

2023
IN THE HIGH COURT OF SINDH, CIRCUIT
COURT HYDERABAD

CrI: Misc: Application No. 3.689 of 2023

Falzan Ali

S/o Ali Ahmed Adult Muslim By Caste Lakho R/o Village
Ayoub Lakho P.O Doolat Pur Taluka Kazi Ahmed District
Shaheed Benazir Abad.....APPLICANT

VERSUS

1. Kainat Naz D/o Jan Muhammad Buriro
B/c Buriro R/o Village Paro shah Mohla Daulatpur
Taluka Kazi Ahmed District Sheed Benazir Abad
2. Investigation Officer,
Cr.No.63/2023
Of PS Daulat Pur
District Shaheed Benazir Abad.
3. SHO PS Daulat Pur
District Shaheed Benazir Abad.
4. The State RESPONDENTS



APPLICATION UNDER SECTION

561-A Cr.P.C.

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Misc. Appl. No. S- 689 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE

11.03.2025

For orders on office objections
For orders on MA 9316/23
For hearing of main case

Mr. Zulfiqar Ali Chandio, Advocate for applicant
Ms. Sobia Bhatti, APG

For the reasons to be recorded lateron this Cr. Misc. Application is
allowed and the impugned order dated 27.7.2023 passed by learned 1st Civil
Judge & J.M Daulatpur is set-aside.

Sd/- MIRAN MUHAMMAD SHAH
JUDGE



CERTIFIED TO BE TRUE COPY
(Signature)
(SHIYAM)
Assistant Registrar
High Court of Sindh,
Circuit Court, Hyderabad.

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MIRAN MUHAMMAD SHAH, J.- Through this Cr. Misc. Application under Section 561-A Cr.P.C. the Applicant has challenged the Order dated 27.07.2024 passed by learned 1st Civil Judge & Judicial Magistrate, Daulatpur whereby the learned Judge did not concur with the Report submitted by the I.O recommending the case for disposal under 'C' with direction to submit charge sheet against the accused within 07 days without fail as according to him there was prima facie case for commencement of trial.

2. Brief facts of the case are that complainant Mst. Kainat Naz lodged FIR on 12.6.2023 at 2230 hours bearing Crime No. 63 of 2023 at Police Station Daulatpur under Section 395 & 452 PPC alleging therein that on 9.6.2023 she along with her brother and relative after having dinner went for sleeping when on 10.6.2023 at 03.00 hours accused Fida Hussain, Khalid Hussain and Nazeer armed with pistol while Faizan and two unidentified persons armed with Repeater barged into their house and accused Fida Hussain robbed golden ornaments, 10 clothes and a cash of Rs. 6,50,000/- from almirah and thereafter went away in car and motorcycle. Such FIR was lodged.

3. After registration of above FIR, I.O conducted investigation and submitted challan recommending the case as cancelled 'C' class but the learned Magistrate did not concur with the said recommendation of the I.O and ordered him for submission of charge sheet as according to him there was prima facie case for commencement of trial against accused persons. Hence the instant Cr. Misc. Application.



4. Learned Counsel for the applicant submits that actually the sister of Mst. Kainat (Complainant of FIR No. 63 of 2023) namely Mst. Ancela contracted free will marriage with one Fida Hussain and filed CP No. D- 982 of 2023. The said Petition was disposed of on the Statement of Mst. Ancela recorded by the I.O. and the instant FIR has been lodged in order to pressurize said Fida Hussain, his family and well-wishers to come in their terms. Learned Counsel further submits that the I.O recorded the Statements including the Statement of Mst. Ancela, fairly investigated the matter and submitted Report recommending the case under cancelled 'C' class but learned Magistrate committed illegality in directing the I.O to submit charge sheet against alleged accused. Learned Counsel further submits that the applicant is student of Agriculture University his future will be at stake as he has been involved in the case only because he was studying in the University where said Fida Hussain who contracted free will marriage with the sister of Complainant was studying. He lastly prayed that the impugned order passed by the Magistrate may be set-aside as it is against the law.

5. In the light of above assertions made and after hearing all the parties it seems to be a family dispute between the applicant and the Complainant party whereas the present applicant has been dragged in this criminal case for mala fide reasons and ulterior motives; hence the false implication of the present applicant in this case cannot be ruled out; therefore, I am of the opinion that the challan submitted the I.O was proper and was based on the investigation conducted by the I.O in fair manner; whereas the learned Magistrate has erred in passing the Impugned order without going into the matter in detail. Therefore, the Impugned order dated 27.7.2023 passed by learned 1st Civil Judge & Judicial Magistrate, Daulatpur is set-aside

6. For the above reasons, this Cr. Misc. Application was allowed in open court on 11.3.2024 and the above are the reasons for the same.



karar_hussain/PS*

Sd/- MIRAN MUHAMMAD SHAH
JUDGE

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(Signature)
(SHIRAZ)
Assistant Registrar
Sindh,
Hyderabad
Created on 11/3/2024