

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. App. No. D – 25 of 2023

Cr. Misc. App. No. D – 07 of 2024

Present:

Mr. Justice Amjad Ali Bohio

Mr. Justice Arbab Ali Hakro

Applicant : Haji Ameer Ali Chang, through
M/s Syed Jaffar Ali Shah and
Liaquat Ali Shar, Advocates.

Respondent No.1 : The State through
Mr. Shafi Muhammad Mahar,
Deputy Prosecutor General.

Respondent No.2 : Mst. Nazeera, through
(Cr. Misc. App. No. D-25/2023) Mr. Athar Hussain Abro, Advocate.

Respondent No.2 : Mst. Shabnam Khatoon, through
(Cr. Misc. App. No. D-07/2024) Mr. Amjad Ali Gabol and
Ms. Bakhtawar, Advocates.

Respondent No.3 : Nemo.

Date of hearing : **23.07.2024**

Date of decision : **23.07.2024**

ORDER

AMJAD ALI BOHIO, J. – Through both these miscellaneous applications, applicant has impugned two different orders dated 08.06.2023 and 02.02.2024, passed by learned Special Judge, Anti-Terrorism Court, Khairpur. The first order was passed on a Police Report under Section 173, Cr.P.C. in Crime No.04/2023, registered at Police Station Abdul Rehman Unar for offences under Sections 302, 337-H(2), 147, 148, 149, PPC and 7 of Anti-Terrorism Act, 1997, and the second order was passed on a show-cause notice issued to the applicant for committing an offence punishable under Section 155(1) of (c & d) of Chapter XVII of Police Order, 2002 as well as for committing illegal omission of the definition of third proviso of Section 107, PPC,

punishable under Section 109 PPC in the capacity of the then SHO, Police Station Ranipur in Crime No.126/2023, registered at Police Station Ranipur for offences under Sections 302, 374, 328-A, 171, 311, 376(3), 377-6, PPC, 14, 3 of Sindh Prohibition of Employment of Children, 2017 and 7 of Anti-Terrorism Act, 1997. The applicant submitted his reply, but the learned Special Judge, seemingly not satisfied, has not only taken cognizance of the offences against the nominated accused but has also made the applicant as an accused in both the aforementioned crimes.

2. Heard learned Counsel for the applicant, learned Counsel for the respondents and learned Deputy Prosecutor General, and perused the material available on record with their able assistance. Complainants of both cases are also present and have categorically submitted that they did not mention the name of applicant in their respective FIRs, and it was only learned Special Judge who joined him as an accused along with others in both the FIRs.

3. Perusal of the record shows that learned Judge while passing both the aforesaid orders has joined the applicant in the subject cases as an accused because he was the SHO of the said police stations where the subject offences including murders had taken place, but he did not take any preventive measures to stop the same, which in view of learned Special Judge was an offence under the provisions of law for which, a show-cause notice was issued to the applicant. It reflects that learned Special Judge through 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 as he had abetted the same by failing to prevent the happening, and it was an illegal omission on his part as defined under Section 107, PPC.

4. It is strange to see that although in the opinion of the learned Special Judge, the applicant had committed an offence under Section 107, PPC by violating scheme thereunder as well as under Section 149, Cr.P.C. and so also u/s 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 under main offence involved in both the FIRs. He failed to refer any material fact leading him to the conclusion that applicant being SHO of the Police Stations was equally responsible for commission of the alleged offences. He also failed to quote a provision of law authorizing him of making some police official who had nothing to do with the crime, as an accused therein, just because the offence allegedly committed in his jurisdiction. Moreover, he has failed to justify the applicant's involvement in commission of the alleged offences.

5. Learned Special Judge while referring to Section 107, PPC concluded that failure of applicant to stop the crime falls within definition of illegal omission, which is misconceived and based on wrong understanding of said provision. Section 107, PPC or scheme under Section 149, Cr.P.C, for which, no evidence is available on record that he was prior in 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 the Incharge Police Station in whose jurisdiction the offence has been committed and about which he only later on came to know. No reference has been made by the learned Special Judge which may show knowledge of the applicant in advance of commission of the offence or his presence at the spot, and still his

failure to stop it in order to hold him responsible for illegal omission. The duty of the police officer is to maintain law and order situation within specified area, however, it does 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 offenders. The negligence on the part of a police officer to take necessary measures for preventing cognizable offences is a different thing, which cannot be linked 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. He however would not be made an accused in the main offence, like in the case in hand.

6. It appears that learned Special Judge 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 only because he observes 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 strange to law and based on misunderstanding of relevant provisions, which he has relied upon to exercise his authority. However, after the conclusion of the trial in aforementioned cases and final

decisions, if the trial Court finds involvement or negligence on the part of the applicant, then the law would come into the motion.

7. In view of above discussion, both the impugned orders dated 08.06.2023 and 02.02.2024, being meritless, are **set aside** to the extent of joining the applicant as an accused in both the aforementioned FIRs.

Both miscellaneous applications stand **disposed of** along with pending application(s), if any. A copy of this order be communicated to the relevant Presiding Officer where he is currently posted for a perusal. Office to place a signed copy of this order in the captioned connected matter.

J U D G E

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Abdul Basit