

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Appln. No.S-598 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on MA-7961/2022
2. For orders on office objection
3. For order on MA-7962/2022
4. For hearing of main case.

08-09-2023

None present for applicant.

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ARSHAD HUSSAIN KHAN, J.- Through instant Criminal Miscellaneous Application under Section 561-A Cr.P.C, the applicant has impugned the Order dated 31.08.2022 passed by learned Sessions Judge/Ex-Officio Justice of Peace, Badin, whereby the application u/s 22-A & B Cr.P.C filed by the present applicant for registration of FIR against the respondents / proposed accused was dismissed.

2. The case of the applicant is that on 23.06.2022 after attending the Court he was going on Motorcycle alongwith Muhammad Juman and Abdul Jabbar Jat when the proposed accused (police officials) arrested him and also snatched cash amount of Rs.39400/- from him and then lodged FIR vide Crime No.104 of 2022 under Section 8 of Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 against him

3. In his report, the SHO PS Talahar has denied the allegations of applicant and reported that applicant is a whole-Sale dealer of narcotics and such criminal record is available against him but in order to maintain pressure upon police the applicant wants to lodge FIR.

4. Conversely, on account of failure of the police to record his FIR he by way of making an application u/s 22-A & B Cr.P.C sought for issuance of direction against police to record his FIR for the above said incident but his application was dismissed by learned Ex-officio Justice of

Peace, Badin vide order dated 31.08.2022, which is impugned by the applicant before this Court by way of instant application.

5. Perusal of record shows that beside there is a criminal record against applicant as reported by SHO concerned that he is involved previously in other 16 cases, an FIR bearing Crime No.104 of 2022 u/s 8 SPPMSS for use of Gutka and Mainpuri Act, 2019 also registered against him which prima facie seems that in retaliation of said FIR and maintain pressure upon the police to continue his illegal activities he has come before the Court against police, hence, the direction so sought by the applicant for recording his FIR against them was based on malafide. In this regard I am fortified with the case of *Rai Ashraf and others vs Muhammad Saleem Bhatti and others (PLD 2010 Supreme Court 691)* wherein it is held by Hon'ble apex Court that;

“Application for registration of FIR had been filed with mala fide intention---High Court had erred in law to exercise discretion in favour of applicant---Constitution petition was not maintainable as disputed questions of fact could not be decided in constitutional jurisdiction---Supreme Court set aside impugned order in circumstances.”

6. In view of the above, no illegality is committed by learned Ex-officio Justice of Peace, Badin while passing the impugned order which may justify this Court to make interference with it, in exercise of its inherent jurisdiction. Consequently, instant Criminal Miscellaneous Application is dismissed in limine.

JUDGE

Shahid