

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Misc. Appln. No.S-120 of 2015.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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For Katcha Peshi.

15.08.2016.

Mr. Riaz Hussain Khoso, advocate for the applicant.

Mr. Mubashar Ali Solangi, advocate for respondents No.2 to 5.

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

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On 05.7.2015, the applicant/complainant lodged an FIR, vide Crime No.111/2015 at Police Station A-Section Thull, District Jacobabad under section 302, 324, 148, 337-H(2), PPC against the accused persons by nominating them, including respondents No.2 to 5. After registration of the said FIR, investigation was conducted and SHO PS A-Section Thull, respondent No.6, submitted report under section 173, Cr.P.C before the learned Civil Judge and Judicial Magistrate Thull, placing the names of the respondents No.2 to 5/accused in column No.2 with blue ink. The learned Judicial Magistrate accepted the challan vide order dated 25.08.2015; however, he declined to take cognizance against the respondents No.2 to 5. It is against order, instant Crl. Misc. Application has been preferred by the applicant/complainant under section 561-A, Cr.P.C.

2. Heard learned counsel for the applicant, counsel for respondents No.2 to 5 and D.P.G for the State and perused the material available on record.

3. Learned counsel for the applicant has mainly contended that the impugned order suffers from material illegality and thus liable to be set aside. He has further maintained that from the contents of the FIR, a cognizable offence is made out against the respondents No.2 to 5, who were duly nominated in the FIR and the witnesses of the applicant/complainant have also fully supported the version of the complainant in their statements. Neither the report submitted under section 173, Cr.P.C shows cogent reasons for placing the names of respondents No.2 to 5/accused in column No.2 with blue ink nor the impugned order passed by the learned Judicial Magistrate



appears to be passed after applying the judicious mind, therefore, same requires interference by this Court under its inherent jurisdiction as envisaged under section 561-A, Cr.P.C.

4. On the other hand learned counsel for the respondents No.2 to 5 and D.P.G have contended that the case was duly investigated and thereafter when no evidence whatsoever was collected against the respondents No.2 to 5 to connect them with the commission of alleged offence, their names were placed in column No.2 and it is now up to the trial Court to implicate them if during trial evidence comes on record against them.


5. It appears from the perusal of impugned order that the learned Judicial Magistrate after examining the material available on record accepted the report under section 173, Cr.P.C against the accused persons namely, Zulifqar Ali alias Bhutto and Adiya alias Adiyoo, who are in custody and against 12 accused persons who have been shown as absconders in second column of challan report with red ink and declined to take cognizance against the respondents No.2 to 5, who have been named in second column of the challan with blue ink observing that *"trial Court is very much competent to join accused whose names are placed in column No.2, during the trial if complainant succeeds to bring on record material evidence"*.

6. There is no cavil to the proposition that on receiving the case from the Judicial Magistrate, the Court of Sessions under section 193(1) is seized of the entire case and can summon any person as an accused who might appear connected with the commission of the offence irrespective of the fact that he was declared innocent by the police or shown in column No.2 of the challan.

7. So far the inherent powers of this Court under section 561-A, Cr.P.C are concerned, the same are very wide and indefinable and in exercise of its powers, the High Court can make all such orders which may be necessary to do real and substantial justice and to prevent abuse of the process of the Court, subject only to the limitation that it cannot override on express provision of the Code. In other words it cannot be invoked for the purpose of doing any act which would come in conflict with any of the

provisions of law or to obstruct or to divert the ordinary course of Criminal Procedure. It may be mentioned here further that the High Court in exercise of jurisdiction under section 561-A, Cr.P.C cannot pre-empt jurisdiction of trial Court which in case in hand is available to learned trial Court under section 193(1) Cr.P.C. In this respect the complainant has appropriate remedy to approach the trial Court under the aforementioned provision of law.

8. For the foregoing reasons, I do not find any illegality in the impugned order, therefore, this Crl. Misc. Application stands dismissed with no order as to cost.



Judge