

IN THE HIGH COURT OF SINDH AT KARACHI**Cr. Misc. Application No. 250 of 2009**

Applicant : Mst. Salma Ata
through Mr. Ashiq Ali Anwar Rana, Advocate

Respondent : The State
through Mr. Faheem Ansari, DPG

Date of decision : 14th January, 2019

ORDER

Omar Sial, J. Salma Ata, the applicant, has impugned an order dated 27-7-2009 passed by the learned 19th Judicial Magistrate, Karachi East. In terms of the said order the learned magistrate declined to agree with a police recommendation to dispose of F.I.R. No. 122 of 2009 in "C" Class and instead took cognizance.

2. Relevant facts are that one Nadeem-ur-Rehman registered the aforementioned F.I.R. under sections 420, 468, 471, 406 and 506 P.P.C. at the Gulshan-e-Iqbal police station against the applicant. He complained that he and the applicant had entered into a deal for the sale of an apartment. The complainant paid a few installments towards the sale consideration to Salma or to her order but then Salma resiled on her part of the deal and did not transfer the apartment in the complainant's name. The police after investigation recommended disposal of the case in "C" class but, as mentioned above, the learned Magistrate did not concur and took cognizance.

3. Through this application Salma Ata has prayed that the order dated 27-7-2009 in terms of which he did not accept the police recommendation and the order dated 8.8.2009 in terms of which the learned Judge accepted the amended report under section 173 Cr.P.C. be quashed and the proceedings culminating from the said F.I.R. be also quashed. On 20-1-2010, proceedings before the learned trial court were suspended by an order of this court. Nearly, 9 years have passed with very little interest shown from both sides to proceed with the matter.

4. In the case of **Director General Anti-Corruption Establishment, Lahore vs Muhammad Akram Khan and others (PLD 2013 SC 401)** the Hon'ble Supreme Court has held that:

“The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction.”

5. The learned counsel was asked how the above ruling of the Hon’ble Supreme Court would not be applicable in the present case when it is an admitted position that the challan has been accepted. The learned counsel was unable to give a satisfactory reply.

6. The learned counsel did not also controvert that in light of a series of judgments of the Hon’ble Supreme Court a police recommendation is not binding on the learned Magistrate. Instead, in support of his case, the learned counsel raised the argument that the F.I.R was delayed, there is a civil suit also pending adjudication between the parties and that there is a family dispute at the heart of this litigation. In my humble opinion all these issues can be raised before the learned trial court in any application filed before it if the applicant is advised that the charge is groundless or there is no probability of conviction.

7. In view of the above no ground for interference with the order of the learned trial court is made out. The order of this court dated 20-1-2010 suspending proceedings is hereby recalled, the application is dismissed and the learned trial court is directed to proceed with the trial in accordance with law.

JUDGE