

**ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr.Misc.Appl.No.S- 418 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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27.04.2018.

Mr. Riazat Ali Sahar, Advocate for applicants.

Mr. Nisar Ahmed Durani, Advocate for proposed accused.

Syed Meeral Shah, A.P.G. for the State.

Proposed accused/police officials namely 1. Inspector Ghulam Nabi Korai, 2. Inspector Ghulam Ali Brohi, 3. SIP Mazhar Hussain Pitafi, 4. ASI Muhammad Parial, 5. ASI Ali Asghar, 6. ASI Khuda Bux, 7. HC Nizamuddin Samoon, 8. HC Hussain Abro, 9. HC Ghulam Rasool, 10. PC Zulfiqar Ali Khoso, 11. PC Ghulam Shabir Panhwar, 12. PC Mir Muhammad, 13. PC Shamsuddin, 14. DPC Ghulam Abbas, 15. PC Zulfiqar Ali, 16. PC Abdul Ghani, 17. PC Abdul Hafeez, 18. DPC Asif Ali and 19. PC Sajid Ali Birhamani are present in person.

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Through instant criminal miscellaneous application, the applicants Shuhabuddin and Manthar Ali have called in question order dated 19.01.2017 passed by the learned Additional Sessions Judge-IV/Ex-Officio Justice of Peace, Dadu in criminal miscellaneous application No.1912/2016, whereby the application for seeking direction to the SHO PS Rukan for registration of the FIR was refused.

2. Mr. Riazat Ali Sahar, learned advocate for the applicants mainly contended that u/s 154 Cr.P.C, statutory duty has been cast upon the officer incharge of the police station to enter information regarding the commission of a cognizable offence but the SHO concerned refused to register the FIR in this case. It is further contended that Ex-Officio Justice of Peace was approached by the applicants but he also dismissed the application without any legal justification. It is further submitted that three young persons were murdered by the police officials in a fake encounter but the SHO refused to

register the FIR. In support of his contentions, learned counsel for applicants has placed reliance upon the cases reported as Muhammad Bashir v. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539) and Hyder Ali and another v. DPO Chakwal and others (2015 SCMR 1724).

3. Mr. Nisar Ahmed Durani, learned advocate appeared on behalf of the proposed accused/police officials and argued that deceased persons had criminal history. They were involved in a criminal case. Mr. Durani submits that the SHO rightly refused to register an FIR. He has further contended that the Ex-Officio Justice of Peace/ADJ by application of his mind, refused to issue directions to the SHO for registration of the FIR. In support of his contentions, learned counsel for proposed accused relied upon Imtiaz Ahmed Cheema, S.H.O. v. S.H.O, Police Station Dharki, Ghotki and 2 others (2010 YLR 189), Nazir Ahmed v. Station House Officer, Police Station Adilpur, District Ghotki and another (2015 P.Cr.L.J 846) and Jamil Ahmed Butt and another v. The State through Prosecutor General Sindh and 2 others (2014 P.Cr.L.J 1093).

4. Syed Meeral Shah, A.P.G. for the State submits that since the SHO refused to register the FIR, complainant may file Direct Compliant and that remedy is available to him under the law. He also placed reliance on the case of Nazir Ahmed v. Station House Officer, Police Station Adilpur, District Ghotki and another (2015 P.Cr.L.J 846).

5. I have carefully heard the learned counsel for the parties and perused the relevant record.

6. Learned Additional Sessions Judge-IV/Ex-Officio Justice of Peace, Dadu refused to issue directions to the SHO for registration of FIR, for the following reasons. The relevant portion of the order is reproduced hereunder:-

“I have heard learned counsel for both the parties, and perused the report of DIG Hyderabad, SSP Dadu, and SHO PS Rukkan, which shows that Haji Khoso, Yousif Jatoi and

Shahmeer Jatoi were involved in crime No.130/2016 u/s 392 PPC registered at P.S. Rukkan by one private complainant namely Muhammad Sadik Panhwar, in crime No.131/2016 u/s 393, 394 PPC registered at P.S. Rukkan by complainant namely Bahadur Panhwar against above three deceased accused persons and in the offence one person is also injured and then police party chased the accused persons, accused persons fired upon police party hence police party also fired in defence and resultantly all three accused persons were died during police encounter such FIR being crime No.132/2016 u/s 324, 353 PPC was registered at P.S Rukkan. Perusal of complaint shows that the complainant has made so many police officers/officials as accused in their application, though the complainants are not eye witnesses of alleged incident, therefore, it seems that, allegations of applicant are not believable.

