

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

Criminal Miscellaneous Application No.S-744 of 2022

Applicant: Deedar Ali through Mr. Ghulamullah Chang, Advocate.

Respondents 1 to 4: Through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Respondents 5 to 7: Through Mr. Ali Najaf Memon, Advocate.

Date of hearing: 13.02.2023.

Date of decision: 20.02.2023.

ORDER

KHADIM HUSSAIN TUNIO, J:- Through instant criminal miscellaneous application, the applicant Deedar Ali has challenged the order dated 27.10.2022, passed by learned 1st Civil Judge & Judicial Magistrate, Johi in case bearing FIR No.73/2022 registered at PS Johi for the offences punishable under sections 302, 148, 149, 504, 114, 337-H (ii) PPC, whereby he allowed the application filed by respondents No.5 to 9/accused and ordered for further investigation of the case.

2. In nutshell, facts of the prosecution case are that on 20.07.2022 at 1030 hours when the applicant/complainant, his brothers Muhammad Yaseen and Muhammad Saleh went to meet their sister Mst. Haleeman Khantoon, the respondents No.5 to 9/accused, namely Azeem, Ameer, Mashooque, Sahib and Sulleman respectively, duly armed with guns and pistols came there and on instigation of the respondent No. 5 Azeem, the respondent No. 8 Sahib made straight fire upon deceased Mst. Haleeman, the sister of applicant/complainant, which hit her above her left breast. The applicant/complainant and his brothers took their sister to the hospital, but she died on the way, as such, instant FIR was registered.

3. Learned counsel for the applicant has contended that after registration of FIR, Investigating Officer SIP Syed Maqbool

Hussain Shah/respondent No.4 conducted investigation of the case and arrested the respondents No.5 to 7/accused but failed to arrest the respondents No.8 and 9/accused; that since the applicant/complainant was being harassed and pressurized by the accused, as such, he preferred a Criminal Miscellaneous Application bearing No.1638/2022 in terms of section 22-A 6(iii) Cr.P.C. before learned Justice of Peace/Court of Sessions Judge, Dadu, whereby provision of protection to him and witnesses was ordered. He has further contended that after passing of the order by learned Justice of Peace, 2nd Investigating Officer Inspector Noor Mustafa Pathan/respondent No.3 conducted investigation and submitted challan showing the respondents No.5 to 7 as arrested while respondents No.8 and 9 as absconders. He has further contended that after submission of challan, instead of accepting the final report, the learned Magistrate has allowed the application filed by respondents No. 5 to 9/accused and ordered for further investigation, which is opposed to law, facts, justice and enquiry; that the learned Magistrate ought to have accepted the challan, but without giving cogent reasons and applying judicious mind did not accept it and ordered further investigation. He has stated that the offence with which the respondents/accused are charged carries capital punishment, therefore, if further investigation is made, complainant's case would be ruined and resultantly the respondents/accused would take its benefit; that the impugned order is based on assumptions and presumptions, which is passed in hasty manner and is not sustainable under the law as the learned Magistrate is not empowered to order for further investigation. He, therefore, prayed to set aside the impugned order by relying upon the case of *'Mst. NASREEN AKHTAR v. The SECRETARY, HOME DEPARTMENT, GOVERNMENT OF SINDH and 3 others'* **(2018 P Cr. L J 7)**.

4. Conversely, learned A.P.G. for the State has supported the impugned order while contending that the magistrate is fully competent to order further investigation into a matter and it is for the Court to decide finally whether the case is

one where cognizance can be taken or not. Whereas, learned counsel for the respondents No.5 to 7/accused has vehemently opposed the contentions of applicant/complainant and contended that in the earlier investigations, version of the respondents/accused was not recorded by the Investigation Officer(s) though the Investigating Officers are duty bound to act impartially, fairly and justly without favour to anybody, therefore, the impugned order is rightly passed by learned Magistrate, which does not require any interference by this Court. In support of his contentions, he has relied upon the cases of '*Choudhry MUHAMMAD ADNAN v. Mst. ERUM and others*' (2011 S C M R 508) and '*Dr. ABDUL AZIZ v. IIND C & FJ/JM SOUTH and another*' (2013 Y L R 676).

