

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 457 of 2019

along with
Criminal Misc. Application No. 04 of 2020

Date *Order with signature of Judge*

For hearing of Main Case.

12.01.2023

Mr. Muhammad Irfan, Advocate for the Applicant in Criminal Misc. Application No.457 of 2019 and for Respondent No.2 in Criminal Misc. Application No.04 of 2020.

Syed Wasi Imam, Advocate for Applicant in Criminal Misc. Application No.04 of 2020 and for Respondent in Criminal Misc. Application No.457 of 2020.

Syed Meeral Shah, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this common order, I propose to dispose of both the Criminal Misc. Applications as the same have been filed against order dated 02.10.2019 passed by the Civil Judge & Judicial Magistrate-XXV, Karachi (East) whereby I.O submitted his report in respect of Crime No.140/2019 registered with P.S PIB Colony, Karachi, under Section 337-A(i), 354, 452, 427 & 34 PPC and disposed of the FIR under 'C' class. Learned Judicial Magistrate, after going through the police report and material placed before him on record, has approved the summary as proposed.

2. Learned counsel for the complainant/applicant submits that learned Magistrate did not appreciate the material placed before him even did not provide equal opportunity of hearing to complainant; hence, the impugned order does suffer from many infirmities as well as illegalities which are liable to be set-aside. He also prays for remand of the case for deciding afresh after hearing to the parties.

3. Learned counsel for the accused/applicant Khalid Anjum has assailed the same order and submits that it may be converted from 'C' class to 'B' class; besides, proceedings in terms of Section 182-B Cr.P.C be initiated against the complainant/respondent.

4. Learned Addl. P.G, Sindh appearing for the State, submits that there is a dispute between husband and wife; besides, no such incident, as alleged, had

occurred, therefore, police have rightly disposed of the FIR under 'C' class. As far as, prayer of accused/applicant in Criminal Misc. Application No.04 of 2020 is concerned, learned Addl. P.G, Sindh submits that I.O did not submit any recommendation for disposal of the case under 'B' class, therefore, connected Criminal Misc. Application No.04 of 2020 is meritless and liable to be dismissed. As far as Criminal Misc. Application No.457 of 2019 is concerned, learned Addl. P.G, Sindh submits that learned Magistrate has discussed each and every aspect of the case through impugned order which does not require any interference by this Court. He has drawn attention of the Court towards para-3 of the impugned order and prays for dismissal of both the applications.

5. **Heard arguments and perused record.** Admittedly, there is a dispute between husband and wife and as per material collected by the I.O only hot words were exchanged between the parties in the street and none of the accused had entered into the house of complainant nor caused any kind of maltreatment to woman folk. Moreover, the learned Magistrate has passed a speaking order and perusal thereof, does not show cognizance of any offence.

6. Before parting with the order, it will be appropriate to reproduce para-3 of the impugned order which reads as under;_

"03. I have heard and perused the whole material available on record. Despite allegation of maltreatment no medical certificate is available with the files except medical certificate of Adnan in which one injury is mentioned which is non cognizable. Aparat from this vide order dated 09.08.2019 passed in G & W Case No.507/2019 passed by learned 21st Family Judge Karachi South whereby meeting was allowed in presence of daughter of alleged accused Khalid Anjum. However, upon investigation the I.O recommended the case under "C" on the ground that both parties had family dispute against each other since long time, on alleged day of incident only hot words were exchanged in the street, none accused entered into the house of complainant nor females of complainant were maltreated. After hearing the parties and perusing the record I am agreed with the opinion of I.O as there is no evidence of door broking, medical about maltreatment. Even otherwise I do not find sufficient material available with record to take cognizance."

7. In the light of above discussion, I am of the opinion that there is no fault in the investigation conducted by the police, therefore, impugned order does not suffer from any illegality or infirmity which may require interference by this Court. Consequently, both these Criminal Misc. Applications, being devoid of merits, are hereby dismissed along with pending application(s), if any.

Office to place copy of this order in the connected application.

JUDGE