

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 600 of 2023

| Date | Order with signature of Judge |
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For hearing of main case

23.11.2023

None present for the applicant.

Mr. Javed Ali Korejo, advocate for the respondent No.4

Mr. Talib Ali Memon APG

Muhammad Yaqoob, DPP

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Nawab has assailed the legality of the order dated 22.08.2023 passed by the learned XII Additional District & Sessions Judge South Karachi in Criminal Petition No. 2335 of 2023. Wherein the learned trial Court allowed the application under Sections 22-A & B Cr. P.C., wherein the direction was issued to the SHO to record the statement of the complainant. For convenience's sake, the relevant portion of the order dated 22.08.2023 is reproduced as under:-

“3. Heard and perused. Perusal reveals that Applicant has alleged that on 07-11-2021 between 04:00 p.m. to 05:00 p.m., his wife namely Munawar Bibi/proposed accused No.3 was kidnaped from their native village situated at District Sahiwal and since petitioner was confined in the jail at the material time, petitioner’s father had lodged FIR. Perusal further reveals that Applicant stated that on 24-09-2022, he was released from jail and came to know that there is no information regarding his wife & sons and during the search, Applicant came to know from his relatives that proposed accused No.1 namely Rizwan Ahmed & proposed accused No.2 namely Nawab kidnaped Applicant’s wife & sons and have detained them in Karachi Mehmoodabad No.6. Perusal further reveals that Applicant stated that he filed Petition No.2123/2023 under Section 491 Cr.P.C., wherein, Police produced proposed accused No.3 namely Mst. Munawar Bibi and her statement was recorded whereby she denied the allegation of kidnapping and stated that the petitioner had already divorced her and she had already filed suit for dissolution of marriage by way of Khula and further stated that one of the son of petitioner has died at Lahore Children Hospital. Perusal reveals that petitioner alleged that his younger son has been murdered by the proposed accused, as such, he submitted application before the S.H.O., Police Station Baloch Colony on 03-08-2023 for lodging FIR but no action was taken by the SHO P.S. Baloch Colony on the influence of proposed accused.

4. Perusal further reveals that proposed accused No.2 & 3, on being asked by the Enquiry Officer, have appeared in Court along Advocates and proposed accused No. 3 filed objection to the petition and she denied allegation murder of her son and claimed that minor was a cancer patient and was admitted in the Children’s Hospital & The Institute of Child Health Lahore, and minor son Rehan has left for eternal abode due to cancer. Advocate for Respondent No.3 brought on record Plaint of Suit for dissolution of marriage by way of Khulla bearing No. 1501/2023 filed before the Court of XVII Civil & Family Judge Karachi South and also produced copy of death certificate issued by The Children Hospital Lahore showing death of Rehan as on 09-06-2022. The Advocate for the Respondent No. 2 brought on record Copy of Order in HCP No. 2123/2023, Application moved before the Court at Sahiwal, Copy of FIR No. 250/2021, FIR No. 1237/2021 and Order dated 22-09-2023 passed by the Magistrate and learned

Advocate for Respondent No. 2 argued that Applicant has murdered wife of the Proposed accused No.2 but due to threats of Applicant & fear the witness did not appear & case was disposed of under Section 249 Cr.P.C. due to non appearance of witnesses, but, now said case is restored by the Court and prayer for dismissal of the petition. Learned Advocate argued that instant Petition is filed by the Petitioner with malafide intentions therefore prayed for dismissal of the Petition.

5. In the wake of above, it appears that Application under Section 22-A Cr.P.C., is motivated as Applicant has pointed his finger on his wife/ex-wife and Rizwan & Nawab, by alleging that they have murdered his son Rehan, whereas, proposed accused No.3 claims that Rehan died in Lahore Children Hospital due to cancer. It is also apparent that Applicant's son Rehan was diagnosed cancer when Applicant was not in prison & he himself got treatment of Rehan from the Children Hospital Lahore. Nevertheless, since allegations of murder of son of the Applicant, a cognizable offence, are leveled in the application, thus, it would be imperative to enquire the allegation through a fair and transparent inquiry/investigation therefore, S.H.O. Police Station Baloch Colony is directed to record statement of the Applicant under Section 154 Cr.P.C., and to proceed in accordance with law, as it is statutory duty of the S.H.O. to record statement whenever an information qua cognizable offence is reported by any person to the S.H.O. Albeit, proposed accused shall not be arrested until credible & tangible proof/material, is collected by the investigating officer during investigation connecting the accused with commission of offence. Reliance in this context, is placed on dictum laid down by Hon'ble High Court of Sindh in case of Dr. Inayatullah Khilji & 9 others versus 1st Additional District & Sessions Judge (East) at Karachi and 2 others [2007 P.Cr.L.J. 909 Karachi]. It is observed that if information submitted by the Applicant during investigation, is established to be false, then, S.H.O., is empowered to invoke proceedings under Section 182 P.P.C. Application is allowed in above terms."

