

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Misc. Appln.No. S- 69 of 2013.

Date Order with signature of judge.

For Katcha Peshi.

24.03.2014.

Mr. Ali Raza Pathan, advocate alongwith the applicant.

Mr. Rafique Ahmed Abro, advocate for the accused.

Mr. Imtiaz Ali Jalbani, A.P.G.

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Through instant criminal miscellaneous application applicant has challenged the order dated 3rd January, 2013 whereby learned Civil Judge and Judicial Magistrate, Kandhkot while accepting summary under 'B' class, cancelled the FIR No.127 of 2012 of P.S B Section Kandhkot.

2. Learned counsel for the applicant has interalia contended that impugned order is against the basic principles of criminal administration of justice; learned Magistrate was not competent to opine regarding the fate of the case; mere pendency of cases was not sufficient to approve summary. It is purely domain of the trial Court to adjudicate the issue between parties after recording of the evidence.

3. Conversely, learned counsel for nominated accused in above referred FIR while refuting the contention raised by the learned counsel for the applicant argued that from the contents of FIR it is apparent that no offence was committed therefore, impugned order is in accordance with the law and well speaking consequently, instant application is liable to be dismissed.

4. On the other hand, learned A.P.G contended that though witnesses have supported the FIR but ingredients of both sections are missing therefore, it can not be termed as false case, however, sufficient evidence was not available therefore, it is a



case which can be recommended for disposed as cancelled 'C' class.

5. Heard learned counsel for the parties and perused the record.

6. While scanning the available record and after consideration of contentions raised by the respective counsel, suffice to say that it is not disputed that while deciding the summary submitted by concerned police U/S 173 Cr.P.C Magistrate is competent to examine the facts and circumstances brought on record and he is under obligation to pass speaking order. On this analogy it appears that learned Magistrate has taken all accounts relevant to the facts of the case. At this stage it will be conducive to refer the relevant portion of impugned order same is as under:

"After investigation ASI Ali Baig arrived at conclusion that complainant, witnesses and accused are close relatives and members of same family due to their old dispute over distribution of their property they use to lodge false case against each other. From perusal of FIR and statement of eye witness it is fact that accused Mohammad Saleh who is aged about more than 70 years is uncle of complainant Mohammad Shareef and father of P.W Mehmood. Police papers reveals complainant have no satisfactory explanation about the ownership of the dispute drilling plant, because complainant have produced one sale agreement between complainant and PW Mehmood, who is son of accused Mohammad Saleh and inimical with his father over their properties under these circumstances such agreement between complainant and PW Mehmood is highly doubtful. From careful examination of evidence available on record it reveals there an old dispute is going on between the parties who are member of same family and enmity is double edge weapon and it can be used from either side but from the facts disclosed in FIR and statement of independent witnesses it is evident that complainant has used the said weapon. Therefore, report of SHO is justified and same is accepted."

7. Plain reading of above, it reveals that learned counsel has failed to point out material illegality and infirmity in the impugned order. However, contention raised by the learned A.P.G has substance therefore, this case is not fit to be recommended for



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disposal under B class therefore, while maintaining impugned order I modify the same, as disposed of under C class.

8. While parting, regarding the contention raised by learned counsel for the applicant that it is the domain of the trial Court to decide the fate of the case, needless to mention here that investigation is real test to decide the genuineness of first information and thereafter it is prerogative of learned Magistrate to concur or disagree with such report therefore, on this aspect learned Magistrate exercised his powers in accordance with the law. However applicant is at liberty to avail the remedy of direct complaint U/S 200 Cr.P.C if so advised.

9. Thus, instant criminal miscellaneous application being devoid of merits is dismissed, with modification in impugned order.



JUDGE