

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Appln. No.S-155 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.
3. For order on MA-2787/2023

25-09-2023

Mr. Muhammad Zakaria Baloch, Advocate for applicant.
Mr. Jaleel Ahmed Memon, Advocate for respondent No.4.
Mr. Ayaz Ali Gopang, Advocate for respondent No.5.
Mr. Hameedullah Dahri, Advocate for Respondents No.6 & 7.
Ms. Safa Hisbani, Assistant P.G Sindh.

ORDER

ARSHAD HUSSAIN KHAN, J.- Through instant Criminal Miscellaneous Application under Section 561-A Cr.P.C, the applicant / complainant has impugned the Order dated 30.05.2022 whereby the learned Civil Judge & Judicial Magistrate-I, Nawabshah, has treated the interim challan as final with directions to I.O to submit subsequent report / challan against main accused Ghulam Mustafa including three ladies accused namely Professor Dr. Fareeda, Farheen Dahri @ Farheen Shaikh and Aatiqa whose names were placed in Column No.2 of the charge sheet for offences under Sections 509, 506, 109, 337-L(ii), 34 PPC.

2. It is alleged by complainant that she is a House Job Officer in Peoples University of Medical & Health Sciences for Women, Nawabshah and is residing in a Hostel. One Ghulam Mustafa Rajput, the Director of the University, used to harass her for illicit connections. It is further alleged that on 09.02.2022 at about 09:00 a.m. when she was available in her Hostel Room No.11, Block-B, where three women wearing masks came into her room and closed the door of the room. They strangulated and closed her breath with intention to commit her murder. She tried to rescue herself and then all three women caused

her kicks and fists blows on right and left arms and thereby she opened the door, came out from the room and started hue and cries besides the room and all the three women again started beating her; hence, she sustained injury on her left side of face. Thereafter, all women went away by threatening her to be hanged with ceiling fan if she does not have illicit connection with the Director. She then called upon her uncle Ali Nawaz and narrated the facts to him who came there and went to P.S, obtained letter for her treatment and then lodged F.I.R.

3. After lodging of F.I.R the I.O / SHO investigated the matter and after investigation she recommended the case for disposal under "C" class; however, the learned Court vide order dated 21.03.2022 being disagreed with the recommendation of the I.O directed SSP Shaheed Benazirabad to depute any competent police officer not below the rank of DSP to further investigate into the matter. The investigation was entrusted to respondent No.3 / DSP-SDPO Ishtiaque Hussain Arain, who after further investigation submitted interim challan / charge sheet under Section 173-(1)(b) in the report by placing the names of the above named accused No.5 to 7 in Column No.2 and released them by exercising powers under Section 169 Cr.P.C. After submission of such report the learned Judicial Magistrate deleted Section 324 PPC by observing that ingredients of said section were not attracted in the case. Besides, the learned Judicial Magistrate treated the said report as final with directions to I.O to submit subsequent report / challan against main accused Ghulam Mustafa including above named three ladies accused vide impugned order dated 30.05.2022; hence, this application.

4. Learned Counsel for the applicant / complainant has mainly contended that the impugned order passed by learned Civil Judge & Judicial Magistrate is perverse and against the law; that the learned trial Judge while passing the impugned order has wrongly deleted Section 324 of PPC; that applicant prior to that has filed C.P.No.D-1789 of 2022 for change of investigation in the case which is pending adjudication before this Court; that the impugned order is erroneous being outcome of non-reading and misreading of facts on record. He, therefore, submits that

impugned order may be modified to the extent of deletion of Section 324 PPC from the charge sheet / challan as well as treating the interim challan / charge sheet as final. In support of his submissions, he has relied upon the cases of MUHAMMAD NAWAZ v. WALIDAD and others (1995 P.Cr.L.J 1727), Khawaja MUHAMMAD ASGHAR v. MUHAMMAD IRFAN and 4 others (2019 MLD 1603), KHALID HUSSAIN and 6 others v. ASIF IQBAL and 2 others (2021 P.Cr.LJ 242).

