

**THE HIGH COURT OF SINDH
CIRCUIT COURT AT HYDERABAD**

Cr. Misc. Application No. S-465 of 2023

[Mansoor & Others vs. SSP Hyderabad & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
1.For orders on office objection.	
2.For hearing of Main Case.	
<u>3.For hearing of M.A. No.7111/2023.</u>	

Applicants : Through Mr. Farhad Ali Abro advocate

Respondent No.3 : Through Mr. Sameeullah Rind advocate

Respondents No.1&2: Through Mr. Imran Ali Abbasi Assistant P.G

Date of hearing : 14 July 2023

Date of Decision : 13 October 2023

ORDER

MOHAMMAD ABDUR RAHMAN, J. - This Criminal Miscellaneous Application has been preferred by the Applicants under Section 561-A of the Code of Criminal Procedure, 1898 against the Order dated 26 June 2023 passed by 1st Additional Sessions Judge/Ex-Officio Justice of Peace Hyderabad on Cr. Misc Application No. 2460 of 2023 under Section 22-A(6)(i)(iii) of the Code of Criminal Procedure, 1898 directing that the Station House Officer of Police Station Tando Jam should record the statement of the Respondent No. 3 under Section 154 of the Code of Criminal Procedure 1898 and should also afford legal protection to the Respondent No. 3 and his family members.

2. Cr. Misc Application No. 2460 of 2023 was moved by the Respondent No. 3 before Ex-Officio Justice of Peace, contending that on 9 June 2023 at about 02:30 am an incident occurred when the persons nominated as the proposed accused in Cr. Misc Application No. 2460 of 2023 entered into the house of the Respondent No.3's and attempted to

abduct his daughter. On the intervention of the Respondent No.3 one of the accused namely Amir Veesar, who had with him a pistol, unloaded a weapon in the direction of the Respondent No.3, which hit him on the right side of his leg next to his knee. The Respondent No.3's sons thereafter attempted to rescue their sister and at which time one of the proposed accused namely Mansoor Veesar fired a bullet at the chest of the daughter of the Respondent No.3 who died on account of her injuries.

3. Ashique Khoso, who is the son-in-law of the Respondent No.3 went to lodge an FIR at Police Station Tando Jam where instead he was arrested and implicated in an FIR emanating from Crime No.103 of 2023. Thereafter on 10 June 2023 the Respondent No.3 approached the SSP Complaint Cell by moving a written application to institute an FIR in respect of this incident but against which no response was received.

4. The SHO PS Tando Jam in Criminal Miscellaneous Application No. 2640 of 2023, stated that on 9 June 2023 at about 04:30 hours one Mashooque Ali Khoso had informed him that one Abdul Qayoom Veesar had died and another one Mst. Shamshad had been injured. He states that he conducted an inquiry after making an entry in the roznamcha and visited the cattle farm of the deceased Abdul Qayoom whereat the body of Abdul Qayoom was identified and another woman namely Mst. Shahmashad was found injured by a gunshot. He submits that the police took the custody of the dead body of Abdul Qayoom Mst. Shamshad and took them to the Civil Hospital and whereafter Mst. Shamshad also passed away. He further reported that on 9 June 2023 one of the proposed accused namely Mansoor Ali Veesar appeared at Police Station Tando Jam at 23:00 hours and stated that on account of disagreements in business dealing as between his brother and five other people namely Mashooque, Fareed Khoso, Ashique Khoso, More Khoso, Habibullah @ Daboo Khoso, they had shot and killed his brother Abdul

Qayoom and during such incident Mst. Shamshad was also injured. The SHO PS Tando Jam further reports that he had recovered an unlicensed T.T Pistol along with a magazine of four live bullets and which was recovered from Ashique S/o Gul Hassan Khoso and in respect of which another Crime bearing No.104 of 2023 under Section 25 of Sindh Arms Act was registered against Ashique S/o Gul Hassan Khoso.

5. On the basis of such facts the 1st Additional Sessions Judge/Ex-officio Justice of Peace Hyderabad was pleased to grant Cr. Misc Application No. 2460 of 2023 under Section 22-A(6)(i)(iii) of the Code of Criminal Procedure, 1898 and had directed that the statement of the Respondent No. 3 be recorded under Section 154 of Code of Criminal Procedure, 1898.

6. Counsel for the Applicants had entered appearance and has relied upon the case of **Mst. Sughra Bibi vs. the State**¹ wherein the Supreme Court has held as under:

“ ... 27. As a result of the discussion made above we declare the legal position as follows:

(i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.

(ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that 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.

(iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.

(iv) During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.