Moreover, the report of SHO is also adverse to the applicant. It is not obligatory for court to issue directions for registration of FIR in each and every case, irrespective of the facts and circumstances, which could call for judicial restraint and turning down such request in this respect. I relied upon case law reported in 2013 P.Cr.L.J 999 Ghulam Rasool v. Additional Sessions Judge Gujranwala and 4 others, wherein it is held that:-

“Power of Justice of Peace to issue directions to registration of FIR. Scope. Ex-officio Justice of Peace while seized of a petition under Ss.22-A & B Cr.P.C. was not to act mechanically by issuing a directions for registration of F.I.R. in each and every case, which had to be decided on its own peculiar facts.”

In the circumstances discussed above, and in view of the report of SHO and material available before me, I am of the view that, this application for registration of FIR merits no considered, hence dismissed. However respondent No.1 to 4 are hereby directed to provide legal and lawful protection to the applicants in accordance with law.”

7. Case of the applicants as disclosed before the learned Additional Sessions Judge-IV/Ex-Officio Justice of Peace, Dadu in criminal miscellaneous application No.1912/2016 was that on 02.02.2016 deceased persons namely Yousif aged about 21 years, Haji Khoso and Shahmir left the village to visit the fare of Sain Jurial Shah on a motorcycle. Police officials in civil dresses caught hold them and brought to P.S. Rukkan where SHO/Inspector Ghulam Ali Brohi demanded Rs.6,00,000/- (Rupees six lac) from the relatives of the deceased persons for release else made it clear that said persons would be full-fried/murdered in fake encounter. It is further stated that relatives of the deceased persons could not pay such amount to the police officials/respondents and then in a fake police encounter they were murdered. Such FIR was lodged by Inspector Ghulam Ali Brohi SHO P.S. Rukkan on 02.12.2016 u/s 324, 353 PPC. Learned A.P.G. after going through the aforesaid FIR states that during encounter not a single injury or scratch was caused to any of the police officials nor damage was caused to the police mobile and three young persons sustained firearm injuries and died. Applicants approached to SHO PS Rukkan for registration of an FIR against the police officials but he refused. Finding no other way, an application u/s 22-A & B Cr.P.C. was moved before the learned Additional Sessions Judge-IV/Ex-Officio Justice of Peace, Dadu but unfortunately it was dismissed, in a mechanical manner. The requirement of law is that u/s 154 Cr.P.C. a statutory duty has been cast upon the officer incharge of the police station to enter the information regarding commission of a cognizable offence but the SHO failed to perform his statutory duty. SHO had no discretion to refuse it. Learned Additional Sessions Judge-IV/Ex-Officio Justice of Peace, Dadu also failed to perform his lawful duty and failed to issue directions to the SHO for registration of F.I.R. In this case, three young persons have been killed. According to the applicants they have been killed in a fake police encounter and in the said police encounter as stated above, not a single injury was

caused to the police officials nor any damage was caused to police mobile. It is observed that now a days fake police encounters are increasing day by day, such tendency needs to be curbed. Rightly reliance has been placed upon the cases reported as Muhammad Bashir v. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539) and Hyder Ali and another v. DPO Chakwal and others (2015 SCMR 1724).

8. In the view of above, instant criminal miscellaneous application No.S-418/2017 is allowed. SHO P.S Rukkan is directed to register the FIR against the proposed accused/police officials. S.S.P Dadu shall entrust investigation to the officer, not below the rank of ASP/DSP who will conduct the investigation in accordance with law. Let a copy of this order be sent to SSP Dadu by fax to ensure the compliance of court orders under intimation to this court.

JUDGE

Tufail