

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No.604 of 2023

Date	Order with signature of Judge
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For hearing of main case

01.11.2023

Mr. Kazim Hussain advocate for the applicant alongwith applicant Akhtiar Hussain Soomro
Mr. Talib Ali Memon, Assistant PG alongwith IO/SI Liaquat Dawach PS Sachal (respondent No.4) and SI Nawaz PS Sachal Karachi
Sadaqat Ali Soomro and Mst. Nusrat, respondents No.1 and 3 are present in person

This Criminal Miscellaneous Application has been directed against the final report (Summary) No. 315 of 2023 (*re-the State v Sadaqat Ali Sommor and others*) vide order dated 21.08.2023 passed by learned Xth Civil Judge/Judicial Magistrate Malir at Karachi, whereby he accepted the C-Class report, in crime No. 730/2023 of P.S Sachal for offenses under sections 380,506,504 and 34 PPC, submitted by the Investigating officer under section 173 Cr. P.C.

The applicant Akhtiar Hussain Soomro being aggrieved by and dissatisfied with the impugned order dated 21.08.2023 passed by learned Xth Civil Judge/Judicial Magistrate Malir at Karachi has approached this court inter-alia on the ground that the Investigation officer has not conducted the fair and impartial investigation and he facilitated the accused persons; that I.O has failed to record the statements of neutral witnesses but recorded statements of defense witnesses, who are close relatives of the accused; that Investigation Officer has only focused on the family dispute between the complainant and his wife Nusrat (accused).

2. The allegations against the private respondents/accused are that on 30.05.2023 they in connivance with each other committed theft of Rs. 14,00,000/- and other valuable articles from the house of the complainant, such report of the incident was given to the Sachal Police Station on 22.06.2023 to register the FIR No. 730/2023 under Section 380, 504, 506 and 34 PPC. However, during the investigation, the Investigating Officer submitted a report under Section 173 Cr. P.C. to the learned Magistrate by recommending the aforesaid FIR to be disposed of under C-Class. The learned Magistrate vide order dated 21.08.2023 disposed of the subject FIR under C-Class. An excerpt of the same is reproduced as under:-

Neither aforementioned terms of the compromised decree were denied from the side of the complainant nor any substantial material is brought in rebuttal from the side of the complainant against the material collected by the investigation officer and even nothing any confidence inspiring is brought which could show malafide on the part of the investigation officer. It is settled law that the

recommendations of the investigation officer is not binding upon the Magistrate while deciding final reports but for such disagreement, there should be sufficient material against the recommendation of the investigation officer which is lacking in the above matter, hence, keeping in view these all circumstances, I am agreed with the report of investigation officer that there is insufficient evidence on record to connect the accused persons in the commission of alleged offense, therefore, instant report submitted under Section 173 Cr. P.C. is hereby approved, consequently, the above FIR is disposed of under C Class. Let this order along with the police file be forwarded to S.I.O of P.S Sachal, for information & necessary compliance.

The private respondents present in Court, submitted that the applicant is a cruel man and unnecessarily dragged his ex-wife and his in-laws into the criminal case. He has further submitted that no incident of alleged theft has been committed. They next submitted that the applicant being an advocate has misused his profession and indulged in illegal activities thus this application is liable to be dismissed. They supported the impugned order dated 21.08.2023.

Mr. Talib Ali Memon, Assistant PG has supported the impugned order and submitted that no proof of the alleged incident in which the aforesaid amount and other documents were stolen by the accused and the Investigating officer conducted a fair and impartial investigation and concluded that there was/is no sufficient evidence on record to connect the accused persons in the commission of the alleged offense. He prayed for the dismissal of the instant Criminal Miscellaneous Application.

I have heard the learned counsel for the parties and have perused the material available on record.

Under section 4(i) Cr.P.C. Investigation is meant collection of evidence helping to form an opinion by the Investigation Officer for submission of the final report but in this case the Investigation Officer recommended the disposal of the case in 'C' class with legal justification supported by material evidence. These findings recorded by the Magistrate on the summary orders were well within the law as it is the prerogative of the Court to give findings regarding the guilt or innocence of the accused at the initial stage. Prima facie ocular evidence as portrayed by the applicant is not corroborated by any material on record to connect the accused in the commission of the offense of the theft. The impugned order passed by the Civil Judge & Judicial Magistrate is sustainable under the law and requires no interference by this Court.

Considering the above facts and circumstances instant Criminal Miscellaneous Application is dismissed.

JUDGE