

# THE HIGH COURT OF SINDH AT KARACHI

CrI. Misc. Application No. 1074 of 2024

Applicants : Ishaque Thaheem & others  
through Mr. Muhammad Daud  
Narejo, advocate

Respondent Nos.1-3 : The State  
through Mr. Mumtaz Ali Shah,  
Assistant Prosecutor General

Respondent No.4 : Muhammad Soomar  
through Mr. Irfan Gul, advocate

Date of hearing : 6<sup>th</sup> March, 2025

Date of Judgment : 6<sup>th</sup> March, 2025

## JUDGMENT

**Jan Ali Junejo, J.--** The present Criminal Misc. Application has been filed by the Applicants (accused), challenging the Order dated 24.08.2024 (here-in-after referred to as the *Impugned Order*) passed by the Court of learned Sessions Judge, Sujawal in Criminal Misc. Application No.272 /2024 (Muhammad Soomar v. SSP Sujawal & Others), whereby the application under Section 22-A, Cr.P.C. filed on behalf of the Respondent No.4 was disposed of with directions to the I.O. to record the statements of the witnesses/injured produced by the Respondent No.4.

2. The case arises from a land demarcation dispute, where Respondent No.4 filed a Criminal Misc. Application (No.272/2024) under Section 22-A Cr.P.C. The dispute had already led to FC Suit No.139/2021, in which the civil court ordered demarcation of a katcha road by Mukhtiarkar and

Tapedar with police presence. However, on 13.08.2024, while demarcation was underway without police, the proposed accused—seven individuals armed with lathis, an iron rod, a hatchet, and a pistol—allegedly attacked the applicant and his brother Allah Dino, causing severe injuries and issuing death threats. The injured obtained a police treatment letter and were treated at Civil Hospital, Jati, with a final medical certificate issued on 19.08.2024. Based on their complaint, FIR No.114/2024 was registered under Sections 324, 337-A(i), F(i), 114, 506-2, 147, 148, 149, and 504 PPC. Later, Muhammad Soomar, one of the accused, filed Crl. Misc. Application No.272/2024 before the District & Sessions Judge, Sujawal, who directed the Investigation Officer (I.O.) to record witness statements under Section 161 Cr.P.C. However, the I.O. subsequently implicated the applicants as accused, even though the court had not explicitly directed their implication, leading to claims of false accusations and misuse of legal provisions in the ongoing land dispute. Lastly, the Applicants have prayed for the following reliefs:-

*a) To declare that the Impugned Order dated 24-08-2024 of learned court below is against the law natural justice, null, void and illegal having legal sanctity in the eyes of law and the same is liable to be aside being devoid of justice.*

*b) To declare that the applicants have illegally been shown/nominated as accused in additional Challan sheet dated 26.09.2024 by the I.O. of FIR No.114/2024 of P.S. Jati without any authority and acted arbitrary and exorbitantly by using excess and unlimited powers which is not the jurisdiction of the police and the names of the applicants in additional Challan sheet are legally required to be struck off from the Challan sheet.*

*c) That to quash all the proceedings against the applicants arising out of Challan sheet dated 26.09.2024.*

*d) To pass interim order directing the official respondents/police not to arrest the applicant until and unless the above petition is decided by this Honourable Court.*

*(e) To grant any other relief(s) which this Honorable Court may deem fit and proper in the facts and circumstances of the case.*

3. The learned counsel for the Applicants has argued that the impugned order dated 24.08.2024 is void ab initio, legally infirm, perverse, and unsustainable, as it was passed without properly considering the facts, law, and evidence. He further contends that FIR No.114/2024 had already been registered against Muhammad Soomar and others for a cognizable offence, and the trial court failed to recognize the non-maintainability of Criminal Misc. Application No.272/2024 under Sections 22-A & B Cr.P.C., which sought to introduce a second version of the same incident, contrary to settled legal principles. He asserts that the Ex-Officio Justice of Peace, despite the absence of legal grounds, wrongly directed the Investigation Officer (I.O.) to record additional statements, leading to the unjust implication of the applicants. He maintains that the final challan had already been submitted on 04.09.2024, and the subsequent challan against the applicants was unjustified, as it merely complied with the impugned order without conducting a proper investigation. He insists that under Section 173(1)(b) Cr.P.C., once an FIR is registered, no fresh FIR is required for a different version of the same incident, and any additional information should be incorporated into the ongoing investigation. He criticizes the trial court for acting in haste, without applying its judicial

