

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr.Misc.A.No.439 of 2023

Asadullah NughalApplicant

Vs.

The State & others.....Respondents

1. For hearing of main case
2. For hearing of MA No.9520 of 2024

24.10.2024

Mr. Mamoon A.K. Sherwany, Advocate for Applicant.

Mr. Zaboor Ahmed Shah, Addl.PG.

ORDER

Muhammad Iqbal Kalhoro, J:- Through this application, applicant an accused in FIR No.49 of 2023 under section 289, 506, 337-F (i) PPC of P.S. Model Colony, has challenged the order dated 07.06.2023, whereby despite disposal of the case under C-Class by the I.O., the Magistrate has taken cognizance of the offence against him.

2. Brief facts of the case are that on 11.02.2023 complainant visited his father's property situated at Plot No.61/22 Sheet No.22, Model Colony along with his mother and one Burhan for cleaning the same as it had remained closed for last one and half month. As complainant reached there and started cleaning, at about 06:00 p.m, Samadullah, Safiullah and Asadullah arrived and asked complainant to leave the premises by extending murderer threats, complainant refused to leave by stating that subject property belonged to her mother. Then accused persons upon getting angry unleashed their dog who attacked complainant after which complaint managed to save himself from the dog but then was beaten up by accused and later cousin of complainant Abdullah intervened and rescued complainant, hence this FIR.

3. Learned counsel for the applicant has argued that although it is the prerogative of the Magistrate to either agree or dis-agree with the negative

report of the investigation submitted by the I.O., but while taking cognizance of the offence, the Magistrate is required in law to give reasons and discuss the material on the basis of which he is taking cognizance of the offence and forming a different opinion than held by the I.O. In this case neither any reason has been given nor any material has been discussed by the Magistrate while taking the cognizance of the offence, hence the order is not sustainable in law.

4. On the other hand, learned Addl.P.G. has stated that since the cognizance has been taken, the applicant shall file application u/s 249-A Cr.P.C. before the same Court for relief.

5. Notwithstanding, it goes without saying that the Magistrate is empowered in law to take cognizance of the offence in the negative report of investigation submitted by the I.O. in a criminal case. But while doing so, he has to give reasons in favour of his opinion disagreeing with the opinion of the I.O. and discuss the material he finds sufficient for taking cognizance of the offence. In the impugned order both of the above pre-requisites are lacking, the Magistrate has taken cognizance of the offence by providing any reasons or discussing any material altering his opinion from that of the I.O, hence the order is set aside. The matter is remanded to the Sessions Judge East to assign it to some other Judicial Magistrate, who shall pass a fresh speaking order after hearing both the parties within a period of 15 days in the light of above discussion.

JUDGE