

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Misc. Appln. No.S-96 of 2017

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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08.09.2017.

1. For orders on office objections.
2. For hearing of case.

Mr. Irfan Badar Abbasi, advocate for applicant.

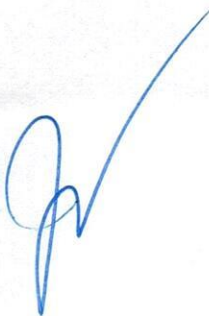
Mr. Sajid Hussain Mahessar, advocate for proposed accused No.1, 2, 3 & 5.

Mr. Khadim Hussain Khooharo, Addl. P.G.

Through this criminal miscellaneous application, the applicant has impugned the order dated 26.4.2017 passed by the Sessions Judge/Justice of Peace, Jacobabad, whereby the application under Section 22-A & B, Cr.P.C filed by the applicant has been dismissed.

2. Learned Counsel for the applicant submits that the learned Justice of Peace has erred in law and facts while passing the impugned order and has not considered the fact that a cognizable offence was made out and, therefore, he was obligated in law to direct the police officials to record the statement of the applicant and proceed further. He has relied upon the case of *Ghulam Fareed v. Station House Officer* (2013 P Cr. L J 117) and *Umer Hayat v. Inspector-General of Police* (2015 P Cr. L J 1551).

3. On the other hand, learned Counsel for proposed accused No.1, 2, 3 and 5 submits that no such alleged incident took place, whereas admittedly the dispute between the parties is regarding some money transaction and now the applicant intends to drag the proposed accused in a false criminal case and one of the proposed accused is of



tender age. He further submits that admittedly they have entered into a settlement, whereas they have made an attempt to get the FIR registered very belatedly and, therefore, the impugned order is correct in law.

4. Similarly, learned Addl. Prosecutor General has supported the impugned order and submits that there appears to be a civil dispute, whereas on perusal of the record there does not seem to be any probability of conviction and, therefore, instant criminal miscellaneous application be dismissed.

5. I have heard the learned Counsel for the applicant and proposed accused as well as learned Addl. P.G and perused the record.

6. The operative part of the impugned order reads as under:-

"From perusal of the application moved by the petitioner to SSP, Jacobabad, no date of its submission is mentioned, however, as per receipt through which the petitioner had sent the application to SSP shows that; the application was posted on 03.04.2017, but as per contents of this application the alleged incident took place on 28.03.2017, then the petitioner's counsel was asked if the incident had happened in the manner disclosed in this application, then as to why the petitioner remained silent for about 06 days and he did not move application to SSP Jacobabad, but he failed to reply satisfactory. Admittedly, there is civil nature dispute between the parties over transaction of money and copy of such Iqarnama/agreement is produced by the petitioner alongwith this application. Furthermore, as per report of the SHO of concerned PS, the parties are on dispute over transaction of money. Therefore, false implication of the proposed accused persons could not be ruled out."

7. Perusal of the aforesaid order as well as the record placed before the Court reflects that allegedly the incident, as per the version of the applicant, took place on 28.3.2017, whereas for the first time the concerned SSP was approached on 03.4.2017 and when confronted as to why this delay was caused, learned Counsel for the applicant failed to

give any satisfactory reply. Even perusal of the application filed under Section 22-A & B, Cr.P.C does not disclose any reason for this delay. It further appears that admittedly the dispute between the parties is regarding a money transaction and though it is not that any criminal offence cannot be reported or committed when there is a civil dispute as well, however, in this matter the delay caused by the applicant regarding the alleged incident has not been satisfactorily responded and, therefore, the learned Justice of Peace was fully justified in passing the impugned order. Moreover, the office of learned Justice of Peace is not supposed to forward all applications under Section 22-A & B, Cr.P.C to police for recording of statement as contended on behalf of the applicant, rather he has to apply his mind and to see that whether any case is made out or not and for that appropriate reasoning has been given in the impugned order.

8. In view of such position, I am of the view that no case is made out by the applicant. Accordingly, the impugned order is maintained and instant criminal miscellaneous application stands dismissed.


JUDGE
8/9/12