

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Misc. Application No.S-138 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on office objections.
For hearing of main case.

17.07.2023.

Mr. Muhammad Idris Kalo advocate alongwith the Applicant.
Ms. Safa Hisbani Assistant Prosecutor General, Sindh.
SIP Meer Muhammad Shahani, on behalf of SP Complaint Cell
Jamshoro.

ORDER

MOHAMMAD ABDUR RAHMAN, J:- This is a criminal miscellaneous application that has been preferred by the Applicant against the order dated 28.12.2022 passed by Additional Sessions Judge-II/Ex-Officio Justice of Peace, Kotri. The Applicant moved an application under Section 22 A & B of the the Code of Criminal Procedure, 1898, seeking therein a direction to lodge an FIR in respect of alleged kidnapping of one Mst. Shabnam, in which she stated that her daughter has been kidnapped by the Proposed Accused .

The Applicant was heard by Additional Sessions Judge-II/Ex-Officio Justice of Peace Kotri in Criminal Miscellaneous Application No.1417/2022 and which after obtaining necessary information and after issuing necessary notices was dismissed on the ground that a delay of one month had occurred between the date of incident and the date of the filing of the subject application. It was further indicated that said Mst. Shabnam, although indicated as the daughter of the Applicant, was actually the sister of the Applicant and that her husband Muhammad Ali was also missing and surprisingly no complainant had been made to that effect in respect of her disappearance.

The Respondent No.2 has filed a response stating that the investigation that had been conducted in this matter showed that there was a private dispute as between the Applicant and Proposed Accused and there are various circumstances around the events that created doubt as to the veracity of the allegations that were being

made by the Applicant. The same seems to have found favor with the Additional Sessions Judge-II/Ex-Officio Justice of Peace Kotri who after hearing the parties had come to the conclusion that there was an apparent mala fide on the part of the Applicant as against the Proposed Accused and who thereafter declined to direct that an FIR should be registered against them. However, keeping in mind that Mst. Shabnam, let alone the said Muhammad Ali, were apparently missing a private complaint could have made directly by the Applicant and which apparently to date has not yet been done.

Counsel for the Applicant indicates that two persons are allegedly missing whose whereabouts are only known to the Proposed Accused and therefore, stresses that impugned order may be set-aside and direction may be given to respondent No.3 to register a FIR against the Proposed Accused.

Counsel for the Proposed Accused states that there is an ongoing dispute over a property as between the Applicant and the Proposed Accused which has instigated the filing of Criminal Miscellaneous Application No.1417/2022 and as a remedy of filing a private complaint is available to the Applicant she is, as has correctly been held by the Additional Sessions Judge-II/Ex-Officio Justice of Peace Kotri in Criminal Miscellaneous Application No.1417/2022, able to file the same so as to seek the recovery of Mst. Shabnam and any other person.

Learned APG supports the contentions of the Counsel of the Proposed Accused and states that there is delay of about one month between the incident occurring and the filing of the complaint and also stresses that the investigation carried out by the SP Complaint Cell Jamshoro /Respondent No.2 indicates that a civil dispute exists as between the Applicant and the Proposed Accused which seems to be the basis on which criminal proceedings are being initiated to seek the settlement of that dispute.

I have heard learned counsel for the parties and perused the record. It is apparent that the version of the Applicant that Mst. Shabnam was kidnapped on 18 November 2022 by the Proposed Accused is doubtful keeping in view that no action was taken by the Applicant for a period of one month from the date of such an incident and which creates an impression that the version that being advanced by Respondent No.2 seems to be true.

However noting that apparently there are two people allegedly missing whose whereabouts are unaccounted for the Applicant must have a course of action to redress such a grievance and for which a remedy of a private complaint was well available to her to redress this issue and on filing of which relevant police officer would be bound to investigate the matter and act in accordance with law. The same process found favor with Additional Sessions Judge-II/Ex-Officio Justice of Peace Kotri vide order dated 28.12.2022 which order I am of the opinion is in conformity with law. Accordingly, this criminal miscellaneous application being misconceived is hereby dismissed. Needless to say, the Applicant is at liberty to file a private complaint to redress her grievance, if she so desires.

JUDGE

Irfan Ali