2. The case of the applicant is that in his absence direction was issued to the SHO concerned to record the statement of Muhammad Imran though there was no need to issue such directions under Section 22-A & B Cr. P.C., as no cognizable offense was/is made out, and the complainant has concocted the story and after release from jail, he attempted to convince the learned XII Additional District & Sessions Judge South Karachi that his minor son was killed by his wife as this is sheer blackmailing and nothing more. He prayed for setting aside the impugned order dated 22.8.2023.

3. Learned counsel for respondent No.4 has submitted that a criminal case was registered against the complainant where he was arrested & sent to Jail; and in the intervening period on 11-07-2021, the applicant kidnapped his wife and shifted to an unknown place and after his release from prison he tried to locate his family and filed an application under section 491 Cr. P.C. before the trial Court where the applicant appeared and disclosed that complainant's elder son is with mother and younger son had died in Lahore and was buried at Karachi. Thereafter he approached the S.H.O. to lodge F.I.R. Upon refusal he approached the trial court where he sought direction to register the case against the applicant and his wife. Learned counsel submitted that even if there is no direction from 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. He submitted that the Supreme Court has categorically held in its various pronouncements 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 prayed for the dismissal of the captioned Application.

4. I have given due consideration to the submission made by the parties present in court and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO by respondent No.4 and order dated 22.8.2023 passed by learned XII Additional District & Sessions Judge South Karachi.

5. The question is whether after recording the statement by Mst. Munawar Bibi before the learned Additional Sessions Judge VIIIth South Karachi on 26.7.2023 is there any cause of action with respondent No.4 to lodge F.I.R against her ex-wife of killing her son as there was no evidence with the respondent No.4 about such incident.

6. 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. 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.

7. In the present case, respondent No.4 has alleged that on 07-11-2021 between 04:00 p.m. to 05:00 p.m., his wife namely Munawar Bibi/accused was kidnaped from their native village situated at District Sahiwal, and since he was confined in the jail at the material time, his father had lodged FIR. A perusal of the record reveals that the complainant was released from prison on 24-09-2022, and came to know that there was no information regarding his wife & sons and during the search, he allegedly came to know from his relatives that one Rizwan Ahmed applicant Nawab kidnaped his wife & sons and had detained them in Mehmoodabad Karachi. Respondent No.4 filed Petition No.2123/2023

under Section 491 Cr.P.C., wherein, Police produced his wife Mst. Munawar Bibi and her statement was recorded whereby she denied the allegation of kidnapping and stated that respondent No.4 had already divorced her and she had already filed suit for dissolution of marriage by way of Khula and further stated that one of the sons of respondent No.4 had died at Lahore Children Hospital which triggered the cause to apply the S.H.O., Police Station Baloch Colony on 03-08-2023 for lodging FIR against his wife and others. The Enquiry Officer appeared before the trial and informed that the minor son of respondent No.4 was a cancer patient and was admitted to the Children's Hospital & The Institute of Child Health Lahore, and left for eternal abode due to cancer. Further private respondent filed a Suit for dissolution of marriage by way of Khulla bearing No. 1501/2023 filed before the Court of XVII Civil & Family Judge Karachi South and also produced a copy of the death certificate issued by The Children Hospital Lahore showing the death of Rehan as on 09-06-2022. It was further disclosed that respondent No.4 had allegedly murdered the wife of the applicant but due to threats of the complainant & fear the witness did not appear & case was disposed of under Section 249 Cr.P.C. due to non-appearance of witnesses, but, now said case has been restored by the trial Court. The learned trial court further observed that the Application under Section 22-A Cr.P.C. was motivated as the complainant had pointed his finger at his wife/ex-wife and Rizwan & Nawab, by alleging that they had murdered his son Rehan, whereas, the applicant claims that Rehan died in Lahore Children Hospital due to cancer. It is also apparent that the complainant's son Rehan was diagnosed with cancer when the complainant was not in prison & he got the treatment of Rehan from the Children's Hospital Lahore.

8. As per the applicant, the complainant filed by respondent No.4 before the trial court was based on malafide intentions and ought to have been dismissed. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged incident, therefore, judicial propriety demands that the aggrieved party may take the resort of appropriate remedy under the law where he would be at liberty to bring the material to prove his case as in the present case SHO is unable to show any cognizable offense and the learned trial court has also reservation on certain points as discussed in the impugned order, however, the complainant is still insisting for registration of F.I.R of the incident. Once the learned trial court has formed its point of view based on the report submitted by the SHO, this Court can modify the order to the extent that it is open for the complainant to file a Direct Complaint and if filed the same shall be decided on its own merits. No case for registration of F.I.R is made out at this stage because of the rivalry between the parties as

such false implication of the parties cannot be ruled out, however, this is a tentative assessment which shall not prejudice the trial court when a complaint is filed which shall be decided on merits if filed.

9. In view of the above the order dated 22.8.2023 passed by the learned XII Additional District & Sessions Judge South Karachi in Criminal Petition No. 2335 of 2023 is modified to the aforesaid extent; resultantly, the Criminal Miscellaneous Application is disposed of, leaving the respondent No.4 at liberty to avail the remedy, if any, before the competent forum. However, it is made clear that the same, if availed shall be decided strictly under law.

JUDGE

Zahid/*