

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

C.P.No.D- 2046 of 2016

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
-------------	--------------------------------------

---

03.10.2017.

Mr. Mehboob Ali Dungan, Advocate for petitioner.

Mr. Hussain Bux Solangi, Advocate files power on behalf of one Mumtaz Ali, taken on record.

Mr. Ali Abbas Memon, State Counsel.

=

Petitioner appeared at Police Station A-Section, Dadu on 12.02.2015 at about 2100 hours and reported murder of his sister-in-law namely Mst. Rubina at the hands of accused Ghulam Yaseen. On such information, an FIR bearing Crime No.33/2015 was registered on 16.01.2015. The case after due investigation was challaned in the court. However, after four months of the said FIR, the petitioner filed an application u/s 22-A & B Cr.P.C narrating a different story of the incident whereby he mentioned in all six accused to have committed the murder of his sister-in-law Mst. Rubina. He mentioned the names of three accused whereas three were shown by him as unknown. His application was initially dismissed by the learned Sessions Judge / Justice of Peace Dadu, but in Constitution Petition filed by him the order of FIR was passed by this court, in pursuance of which an FIR bearing Crime No.166/2015 was registered on 10.07.2015. This FIR was

thoroughly investigated by the I.O, who finally disposed of the case under 'B' class (maliciously false). However, when this report was placed before the SSP concerned, he ordered it to be disposed of under 'C' class (neither maliciously false nor true). This opinion of the I.O. and SSP was placed before the learned 2<sup>nd</sup> Civil Judge & J.M, Dadu who after examining the entire material passed the impugned order thereby agreeing with the opinion of police and disposed of the case under 'C' class. Petitioner being aggrieved by the said order has filed the instant petition.

2. Learned counsel for the petitioner has argued that the impugned order is not sustainable under law; that first FIR was not registered by the police as per verbatim of the complainant; that the proper investigation was not conducted in first FIR and instead of the real culprits, the witness of the murder case was made accused therein.

3. On the other hand learned counsel for the respondent as well as the learned State Counsel have supported the impugned order

4. We have considered the submissions and perused the material available on record. It goes without saying that there is no impediment in law for registration of the second FIR and the complainant can register the second FIR, if he is not only able to demonstrate that the first FIR was not registered as per his verbatim, but his action of getting second FIR registered is not tainted with any mala fide. Besides,

he is able to establish that as soon as he came to know about the wrong or twisted facts in the first FIR, he acted promptly for remedying the wrong. In the present case, the first FIR was thoroughly investigated by the Investigating Officer who seems to have collected supporting evidence and recovered the crime weapon from the accused; and while finding him involved in the case submitted the challan against him which was accepted by the trial court. In the investigation of first FIR, the complainant and other witnesses fully participated but never raised any objection on the name of the accused nominated therein or the story of the FIR. It was only after a lapse of considerable time, the petitioner approached the Ex-Officio Justice of Peace for registration of the second FIR and advanced entirely a different story with different culprits. Nonetheless, the said story of second FIR was thoroughly investigated by the relevant I.O. who found no supporting material / evidence and disposed it of under 'B' class. This report was submitted before the learned Civil Judge & Judicial Magistrate concerned who after thorough examination on the entire material agreed with the opinion of the police and has disposed of the case under 'C' class. Although ipsi dixit of the police is not binding upon the court, however its relevancy cannot be questioned in particular facts and circumstances of the case. In the present case in view of the facts and circumstances as discussed above the opinion of the police to dispose of the said F.I.R cannot be brushed aside summarily particularly when this opinion has been

found correct by the learned Civil Judge & Judicial Magistrate concerned. We have seen the impugned order the learned Magistrate has given valid reasons for arriving at the conclusion and there is no justification to interfere with the same. Accordingly, this petition is found meritless and is dismissed.

JUDGE

JUDGE