

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 297 of 2020

Date

Order with signature of Judge

Priority Cases

1. For order on office objection at 'A'
2. For hearing of main case

06.11.2023

Syed Amir Ali Shah advocate for the applicants
Moulvi Iqbal Hyder advocate for the respondent No.3
Ms. Rahat Ehsan APG

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C, the applicant Mst. Moazzama Sarfaraz and Mst. Safina Sarfaraz has assailed the vires of the order dated 15.08.2020 passed by the learned IInd Additional District Judge Karachi Central in Criminal Miscellaneous Petition No.671 of 2020 whereby direction was issued to the SHO concerned to record the statement of the respondent.

2. Syed Amir Ali Shah learned counsel for the applicants submits that respondent No.3 who is the real brother of the applicants, has sought the impugned order dated 15.8.2020 from IInd Additional District Judge Karachi Central, in his favor, by concealing the facts. He next submitted that the applicants are co-sharers of the inherited property for which civil litigation is pending; however, respondent No.3 with malafide intention attempted to blackmail the sisters to get the lion's share in the property, hence succeeded in obtaining the order for registration of the FIR against his sisters, after a considerable period. Per learned counsel, the entire goal of respondent No.3 is to deprive the applicants of the inherited property by initiating criminal proceedings against them, which was/is not called for. Learned counsel relied upon the statement dated 20.10.2023 and submitted that a Special Medical Board was constituted to the authenticity of the medical certificate issued by MLO, which has been kept in abeyance and in the absence of this material no case of purported injury was/is made out and consequently no direction could be issued to the SHO to register the FIR against them and if allowed amounts to harass the applicants at the hands of police. He further submitted that the private respondent trespassed into the house of the applicants and such report of the incident was given to Juharabad Police Station, who lodged FIR No. 30 of 2019 under Section 337-A 337-A (i) and 337-L PPC and on the same cause of action no new F.I.R could be registered in terms of law laid down by the Supreme Court in the case of *Sughra Bibi Vs. The State PLD 2018 SC 595*. The learned counsel also submitted that the court bailiff did not make

any complaint, nor the names of the applicants were mentioned in the police letter for medical examination, therefore, the medical certificate was/is managed one as the applicants have already lodged FIR against respondent No. 3 and the matter is fixed for evidence of the parties; and in the intervening period respondent No.3 remained silent and after considerable of time filed an application under Section 22-A Cr. P.C.

3. Moulvi Iqbal Hyder learned counsel for respondent No.3, has submitted that he filed Civil Suit No.177/2019 for Cancellation and Permanent Injunction in this Court in which the court bailiff accompanied respondent No.3, for service upon the applicants who fought with him, caused injuries and they also misbehaved with the bailiff and used filthy language. He has further submitted that they refused to receive notice from this Court and also restrained the bailiff from pasting copies of the notice. He added that the bailiff has also stated in his report that the fight between the applicants and respondent No.3, took place, on which police referred him for medical treatment and a certificate, and such medical certificate is available on record, but the applicant succeeded to lodge FIR, however, FIR of respondent No.3 was not lodged. The learned counsel further argued that the names of applicants were mentioned in the application submitted before the police and this Court as well as in the bail order obtained by respondent No.3 to the effect that both parties were injured; that the application had already been addressed to the SHO who unfortunately refused to register the F.I.R against the applicants, compelling him to approach the trial Court for redressal of his grievances. Learned Counsel further submitted that such a case of *Sughra Bibi Vs. The State* **PLD 2018 SC 595** is not applicable in the present circumstances. He next argued that it is settled law that even if there is no direction of the Court, the S.H.O. has no authority to refuse to record the statement of the complainant in the relevant register irrespective of its authenticity/correctness or falsity of such statement. In this context, he submitted that the Supreme Court has categorically held that S.H.O. has no authority to refuse to register FIR under any circumstances. He may refuse to investigate a case but he cannot refuse to record FIR. He emphasized that the check against the lodging of false F.I.Rs was not the refusal to record such F.I.Rs, but the punishment of such informants under Section 182, P.P.C., etc. which should be, if enforced, a fair deterrent against misuse of the provisions of Section 154, Cr.P.C. Per learned counsel the complainant has to approach the SHO concerned to record his statement, however, due to restraining order passed by this Court, F.I.R has been delayed, which goes in favor of the applicants, which is not the

requirement of law. He prayed for the dismissal of the present Application.