5. Having heard the learned counsel for the applicant as well as learned counsel for respondents No.5 to 7, learned A.P.G. for the State and have perused the material available on record.

6. Before diving into the merits of the case, it is pertinent to observe that a fair and impartial investigation is the right of every accused and is a concomitant of the right to a fair trial guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Enjoying the protection of law, be it even for a convicted person is an inalienable right of every citizen of Pakistan under Article 4 of our Constitution. An investigation officer is duty bound to find out the truth of the matter under investigation; his object shall be to discover the actual facts of the case and to arrest the real offender or offenders; and that he shall not commit himself prematurely to any view of the facts for or against any person. Such investigation is to be completed without any unnecessary delay and as soon as it is done, the investigation officer is to submit a report u/s 173 Cr.P.C.

7. The question whether further investigation could be ordered or not is one that has often come before the Superior Courts. It has been the consistent view that further investigation or even reinvestigation can be ordered or done by the police on its own accord to find the truth. The Hon'ble Apex Court, in the

case of ***Bahadur Khan v. Muhammad Azam and 2 others (2006 SCMR 373)*** has been pleased to observe that:-

"It is well settled proposition of the law as also held consistently in the important judgments of this Court and those cited by the learned Advocate on Record, in view of the provision of section 173, Cr.P.C. that no legal bar existed for reinvestigation of a criminal case even after submission of final report under section 173, Cr.P.C. and the police could carry out the fresh investigation and submit its report to the Court."

8. Further investigation, regulated u/s 173(2) Cr.P.C, is subject to *"pending the order of the Magistrate"*. Proviso to Section 173(1) says that Court shall commence the trial on the basis of interim report, unless, for reasons to be recorded, the Court decides that the trial should not so commence. Meaning thereby if the court does not commence the trial, it would be presumed that the police should continue on for further investigation. "Pending the orders of Magistrate" has a wide connotation that Court can also direct to collect such and such information in the matter apart from the functions assigned to prosecution to supervise the process in order to build a case on the basis of evidential and public interest tests but if the court commences the trial on such interim/incomplete report, even then police is bound to submit complete report later because there is no limitation for conclusion of investigation in any stipulated period which is mentioned in the opening lines of section 173 Cr. P.C that "Every investigation under this Chapter shall be completed without unnecessary delay". The order passed by the learned Magistrate was not one passed in the ordinary course, rather the learned Magistrate had observed that since the parties had lost faith in the investigation officer who was responsible for collection evidence and in such eventuality responsible for sealing the fate of an accused, further investigation was bound to occur to promote the canons of justice and fair trial.

9. While it may be true that following further investigation or re-investigation, as also argued by the learned counsel for the applicant, conflicting evidence and contradictory opinions of the police officers may come forward, it remains the

duty of the Court to evaluate the contradictory opinion in accordance with established principles of criminal jurisprudence and rules of evidence. The Hon'ble Apex Court in the case of **Muhammad Ashfaqe v. Amir Zaman and others (2004 SCMR 1924)** has been pleased to observe that:-

“The apprehension of the petitioner/complainant that his case is likely to be prejudiced by submission of report on reinvestigation is misconceived. Firstly because the court concerned can proceed with the trial on the basis of the report already submitted under section 173 Cr.P.C. and secondly it is not bound by the opinion given in the said report or expressed in the report being submitted pursuant to reinvestigation. It is always the judicial consideration of the material collected by police which weighs with the court while issuing process.”

10. For what has been discussed above, the impugned order passed by the 1st Civil Judge and Judicial Magistrate Johi is legal and does not call for any interference by this Court. Resultantly, instant criminal miscellaneous application is hereby dismissed being devoid of any merits.

JUDGE