

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 661 of 2023
&
Criminal Misc. Application No. 662 of 2023

Date	Order with signature of Judge
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Priority Cases

1. For hearing of main case

29.11.2023

Mr. Saeed Ahmed Khoso advocate for the applicant
Mr. Muhammad Hanif advocates for the proposed accused.
Syed Meeral Shah Additional P.G

Through these Criminal Miscellaneous Applications under Section 561-A Cr. P.C, the applicant Matloob Hussain has assailed the vires of the order dated 5.08.2023 and 16.08.2023 passed by the learned Additional District & Sessions Judge III/Ex-Officio Justice of Peace Karachi East in Criminal Miscellaneous Application No. 3273 &3274 of 2023 whereby his Criminal Miscellaneous applications were dismissed as being not maintainable; besides he came with unclean hands.

2. Mr. Saeed Ahmed Khoso advocate for the applicant has contended that cognizable offenses have been committed by the proposed accused in both the Criminal Miscellenous Applications as such directions for FIR be given to the SHO of the concerned police station; that the registration of FIR is a basic right of citizen and victim, which unfortunately has been made like an unfulfilled dream for the poor citizens of the province of Sindh and due to the political influence and intervention, the registration of the FIR is not less than a miracle for common people. He lastly prayed for allowing these Criminal Miscellaneous Applications with direction to the concerned SHO to record his statement under Section 154 Cr. P.C.

3. Mr. Muhammad Hanif advocate for Respondent No. 3 and 4 has argued that the applicant committed theft at his wooden Karkhana on 28.07.2023 wherein the applicant also made straight fires at respondent No. 3 and others and such incident was reported to 15 police, wherein three persons were apprehended as the incident of said FIR had taken place on 31.07.2023, which pertains to the same wooden factory, wherein the applicant alleged such robbery was committed, whereas the SHO in his report had shown the applicant being a habitual criminal as more than 10 FIRs have been registered against him at different police stations as such he cannot seek direction to save his skin from the clutches of law. He lastly prayed for the dismissal of these Criminal Miscellaneous Applications.

4. Learned Addl. P.G has supported the impugned order and relied upon the statement of DSP Sohrab Goth and submitted that applicant Matloob Hussain and his accomplices are notorious and habitual criminals and are experts in submitting false applications with further narration as the applicant has been involved in more than 10 cases.

5. I have given due consideration to the submission made and have carefully gone through the contents of these Criminal Miscellaneous Applications as well as the application addressed to the SHO and learned Additional Sessions Judge/ Ex. Officio Justice of Peace in Criminal Miscellaneous Applications No. 3273/2023 and 3274/2023. 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.

6. 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, however, it is made clear that there can be no second FIR in respect of the same cognizable offense or the same occurrence or incident in terms of law laid down by the Supreme Court in the case of Sughra Bibi vs. The State PLD 2018 Supreme Court 595.

7. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged offense, 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 the learned 3rd Additional District & Sessions Judge has refused to entertain the application of the applicant for direction to concerned SHO to record his statement on certain premises as discussed supra, however, the applicant complainant is still insisting for registration of his version / FIR. Once the learned Justice of Peace has formed his point of view based on the report of SHO concerned, this Court cannot substitute its view as no material has been shown to this Court to take a contrary view. However, it is open for the applicant to file a Direct Complaint and if filed the same shall be decided on its own merits.

8. In view of the above the orders dated 05.08.2023 and 16.08.2023 passed by the learned Additional District & Sessions Judge Karachi East in Criminal Miscellaneous Application No. 3273/3274 of 2023 are sustained; resultantly, these Criminal Miscellaneous Applications are dismissed, leaving the applicant 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 in accordance with law.

JUDGE