4. I have heard learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

5. The Criminal Procedure Code classifies criminal offenses into two categories for certain purposes, namely cognizable and non-cognizable offenses. Sections 154 and 155(1) Cr.P.C. separately prescribe the procedure for dealing with them. If there is a piece of information relating to the commission of a cognizable offence, it falls under section 154 of the Code of Criminal Procedure and a police officer is under a statutory obligation to enter it in the prescribed register. The condition precedent is simply two-fold: first, it must be information, and second, it must relate to a cognizable offense on the face of it and not merely in the light of subsequent events. A police officer is bound to receive a complaint when it is preferred to him, or where the commission of an offense is reported to him orally, he is bound to take down the complaint. If he does not incorporate the complaint so made in the register, he fails to perform a statutory duty as a public servant; therefore, renders himself to be dealt with by his superior officers for neglect of duty. Thus, it does not depend on the sweet will of a police officer who may or may not record it.

6. The Supreme Court in the cases of *Muhammad Bashir v. Station House Officer, Okara Cantt. and others* (PLD 2007 SC 539) and *Younas Abbas & others vs. Additional Sessions Judge Chakwal and others* (PLD 2016 SC 581) while dealing with powers of Ex-officio Justice of Peace under Section 22-A of the Cr. P.C. has held that until and unless due recourse is exercised within the police hierarchy for initiation of proceedings under Section 154 Cr.P.C. petition under sections 22-A, 22-B Cr.P.C. is not maintainable. Hence, because of guidelines given by the Supreme Court in the Judgment supra, the court must function as Ex-officio Justice of Peace, before taking cognizance in the matter of an application under Sections 22-A, 22-B, Cr.P.C., to satisfy that the part has already approached the concerned quarter(s) meant for redressal of his grievance i.e. file application before SHO for registration of the case, which was registered under a proper diary and the inaction by the SHO was further agitated before the higher police hierarchy (Superintendent of Police) under due receipt but with no effect.

7. In the present case, it appears that there is a Civil proceeding pending between the brother and sisters over the property. The record further reveals that one of the applicants had already lodged FIR No.30 of

2019 under Section 337-A, 337-A(i), and 337-L PPC against respondent No.3 at Juharabad Police Station, with the allegation that he had caused her severe injuries, which attracts the principles law laid down by the Supreme Court in the case of *Sughra Bibi*. Prima facie it appears that respondent No.3 had moved the application for registration of FIR on 25.6.2020 whereas the alleged incident took place on 2.2.2019, after considerable time, prima-facie he ought to have come to the Court just after refusal by the SHO concerned, however, waited when F.I.R against him was lodged thereafter he attempted to record his version, and he could have approached the Investigating Officer in the aforesaid F.I.R to put his defense version rather than requesting for another F.I.R of the same incident, which amounts to lodge separate FIR just to exert pressure upon her sisters. The Supreme Court has settled a point for determination in the said case of *Sughran Bibi* as per para No.3 under:-

“ The issue before us, to put it very simply, is as to whether a separate FIR can be registered for every new version of the same incident when commission of the relevant cognizable offence already stands reported to the police and an FIR already stands registered in that regard or not. An ancillary issue is that if no separate FIR can be registered for any new version of the same incident then how can such new version be recorded and investigated by the police.”

8. The Supreme Court in para No. 27 (ii) has declared that the **“version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.”** The definition of the word version is *“a particular form of something differing in certain respects from an earlier form or other forms of the same type of thing.”*

9. It is clear from the above that for every different version/plea for the offense under investigation if raised, no separate FIR is to be registered; however, for any version introduced after the first FIR, the same is to be investigated along with the first version.

10. In view of the above learned Justice of Peace has failed to check the intention of respondent No.3 against whom a case has already been registered and on the same cause of action he intends to lodge F.I.R which matter is already sub-judice before the competent Court, therefore, interference in the impugned order is required by this Court. Accordingly, captioned Criminal Miscellaneous Application is allowed, leaving respondent No.3 at liberty to avail the remedy, if any, under Section 200 Cr. P.C before the competent Court of law, however, it is made clear that

same, if availed, shall be decided by the competent Court strictly in accordance with the law, without being influenced by this order and/or order passed by learned Justice of Peace.

JUDGE

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