

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. A. No. S – 475 of 2021

Cr. Misc. A. No. S – 577 of 2021

Cr. Misc. A. No. S – 677 of 2021

Date of hearing	Order with signature of Judge
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Hearing of cases

1. For orders on office objection
2. For hearing of main case

03.03.2022

Mr. Muhammad Ali Ansari, Advocate for applicants in Cr.MAS-475/2021 and for respondents in Cr. MAS-677/2021.

Mr. Humail Rafi Mahesar, Advocate for applicant in Cr. MAS-577/2021 and for respondents in Cr.MAS-475/2021.

Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

O R D E R

MUHAMMAD FAISAL KAMAL ALAM, J. The above three titled Criminal Miscellaneous Applications are decided by this Common Order due to commonality.

It is necessary to give a brief background. Criminal Miscellaneous Application No. S – 475/2021 and 577/2021 are interlinked because the first one is preferred by Mst. Mumtaz Noohpoto, who was the former wife of Applicant of Criminal Miscellaneous Application No. S – 577/2021 Muneer Ali Maitlo (**former husband**).

2. Earlier, Mst. Mumtaz Noohpoto filed a Family Suit No.281 of 2016 and obtained a Judgment dated 01.12.2016, inter alia, for dissolution of her marriage by way of **Khula**. She then contracted a second marriage with Applicant No.2 (in Criminal Miscellaneous Application No. S – 475/2021), namely, **Abdul Sattar (present husband)**. The Free Will Affidavit so also *Nikahnama* between

Applicant Lady and present husband are on record in Criminal Miscellaneous Application No. S – 475 of 2021.

3. The second set of facts revolve around Criminal Miscellaneous Application No. S – 677/2021 filed by Kareem Bux Maitlo v. so also above named Present Husband and two other alleged accused so also Applicant Lady. Undisputedly, Kareem Bux Maitlo (**KBM**) is real paternal uncle of Applicant Lady and her former husband Muneer Ali Maitlo. As per the contents of Criminal Miscellaneous Application No. S – 677/2021, a FIR No.41/2020 was lodged by the KBM – paternal uncle against the Applicant Lady, her Present Husband and two other accused alleging therein that the Applicant Lady committed theft at the residence of KBM. It is also stated [in the FIR] that earlier the Applicant Lady demanded her share in the inheritance left by her deceased father (late Qalandar Bux), from the said KBM – paternal uncle. Police investigated the case and submitted a report, recommending that FIR be cancelled under “B” class as allegations mentioned therein against the Applicant Lady, her present husband and other co-accused are false. However, learned Court did not accept the recommendation and vide order dated 29.5.2020 cancelled above FIR No.41/2020 in “C” class, with the reason that in order to curtail the litigation between the parties this has been done. This order has been challenged earlier by the Lady and her Present Husband in Criminal Miscellaneous Application No. S – 263/2020 but without any fruitful result and the order dated 18.10.2021 passed by this Court has now been challenged before the Hon'ble Supreme Court in Criminal Petition for Leave to Appeal No.156-K of 2021.

4. The other set of facts relating to FIR No.41/2020 is that the same order of 29.05.2020 has been challenged by the KBM (paternal uncle) in present Criminal Miscellaneous Application No. S – 677/2021 with a prayer that the said order be set aside and the case be sent up for trial.

5. Adverting to the FIR No.54/2021 lodged by former husband against the Applicant Lady and her Present Husband. The undisputed facts are that earlier a proceeding was filed by the former husband - Muneer Ali Maitlo by way of Criminal Miscellaneous Application No.1001/2020 before the learned Additional Sessions Judge / Ex-Officio Justice of Peace, Khairpur, for lodging of FIR, but the same was not accepted and the said application was disposed of vide **order dated 15.04.2020** with an observation that an investigation be conducted and if it is found that allegations are false, then proceeding under Section 182 PPC [Pakistan Penal Code] be initiated. This order was challenged by the Applicant Lady and her Present Husband before this Court in Criminal Miscellaneous Application No. S – 169/2020, which was disposed of by the order dated 20.07.2020, observing that already learned Additional Sessions Judge has made relevant observation. It was also considered that in the intervening period DSP, CIA has submitted the Report dated 23.06.2020, concluding that the allegations levelled by Respondent No.4 in his Application, that is, former husband, **was false** and the motivated and desire was to usurp the inherited property of Applicant Lady.

