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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Crl. Misc. Application No.S-219 of 2013.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Mr. Altaf Hussain Surahiyo, advocate for the applicants alongwith applicants.

Mr. Ali Nawaz Ghanghro, advocate for respondent No.3.

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

Date of hearing : 13.10.2015.

Date of Order : 13.10.2015

ORDER

Salahuddin Panhwar, J. Through instant Crl. Misc. application, applicants have called in question the legality of the order dated 30.9.2013, passed by the 2<sup>nd</sup> Civil Judge & JM, Ratodero in crime No.127/2013, registered with PS Ratodero u/s 392,506(2),337-A(i),337-F(i),34 PPC under 'B' class whereby it is ordered the respondent no.2 (SHO PS Ratodero) to submit police report / challan on prescribed proforma in accordance with law within seven (7) days after receipt of the order.

2. Precisely, relevant facts are that complainant / respondent No.3 Nadeem Akber lodged the above FIR on 18.7.2013 at 1900 hours wherein alleging that he has a book-store in Ratodero City, accused started a new book-store and were annoyed with complainant / respondent no.3 hence used to threaten him to close his book-store. On 09.7.2013 at 11.00 a.m he (complainant) alongwith his brother Naeem and cousin Muhammad Ali went to bank after closing of work, when came out of bank, Muhammad Arshad, armed with gun, Muhammad Amjad and Majid Ali empty handed;



raised Hakals that "don't spare them" upon which accused Arshad caused blow to complainant while other accused persons caused fist and kick blows on head and other parts of the body, they robbed Rs.60,000/- on force of weapon and went away leaving threat to close the shop else, would be killed.

3. The record further shows that police investigated the case, submitted report for disposal of the case under false 'B' class but such report was not agreed by the Magistrate and in consequence of such disagreement he (Magistrate) passed impugned order.

4. Learned counsel for the applicants has argued that applicants were / are innocents and were falsely involved in the case by the complainant; complainant / respondent no.3 knows the applicants / accused very well but with (complainant) malafide shown the applicants as 'shop-keepers' though they are practicing lawyers and were available in court, at alleged time of incident; FIR was delayed by Nine (09) days and yet no independent witness was there to support false versions of complainant while applicants did produce substantial material to establish their plea of *alibi*. Complainant/respondent No.3 and his witnesses (close relatives) even do not support the versions of complainant. The police has properly investigated the matter and conclusion for disposal of the case was legal hence the learned Magistrate was not justified *in law* to disagree with report.

5. On the other hand, learned counsel for the respondent No.3 opposed the maintainability of the petition; he argued that plea of *alibi* was / is not to be considered at such stage; there is medical evidence hence order, *impugned*, is legal, valid and not open to interference.

6. Learned A.P.G, however not supported the impugned order.



7. Heard the respective parties; perused the impugned order and all other available material.
8. It is settled principle of law that an order of Magistrate either *agreeing* or *disagreeing* with police report must be based on *reasons* in such conclusion *which*, however, should be result of tentative assessment of the material. Needless to add that *tentative assessment* does include *comparative / critical* reading of all the available material, collected by *investigating officer* during course of investigation else an order shall fail for want of '*reasonableness*' towards its conclusion.
9. Albeit, complainant/respondent No.3 did file the objections against petition *in question* but nowhere they have denied *least* challenged the claim of the applicants/accused to be *present* as an advocate in court of law at relevant time of incident. Such *plea* was with specific reference to particular case hence it would not be safe to state that such *plea* was without any evidence, as observed by the Magistrate in his impugned order.
10. The perusal of the FIR shows that complainant / respondent no.3, *categorically* claimed robbery of Rs.60,000/- which he got encashed from the *Bank* but his witness Muhammad Ali said that only Rs.40,000/- were got encashed from *Bank* while Rs.20000/- were already available with complainant. Such *prima facie* conflict in very story, knitted to apply Section 392 PPC, should have been taken into consideration because it was not a mere case of '*injuries*' but one of '*robbery*'.
11. The *injuries* have been declared to be '*Shajjah-i-Khafifah* (337-A(i) PPC' & '*Ghayr-Jaifah damiyah* (337-F(i) PPC' which by themselves would not necessarily hold the allegation of '*robbery*'. A medical certificate for '*non-*

*cognizable offences* shall not necessarily absolve the prosecution to place on record showing 'commission of the offence', particularly when allegations are relating to *entirely* different offence(s). Perusal of the available material results into a conclusion that complainant could not bring sufficient evidence so as to *prima facie* establish the allegation of 'robbery & criminal intimidation' hence in absence thereof it was not *legally* justified to take cognizance on a negative report because the *trial* is normally done on material, collected and presented by prosecution as report U/s 173 Cr.PC.

12. Be as it may, the learned Magistrate was/is not legally justified to return the report (challan submitted under Section 173 Cr.PC) with direction to re-submit the same on some prescribed *proforma* but where the Magistrate does not agree with police report and is competent to take the cognizance onto the matter for the *offences* which appears to him to have been made out because cognizance is never taken against person but for '*offence(s)*'. Such legal procedure has not been followed by the learned Magistrate.

13. In view of what has been discussed above, I am not inclined to stamp the impugned order which *otherwise* appears to have not been passed having considered all available material and is not in line with the procedure, settled to deal with a police report under Section 173 Cr.PC (final report to be submitted at the end of the investigation).

These are the reasons for the short order dated 13.10.2015 whereby the impugned order was set aside, as a result wherewith proceeding emanating from that order was quashed.

JUDGE 4/1/20