

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No.774 of 2021

Date	Order with signature of Judge
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For hearing of main case

07.12.2023

Mr. Khawaja Muhammad Azeem advocate for the applicant
Nemo of the respondent No. 5 to 7.
Mr. Salim Akhtar Buriro, Additional PG

Applicant Mst. Fatima has filed this Criminal Miscellaneous Application against the order dated 23.10.2021 passed by learned II-Additional Sessions Judge Karachi West in Cr. Revision 28/2019 (*re-Mst. Fatima v The State and others*), whereby the Revision application was dismissed and the order dated 26.11.2018 passed by the learned IVth Judicial Magistrate Karachi West, was maintained and her Private Complaint No. Nil/2018 filed under Section 200 Cr. P.C. was dismissed. An excerpt whereof is reproduced as under:-

“On careful examination of the above principles of law set forth by the Honorable apex Court, it is abundantly clear no separate FIR could be registered for the same incident. Nevertheless, for the sake of argument if it is believed that the first FIR bearing No.206/2018, was not registered as per version of the applicant, yet the filing of subject complaint merits no consideration in presence of the admitted fact that the second FIR No.375/2018 was registered under the orders of the Court purely on the basis of statement submitted by the very applicant.

7 For the reasons, recorded above, I find no illegality in the impugned order, as such same required no interference. Consequently, instant revision in hand merits no consideration, stands dismissed accordingly.”

2. Learned counsel for the applicant has contended that the learned Trial Court gravely erred in dismissing the private complaint of the applicant on the wrong notion that on the subject issue, FIRs had already been lodged. Learned counsel emphasized that the private complaint lodged by the applicant against the private respondents who committed the murder of her son was saved by the police, thus she had no option but to file the private complaint under Section 200 Cr.P.C for the reason that the FIR bearing No. 375 of 2018 for offense under Section 302/34 PPC in respect of the murder of her son was disposed of under C Class in terms of Sughra Bibi case. Learned counsel further contended that the learned trial Court has no option but to hold a preliminary inquiry in terms of Section 203 Cr. P.C. and thereafter can form an opinion about the fate of the

complaint as such the dismissal of the complaint based on Sughra Bibi case is erroneous decision on the part of learned trial Court which was erroneously maintained by the revisional Court on the same analogy. He further submitted that the private complaint of the applicant needs to be decided on merits rather than dismissal on technical grounds without touching the factual as well as legal aspects of the case. He prayed for setting aside the order dated 23.10.2021 passed by the two courts below.

3. Learned APG has pointed out that the learned Magistrate has passed an order under Section 203 Cr. P.C., whereby he dismissed the complaint on the ground that the police had already investigated FIR No 206/2018, therefore, no further ligation was/is to be made in terms of Section 200 Cr.P.C. He further submits that the Magistrate has to decide the case on merits rather than based on the findings of the Sughra Bibi case. The case of the applicant is related to the murder of her son which requires evidence and the private complaint cannot be dismissed in a cursory manner without trial.

4. This Court vide order dated 14.09.2022 issued notices to the respondents and thereafter continuously notices were issued to be served upon the private respondents however they are not bother to appear and assist this Court as such this Court is left with no option but to decide the present lis on merits with the assistance of learned counsel representing the applicant and learned APG. For the reason that the legal point is involved in the matter. 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.”

5. 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.”**

6. 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.

7. *Since the law does not restrict one to choosing the alternative of **filing direct complaint** if he claims to be dissatisfied with the attitude of the police investigating authority, then there arises certain legal question “**Whether to continue with the investigation in FIR of the complainant or drop it when the complainant has chosen alternative remedy?**”* in the present case the applicant has chosen the alternative remedy as the police authorities have sided with the respondents as such there was no illegality on the part of the applicant to file the direct complaint as the case of Sughra Bibi does not attract in the present case as the applicant cannot be restricted to rely upon the police investigation as she being dissatisfied with the investigation conducted in the aforesaid case the applicant has the remedy to choose which she has chosen, as such the direct complaint filed by her cannot be dismissed without trial.

8. In view of the above, the instant Cr. Miscellaneous Application is allowed, consequently the impugned order dated 23.10.2021 passed by the learned IInd Additional Sessions Judge Karachi West and order dated 26.11.2018 passed by the learned IV Judicial Magistrate Karachi West are set aside and the matter is remanded to the learned Sessions Judge to assign the complainant's case to another Judicial Magistrate for holding preliminary inquiry in the matter and refer the case to the learned Sessions Judge for trial and conclusion thereon within reasonable time.

JUDGE