mind, by dismissing Criminal Misc. Application No.272/2024 while still directing the recording of statements from Muhammad Soomar and his witnesses, which he claims was contradictory and legally flawed. He submits that the impugned order is non-speaking, arbitrary, vague, and based on conjectures, violating natural justice and equity, and therefore warrants immediate setting aside. He questions why the opposing party insisted on a separate FIR, arguing that it was merely a tactic to pressure the police and falsely implicate the applicants. He concludes that the impugned order, which leads to the automatic arrest of the accused based on mere allegations, is misconceived, legally untenable, and should be declared null and void. Lastly, the learned counsel prays for allowing the Cr. Misc. Application.

4. Per contra, the learned APG vehemently opposes the Criminal Misc. Application, arguing that the impugned order dated 24.08.2024 was passed in accordance with the law and does not suffer from any legal infirmity. He contends that the Ex-Officio Justice of Peace rightly exercised jurisdiction under Sections 22-A & B Cr.P.C., directing the Investigation Officer (I.O.) to record additional statements to ensure a fair and impartial investigation. He further argues that the registration of FIR No.114/2024 does not preclude the consideration of another version of the same incident, as different perspectives may emerge during the investigation, and it is the duty of the police to record all relevant information to ascertain the true facts. He submits that the trial court did not act arbitrarily but rather took into account the material placed before it and passed a reasoned order to facilitate proper investigation. He maintains that the I.O. complied with the court's directions and conducted further inquiries, which revealed that the applicants' involvement in the incident could not be ignored. He rebuts the

applicants' claim that the second version amounts to an impermissible second FIR, arguing that under criminal jurisprudence, the police are not bound by the first version of an incident and must investigate all available evidence and statements to determine the actual culprits. He asserts that the applicants' plea for setting aside the impugned order is baseless, as it seeks to hamper the due process of law and prevent an unbiased investigation. He insists that the investigation officer acted in accordance with legal principles and merely fulfilled his duty to record all relevant statements under Section 161 Cr.P.C. He further submits that the petitioners have failed to point out any jurisdictional error or legal infirmity in the impugned order, making their plea misconceived and liable to be dismissed. He emphasizes that the application under Sections 22-A & B Cr.P.C. was rightly entertained, as it sought a fair probe into the matter, and the applicants cannot claim immunity from investigation merely because an FIR was already lodged. He concludes that the Criminal Misc. Application lacks merit, as the applicants are seeking to frustrate the investigation process, and thus, their plea should be outrightly dismissed to allow the legal process to take its due course.

5. The learned counsel for Respondent No.4 argues that the impugned order dated 24.08.2024 was lawfully passed and ensures a fair and impartial investigation. He contends that the Ex-Officio Justice of Peace rightly directed the I.O. to record additional statements under Section 161 Cr.P.C., as the law does not prohibit further inquiry into new facts despite the existence of FIR No.114/2024. He maintains that the applicants are trying to obstruct the investigation to avoid scrutiny, and their claim that a second version is impermissible is legally flawed, as investigation is a continuous process. He asserts that

medical evidence, witness statements, and police reports support Respondent No.4's version, making further inquiry necessary. He concludes that the Criminal Misc. Application is a delaying tactic aimed at suppressing vital evidence, and thus, it deserves outright dismissal.

