

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. App. No. S – 855 of 2023

(Asgher Ali versus 3rd Additional Sessions Judge N/Feroze & others)

Date of hearing : **12.02.2024**

Date of decision : **12.02.2024**

Mr. Abdul Sattar N. Soomro, Advocate for applicant.
Mr. Shuhab Deen Siyal, Advocate for respondents No.6 & 7.
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

ORDER

Muhammad Iqbal Kalhoro, J. – By this application, applicant has challenged an order dated 08.02.2023, passed by the Court trying Sessions Case No.317 of 2022 (*State versus Mehar Suhag & others*), arising out of Crime No.120 of 2022 U/S 302, 337-H(2), 109, 34 PPC and Sessions Case No.460 of 2022, arising out of a Direct Complaint in the same incident, whereby the Court has amalgamated both the cases and treated the Direct Complaint / Sessions Case No.460 of 2022 as a leading case.

2. Grievance of the applicant is that it is well settled proposition of law that when there is a State case and a complaint case registered by a complainant in respect of one and same incident, the complaint case has to proceed first and decided. The procedure adopted by the trial Court to proceed the State case first is alien to law therefore, and cannot be sanctified. The trial Court is proceeding with the State case instead of Direct Complaint case precipitating miscarriage of justice. His arguments have been rebutted by learned Counsel for the respondents and Deputy Prosecutor General, who have relied upon the cases of *Mumtaz and 3 others v. Mansoor Ahmad and another* (1984 SCMR 221), *Allah Ditta va. The State and 2 others* (2001 MLD 1093) and *Niaz Ahmed v. Hasrat Mahmood and 3 others* (2017 P Cr. L J Note 160).

3. I have heard the parties and perused material available on record. No doubt, it is settled proposition of law that in the face of two cases registered into same incident by the complainant i.e. Direct Complaint and the State case, precedence and preference has to be given to the case registered pursuant to Direct Complaint, and only after the decision is made in such case, the fate of the State case is to be decided. All the same, amalgamation of two cases and treating the Direct Complaint as a

leading case is not against the law either. Consolidation of the two cases against the same set or otherwise of accused with same and identical allegations can be made for avoiding multiplicity of litigation and conflicting judgments. Through the impugned order, the trial Court, although has amalgamated both the cases, but has treated the Direct Compliant as a leading case, which means that the witnesses and the allegations set out in the Direct Complaint would be taken up first before carrying out inspection of the State case. In additions, the reason given by the trial Court for passing the impugned order i.e. to avoid any conflicting judgment is not against the above scheme of law or illegal.

4. I, therefore, do not find any illegality in the impugned order, and hence, **dismiss** the application in hand.

J U D G E

Abdul Basit