6. Further development took place in the matter when despite all these observations and investigation of DSP CIA in which it is recommended that allegations are false, a FIR No.54/2021 was lodged by the police officials against the Applicant Lady and her Present Husband, and the person who has purportedly solemnized the Nikah. This FIR No.54/2021 (**Subject FIR**) is the subject matter of present controversy. Regarding subject FIR police officials have recommended that it be cancelled under “C” class as all the parties hereto, that is, paternal uncle – KBM, former husband Muneer Ali Maitlo and Applicant Lady Mst. Mumtaz Noohpoto have entered into a compromise before the police officials for not initiating further cases against each other. The learned Court in case / Summary No.29/2021 has accepted the recommendation of Investigating

Officer for cancellation of subject FIR in crime No.54/2021, primarily alleging offences of remarrying during lifetime of husband to be cancelled in "C" class. It has been challenged by the Lady Applicant that the FIR should be cancelled in "B" class and by the former husband with the prayer that **Impugned Order dated 25.06.2021** be set aside and the case be challaned and sent up for trial.

7. The undisputed facts are that Decree of *Khula* was obtained by Applicant Lady on 01.10.2016 through the learned Family Court which was never challenged and has attained finality. Thereafter, she contracted marriage with her present husband who is also one of the applicants in Criminal Miscellaneous Application No. S – 475/2021 on 09.02.2019, that is, after three years. Both Lady and Present Husband were present in Court on the last date of hearing and on specific question the husband has stated that he is working in some NGO and he has obtained a Degree of Masters in English, whereas the Applicant Lady is a School Teacher / Government employee. From the present wedlock they have a daughter and the minor son was died due to miscarriage. Learned counsel for former husband has stated that he has earlier filed a Suit No.49/2021 seeking cancellation of *Nikahnama* and subsequently filed a suit No.07/2021 before the learned Family Court. Both the Suits have been filed after five years from the date of obtaining Decree of *Khula* and looking at the above facts I cannot restrain myself from observing that both subsequent proceedings of Civil Suit No.49/2021 titled Muneer Ali v. Mst. Mumtaz, Abdul Sattar and Suit for Jectitation of Marriage are actuated with malice. It is a settled rule that a decision passed by a competent forum cannot be dilated in collateral proceeding. Both learned Courts while deciding the above two separate cases have to consider observations made in this Order. Perhaps purpose of two Suits is to dilute the Decree of *Khula*. In one of the dates of hearings, learned counsel for the Applicant Lady has produced a report of applications filed by former husband against Applicant Lady. Including the present one in all 20 applications were filed,

which shows that former husband earlier has also made various complaints against the present Applicant Lady.

8. The above undisputed record shows that there was no justification of lodging Subject FIR in view of the enquiry report submitted by DSP CIA Circle on the earlier Order of learned Additional Sessions Judge which observation was incorporated in the Order dated 20.07.2020 passed by this Court yet a FIR was lodged by police officials against Applicant Lady and her Husband which was later recommended to be cancelled in "C" class. This is a classic example of abuse of process of Court in which the concerned police official, who lodged the FIR No.54/2021 so also the former husband are parties. They have abated each other in causing immense humiliation and mental agony to Applicant Lady and her Present Husband. Learned Addl. P. G is directed to take disciplinary action against the concerned police official, who lodged the FIR.

9. From the above undisputed facts, it is quite clear that former husband is continuously causing harassment to Applicant Lady and her Present Husband by filing frivolous litigation. Since after lodging of FIR No.54/2021 Applicant Lady, her former husband Muneer Ali Maitlo have entered into a compromise before police officials which persuaded the Investigating Officer to file a report for cancellation in "C" class, that was accepted in the Impugned Order, which is challenged in Criminal Miscellaneous Application No. S – 475/2021 and Criminal Miscellaneous Application No. S – 577/2021; therefore, at this stage, I am not inclined to interfere in the Impugned Orders. Accordingly, both these Criminal Miscellaneous Applications No. S – 475 and 577 of 2021 are dismissed.

10. Adverting to Criminal Miscellaneous Application No. S – 677/2021, since the matter is sub judice before the Hon'ble Supreme Court; therefore, no order can be passed on this Criminal Miscellaneous Application. However, independent of this fact, the fact remains that it is also mentioned in the FIR

No.41/2020 that Applicant Lady is demanding her right in inheritance left by her deceased father, for which she has liberty to initiate appropriate proceeding in the Court of law and the same is resisted unnecessarily by the KBM, her former husband or anyone else, then the Applicant Lady would be at liberty to lodge a FIR under Section 498-A of PPC, concerning the offence for depriving a female member of a family from her rightful share in the inheritance.

11. In view of the above discussion, two Criminal Miscellaneous Applications are disposed of and one is adjourned sine die subject to decision of Hon'ble Supreme Court.

Office is directed to place a signed copy of this order in all the captioned connected matters.

J U D G E

N.M.