5. In contra, leaned A.P.G while supporting the impugned order has contended that under the law the I.O. is authorized to add, change or delete any Section on the basis of investigation carried out by him, therefore, there was no illegality or material irregularity committed by I.O as well as learned Judicial Magistrate who accepted the charge sheet submitted by the I.O.

6. Learned Counsel for the respondents / accused have adopted the arguments so advanced by learned A.P.G.

7. Heard learned Counsel for the applicant / complainant as well as learned A.P.G and perused the material available on record. It appears that the main anxiety of the applicant / complainant is with regard to the deletion of Section 324 PPC from the F.I.R in the charge sheet. In order to properly evaluate such grievance, it would be advantageous to reproduce the contents of Section 324 PPC which reads as under;-

"324-whoever does any act with such intention or knowledge, and in such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment for either description of a term which may extend to ten years, and shall also be liable to fine, and, hurt is caused to any one by such act, the offender shall be liable to the punishment provided for the hurt caused."

8. From the plain reading of Section 324 PPC it transpires that the learned trial Judge has rightly deleted Section 324 PPC upon a report submitted by the second I.O after re-investigation of the case. In an attempt to murder case falling within the ambit of Section 324

PPC the nature of the act done, the intention of the offender and the circumstances leading to the occurrence are the essential ingredients which need to be probed into to determine the guilt or otherwise of an accused. In the present case, looking to the circumstances as well as nature of the act, the ingredients of Section 324 PPC does not attract. In this regard, I have gone through the contents of F.I.R which reflect that a Director of the University is alleged to have enforced upon a lady to have illicit terms with him through three women / Doctors. At the moment it is hard to imagine that a Director of the University can engage the Doctors, one of whom is a Professor by profession and another is a Doctor, to enforce upon a lady / applicant to have illicit terms with him. On the other hand, the incident has taken place within the sphere of a University in a Hostel and after such incident she has made hue and cry and surprisingly nobody came forward to see her and further that during incident no weapon or lathi or danda or anything else was used by the three women accused. However, these ingredients either true or false are yet to be determined by the trial Court. In so far as the acceptance of deletion of Section 324 PPC by the Magistrate is concerned, the same appears to be correct as the ingredients of Section 324 PPC in view of the circumstances and manner of incident does not attract in this case.

9. Further, in the present case twice the investigation was conducted. First investigation was conducted by IO/SHO who after investigation recommended the case for disposal under "C" class; however, such recommendation was not accepted by the learned Judicial Magistrate who then ordered for re-investigation in the matter. After re-investigation the report / charge sheet was submitted before the Magistrate and the Magistrate upon such report has passed the order dated 30.05.2022 (impugned herein). Learned Magistrate though has accepted the recommendation of deletion of Section 324 PPC; however, and he while disagreeing with the recommendation for letting of three women accused as well as deletion of Sections 506, 109, 337-L(ii), 34 PPC, directed the I.O to submit the report / challan against main accused

Ghulam Mustafa including above named three let of women accused for offences under Sections 509, 506, 109, 337-L(ii), 34 PPC.

10. Apart from the above, the applicant filed application before this Court for transfer of the case from one Court to another Court having jurisdiction which by consent was allowed vide order dated 12.12.2022 passed by this Court in Criminal Transfer Application No.S-80 of 2022. After obtaining this order, the applicant has filed instant application. Surprisingly, the applicant neither challenged the interim challan / charge sheet submitted by the I.O nor was it challenged at the time of passing of the impugned order nor the same was agitated in the aforesaid transfer application. However, when the case was transferred from one Court to another of the jurisdiction and was fixed for evidence the applicant filed present miscellaneous application on 11.03.2023 challenging the order dated 30.05.2022.

11. For what has been discussed above, in my tentative view, the impugned order has been passed after considering the entire circumstances and the material available on the record which is just and proper; hence, it does not suffer from any gross illegality or material irregularity which may call for any interference. The application being devoid of merits is dismissed.

JUDGE

Shahid