

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

Cr. Misc. Application No. 303 of 2019

Muhammad Afzal Applicant

vs.

1. The State
2. Learned Judge of ATC Court No.XI Karachi
3. Ghulam Farooq S/o Ghulam Sarwar Mahar
4. Muhammad Hanif Memon S/o Abdul Ghaffar Memon
5. Fasih S/o Niaz Ahmed Khoso
6. Niaz Ahmed S/o Mehrab Khoso
7. Mehrab S/o Niaz Ahmed Khoso
8. Sharif S/o Muhammad Hashim Marato
9. Rafique S/o Muhabbat Marato
10. Usman S/o not known
11. Saddar Khoso S/o Not known
12. Nisar S/o not known
13. Muhammad Arif S/o Abdul Ghaffar Memon
14. SHO Preedy Karachi Respondents

M/s. Mazhar Iqbal Sidhu and Muhammad Afzal Roshan, Advocates for applicant.

Mr. Amir Khosa, Advocate for respondent No.5.

Ms. Robina Qadir, Deputy Prosecutor General Sindh.

Date of hearing : 4th March, 2024

Date of judgment : 4th March, 2024

JUDGMENT

OMAR SIAL, J: Muhammad Afzal has filed this application impugning an order dated 21.06.2019 passed by the learned Anti-Terrorism Court No. XI at Karachi. In terms of the said order, a direct criminal complaint filed by Afzal was dismissed. The grievance of the complainant was that on 25.05.2018 when he along with two friends were driving, they were intercepted by the accused persons, beaten and abducted.

2. The record of the case reveals that Muhammad Afzal filed a direct complaint against 11 individuals before the learned ATC XI. The learned trial court based on the statement made by the complainant and an inquiry report issued by the SHO Preedy, took cognizance of the complaint on 03.05.2019. On 25.05.2019 when the SHO Preedy police station appeared in person, he told the learned trial court that the inquiry report (which prompted the trial court to take cognizance) had not been issued by him. The matter was referred to the SSP Investigation, CTD. Simultaneously, the learned trial judge also filed a reference in the High Court complaining that aspirations against his integrity had been cast by the complainant and thus the case should be transferred from his court. The High Court transferred the case to ATC-XII on 14.06.2019. For reasons that have not been explained to us, inspite of the fact that the case had been transferred, the High Court on 17.06.2019 directed that the ATC-XI decides an application pending before it. The application was one under section 21 of the General Clauses Act, 1897 and sought recall of the order dated 03.05.2019 (the order whereby cognizance of the complaint was taken). The learned trial judge on 21.06.2019 recalled the order and dismissed the complaint.

3. We have heard the learned counsel for the parties and have perused the record. Our observations and findings are as follows.

4. We are of the view that the order impugned was passed in an arbitrary and hurried manner. The learned trial judge did not wait for the SSP Investigation CTD to confirm whether the report submitted by the SHO Preedy was a fake one. A statement on oath was also not taken from the SHO Preedy. No discussion was made in the impugned order that even if the report was a fake report, was there sufficient evidence available (apart from the report) that would still merit taking cognizance of the complaint. It seems that bad blood which had developed between the litigants and the trial court may have contributed to the final decision in the case. This was not the preferred route to have followed. Serious allegations have been raised against the proposed accused persons. Who put the SHO's report on the Court record is also not clear. The position would have been better

understood if a senior officer like the SSP Investigation CTD would have furnished his report.

5. In the circumstances of the case, we direct as follows:

- (i) The impugned order is set aside.
- (ii) SSP Investigation CTD is directed to personally look at the incident and its aftermath and submit a detailed report in this behalf within two weeks of this Order. The report will be filed in the Court having jurisdiction.
- (iii) Mohammad Afzal shall thereafter have the option to file a fresh direct complaint before the relevant court (we understand that the case may now have been transferred to the learned 7th Additional Sessions Judge, Karachi Central).
- (iv) The learned trial court shall look at the complaint afresh and pass a speaking order on the same. If the learned trial court is of the view that the facts of the case merit taking cognizance it shall do so.

6. The application stands disposed of in the above terms.

JUDGE

JUDGE