

Order Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

Cr. Misc. Appl. No. S- 226 of 2023

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DATE	ORDER WITH SIGNATURE OF JUDGE
28.04.2023	

For orders on office objections  
For hearing of main case

Mr. Ishfaque Ahmed Almani, Advocate for applicant  
Mr. Ahmed Hussain, Advocate for respondents 3 to 6  
Mr. Siraj Ahmed Bijrani, A.P.G.

**ORDER**

**ADNAN-UL-KARIM MEMON, J .** - Through instant Cr. Misc. Application, the applicant has prayed for setting aside the order dated 5.4.2023 passed by learned Vth Additional Sessions Judge / Ex-Officio Justice of Peace Hyderabad with further direction to respondent No.2 to record the statement of applicant and if from his statement a cognizable offense is made out register the FIR. An excerpt of the order dated 5.4.2023 is reproduced as under:-

6). In the instant case, the F.I.R for the same incident has already been lodged, therefore, in the above circumstances, while relying upon the above case law, the prayer in respect of lodging of second F.I.R for the version of the applicant for the same incident is declined. However, the officer, who is investigating F.I.R No.90/2023, may also investigate the version advanced by the applicant regarding the same incident. The applicant is at liberty to file direct complaint, if she is advised so. The applicant has also prayed for providing legal protection which is constitutional right of every citizen, therefore, Incharge Check Post Airport, Hyderabad is directed to provide legal protection to the applicant and her family members in accordance with law and submit such compliance report within 07 days. Let the copy of this order be sent to the concerned Police Station for information and compliance.

2. The case of the applicant is that she contracted marriage with Rasool Bux on 16.11.2008 who subsequently drove her out of his house, upon which from time to time harsh words were being exchanged between the applicant and proposed accused; that on 12.3.2023 applicant along with her brothers Saleem, Mushtaq and mother Ghulam Khatoon were present in their house when at about 0900 hours Rasool Bux Magrio along with his six companions forcibly entered in their house caused injuries to the applicant and his brother;

meanwhile Muhallah people came and intervened upon which the accused persons went away. The applicant approached SHO PS Airport for obtaining letter for medical treatment and registration of FIR. The SHO gave letter for treatment to the applicant only but not his brother and further refused to register the FIR; hence she filed Cr. Misc. Application before learned Ex-Officio Justice of Peace who dismissed the same vide impugned Order dated 5.4.2023; hence the instant Cr. Misc. Application.

3. Learned counsel argued that the private respondents have committed a cognizable offense but the SHO concerned failed to register the FIR and further learned Ex-Officio Justice of Peace also committed illegality while dismissing the application of applicant and on the contrary he allowed the application of respondent No.3 moved for the same incident with direction to concerned SHO to record his statement; that learned Ex-Officio Justice of Peace without giving cogent reasons dismissed the application of applicant; hence the impugned Order is liable to be set aside.

4. I have heard learned counsel for the parties present in court and perused the record with their assistance.

5. It is now settled that anyone can report the commission of a cognizable offense either orally or in writing to the police. Even a telephonic message can be treated as a FIR., Police has to register FIR without any delay or excuse, for the reason that the registration of an FIR and the doing of an investigation are the acts of officers of the police department. This Court can declare such acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision.

6. Under Section 154 Cr.P.C, a First Information Report (FIR) can be registered only about the commission of a cognizable offense. Similarly, an investigation can be made by a police officer, without the order of a Magistrate under Section 156 Cr.P.C only in respect of a cognizable offense.

7. The Supreme Court has held that it is the contents of an FIR that are to be seen to ascertain whether a cognizable offense is made out of the allegations contained therein, and mere mentioning of a particular Section of PPC or any other offense under the law in the FIR is not determinative in this regard. However, the falsity or truthfulness of those allegations is not under examination to determine the legal authority of the police officer to register the

FIR. The precise question is whether the allegations contained in the FIR make out the commission of a cognizable offense.

8. It is the sacred duty of the court to protect the rights of the people; and, it is the duty of police to investigate the first FIR and collect evidence including the cross version if an investigation is launched malafide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by the court and aggrieved person could approach the Court for redressal of his/her grievances under the law laid down by the Supreme Court.

9. As far as the cases referred by learned counsel regarding the opinion of the Investigating Officer is concerned, in Sughran Bibi's case (**PLD 2018 SC 595**), it was observed that it is the duty of the Investigating Officer to dig out the truth but the said exercise should be based upon concrete admissible material and not a bald opinion, and Courts are not bound to accept the bald opinion of Investigating Officer which is not based upon reasonable, plausible and strong material.

10. In my humble view, the case of the present applicant does not fall within the parameters as settled by Apex Court in the case of **Sughran Bibi supra in paragraph-27 (IV) (V) & (VII)**. Resultantly, this application is hereby allowed. Consequently, the impugned order dated 5.4.2023, passed by learned Additional Sessions Judge, is set-aside; however, the applicant may approach the Investigation Officer who may record her statement under Section 161 Cr. P.C. and proceed further under law. If the investigation officer collected some evidence based on medical evidence and other material which constitutes an offense he is at liberty to file a fresh report before the concerned Magistrate, who thereafter pass appropriate order on the report of I.O and if he feels that case should be registered against the accused he may do so in accordance with law.

JUDGE