

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application Nos. 523,524,525, and 526 of 2021

Date	Order with signature of Judge
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For hearing of main case

10.11.2023

M/s Ameeruddin, Sana Kamal and Aijaz Ali Tunio advocates for the applicants Mr. Abrar Ali Khichi, Additional PG
Mr. Iftikhar A. Gohar advocate for the proposed accused
Mr. Karim Nawaz Qureshi advocate for the proposed accused Zohaib Nazeer

Through these Criminal Miscellaneous Applications under Section 561-A Cr. P.C, the legal heirs of 4 deceased namely Bilal @ Shahoo Bilawal, Aamir, Masood, and Muhammad Islam have assailed the legality of the order dated 14.7.2021 passed by the learned IVth Additional Sessions Judge Karachi East in Criminal Miscellaneous Applications whereby direction to SHO concerned to record the statement of the legal heirs of deceased for registration of F.I.R against the respondent Police officials was declined. For convenience's sake, the relevant portion of the order dated 14.7.2021 is reproduced as under:-

“Heard and perused the record. Indisputably, the application has been filed on behalf of legal heirs of deceased accused, who lost their lives in police encounter. The learned counsel for applicant contends that on 28 4 2021 at about 10.00 pm the heavy contingent of police force wearing uniform as well plain clothes, equipped with weapons arrived at place of incident viz Munnu Goth, Baloch Para, near Bhojwam clinic where the deceased were available in their Hi-roof vehicle, but the police without issuing any warning resorted to straight firing, resulting in the death of 4 individuals on the spot. The legal heirs wanted to register case against the police officials, but their statement is not recorded by respondent No 2, hence this application Reliance is placed 2019 MLD 1192 Conversely, the official respondents available in court have placed on record the detail of the case including CRO of the accused. According to the officials they received a tip of regarding the availability of deceased gangster belonging to the group of Ahmed Ali Magsi at the place of the incident Upon receiving such information the police party official accused arrived at the place of incident and cordoned of the area and cautioned the accused present in the Hi-roof to surrender, but instead they started straight firing upon the police party. In respect the police party also returned fires in their self-defence and at the end of firing s that two injured namely Bilal@ Shahoo Bilawal S/o Haji Usman and Aamir So unknown has received bullet injuries and died on spot. Two pistols of 30 bore and 2 live rounds were secured from the possession of expired accused. Two injured accused namely Islam and Masood were seriously injured and were shifted alongwith expired accused towards nearby hospital for treatment/legal formalities Thereafter two injured accused admitted in the hospital namely Masood S/o Riaz Khan and Muhammad Islam So Abdul Majeed also expired in the hospital on 2.5.2021 and 3.5.2021 respectively. The empties secured from the place of incident were sent to FSI, for examination Blood stained clothes have been sent to chemical laboratory for chemical examination Post-mortem

have been obtained from the relevant hospital. The Remand of the injured accused were produced before the Administrative Judge of ATC and the remand was extended till 8.5.2021, but during remand both the accused died at the hospital The deceased accused Bilal has a previous criminal history and is involved about 10 cases. The accused Aamir is also involved in FIR No 33/2017 Us 2300)A SAA Lastly the official respondents states that the encounter was genuine and the accused were criminals, who have met with their fate Heard and perused the record. Having heard the arguments of both sides and perusal of record available on file reflects that the awful incident has happened on 28.4.2021 but the instant application has been filed at this forum on 6.7.2021, with a delay of about more than two months, which has not been explained either in the memo of application The controversy at present is regarding different contention(s) of both sides. According to deceased side the encounter was fake, whereas the police reiterates that the encounter was genuine and was a result of spur of moment. In a situation where a person foreseeing his imminent arrest at the hands of police at a specified location ventures to use his weapon against police force then eventually the police force will retaliate and in the course of exchange of fires, like the case in hand, the person at the other hand receives injuries and is expires then, who to blame? In this case if the police force with sizeable number of cops available at the place of incident was pre-determine, as is alleged by the applicant, then why all the four accused did not expire on spot? Why two accused in injured condition were brought to hospital for treatment? Why the weapons and ammunition were available with the accused persons at the place of incident? Why the same was secured and recovered by the police from the possession of accused persons? Why previous criminal record is available with the police in respect of accused? Why the post- mortem report of accused suggest that "No blackening seen and exit wound found"? The clipping of different newspapers are in conflict with each other As some of them declared a fake encounter, whereas the other relates the incident to killing of two notorious gangster in the encounter, therefore such news clipping are of worth for consideration. Forgoing in-view, I am not in a view to gather malafide on the part of police officials from their conduct in the incident, therefore the instant application is hopelessly misconceived and is not maintainable under the law. which is accordingly dismissed The case law referred by the learned counsel for applicant is distinguishable to the facts and circumstances of the instant case ”

2. The legal heirs of above named deceased have raised their voice of concern that the respondent-police officials had committed the brutal murder of young boys by showing a fake police encounter on 28 4 2021 at Munnu Goth, Baloch Para, near Bhojwam clinic. The legal heirs wanted to register a case against the police officials, but their statement was not recorded by the concerned SHO just to save the respondent-police officials from the clutches of law on the premise the deceased were involved in various criminal cases and were killed in a Police encounter. The legal heirs being aggrieved by and dissatisfied with the highhandedness of the Police approached the learned IVth Additional Sessions Judge Karachi East in Criminal Miscellaneous Application No.2076 of 2021, who refused to order for registration of the case against the Police officials vide order dated 14.7.2021.