¹ PLD 2018 SC 595

(v) *During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."*

(vi) *Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.*

(vii) *Upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person."*

On the basis of this decision the learned counsel for the Applicants states that since one FIR has already been registered, it is incumbent upon the police to carry out a complete investigation into the matter and in the event the facts of Respondent No.3 are confirmed then in such circumstances cognizance of an offence emanating from first offence should be taken in the first FIR and the second FIR, therefore, cannot be registered. He states that 1st Additional Sessions Judge/Ex-Officio Justice of Peace Hyderabad has erred in not taking into account the decision of **Mst. Sughran Bibi versus the State**² and has prayed that the Order dated 26 June 2023 passed by Ex-Officio Justice of Peace in Cr. Misc Application No. 2460 of 2023 may be set aside.

7. Counsel for the Respondent No.3 has entered appearance and has contended that there are two distinct and separate incidents and therefore, cognizance has correctly been taken by 1st Additional Sessions Judge/Ex-Officio Justice of Peace in Criminal Miscellaneous Application No.2640 of

² PLD 2018 SC 595

2023 in respect of which a separate FIR can be registered. While conceding that Ex-Officio Justice of Peace did not take into account the decision of **Mst. Sughra Bibi vs. the State**³ while adjudicating on Criminal Miscellaneous Application, he submits that in the facts of circumstances two separate FIRs must be registered as the events show two distinct offences, one of which is being concocted so as to defeat the registration of the FIR by the Respondent No.3. In support of his contentions he relied upon the decision of **Gul Nawaz Versus The State**⁴ in which on an application for bail it was held that two versions of the occurrence called for further probe and accused are entitled to bail. He also relied upon the reported case of **Dr. Noor-Ul-Haq And 3 Others vs. The State**⁵ wherein on an application for bail in the existence of two FIRs accused were entitled to bail. He further relied upon the reported case of **Ali Muhammad And Others vs. Syed Bibi and others**⁶ where a five Member Bench of the Supreme Court of Pakistan had directed for the registration of a second FIR emanating from same set of facts. He also relied upon the reported judgment of **Mst. Madina Versus Dig Police Mardan**⁷ wherein the case of disputed facts emanating from same set of facts a separate FIR was registered. Finally, he relied upon the decision reported as **Muhammad Imran Qamar vs. Additional Sessions Judge And 2 Others**⁸ wherein it was held that there was no bar for registration of a second FIR in case a complaint was made out.

8. I have heard the Counsel for the parties and have perused the record. Firstly it is to be noted that all of the cases relied on by the Counsel for the Respondent No. 3 pre-date the decision of **Mst. Sughran Bibi vs. the State**⁹ and some of which were specifically overruled by the Supreme Court of Pakistan in that case. It is equally apparent that there is

³ PLD 2018 SC 595

⁴ 2022 SCMR 547

⁵ 2023 YLR 690

⁶ PLD 2016 SC 484

⁷ 2017 P Cr.LJ 617

⁸ 2016 P Cr. LJ

⁹ *Ibid*

prima facie some nexus between the incidents as narrated by the Applicants and the Respondent No. 3 and I am quite satisfied that as per the decision of the Supreme Court of Pakistan reported as **Mst. Sughra Bibi vs. the State**¹⁰ it is incumbent on the Investigation Officer when submitting his report under Section 173 of the Code of Criminal Procedure, 1898 to take cognizance of any offence committed based upon the facts discovered during the investigation “irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person”.

9. Clearly the order dated 26 June 2023 passed by the 1st Additional Sessions Judge/Ex-officio Justice of Peace Hyderabad in Cr. Misc Application No. 2460 of 2023 under Section 22-A(6)(i)(iii) of the Code of Criminal Procedure 1898 failed to take into account the decision in **Mst. Sughra Bibi vs.the State**¹¹ which specifically prohibits the registration of a second FIR in such circumstances and which order hence cannot be sustained. The Application therefore must be allowed.

10. For the foregoing reasons the Order dated 26 June 2023 passed by the 1st Additional Sessions Judge/Ex-officio Justice of Peace Hyderabad in Cr. Misc Application No. 2460 of 2023 under Section 22-A(6)(i)(iii) of the Code of Criminal Procedure 1898 directing that an FIR be registered as against the Applicants is found to have been passed in violation of the decision of the Supreme Court of Pakistan reported as **Mst. Sughra Bibi vs. the State**¹²and which is set aside. The investigation officers should conclude his investigation in Crime No. 103 of 2023 and if the Applicants are considered by him to have a role in a crime to proceed against them in those proceedings. This Application is accordingly allowed in the above terms.

Hyderabad.
Dated:13 October 2023

JUDGE

¹⁰ PLD 2018 SC 595

¹¹ *Ibid*

¹² *Ibid*

