

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Appln:No.S-614 of 2023

Applicants: Allah Bachayo son of Muhammad Bux Jokhiyo through Mr. Badal Gahoti, Advocate.

Respondents: Through Mr.Sikandar Ali Khaskheli, Advocate

The State: through Ms. Rameshan Oad, A.P.G for the State.

Date of hearing: **20.01.2025**

Date of Order: **20.01.2025**

O R D E R

AMJAD ALI SAHITO, J:- Through this Criminal Misc. Application filed under Section 561-A Cr.P.C, the applicant has impugned the order dated 09.08.2023, passed by the learned 1st Additional Sessions Judge, Badin in Sessions Case No.191 of 2023 Re: the State vs Mumtaz & others wherein the application under Section 190, 193 r/w Section 173 Cr.P.C for joining the proposed accused as one of the accused in the said sessions case offshoot of crime No.149 of 2021 u/s 302, 342, 35 PPC lodged at PS Matli was dismissed.

2. Per learned counsel, infact Criminal Misc.Appln:No.S-815 of 2020 was heard and decided vide order dated 26.08.2022, wherein the opportunity was provided to the complainant that during proceeding if, they will deposed against the accused persons and if, there is sufficient material has been brought on the record then the applicant/complainant may file proper application for joining of the accused persons who were placed in column No.2 of the challan. He further submits that after framing of the charge, the application under sections 190, 193 r/w section 173 Cr.P.C was filed before the Court of learned 1st Additional Sessions Judge, Badin in Sessions case No.191 of 2023, but the same was dismissed only on the ground that the consent was not obtained from the learned Prosecutor in view of section 493 Cr.P.C, as such, the application was dismissed. He further submits that during proceedings two accused namely Shakeel and Nisar have surrendered before the learned trial Court as such now

case is fixed for denovo trial and fixed for framing of fresh charge against accused persons, as such, he submits that since prior to this, the application was not decided on merits but on the technicalities learned trial Court has decided the same therefore, he prayed that the impugned order dated 09.08.2023 may be set-aside and once again the opportunity may be given to the applicant/complainant to file proper application through DPP.

3. Learned counsel for accused submits that the application was not dismissed mere on technicalities but the learned trial Court also discussed merit of the case. He further submits that impugned order is well reasoned and same may be maintained.

4. Learned A.P.G for the State also supported the contention so raised by the learned counsel for applicant/complainant

5. Heard & perused.

6. From perusal of record it reflects that after full-fledged investigation, the challan was submitted and the names of the accused namely DSP Nand Lal, SIP Irshad Ali, ASI Qadir Bux and HC Karim Bux were placed in column No.2 and such police report under section 173 Cr.P.C was submitted wherewith the learned Magistrate agreed with the report and subsequently released them u/s 169 Cr.P.C. Further, after filing application before this Court by the complainant/applicant a chance was provided to him to record the evidence before the trial Court and after that he may file application under Section 193 Cr.P.C. Same was filed but the learned trial Court did not agree with the contention raised by the complainant/applicant and dismissed the same on the ground that there is no eye-witness in support of the version of the complainant/applicant and that an encounter was committed in presence of the witnesses so also he discussed the all other aspect of the matter. Since, the learned counsel is agreed and he submits that he is not pressing instant application on merit if, he may be again given a chance to approach before the learned trial Court by filing another application u/s 193 Cr.P.C for joining the accused.

7. Learned A.P.G for the State raised no objection.

8. In view of above, instant Criminal Misc. Application stands disposed of accordingly and the impugned order is hereby set-aside and once again the applicant/complainant is at liberty to move proper application at it proper stage if, he chooses so.

JUDGE

Ahmed/Pa,