IN THE HIGH COURT OF SINDH AT KARACHI

CR. MISC. APPLICATION NO.175/2017

Applicant : Sajid Abbas Rizvi,
through Mr. Abbadur-Rehman, advocate.

Respondents : Naureen and others,
through Mr. Nisar Ahmed Sher, advocate.
Mr. Faheem Hussain Panhwar, DPG.

Date of hearing : 14th February and 6th March, 2019.

Date of announcement : 22nd March, 2019.

O R D E R

SALAHUDDIN PANHWAR, J. Through instant criminal miscellaneous application, applicant seeks quashment of FIR in Criminal Case No.1033/2016 arising out of FIR No.55/2016, u/s 420, 468 and 471 PPC, PS Shahrah-e-Faisal.

2. Relevant facts, as stated in FIR, are that complainant reported that her father Hakeemuddin had expired on 06.02.2014 who had never executed any will during his lifetime while complainant's husband Syed Sajid Abbass Rizvi filed suit No.2488/2015 in the this Court, notice was served upon complainant whereby she came to know that her husband had made a will by cheating and fraud; she also lodged FIR No.9/2015 for issuing threats to her; that her husband committed offence by preparing false will on behalf of her father and committed offence punishable under sections 420, 468 and 471 PPC.

3. It further reflects that in above referred case charge was framed, witnesses were examined and same is at the stage of statement of accused however due to stay of this court by order dated

27.10.2017 trial court was directed "not to pronounce order/judgment".

4. Learned counsel for applicant *inter alia* contends that this court is competent to quash the proceedings when from the face of it no offence is made out and it is discretion of this court. He has referred various documents showing therein that issue is of civil nature and relates to monetary dispute between applicant and complainant. He relied upon 2007 PCrLJ 613.

5. In contra, learned counsel for complainant and DPG contend that instant criminal miscellaneous application is not maintainable; legal course is available with the applicant to adjudicate his plea before trial court hence this is not a case of an exception to exercise powers under section 561-A CrPC. Counsel for complainant relied upon 2007 MLD 1036, 1990 PCRLJ 1209, 2006 PCRLJ 832, 2004 YLR 830, 2004 YLR 834, 2009 YLR 1465, PLD 1968 LAHORE 451, PLD 1992 LAHORE 178.

6. Since it has come on record that matter is fixed for recording of statement of accused and at such stage the applicant seeks quashment on the plea that FIR and other material was not sufficient to take cognizance and framing of the charge. It is settled proposition of law that legally the normal course should not be bypassed particularly where the adequate and alternate remedy is available. The provision of Sections 249-A / 265-K of the Code have the affects of quashing therefore, once the cognizance is taken the normal and proper legal course is to resort such available remedy. Reference may well be made to the case of *Director General Anti-Corruption Estt. V. Muhammad Akram Khan* (PLD 2013 SC 401) wherein such principle has been stamped as:-

> "2. … The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under section 249-A/265-K Cr.PC to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction."

It is also matter of record that applicant has attended trial court, he has participated while conducting cross examination of the witnesses hence in such eventuality it is always requirement of law that normal course to be followed and after trial it is not advisable to make direct approach by resort of Section 561-A Cr.PC which could only come in *extraordinary* circumstances. Reference is made to case of *State through advocate-General V. Raja Abdul Rehman* (2005 SCMR 1544) wherein it is observed as:-

> "14. In the aforesaid cases, the principle laid down by this Court while dealing with the powers of the Courts under section 561-A Cr.P.C. in quashing criminal proceedings pending before the trial Court is that when the law provides a detailed inquiry into offences for which an accused has been sent up for trial then ordinarily and normally the procedure prescribed by law for doing the fate of a criminal case should be followed unless some extraordinary circumstances are shown to exist to abandon the regular course and follow the exceptional routes..."

Further, the allegations are of *fraud* and that of forging document which question requires evaluation and complete examination hence it is not advisable for this Court to assume the role of trial Court or investigating officer in name of *inherent jurisdiction* rather it is proper to believe in the trial Court. I do not find any thing which could bring the instant case as that of ***extraordinary circumstances*** hence find no substance. In consequence thereto, the instant application is

dismissed with direction to the trial court to conclude the trial within one month, without being influenced by the contentions raised in this petition as well order.

J U D G E

IK