 06.07.2021 through an application to SSP; in the course of application u/s 22-A & B CrPC report was called from SHO who after inquiry has submitted the report in negative.

4. I have considered submissions of parties and perused material available on record. This incident is alleged to have happened on 02.06.2021. The application which was moved by applicant was after one month that of on 06.07.2021. Without waiting for any proceedings on the application by the SSP, next day i.e. 07.07.2021 applicant filed

application before the learned Ex-officio Justice of Peace. It seems that only to create a cause of action to file application u/s 22-A & B CrPC application to SSP was moved a day before. In the course of application u/s 22-A & B CrPC when the report was called from the SHO concerned he submitted the report in negative that no evidence regarding the alleged offence could be found. Even otherwise, since the matter was reported after one month, no evidence was likely to be found on the place of incident to support the allegation of aerial firing by the respondents. Parties are already at odds and a number of cases have been filed by them against each other. Dismantling of module / watercourse as stated by the Assistant Executive Engineer in some other case by respondent Faisal Mughal cannot be considered while deciding this application. Even otherwise, it is the prerogative and domain of the irrigation authorities to take action if they have any evidence of dismantling of the module by the said respondent. Without a reference by the irrigation officials and determination whether it constitutes any cognizable offence or not, no action can be taken against the said respondent in the shape of FIR. Delay in filing application and the fact of pendency of civil litigation between the parties coupled with above facts have denuaded the report of incident of significance to take cognizance thereof.

5. I do not find any illegality in the impugned order and agree with the findings recorded by the learned Sessions Judge / Ex-officio Justice of Peace. Even otherwise, the applicant has alternate remedy in the shape of direct complaint through which he can produce relevant evidence. If so advised, he may avail the same. This application is dismissed accordingly.

JUDGE

Ali Haider