

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl Misc: Appln. No.S-366 of 2023.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For orders on maintainability of main case.

06.03.2024

Mr. Safdar Ali Ghouri, advocate for the applicant.

Mr. Ali Anwar Kandhro, Addl. P. G.

Mr. Habibullah G. Ghouri, Amicus curiae.

Instant Crl. Misc. Application has been filed against the order dated.10.10.2023, passed by learned Sessions Judge/Ex-Officio Justice of Peace Jacobabad in Crl. Misc. Appln. No.968/2023, whereby application filed by the applicant under section 22-A and B, Cr.P.C with the prayer to direct the SHO to record statement of the applicant and register FIR against proposed accused for the offence as made out, was dismissed.

Learned counsel for the applicant submits that the applicant claims in respect of oil cake (cattle feed) of 394 maunds which according to the applicant while transporting, was taken into possession by the police officials who are proposed accused persons. Counsel further contends that the applicant was on the way with the driver and the cleaner, they were intercepted by the police officials (proposed accused) and taken to the Police Station Saddar, where the aforesaid oil cake of the applicant was usurped by them and thereafter FIR bearing Crime No.221/2023 was registered at Police Station Saddar, Jacobabad, against the driver Aziz Ahmed and the recovery of 270 liters of Diesel is shown from the same Truck. According to the



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counsel for the applicant, since the applicant has been deprived of his lawful right/aforesaid commodity, which has not been shown by the police for having been recovered in recovery memo, therefore, the applicant wants to lodge a criminal case against the proposed accused persons/police officials. Per learned counsel, the learned Sessions Judge/Ex-Officio Justice of Peace was not justified to dismiss such application filed under Section 22-A & 22-B, Cr.P.C and instead would have directed the concerned police to record statement of the applicant, where-after the version of the applicant would have come on record and criminal case should have been registered.

Conversely learned Addl. P. G appearing for the State has opposed the maintainability of instant Crl. Misc. Application on the ground that the allegations as contained in the application besides being false and frivolous are not duly supported by any material or evidence, whereas accused of aforesaid FIR has managed the applicant in order to affect the already pending criminal case against the accused, hence the learned Sessions Judge was justified in dismissing the application of the applicant.

Mr. Habibullah G. Ghouri, present in Court was requested to assist the Court as to the maintainability of instant application under the aforesaid facts and circumstances who has candidly stated that even if the allegations as contained in the application are found to be convincing the applicant has two remedies under the circumstances either to file the suit for recovery of his articles from the persons (accused) to whom such articles/property if any, was entrusted for safe transportation or to pursue the criminal trial already pending pursuant to the aforesaid FIR registered against the accused in respect of same incident while recording his statement, keeping in view the Judgment



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passed by the Hon'ble Supreme Court of Pakistan in case of *Mst. SUGHRAN BIBI v.. THE STATE* reported as **(PLD 2018 SC 595)** on the subject. The relevant portion of the aforesaid judgment discussed at para 27 is reproduced hereunder :

"27. As a result of the discussion made above we declare the legal position as follows :

- (i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.*
- (ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.*
- (iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.*
- (iv) During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C in the same case. No separate FIR is to be recorded for new version of the same incident brought to the notice of the investigation officer during the investigation of the case.*
- (v) 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*



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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."

(vi) 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 the investigation prima facie satisfying the investigating officer regarding correctness of the allegations leveled against such suspect or regarding his involvement in the crime in issue.

(vii) 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 informant or any other version brought to the notice of the investigating officer by any other person."



Heard learned counsel for the parties and learned amicus curiae and have also gone through the Judgment of the Honourable Supreme Court of Pakistan which prima facie reflects that ratio of the cited judgment is applicable to the facts of case of the applicant. Accordingly, I do not find any error in the impugned order passed by the learned Sessions Judge/Ex-Officio Justice of Peace Jacobabad vide

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order dated 10.10.2023; keeping in view the aforesaid legal position as emerged from the judgment passed by the Hon'ble Supreme Court, therefore, instant CrI. Misc. Application is dismissed. However, the applicant is at liberty to approach the concerned Court or the Investigation Officer for recording his statement in the above case, and/or may file suit for recovery of his articles/commodity, if so advised, against the person to whom such articles/commodity was entrusted for safe transportation, in accordance with law. ~



(Ajeeb Ahmed Abbasi)
Sol.
Chief Justice