

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. App. No. D – 16 of 2024

(*Muhammad Saleem versus The State and others*)

Present:

**Mr. Muhammad Iqbal Kalhoro, J.**

**Mr. Arbab Ali Hakro, J.**

Date of hearing : **22.05.2024**

Date of decision : **22.05.2024**

Mr. Atta Hussain Chandio, Advocate for applicant.  
Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

## **ORDER**

**Muhammad Iqbal Kalhoro, J. –** When final report u/s 173 CrPC in Crime No.284 of 2023, registered at Police Shaheed Murtaza Mirani, District Khairpur u/s 302, 324, 337-A(i), 337-F(iii), 337-F(vi), 506/2, 114, 148, 149 PPC read with Section 7 of Anti-Terrorism Act, 1997 was submitted by the IO before learned Anti-Terrorism Court, Khairpur for taking cognizance of the offences against the accused named in FIR, he before doing it issued a show-cause notice to SHO of the said police station, namely Saleem Dayo, the applicant, for having committed an offence u/s 155(1) of (c & d) of Chapter XVII of Police Order, 2002 as well as third proviso of Section 107 PPC, punishable u/s 109 PPC. The applicant submitted a reply, but it seems that learned Judge did not get satisfied, and by impugned order dated 18.04.2024, he has not only taken cognizance of the offences against the nominated accused but has made the applicant as an accused in the same crime for committing offences u/s 302, 324, 506/2, 114, 148, 149 PPC read with Section 7 of Anti-Terrorism Act, 1997.

2. The reasons influencing mind of learned Judge to arraign applicant in the same case as an accused are that he was the SHO of the said police station where the offence, in which at least four (04) persons lost their lives, had taken place, but he did not take any preventive measures to stop it, which in view of learned Judge was an offence under the provisions of law under which the applicant was given a show-cause notice. It seems that learned Judge while dictating the impugned order has taken extra pains to discuss scheme of the said provisions of law and has concluded that by not preventing commission of the said offence in advance, the SHO was equally guilty of the offence committed by the accused in that he had abetted the same by failing to prevent the occurrence, which in his view was an illegal omission on his part as defined

u/s 107 PPC. This order has sensitized applicant to approach this Court for safety by means of this application.

3. We have heard parties and perused material available on record. Learned Additional Prosecutor General, at the very outset, has candidly conceded that the impugned order is not sustainable in law, is based on misconceived interpretation of the scheme contained in the provisions of law under which applicant was given a show-cause notice. Further, the concept promoted thereunder is alien to law, hence he does not support the same.

4. We are surprised to see that although in the opinion of the learned Judge, the applicant had committed an offence u/s 107 PPC by violating scheme thereunder as well as u/s 149 CrPC and 155(1)(c)(d) of the Police Order, 2002, which essentially enjoins a police official to take measures to prevent the commission of a cognizable offence and nuisance, but has made the applicant as an accused u/s 302, 324, 506/2, 114, 148, 149 PPC and Section 7 of Anti-Terrorism Act, 1997. He has not referred to any material facts leading him to a conclusion that applicant, the SHO of Police Station, was equally involved in commission of the alleged offence. He has not cited a provision of law either giving him an authority of making some police official who had nothing to do with the crime, as an accused therein, just because the offence got committed in his jurisdiction. Secondly, he has not pointed out to a justification creating even a remote hypothesis evidencing applicant's hand in commission of the alleged offence in support of his impugned opinion.

5. His reference to Section 107 PPC and conclusion that failure of applicant to stop the crime comes within definition of illegal omission is equally misconceived and based on wrong understanding of said provision. Section 107 PPC or scheme u/s 149 CrPC would come into play only when the police officer, or someone for that matter, has the knowledge of the offence, about to be committed or is being committed in his presence, which he either instigates or engages with one or more other persons for committing that offence or makes a conspiracy for doing it, or indulges in illegal omission by letting it happen without informing the relevant police or the victims with a view to prevent it. It would not apply to in charge Police Station in whose jurisdiction the offence has been committed and about which he only later on came to know. Nothing in this case is available on record, or has been referred to by the learned Judge, that may show knowledge of the applicant in advance of commission of the offence or his presence at the spot, and yet his failure to stop it in order to hold him responsible for illegal omission on his part.

6. No doubt, it is the duty of the police officer to maintain law and order situation within a given area, however, it would not mean that if an offence is committed within the jurisdiction of the police station, the SHO would be joined in the case as an accused to stand trial along with actual culprits. The negligence on the part of a police officer to take necessary measures for preventing cognizable offences is a different species, cannot to be equated with the actual offence committed by the accused in his area. If some police official is found negligent in performance of his duty, he would be chargeable by a provision different than the offence which is found to have been committed due to his negligence and he would be dealt with by a different procedure. His negligence would not however make him an accused in the main offence, like the one in hand where allegedly on account of previous enmity four (04) persons have been killed. If the approach adopted in the impugned order is allowed to remain in the field, it would create upheaval in the society, demoralize the police force and would put entire justice system in jeopardy.

7. Learned Judge, while passing the impugned order, has completely lost sight of basic principles as above governing exercise of jurisdiction under the criminal matters and the manner it is attracted and applied. It does not allow the Presiding Officer of the Court to make an SHO of the police station in whose jurisdiction a certain offence has been committed, as an accused therein just because he perceives him to be negligent in his duty. Even a conclusion by him that the police official has been negligent in preventing a certain offence would require factual enquiry i.e. recording of evidence without which nothing can be definitely determined about his alleged negligence. The approach of learned Judge making SHO of the relevant Police Station as an accused in the main offence is therefore alien to law and based on non-understanding of relevant provisions he has relied upon to exercise his authority. Hence, the order is found meritless and is **set aside**.

The application is accordingly **disposed of** along with pending application(s), if any. Let a copy of this order be communicated to the said Presiding Officer where he is currently posted for a perusal.

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