

**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

Criminal Miscellaneous Application No.S-352 of 2022  
Criminal Miscellaneous Application No.S-353 of 2022

Applicant(s): Muhammad Iqbal in both applications through Mr. Ghulamullah Chang, Advocate.

Respondents No.1,2&4: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Respondent No.3: Ghulam Mustafa [Cr. Miscellaneous Application No.S-352 of 2022] and Mst.Zeenat [Cr. Miscellaneous Application No.S-352 of 2022] through Mr. Muhammad Hanif Kalhoro, advocate who filed his Vakalatnama on their their behalf today, taken on record.

Respondents No.5,6&8: SIP Muhammad Jameel Chandio, ASI Manzoor Ali Panhwar and Wahid Bux through Mr. Muhammad Rafique Arain, Advocate.

Respondent No.7: H.C. Ali Bux in person.

Date of Hearing: 28.08.2023.

Date of Decision: 21.09.2023

**ORDER**

**ZULFIQAR ALI SANGI, J:-** Both the above captioned criminal miscellaneous applications have filed by applicant Muhammad Iqbal are arising out of same incident, as such, the same are being disposed of through this single order. Through these criminal miscellaneous applications, applicant has impugned the order dated 24.05.2022 passed on the applications of respondent(s) No.3 namely Ghulam Mustafa and Mst. Zeenat [both the respondents are hereinafter referred to as "Respondent No.3"] respectively, whereby the learned Additional Sessions Judge-I / Justice of Peace Dadu has allowed the applications filed in terms of section 22-A & B Cr.P.C. and directed respondent No.2

to record statements of respondent No.3 and incorporate the same in a book under section 154 Cr.P.C.

2. Background of the case is that the respondent No.5, who is SHO of PS Khudabad, registered a FIR bearing crime No.29 / 2022 for the offence under sections 324, 353, 399, 402 PPC at PS Khudabad District Dadu alleging that while he and his subordinate staff was on patrolling duty during which while they were near to Parco Line, five persons having pistols in their hands, who signaled their government vehicle observing it to be private vehicle. They introduced themselves as police and directed to up their hands but they started straight firing. According to complainant, they alighted from vehicle and took positions and exchange of firing continued for five minutes. Thereafter police apprehended two culprits in injured condition while rest succeeded to flee away. Injured Zahid and Ahsan both received fire shots on their left legs. On the other hand, the respondent No.3 alleged that there was dispute between him and proposed accused HC Ali Bux and Wahid Bux and on 01.05.2022, his brother Zahid (injured) was took by some police constables, who firstly was kept at PS A-Section Dadu then shifted to PS Khudabad. It is also alleged that when they approached at PS Khudaabad, one Ahsan son of respondent Mst.Zeenat was also detained at PS. Subsequently, they came to know about an encounter and alleged it to be fake, wherein the police did injured to Zahid and Ahsan, as such, respondent No.3 approached the Ex-Officio Justice of Peace and got orders for registration of cases, which have been impugned in these proceedings.

3. Per learned counsel for the applicant, the whole story set up in the applications is false, fabricated, unbelievable and unwarranted based on ill founded facts and feud; in fact, applications under section 22-A & B Cr.P.C. were mainly filed before the Ex-Officio Justice of Peace only to pressurize police who has lodged FIR against the injured persons, who became injured in an encounter, took between them and police; that the injured persons were notorious criminals and number of criminal cases were registered against them; that it is settled principle of law that the Ex-Officio Justice of Peace is

not authorized and competent to order registration of second FIR, for the reasons that for the one and same incident, no second FIR is to be lodged but different version can be brought on record by recording statement of aggrieved person and both versions can be investigated, therefore, the impugned orders are against the verdict of Hon'ble Apex Court. In this regard, by relying upon the case of 'Mst. SUGHRAN BIBI v. The STATE' (PLD 2018 Supreme Court 595), he has prayed for setting aside the impugned orders.

4. Conversely, learned A.P.G. Sindh, learned counsel for respondents No.5, 6 & 8 have conceded that no second FIR can be registered for the one and same incident in view of the case law referred by learned counsel for the applicant.

5. On the other hand, learned counsel for respondent No.3 has invalidated the version of the applicant on the ground that innocent persons have been injured by the police with fake and fabricated encounter; that how it is possible that both the injured have sustained injuries on their same places, in fact, no such encounter had ever taken place. He has pointed out that there was dispute between respondent No.3 and proposed accused HC Ali Bux and Wahid Bux and on 01.05.2022, his brother Zahid (injured) was took by some police constables, who firstly was kept at PS A-Section Dadu then shifted to PS Khudabad and thereafter made drama of encounter. He has further contended that impugned orders are legal and does not require any interference by this Court as it is settled provision of law that during investigation if the version of respondent No.3 is found false then proceedings u/s 182 PPC are there and can be initiated against him/her. He, therefore, prayed for dismissal of these applications.

