

ORDER SHEET

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Cr. Misc. App. No. S – 528 of 2023

Date of hearing	Order with signature of Judge
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**Hearing of case**

1. For orders on office objections at Flag-A
2. For hearing of main case

**08.03.2024**

Mr. Munawar Alam Khan, Advocate for applicant.

Ms. Kiran Raees and Mr. Mohsin Ali Randhawa, Advocates for respondent No.2.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

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**Muhammad Iqbal Kalhoro, J. –** Applicant filed an application before the trial Court for alteration of Charge to include Section 395 PPC and send the case to the Sessions Judge for a trial as a consequence. This application was dismissed vide order dated 05.05.2023 with observation that no allegation of robbery is mentioned in the FIR; hence, no case U/S 395 PPC was made out. Applicant challenged the order in revision application being Cr. Revision Application No.15/2023 before learned Additional Sessions Judge-I / MCTC-I, Sukkur, who after going through the relevant provisions and taken into consideration all the relevant facts has passed the impugned order dismissing the revision application, which applicant has challenged before this Court.

2. On the last date of hearing, instead of arguing the matter on merit, learned Counsel for the applicant took the stance that learned Counsel appearing for respondent had stood surety on his behalf, which was a misconduct on his part, hence, his case be referred to Sindh Bar Council for action. Today, the case is fixed for hearing on this point as well as hearing on the merits.

3. Learned Counsel, instead of arguing the case on merits, has started stating that the Counsel, who is nephew of respondent cannot stand his surety and it is misconduct on his part and his case may be referred to Sindh Bar Council for action against him. However, he has not referred to any law on this point or the relevant provision of Sindh Bar Council Act, which stops an advocate to stand surety on behalf of his uncle, and represent him in the case as an advocate. On merits, learned Counsel has stated that there is a medical evidence which justifies inclusion of Section 395 PPC in this case.

4. Learned Additional Prosecutor General has, however, supported the impugned order and states that no material is available on record on the basis of which Section 395 PPC be added in the case, and the case sent to the Sessions Judge for a trial.

5. I have heard the parties and perused material available on record including the impugned orders passed by the fora below. Learned Counsel for applicant has not pointed out to any material to establish his case for alteration of charge and inclusion of Section 395 PPC. Neither FIR nor other material shows that any allegation of commission of robbery was leveled by the complainant against the respondents. More so, the IO on due investigation has reported the relevant offences made out during investigation in the challan U/S 173 CrPC, which do not include Section 395 PPC and which has been accepted by the trial Court. In absence of any material, the application before the trial Court was misconceived and was rightly dismissed.

6. No case for interference is made out, therefore, this criminal miscellaneous application, having no merits, is **dismissed**.

J U D G E

Abdul Basit