

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Misc. Application No. S- 477 of 2022
(Babloo Jan Solangi Vs. SHO PS Mohbat Dero & & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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- 1. For Orders on office objection.
- 2. For hearing of main case.

22-03-2024.

Mr. Abdul Baqi Jan Kakar, advocate for the applicant.
M/s Bakhshan Khan Mahar, Shoaib Nisar Khaskheli and Achar Khan Gabole advocates for the private respondents.
Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

- 1. Over ruled.
- 2. The facts in brief necessary for disposal of instant Crl. Misc. Application are that an FIR /Crime No. 06/2022 u/s 302, 343, 34 PPC was lodged with PS Mohbat Dero by the applicant alleging therein that his brother Akhtiar Ali was taken away by the accused named in the FIR, who then by keeping him in wrongful confinement committed his murder. On investigation, a report u/s 170/173 Cr.P.C was submitted by the police for trial of certain accused; learned IInd Judicial Magistrate Kandiaro instead of taking cognizance of the case disposed of the subject FIR under “C” class consequently, discharged/released the accused involved therein vide order dated 17-08-2022, which is impugned by the applicant before this Court by making the instant Crl. Misc. Application under section 561-A Cr.P.C.

It is contended by learned counsel for the applicant that learned trial Magistrate was having no authority to have dismissed the positive report of the police for trial of the accused; therefore, the impugned order same being patently illegal is liable to be set aside by this Court with direction to learned trial Magistrate to take cognizance of the offence and then to proceed further with the case in accordance with law.

Learned Additional P.G for the State did not support the impugned order; however learned counsel(s) for the private respondents by supporting the impugned order have sought for dismissal of instant CrI. Misc. Application by contending that the death of the deceased was natural and such report u/s 174 Cr.P.C has already been approved by learned IInd Judicial Magistrate Badin, which has not been impugned.

Heard arguments and perused the record.

It was a murder case wherein report u/s 170/173 Cr.P.C was furnished by the police for trial of the certain accused involved therein. Learned trial Magistrate instead of taking cognizance of the offence on police report which was positive by making irrelevant and unnecessary observation disposed of the subject FIR under "C" class consequently discharged/released the accused involved therein ignoring the principle that burden to make out the case for cognizance is light same could never be equated with the burden to prove the case at trial which require evidence. The approval of report u/s 174 Cr.P.C by the Magistrate having jurisdiction at Badin with regard to the death of the deceased being natural could hardly be taken enough to disbelieve the applicant and his witnesses in case like present one in summary manner.

In case of *Said Jalal and 2 others Vs. The State and & another* (1972 SCMR 516), it has been held by Apex Court that;

"The Magistrate cannot dismiss the report submitted by the police under section 173 merely on the ground that result of the preliminary inquiry conducted by the Magistrate is otherwise. If a challan be submitted under section 173 of the Code it is the duty of the Magistrate to proceed to deal with it according to law, and this means that the Magistrate shall proceed to issue process under section 204 of the Code, and hold the inquiry of trial contemplated under Chapters XVIII, XX and XXI of the Code".

In view of above, impugned order is set aside with direction to learned trial Magistrate to pass the same afresh in accordance with law after conducting further inquiry, if needed.

The instant Crl. Misc. Application is disposed of accordingly.

Judge

Nasim/P.A