

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

Cr. Misc. Appl. No. S- 608 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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28.04.2023

For orders on office objections
For hearing of main case
For hearing of MA 8063/22

Mr. Sajjad Ali Laghari, Advocate for applicant
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 15.8.2022 passed by learned Sessions Judge, Shaheed Benazirabad in Cr. Misc. Appl. No. 1858 of 2022 whereby the learned Judge while dismissing the above application of the applicant with a cost of Rs. 50,000/- directed SHO PS A-Section Nawabshah to record the statement of Mst. Ghulam Kubra; and, if a cognizable offense is made out incorporate it in 154 Cr.P.C. book.

2. Brief facts of the case are that applicant applied under Section 491 Cr.P.C. for recovery of his son Fayaz aged about 20 years who was allegedly kept by the private respondents at their house.

3. While issuing notices on the above application, SHO PS A-Section Nawabshah was directed to ensure the production of alleged detainee; at the first instance, the detainee could not be recovered but subsequently, ASI Ghulam Nabi Zardari conducted a raid at the house of applicant and recovered the alleged detainee Fayaz; that Mst. Ghulam Kubra grandmother of respondents 5 and 6 also appeared and stated that her daughter Mst. Husna was married to Mehar Ali and out of wedlock respondents 5 and 6 were born. She further stated that she kept her gold with her son-in-law which was stolen by the alleged detainee Fayaz and to avoid the return of gold they filed the application

under Section 491 Cr.P.C. with malafide intention. She further stated that time and again she approached the concerned police but she was condemned unheard. She further pleaded that the applicant attempted to book her family; however, failed to obtain favourable orders at all the legal forum.

4. Mr. Sajjad Ali Laghari learned counsel argued that learned trial court was required to issue directions to the SHO concerned to record the statement of applicant but on the contrary the trial court while dismissing the application of applicant directed to record the statement of Mst. Ghulam Kubra was also involved in kidnapping of the detainee, which caused miscarriage of justice; further while dismissing the application of applicant learned trial court has given a pre-trial verdict which is erroneous; that learned trial court traveled beyond jurisdiction while playing the role of Investigation Officer which has caused miscarriage of justice. He lastly prayed for allowing the instant application as the lawful rights of the applicant have been denied by respondent No.3.

5. Learned A.P.G. has opposed the application and supported the impugned Order.

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

7. Learned Sessions Judge, Shaheed Benazirabad after hearing the parties and recovery of alleged detainee from his own house dismissed the application with a cost of Rs. 50,000/- and further directed SHO PS A-Section Nawabshah to record the statement of Mst. Ghulam Kubra and incorporate it in 154 Cr.P.C. book if a cognizable offense is made out.

8. During arguments, the parties informed that the son of applicant Fayaz Palh was booked in Criminal Case No.191 of 2022, however, he was acquitted from the charge vide judgment dated 22.12.2022 handed down by learned Judicial Magistrate–I NawabShah. An excerpt of the judgment is reproduced as under:-

“The perusal of the record shows that the evidence of complainant/PW-1 Mst. Ghulam Kubra Ratar was recorded on 22.12.2022 and during the course of the evidence; she deposed that he registered the FIR against her nephew Manzoor Hussain Ratar and his friend Fayaz Palh. Since her

nephew was having friendship with bad company that's why upon suspicious she lodged this FIR, thereafter she came to know that the above-named accused persons were not their real culprits. She further deposed that she does not want to proceed this case against both accused and she cannot produce her witnesses against her claim. Subsequently, learned ADPP declared the complainant as hostile witness, and she was cross-examined by the learned ADPP for the state.

The perusal of the record reflects that the complainant is the star witness of the incident, and his evidence is of the utmost importance, but he has failed to support the prosecution case. The evidence, as recorded, casts clouds of doubt on the prosecution's story; as such, nothing convincing is available on record that may establish any link between the alleged offence and the accused. In a criminal trial, the burden to prove the charge rests on the shoulders of the prosecution, but the prosecution has miserably failed to prove its case against the accused.

It is well settled principle of law that the prosecution is duty bound to establish its case against the accused beyond any reasonable doubt and if any single doubt arise in prosecution case, such benefit of doubt will go in favour of accused. Reliance is placed on the dictum of law in the case of **PLD 2005 Peshawar 204 ,2003 P.Cr.LJ1847-Karachi, 2009 SCMR 230.**

In view of the above facts and circumstances, the doubtful implication of the accused cannot be overruled. As a result, the accused Manzoor Hussain S/O Lal Hussain Ratar is hereby acquitted from the charge leveled against him u/s 245 (i) Cr.P.C., and the accused Fayaz S/O Allah Bux Palh is also acquitted in his absence; both accused are present on bail; their bail bonds stands cancelled and sureties are discharged.”

9. 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 an FIR. It is the duty of police to register FIR without any delay or excuses, for the reason that registration of an FIR and 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.

10. Under Section 154 of the 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 Magistrate, under Section 156 of the Cr.P.C only in respect of a cognizable offense.

11. 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. In the present case applicant has failed to demonstrate that his right has been infringed on the contrary the alleged detainee was recovered from his house which factum has been disclosed in the impugned Order which is sufficient ground to hold that frivolous litigation clogs the pipelines of justice causing delay in the dispensation of justice. Such vexatious and frivolous litigation on the part of applicant must be dealt with firmly and strongly discouraged. Perhaps this could be the reason that the Presiding Officer imposed a cost upon the applicant.

12. In view of the above facts and circumstances of the case, no reasonable ground existed to interfere in the impugned order.

This Criminal Miscellaneous Application is dismissed.

JUDGE