6. Heard and perused.

7. A look on record reflects that the stance of the respondent No.3 in both the applications is connected and common with the main crime bearing No. 29 / 2022 for the offence under sections 324, 353, 399, 402 PPC at PS Khudabad District Dadu wherein both the injured persons namely Zahid and Ahsan are stated to become received injury after an encounter taken place with the police who were on patrolling duty as it is stated that both the injured persons were apprehended by

the police a day before the said incident. The alleged incident is not denied by police as well as respondent No.3; however, police states the same to have taken place is genuine whereas, respondent No.3 standpoints it to be fake and fabricated. *Prima facie*, if the version of respondent No.3 is believed to be genuine then a question arises whether he preferred application to any authority against police for illegal apprehending injured persons. Obviously, no such application is placed on record. Converse to this stance, police has stated the incident in shape of registration of case.

8. The question to be concentrated upon, therefore, is whether the context set by impugned orders involves an inevitable conflict with the case of 'Mst. SUGHRAN BIBI v. The STATE' [PLD 2018 Supreme Court 595]. I cannot therefore see any logical basis to agree with the impugned orders for multiplicity of cases to be registered for the one and same incident after having looked at the cited case law. Put more simply, it seems to me that the second aspect for registration of separate cases for the same incident has been unfair, the opportunity to proclaim one's right to benefit from the recognition and acceptance of that condition lies at the heart of much of the dispute in this case. But an inevitable sub-text is that registration of another case for the same offence as a positive fact can be an impossible task. This is especially so if court proceedings do not provide the occasion to address, much less resolve, the issue. Although context is all in the law, this degree of imprecision about general principles is indicative of the uncertain and shifting ground onto which the respondent No.3 intended to launch further proceedings of the same incident separately.

9. More so, both parties agree that the incidence took place on 02.05.2022 at 0230 to 0235 hours. The location of the incident as disclosed by both the parties is the same. The gunfire incident is also mentioned by both parties to be same. Respondent No.3 accuses the police of inflicting firearm injuries while police alleges that both the injured persons along with co-accused fired upon the police party. No separate narration about the incident has been disclosed.

10. Be that as it may be, the application of any such division is itself against the observations as is evident by a

comparison with the case of Sughran Bibi [supra], wherein it is held that no FIR can be registered for same incident and if any person has grievance to approach the Investigating Officer of the case who is conducting investigation of subject matter. The Investigating Officer or the Officer in Charge of a Police Station may come to know several pieces of information about an incident engaging one or more versions; however, it does not mean to register a new FIR for each such information.

11. The Honourable Supreme Court in case of 'SUGHRAN BIBI v. The STATE' [PLD 2018 SC 595] has held that 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." 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 aspect or regarding his involvement in the crime in issue. 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 information or any other version brought to the notice of the Investigating Officer by any other person.

12. As per SUGHRAN BIBI's case no separate FIR is to be recorded for any new version of the same incident brought to the notice of the I.O. during the investigation of the case. In the instant case, the respondent No.3 has brought new version challenging the involvement of injured persons through an encounter taken place between them and police. Since no new offence has been committed, as such, the learned Ex-Officio Justice of Peace while passing the impugned orders has not looked at the dicta laid down by the Hon'ble Supreme Court of Pakistan in the referred case.

13. For what has been discussed above, I am of the view that impugned orders are not just and proper but against the dicta set up by the Honourable Supreme Court of Pakistan in the referred case of Sughran Bibi. Consequently, these applications are **allowed**, impugned orders are set aside. Since highhandedness of the police is shown by the respondents who wants to register their separate version against the police, therefore, under these circumstances the SSP Dadu is directed to constitute J.I.T. comprising of at least three Deputy Superintendent of Police, who shall record the versions of the respondents under section 161 Cr.P.C. in the FIR bearing crime No.29 / 2022 for the offence under sections 324, 353, 399, 402 PPC at PS Khudabad District Dadu and conduct investigation fairly and honestly and on conclusion of the investigation file report under section 173 Cr.P.C. in respect of each version before the Court having jurisdiction.

14. Both criminal miscellaneous applications stand disposed of.

JUDGE