

**THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Criminal Revision Application No.S-134 of 2022

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**DATE**                      **ORDER WITH SIGNATURE OF JUDGE**

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For orders on office objections.  
For hearing of main case.  
For hearing of M.A. No.8370/2022.

27.03.2023.

Mr. Muhammad Jamil Ahmed advocate for the applicants.  
Mr. Wali Muhammad Khoso advocate for the complainant.  
Mr. Abdul Waheed Bijarani Assistant Prosecutor General.

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O R D E R

MUHAMMAD IQBAL KALHORO, J:- This Revision Application is directed against an order dated 19.09.2022 passed by 7<sup>th</sup> Additional Sessions Judge Hyderabad in Criminal Revision Application No.29 of 2022 filed against the order of learned Judicial Magistrate-IX Hyderabad dated 04.08.2022 on an application under Section 190 CrPC filed by complainant whereby learned Magistrate has taken cognizance of the offence against the applicants under Section 201 PPC.

Brief facts of the case are that complainant Hamid Ali lodged an FIR at PS FIA Crime Circle Hyderabad stating that he deposited-380,000/- Australian Dollar in the account of Syed Danish Hyder through Pakistan Currency Exchange but their officials mala fidely transferred-135,000/- Australian Dollar in the account of Sadia Shamim, his wife, with his fake signatures. And that due to his relation with Danish and his wife Sadia Shamim he gave such amount to Danish with his undertaking to return the same within six months. However, later on fake notices of Australian High Court & Supreme Court were sent to him by them informing him that his amount will be returned after 5 years. Thus, he lodged FIR against Pakistan Currency Exchange for illegal transfer of-135,000/- Australian Dollar in the account of Sadia Shamim in connivance of Danish and Sadia. The FIR was registered U/S 406, 420, 468, 471, 201, 109 & 34-PPC.

After investigation I.O. submitted the final report under Section 173 CrPC citing the applicants as witnesses, and showing accused

Sadia Shamim and Danish Hyder as absconders and accused Muzaffar Ali and Irfanullah officials of Pakistan Currency Exchange on bail. After submission of the Challan, complainant filed an application under Section 190 CrPC requesting the Court to take cognizance of the offence against the applicants which the trial Court allowed. The Revision Application filed by the applicants against which before learned 7<sup>th</sup> Additional Sessions Judge Hyderabad was dismissed vide impugned order, as stated above.

Learned counsel for applicants has argued that without any material available on record cognizance of the offence has been taken by learned trial Court, the learned trial Court did not even issue a show cause notice or afforded a hearing to the applicants which is against the scheme of Article 10-A of the Constitution of Pakistan. The Revisional Court did not consider this fact that applicants were the witnesses basically, and had been condemned unheard by learned Magistrate who ordered their joining in the trial on the basis of 161 CrPC statements of the applicants considering them self-incriminatory which is against the scheme of Article 13 of the Constitution.

On the other hand, counsel for the complainant and learned APG have opposed the revision application stating that there is sufficient material available against the applicants justifying taking cognizance of offence against them. Learned trial Court and learned Revisional Court have not committed any error in passing the impugned orders which are based on correct appreciation of law as well as facts.

I have considered submissions of the parties and perused material available on record. Applicant Malik Tahir Abbas is Director Operations and founder Member of Pakistan Currency Exchange; whereas applicant Mirza Hafeez Baig is Supervising Officer there. In the final report, the I.O. has cited them as witnesses in support of prosecution case. It appears that learned Magistrate while taking cognizance of offence against them on application under Section 190 CrPC failed to issue first any notice to them or to make sure their presence before him at the time of hearing of the application for deciding the case against them. He has mainly considered statements of these two applicants recorded under Section 161 CrPC as self-incriminatory providing sufficient material justifying cognizance of

offence. However, learned Magistrate failed to realize that before considering such statements of the applicants as self-incriminatory, a notice was required to be issued and that affording an opportunity of hearing to them was mandatory in view of Article 10-A of the Constitution of Pakistan which basically reiterates the dictum that no one should be condemned unheard.

At the time when application under Section 190 CrPC was filed by the complainant, no extra material other than what had already been collected by I.O. was present before the trial Court to justify taking a difference view against the applicants. The order passed by the Magistrate shows that he has considered disclosure of mistake by co-accused Muzaffar Ali in sending the amount in a wrong account of Sadia Shamim; and applicant Malik Tahir Abbas inaction on such disclosure, as incriminating evidence without however realizing that the narration made in 161 CrPC statement by a witness has infact no evidentiary value, and unless such disclosure of facts is supported by some material cogent enough to inspire confidence the same cannot qualify as an incriminating piece of evidence sufficient enough to justify taking cognizance of the offence against the same persons.

The next point weighing with learned Magistrate to pass impugned order is that applicant Malik Tahir Abbas had failed to produce relevant record of the transactions to the I.O. on the plea that it has been destroyed in rain. It is however surprising that why the I.O. did not take any action against him or made any recommendation before the Magistrate for taking action against him in such circumstances; and why the Magistrate considered it a sufficient incriminatory material to justify joining of him as an accused, instead of a witness as arrayed in the Challan under Section 173 CrPC.

The material which has been considered by the Magistrate against applicant Mirza Hafeez Baig is that he in his statement has admitted that he had attested the remittances Forms and affixed stamp over it on trust basis. The very tenor of such statement would mean that the applicant did it on bona fide and that he was not aware whether any fraud or temperament has been committed in the record, which was produced before him for the purpose of attestation. But, in any case, such disclosure that too made before the police officials under Section 161 CrPC by the witnesses himself cannot be

considered as self-incriminatory justifying taking cognizance of offence against him.

When the matter came before the learned Revisional Court against such findings, the Court apparently did not consider all these facts and in a perfunctory manner has allowed the Revision Application, without realizing that applicants had been condemned unheard and sufficient material before the trial Court was not available to transpose them as accused from the witnesses. I am, therefore, of the view that both the orders are not sustainable in law and the same are hereby set-aside and the matter is remanded back to learned trial Court viz. Judicial Magistrate-IX Hyderabad where the application under Section 190 CrPC would be deemed to be pending. The learned Judicial Magistrate would be required to issue a notice to all including the applicants first and afford them an opportunity of hearing and decide the said application on the basis of well-established principles of law, reiterated in brief above in the present order. The Revision Application alongwith listed application is disposed of in the above terms.

**J U D G E**

Irfan Ali