6. I have carefully considered the arguments advanced by both parties and have thoroughly examined the material available on record. A meticulous review of the case record reveals that the Applicants' principal contention revolves around the alleged impermissibility of registering a "second FIR" for the same incident. They base their argument on the Supreme Court's ruling in *Sughran Bibi v. The State* (PLD 2018 SC 595). However, this contention misinterprets the true nature of the Impugned Order. The Sessions Court did not authorize a new FIR but merely directed the Investigating Officer (I.O.) to record additional statements under Section 161 Cr.P.C. within the framework of the existing FIR No. 114/2024.

The Supreme Court, in *Sughran Bibi*, categorically prohibited the registration of a second FIR for the same occurrence to prevent harassment and inconsistent narratives. However, it was also established that during an investigation, the Investigating Officer is duty-bound to explore all possible aspects of the case, taking into account every version of the incident brought to his attention. This obligation is reinforced by Rule 25.2(3) of the Police Rules, 1934, which mandates the I.O. to uncover the truth objectively. The purpose of the investigation is to ascertain the actual facts of the case and identify the real perpetrator(s) without prematurely committing to any particular stance. The Impugned Order falls squarely within this legal exception. The I.O.'s decision to include the Applicants' names in the supplementary challan is a legitimate exercise of statutory authority aimed at presenting

all available evidence rather than initiating a new FIR. The learned Sessions Judge, in his capacity as an Ex-Officio Justice of Peace, issued directions under Sections 22-A & B Cr.P.C. to record the statements of injured persons and witnesses. These directions were neither arbitrary nor extraneous but intended to ensure a comprehensive investigation and uncover the truth. The Applicants' claim that this amounts to a "second version" of the incident is untenable. Criminal jurisprudence firmly establishes that the police must investigate all perspectives, even those that emerge belatedly. It is a settled principle of law that reinvestigation of a criminal case is not barred, and police authorities are legally permitted to file a supplementary challan even after submitting the final report under Section 173 Cr.P.C. However, this is subject to the condition that the trial court has not yet disposed of the case on merits, barring certain exceptions. Reference can be made to *Raja Khursheed Ahmed v. Muhammad Bilal and others* (2014 SCMR 474). The final challan submitted on 04.09.2024 does not render the investigation immutable. The inclusion of the Applicants as accused, based on subsequent statements, is neither unlawful nor tainted with malice but represents a valid exercise of investigative discretion. The Applicants' plea for quashing the proceedings at this stage is premature. Since the trial court has already taken cognizance of the case, the appropriate forum to assess the merits of the evidence is during trial. Under Section 561-A Cr.P.C., this Court cannot summarily terminate proceedings merely because the Applicants dispute their involvement. The law requires such objections to be addressed during trial, where the credibility of the allegations can be tested through evidence and cross-examination. Furthermore, the Applicants have failed to establish any jurisdictional defect or violation of natural justice in the Impugned Order. The Sessions Court provided cogent reasons for directing the

recording of statements, ensuring adherence to procedural fairness. The I.O.'s actions, being in compliance with statutory mandates, do not warrant judicial interference. It is also evident from the record that the Applicants have not demonstrated any special or exceptional circumstances justifying the quashing of the pending proceedings. Accordingly, the present Criminal Miscellaneous Application is not maintainable under the law. In *Muhammad Farooq v. Ahmed Nawaz Jagirani and others* (PLD 2016 SC 55), the Supreme Court reaffirmed this position, holding that: *"It is now well entrenched legal position that where a power is coextensive with two or more Courts, in ordinary circumstances, propriety demands that the litigant must first seek remedy in the Court of the lowest jurisdiction. Mr. Shahadat Awan does not dispute that learned trial Court was seized of jurisdiction under Section 249-A, Cr.PC. No special and or extraordinary circumstances were either pleaded or considered by the learned Judge in Chambers in the High Court, while exercising its inherent jurisdiction Section 561-A, Cr.PC."*

7. For the foregoing reasons, the Criminal Misc. Application is dismissed as devoid of substantive merit. The Impugned Order dated 24.08.2024 is upheld, and the proceedings before the trial court shall continue unabated. The trial Court is directed to adjudicate the case strictly on its merits, uninfluenced by any observations herein.

**JUDGE**