

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CrI. Misc. Application No.764 of 2023

Date

Order with signature of Judge

1. For hearing of main case.
2. For hearing of MA No.12056/2023.

12.12.2023

Mr. Zulfiqar Ali Khan Jalbani, advocate for the applicants.

Mr. Abdul Rehman Sherani, advocate for respondent No.1

Mr. Muntazir Mehdi, APG.

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicants Asadullah Khan and Waheed Khan have assailed the legality of the order dated 30.09.2023 passed by the learned X Additional Judge (South) Karachi in Criminal Miscellaneous Application No. 2897 of 2023 (*re-Rehmat Ullah v SSP Complaint Cell and others*) whereby, the SHO PS Kalri was directed to record the statement of the applicant under section 154 Cr. P.C.

2. At the outset, I asked the learned counsel for the applicant to explain how the applicant's application filed under section 561-A, Cr.P.C. is competent and maintainable before this Court, against the impugned order passed by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C., whereby direction was issued to the police to record the statement of the complainant Rehmatullah but he has not been able to satisfy this Court in that regard and insisted on the plea that the deceased accused Naimutullah was arrested in FIR Nos. 208 & 209 of 2023 of PS Kalri under Section 6/9 Control of Narcotic Substance Amendment Act 2022, however, he hanged himself inside the lockup and committed suicide by hanging himself through a bedsheet. Subsequently, the body of the deceased was shifted to Civil Hospital where he was declared dead, such inquest report was prepared by the learned Magistrate and a post-mortem of the body of the deceased was conducted, which is explanatory and does not show the marks of torture. Learned counsel further submits that if there is no cognizable offense such FIR cannot be registered. He further submitted that the applicants have not played any role in the alleged incident as such they are not liable to be prosecuted. He prayed for allowing the instant Criminal Miscellaneous Application by setting aside the order of the learned Trial Court.

3. The legal heir of above named deceased has raised his voice of concern that the respondent police officials had committed the brutal murder of a young boy aged about 29 years by portraying that the deceased Naimatullah committed suicide inside the police lockup. The legal heir wanted to register a case against the police officials, but his 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 was involved in various criminal cases and he hanged himself inside police lockup.

4. I have given due consideration to the submission made by the parties and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO concerned and learned X Additional Judge (South) Karachi in Criminal Miscellaneous Application No. 2897 of 2023.

5. The rationale beyond the conferring of powers upon the Justice of Peace was to enable the aggrieved person to approach the Court of Justice of Peace for the redressal of his grievances i.e. non-registration of FIRs, excess of Police, transfer of investigation to the Court situated at district level or Session or at particular Sessions Division. The main purpose of section-22-A(6) Cr.PC., was to create a forum at the doorstep of the people for their convenience. Primarily, proceedings before the Justice of Peace are quasi-judicial and are not executive, administrative, or ministerial to deal with the matters mechanically rather the same are quasi-judicial powers in every case before him demand discretion and judicial observations and that is too after hearing the parties. It is, therefore, observed that the Justice of Peace before passing any order for the registration of the FIR shall put the other party on notice against whom the registration of FIR is asked for.

6. As 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.

7. 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.

8. Learned counsel for the applicants has contended that the concerned Magistrate has prepared an inquest report and the cause of death of the deceased is still reserved as such no opinion can be formed at this stage, whether the deceased died by hanging himself or he was tortured to death which is only possible if the opinion is formed by the Medicolegal officer in such circumstances, the impugned order is liable to be set aside. At this stage learned counsel for the respondent has refuted the stance of the applicant by referring to the postmortem report which prima facie shows the marks of violence on the body of deceased Naimatullah as such the directions issued by the Trial Court to record the statement of the complainant by the SHO is need of the time so that matter could be finally set at rest in terms of Section 154 Cr.P.C.

9. On the subject issue, the law is quite settled by now that the jurisdiction of a High Court under section 561-A, Cr.P.C. can be exercised only in respect of orders or proceedings of a court and that the provisions of section 561-A, Cr.P.C. have no application viz executive or administrative orders or proceedings of any non-judicial forum or authority. The police have powers under Sections 154 and 156, Cr. P.C., and a statutory right to investigate a cognizable offense without requiring the sanction of the Court. It is well-settled law that if an investigation is launched malafide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding under the law, however in the present case the applicants who are police officials are resisting for recording the statement of the complainant, which is apathy on their part being police officials who are bound to protect and not to abduct. 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.

10. It is admitted position that the deceased was done to death inside the police lockup and SHO and his staff are equally responsible as they cannot be absolved for their respective duties, therefore, the IGP Sindh shall ascertain the factual position of the case and if he finds something fishy on the part of Police personnel of the concerned police station, he would direct the concerned SHO to record the statement of the applicant under section 154 Cr.P.C. forthwith, however, the aforesaid exercise shall be undertaken within one week after providing the opportunity of hearing to all concerned. The IGP Sindh shall ensure that during the disciplinary proceeding, the delinquent officials shall not be given field posting if they are found guilty of de-relinquishing their duty.

11. It appears to me that the order passed by the learned Justice of Peace seems to be reasonable and within the parameters of the law and does not fall for interference on my part.

12. This Criminal Miscellaneous Application is dismissed.

Let a copy of this order be communicated to IGP Sindh for compliance.

JUDGE