

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Misc. Application No.S-519 of 2022

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1. For Orders on office objection.
2. For hearing of main case.

**24-10-2023.**

Mr. Ghulam Shabbir Shar, advocate for the applicant.  
Syed Israr Ahmed Shah, advocate for the private respondents.  
Mr. Shaif Muhammad Mahar, Deputy P.G for the State.

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1. Over ruled.
2. The facts in brief necessary for disposal of instant Crl. Misc. Application are that the applicant alleging gang rape against the private respondents, lodged an FIR against them with PS Kumb, it was recommended by the police to be cancelled under "C" class and was cancelled accordingly by learned Ist Judicial Magistrate Kotdiji vide order dated 19-07-2023, which is impugned by the applicant before this Court by making the instant Crl. Misc. Application under section 561-A Cr.P.C.

It is contended by learned counsel for the applicant that learned trial Magistrate has ordered for cancellation of subject FIR, on the basis of DNA report, which was not a conclusive piece of evidence determining the guilt of the private respondents in summary manner. By contending so, he sought for setting a side of impugned order with direction to learned trial Magistrate to take cognizance of the offence in accordance with law. In support of his contention, he relied upon case of *Zahid and another Vs. The State (2020 SCMR 590)*.

Learned DPG for the State did not support the impugned order. However, learned counsel for the private respondents by supporting the impugned order sought for dismissal of instant CrI. Misc. Application by contending that the applicant was intending to involve the private respondents by lodging a false FIR against them, which has rightly been cancelled under "C" class on the basis of honest investigation which was also corroborated by DNA report being negative.

Heard arguments and perused the record.

The applicant in her FIR has expressly involved the private respondents of the alleged incident and she in that respect is supported by her witnesses, they could not be disbelieved in a summary manner, on the basis of DNA report being negative, which is corroboratory in nature. It was the case which was calling for evidence in order to determine the guilt of the private respondents. In these circumstances, learned trial Magistrate ought not to have ordered the cancellation of subject FIR under "C" class on the basis of recommendation of the police, by way of impugned order; it is set aside with direction that the same to be passed afresh by learned trial Magistrate, after conducting further inquiry, if need be.

The instant CrI. Misc. Application is disposed of accordingly.

**Judge**