3. Learned counsel for the applicants submitted that all the 4 deceased mentioned supra were murdered by the above-mentioned police officers and were shown killed in fake police encounters. Per learned counsel, the legal heirs of the deceased requested about the false encounter to the high-ups of the Police, but no action has been taken by the Police against the guilty police officers. Learned counsel for the applicants had serious objections to the tone and tenor of the observations made by the IVth Additional Sessions Judge Karachi East which are said to be based upon his general perceptions rather than the concerns relating to the facts of the present case as pleaded. In this context, a reference has been made to the observations that the deceased met with a police encounter. He added that the FIRs registered by the police against deceased were one-sided and later disposed of under 'C' Class canceled without the permission of the concerned Judicial Magistrate under the law.

4. Learned Counsel representing the private respondents has submitted that the police officials received a tip regarding the availability of a gangster belonging to the group of Ahmed Ali Magsi at the place of the incident and upon receiving such information the police party official arrived at the place of incident and cordoned off the area and cautioned the accused present in the Hi-roof to surrender, but instead, they started straight firing upon the police party. In retaliation, the police party also opened fire in their self-defense, and at the end of the firing two individuals were injured namely Bilal@ Shahoo Bilawal and Aamir had received bullet injuries and died on the spot. Police also recovered Two pistols of 30 bore and 2 live rounds from the possession of the deceased accused. In the meanwhile Two more accused namely Islam and Masood were found seriously injured and were shifted along with the expired accused to a nearby hospital for treatment/legal formalities. Per learned counsel thereafter two injured accused was admitted to the hospital namely Masood and Muhammad Islam who also succumbed to injuries and died in the hospital on 2.5.2021 and 3.5.2021 respectively. The empties secured from the place of the incident were sent to FSI, for examination, Blood-stained clothes were also sent to the chemical laboratory for chemical examination, Post-mortem of the deceased was conducted. Per learned counsel, the deceased accused Bilal had a criminal history and was involved in about 10 cases. The accused Aamir was also involved in FIR No 33/2017 Us 23-A of Sindh Arms Act 2013. Per learned counsel the police encounter was genuine and the deceased accused were criminals, who had met with their fate, as such no case for registration of F.I.R. is made out. They prayed for the dismissal of the Criminal Miscellaneous Application.

5. After arguing the matter at some length, both parties have agreed to the disposal of these Criminal Miscellaneous Applications in the terms that the DIG East Karachi be directed to hear both parties and if from the contents of the Applications a cognizable offence is made out and /or if it is found that the alleged encounter was a fake one, an appropriate direction could be given to the concerned SHO to record the statement/version of the legal heirs of deceased.

6. I have given due consideration to the submission made and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO and learned IVth Additional Sessions Judge Karachi East in Criminal Miscellaneous Application No.2076 of 2021.

7. 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 the Supreme Court in the case of Muhammad Bashir vs. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539) in para-25 and 26 have 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.

8. 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.

9. In my humble opinion, certain offences as argued by learned counsel for the applicants have to be ascertained by DIG East and there will be no wrong if the version/statement of the applicants is recorded after hearing the parties concerned in terms of law laid down by the Supreme Court in the case of Sughra Bibi Vs The State PLD 2018 Supreme Court 595.

10. Since the subject F.I.Rs were registered against the deceased accused and the investigation was entrusted to the Quaidabad Police Station and it would have been more appropriate that the cases ought to have been handed over for investigation to some other independent investigation agency, however, the final report of the cases suggest that the aforesaid F.I.Rs were disposed of under C Class. In my view, in either case, on completion of the investigation, the investigating officer has to

submit a report to the Magistrate and the report of investigation in such cases should be examined thoroughly by the Magistrate so that complete application of the judicial mind is available to ensure just investigation, however, the order of the magistrate has been placed on record. At this stage the legal heirs want the criminal case to be registered against the police officials.

11. For the reasons stated above, I make the following directions:-

i) If the information furnished by the legal heirs of the deceased to the DIG Police East is found sufficient to suspect the commission of a cognizable offense, immediate steps be taken to investigate the facts and circumstances leading to the death of the deceased accused and if the police officials are found guilty of the holding fake encounter, the DIGP shall ensure stern action against the delinquent police officials on both counts i.e criminal as well as disciplinary action, after providing the opportunity of hearing both the parties. The aforesaid exercise shall be undertaken within two weeks from the receipt of this order.

12. These Criminal Miscellaneous Applications are disposed of in the above terms. Let a copy of this order be transmitted to DIGP East for compliance.

JUDGE