

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

Criminal Miscellaneous Application No.S-843 of 2022

Applicant: Muhammad Nawaz through M/s. Ghulamullah Chang, Mansoor Ahmed Laghari and Zaffar Ali Laghari, Advocates.

Respondents No.1: Sadam Hussain through M/s. Noorul-ul-Haq Qureshi, Saad Salman Ghani and Fayaz Ahmed Laghari, Advocates.

Respondent No.8: Aqeel through Mr. Mahmood A.Qureshi, Advocate.

Respondents No.12: Alam through Mr. Rasool Bakhsh A. Soomro, Advocate.

Respondent No.2to5: Through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Respondent No.6: Nemo.

Date of Hearing: 28.08.2023.

Date of Decision: 21.09.2023

ORDER

ZULFIQAR ALI SANGI, J:- Through this criminal miscellaneous application, applicant has impugned the order dated 02.12.2022 passed on the application of respondent No.1 namely Sadam Hussain, whereby the learned Additional Sessions Judge-I / Ex-Officio Justice of Peace, Tando Muhammad Khan has allowed the application filed in terms of section 22-A 6 (i) & B Cr.P.C. and directed respondent No.4 to record statement of respondent No.1 and if any cognizable offence under the preview of injury is made out same be incorporated in a book under section 154 Cr.P.C. and conduct fair investigation. It was further directed that if claim of respondent No.1 becomes false, proceedings u/s 182 PPC shall be launched.

2. The claim of the respondent No.1 as set up in his application is that he, PWs Niaz Muhammad and Muhammad Hassan were present on the lands when they were attacked by proposed accused Muhammad Nawaz and others despite they disclosed that the dispute of measurement is to be resolved by tomorrow i.e. 03.11.2022 by the Settlement and Survey Department. It is stated that the proposed accused duly armed with deadly weapons including iron rods caused injuries to Niaz Muhammad and Muhammad Hassan. Such application was moved to SSP Tando Muhammad Khan. It is also stated that during fight Ali Raza and respondent No.1 grappled each other while Aqeel attempted to fire at respondent No.1 but it hit Ali Raza who fell down, therefore, due to anger Aqeel hit repeater from handle side on head of respondent No.1 with intention to kill him. Per respondent No.1, he came to know that on the next day, FIR bearing No.93/2022 under section 302, 324, 147, 148, 149, 337-A (i), 337-F (i) PPC was registered at PS Shaikh Bhirkio by applicant Muhammad Nawaz, as such; respondent No.1 and his witnesses were taken into custody from hospital on 03.11.2022. Thereafter on the orders of learned Magistrate, the police provided medical treatment from RHC Rajo Nizamani on 04.11.2022 and Medical Officer issued provisional medical certificate on 11.11.2022 with delay, as such, respondent No.1 approached the Ex-Officio Justice of Peace and got order for registration of FIR, which has been impugned in these proceedings.

3. Per learned counsel for the applicant, the whole story set up by respondent No.1 is false, fabricated, unbelievable and unwarranted; in fact, such false story is nothing but only to make case of counterblast to pressurize the applicant party for compromise in the case / crime No.93/2022 registered against respondent No.1 and others by the applicant; that the complainant of the case is owner of the land bearing survey No.537 situated at deh Burira Taluka Tando Muhammad Khan, whereas deceased Ali Raza was the Hari on the said land; and the accused have attacked upon them which resulted murder of deceased Ali Raza. According to him, 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 order is 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 order. He further relied upon the case reported in 2020 PSC (CrI.) 922.

4. On the other hand, learned counsel for respondent No.1 has invalidated the version of applicant on the ground that innocent persons have been received injuries at the hands complainant party of crime No.93/2022 and in fact the applicant party attacked upon them and deceased Ali Raza was murdered on the firing of complainant party; that there was dispute over the measurement of land, which was to be resolved by measurement through the Settlement and Survey Department by conducting measurement a day after the incident but the complainant party attached upon them. Learned counsel further contended that the injured appeared before the Medical Officer after obtaining the letter for treatment, however, the version was not recorded by the police with mala fide intention and FIR was registered against them, therefore, respondent approached the Ex-Officio Justice of Peace. He, therefore, contended that impugned order is proper and in accordance with law, as such, instant application may be dismissed. He relied upon the cases reported in 2002 Lahore 79, PLD 2007 S.C 539, 2012 P Cr.J 180 (Sindh), 2013 P Cr.LJ 749 (Sindh), 2015 MLD 502 (Lahore), 2015 P Cr.LJ 1777 (Balochistan), 2016 P Cr.LJ 86 (Lahore) DB, 2018 YLR 1374 (Sindh (Hyderabad Bench) and 2019 MLD 1192 (Sindh).

5. Conversely, learned A.P.G. Sindh, learned counsel for respondents except respondent No.1 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.

6. Heard and perused.

7. Meticulous scrutiny of the record demonstrates that the stance of the respondent No.1 is connected and common with the main crime bearing No. 93 / 2022 for the offence under sections 302, 324, 147, 148, 149, 337-A (i), 337-F (i) PPC registered at PS Shaikh Bhirkio by applicant Muhammad Nawaz, wherein one Ali Raza was stated to

have been killed on the attack of accused as well as received injuries to the complainant party.

8. The alleged incident is not denied by both the parties to have taken place on the one and same place. In such a situation, a question to be determined upon, therefore, is whether the context set by impugned order 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 order for another case 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 case 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.1 intended to lodge another case of the same incident separately.

9. More so, both parties agree that the incidence took place on 03.11.2022 at an agricultural land, on the measurement of which, there is dispute between the parties. 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; however, both parties dispute the making of gunfire upon deceased Ali Raza against each other. 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.1 has brought a version challenging the stance

of complainant of main case. Since no new offence has been committed and the version of the respondent in respect of receiving the injuries is also in continuation of the same incident for which an FIR being crime No.93 of 2022 is already registered, as such, the learned Ex-Officio Justice of Peace while passing the impugned order has not looked at the dicta laid down by the Hon'ble Supreme Court of Pakistan in the referred case. The investigation of the version brought by the respondent is stated to be conducted however on perusal of report under section 173 Cr.P.C. not found any opinion of the Investigating Officer from which it reflects that proper investigation was not done in the version introduced by the respondent No.1

13. For what has been discussed above, I am of the view that impugned order is 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, the application in hand is **allowed** and SSP Tando Muhammad Khan is directed to constitute J.I.T. comprising of at least three Deputy Superintendent of Police, who shall record the versions of the respondent No.1 under section 161 Cr.P.C. in the FIR bearing crime No. 93 / 2022 for the offence under sections 302, 324, 147, 148, 149, 337-A (i), 337-F (i) PPC registered at PS Shaikh Bhirkio, District Tando Muhammad Khan 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