

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Miscellaneous Application No.S-382 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>31-07-2023</u>	For orders on office objection. For hearing of main case.
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Mr. Asim Shabbir Soomro, advocate for applicants.

Mr. Siraj Ahmed Bijarani, A.P.G. Sindh.

Mr. Noor Nabi Samo, advocate for respondent No.3.

Through this criminal miscellaneous application, applicants have impugned the Order dated 29.05.2023, whereby the learned IInd Additional Sessions Judge / Ex-Office Justice of Peace, Hyderabad, directed respondent No.2 to record a statement of the respondent No.3 if cognizable offence is made out then same be incorporated in a book maintained under section 154 Cr.P.C. and dealt with in accordance with law. It was further ordered that legal action be initiated against respondent No.3 if she is found false after the investigation.

2. Learned counsel for the applicants submits that there is a dispute regarding the share of the house, respondent No.3 / applicant is the widow of deceased Nazim Hussain Subhopoto, and the applicants are her brother-in-law and sister-in-law. He further submits that the trial Court has failed to consider the report dated 29.05.2023, presented by the Superintendent of Police (Complaint Cell), Hyderabad, on the application filed by respondent No.3 before the Ex-Officio Justice of Peace, wherein it has specifically been mentioned that no evidence is surfaced regarding the incident of fire and it could be a result of short-circuit of electricity. He further submits that respondent No.3 has concocted a false story and implicated the applicants in an incident of a set fire to her room. However, the room was not burnt, along with moveable articles. He finally prayed that the impugned Order may be set aside.

3. Conversely, learned A.P.G. Sindh and learned counsel for respondent No.3 have supported the impugned Order. During the course of arguments, learned counsel for respondent No.3 has placed photographs of burnt articles in the incident along with his statement on record.

4. I have heard learned counsel for the parties and perused the record.

5. It is evident that the applicants have not contested the occurrence of a fire incident within a room located in the same residence occupied by the applicants and respondent No. 3. There is consensus that on 11.5.2023, respondent No.3, accompanied by her children, locked the room and departed for her sibling's nuptial ceremony in Tando Muhammad Khan. The record reflects that in Para No.4, respondent No.3 has explicitly provided the date of the incident and made a grave accusation against the applicants regarding their alleged involvement in the alleged incident. The corroboration of the incident is further substantiated by the report provided by the Superintendent of Police (Complaint Cell), Hyderabad. The photographs presented as evidence today demonstrate that the articles have been subjected to burning, thereby reinforcing the credibility of the testimony provided by respondent No. 3 regarding the occurrence of the alleged incident. The trial Court has issued direction to respondent No.2 to record the statement of respondent No.3. At this juncture, the allegation of mischief is required to be probed, and it is a settled proposition of law that once the offence is reported before Police or Court of law has to be dealt in accordance with the law. It is worthwhile to mention here that after recording the statement of respondent No.3, if the cognizable offence is made out, then such statement is to be incorporated in a book provided under section 154 Cr.P.C. then the course of investigation is started. The applicants have ample opportunity to bring their version before the Investigating Officer. In an inquiry, if the applicants are found innocent, there is also a further course of initiation of the proceedings for false implication of the applicants against the complainant.

6. Any person familiar with the workings of a police station in Pakistan knows that the provisions of section 154, Cr.P.C., are flouted and misused. Section 154, Cr.P.C. provides, inter alia, that every information given to an officer in charge of a police station relating to the commission of a cognizable offence, whether given in writing to him or reduced in writing by an officer in charge of a police station, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf. While this provision is mandatory in nature, often the concerned police station refuses to register the F.I.R. even if the information provided to it relates to the commission of a cognizable offence. It may be reiterated and even emphasized that there was no provision in any law, including the said section 154 or 155 of the Cr.P.C., which authorized an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or the falsity of the information received by him before complying with the command of the said provisions which obliged him to reduce the same into writing irrespective of the fact whether such information was true or otherwise. The wisdom was not far to find. If the S.H.O. was given the authority to determine the truthfulness or the falsehood of the allegations levelled against someone and thereafter to decide to record or not to record such allegations as F.I.R., then such a police officer would have got blessed with the power to decide about the guilt or innocence of an accused person. This was, however, far from the envisaged by the lawmakers regarding the identification and the consequent acquittal or conviction of accused persons as the said task stood assigned only to the courts of law and had never been conceded to police officers. Reference may be made to the Case of ***Muhammad Bashir v. Station House Officer Okara Cantt. and others (PLD 2007 Supreme Court 539)***.

7. In the past, if a person aggrieved went to report the commission of a cognizable case, his report was not registered. If he had the means, he could file a petition for the issuance of an appropriate writ in the respective

High Court. By the time his petition matured for being heard and decided in his favour, a great deal of evidence was either lost or destroyed. The relief so granted was almost equal to the relief declined, barring exceptions, which were not more than a few. With the insertion of subsection (6), an aggrieved person could get in time at his doorstep what he could not get despite approaching the High Court. As against that, the grievance of a person having no means and resources went unattended and un-redressed altogether. Wealthy, well off and well-connected people exploited this situation. They committed the crime and yet went scot-free. But ever since the day the Sessions Judges and on nomination by them, the Additional Sessions Judges became the Ex-Officio Justices of Peace; no rich and well-off person could break the law with impunity or obstruct the person oppressed and assaulted from seeking remedy at his doorstep. If the S.H.O. of a Police Station, owing to the influence and affluence of any, refused to register a case, the resort could be had to the Ex-Officio Justice of Peace for the issuance of an appropriate order or direction by moving a simple application. Aggrieved persons, who could not afford the luxury of engaging a lawyer in the past for filing a writ petition in a High Court to get the desired relief, could seek an order or direction from the Ex-Officio Justice of Peace without spending much. It is a matter of record that the impugned Order passed by the learned IInd Additional Sessions Judge / Ex-Officio Justice of Peace, Hyderabad is conditional and subject to making out of cognizable offence.

8. In view of the above facts and circumstances, I do not find any illegality or irregularity in the impugned Order, which is justified, speaking one and in accordance with law and does not require any interference by this Court and is hereby maintained. Resultantly, the instant criminal miscellaneous application is hereby dismissed.

JUDGE