

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Miscellaneous Application No.S-451 of 2024

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For hearing of main case
3. For hearing of M.A. No. 8323/2024

16.09.2024

Mr. Sajjad Ahmed Chandio and Ms. Baby Hira, advocates for applicants.

Mr. Muhammad Sachal R. Awan advocate for respondent No.3 / complainant.

Ms. Sana Memon, Assistant Prosecutor General.

ORDER

ZAFAR AHMED RAJPUT, J.- Through instant Criminal Miscellaneous Application, the applicants have impugned the order dated 10.07.2024 passed on a report u/s 173, Cr.P.C. submitted in FIR No.160 of 2023 registered at Police Station Hatri u/s 324, 447, 511, 147, 148, 149, 427, 109, 337-H(ii), 395, 337-A(iii), 337-F(vi), 336 PPC, whereby the Judicial Magistrate-VI, Hyderabad while taking cognizance against accused persons mentioned in the report passed an order of issuance of notice to all accused persons (applicants), whose names were placed in column-II of the report with blue ink, to join the trial.

2. Learned counsel for the applicants submits that the Judicial Magistrate concerned has wrongly taken cognizance against the applicants as their names were mentioned in column-II of the Charge Sheet with blue ink for want of sufficient material to connect them with the commission of alleged offence; that it is only the prerogative of the trial Court, if the case is not triable by the court of Magistrate, to direct such accused persons, whose names have been placed in column-II with blue ink, to join the trial after recording evidence of the prosecution witnesses if it appears that *prima facie* they were involved in commission of any offence.

3. On the other hand, learned counsel for respondent No.3 / complainant points out that in fact the Judicial Magistrate has not taken cognizance of the offence but he has issued the notice to applicants to join the trial.

4. Learned Assistant Prosecutor General Sindh is also of the same view that of learned counsel for respondent No.3 / complainant.

5. Heard. Record perused.

6. It may be observed that under sub-section (1) of Section 190, Cr.P.C., the Magistrate is competent to take cognizance of any offence upon receiving a complaint of facts which constitute such offence; upon a report in writing of such facts made by any police officer; and, upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed which he may try or send to the Court of Sessions for trial. Under sub-section (2) of Section 190, Cr.P.C., a Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence, send the case to Court of Sessions for trial. It may also be observed that nowhere, it is provided in Section 190, Cr.P.C. that a Magistrate is competent to issue notice to join the trial to those accused persons who have not been sent up for trial by the Investigating Officer by keeping their names in column-II with blue ink.

7. In the instant case, it is an admitted position that the Judicial Magistrate has not taken cognizance of the offence against the applicants, hence, issuing of notices against them to join the trial is without lawful authority. Hence, the impugned order to that extent is set-aside by observing further that if at any stage of the trial, it appears from the evidence of prosecution witnesses that sufficient material is available against the applicants, the trial Court may issue notice to them to join trial.

The Criminal Miscellaneous Application stands disposed of in the above terms along with listed application.

JUDGE

