

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Cr. Misc Application No. S-110 of 2017

Applicant : Sajad Hussain son of Abid Hussain Chandio
through Mr. Irshad Ali R. Chandio, Advocate
Respondent : SHO P.S. Miro Khan & 2 others through
Mr. Aijaz Mustafa Samtio, DDPP
Date of hearing : 16.06.2017
Date of order :

ORDER

ADNAN-UL-KARIM MEMON, J.- Applicant has impugned the order dated 02.06.2017 whereby application moved by Applicant under section 22-A & B Cr. P. C. for registration of FIR against proposed accused is dismissed by learned Ex-Officio Justice of Peace/ Additional Sessions Judge, Kamber.

2. Brief facts of case per Applicant are that he was on visiting terms with proposed accused namely Syed Mudasir Hussain Zaidi. He further disclosed that in May 2016, said proposed accused came to him and disclosed that he has 04 visas of Saudi Arabia and offered the same to Applicant in lieu of payment of Rs.300,000/- for each visa, total amounting to Rs.12,00,000/- (Rupees twelve lacs only) including expenses of Rs.30,000/- per visa. As per version of the Applicant he informed about the offer of visa to one Abdul Nabi son of Abdul Qadir Chandio, Altaf Hussain son of Mohammad Ali Chandio, and Abdul Majeed who agreed to purchase the said visas. It is alleged by the Applicant that he paid Rs.12, 30,000/- (Rupees Twelve lacs and Thirty thousand only) to the proposed accused. It is further alleged by the Applicant that he contacted proposed accused on telephone after payment of above mentioned amount but, he did not receive any reply/response from the proposed accused who kept Applicant on hollow hopes. It is further disclosed by Applicant that proposed accused offered him one white Corolla Car bearing No. LEC-6084, Model 2007, Chasis No. NZE-

1206054813, Engine No. X523634. Per Applicant, he agreed to above said offer of proposed accused on account of certain amount of visas outstanding against him and such agreement was reduced to writing. It is further alleged by the Applicant that proposed accused promised to pay outstanding amount to Applicant in a reasonable time. Per Applicant, on 22.05.2017 proposed accused called applicant at Miro Khan town, where Applicant demanded payment of outstanding amount from him to which proposed accused got annoyed, took out pistol, used abusive language and fired upon the Applicant who fell down. It is further alleged by the Applicant that in the meanwhile proposed accused forcibly snatched original documents of above mentioned car and Rs. 500,000/- (Rupees Five lacs only) from said car and escaped. Thereafter, Applicant approached S.H.O. Police Station, Miro Khan and SSP Kamber for registration of FIR but of no avail.

3. Applicant feeling aggrieved and dissatisfied over inaction on the part of official Respondent No. 1 and 2 approached learned Sessions Judge/Justice of Peace, Kamber-Shahdadkot @ Kamber by filing Cr. Misc. Application bearing No. 820/2017 under section 22 A & B, Cr. P. C. for direction to concerned SHO to record statement of Applicant under section 154 Cr. P. C. The learned Additional Sessions Judge, Kamber vide impugned Order dated 02.06.2017 dismissed the above specified application of Applicant.

3. Mr. Irshad Ali R. Chandio, learned counsel for Applicant argued that Station House Officer, Police Station Miro Khan was duty bound to register case of cognizable offence against proposed accused namely Syed Mudasir Hussain Zaidi and two unidentified persons, who defrauded Applicant with threats of dire consequences, made straight fire shots upon him and snatched original documents of car as well as cash of Rs. 500,000/- (Rupees Five lacs only) from him. He next asserted that bare perusal of application moved by the Applicant before learned Sessions Judge/Justice of Peace reflects that a cognizable offence is made out. He next asserted that learned Justice of Peace erroneously dismissed

the application firstly, on wrong premise that apparently dispute between the Applicant and proposed accused is related to terms of certain business deal over travel/permit visa and secondly, on the ground that Applicant failed to produce authentic proof of approach to higher forum of police against SHO who refused to record his statement at Police Station. He next added that learned Justice of Peace has committed material illegality by dismissing the application on the ground that Applicant has not mentioned the name of Prosecution Witnesses in the memo of application. Per leaned counsel this is hardly a ground for the learned court to refuse relief to Applicant which is a good case for direction to the concerned SHO to record statement of the Applicant. He lastly contended that Applicant has made out a case of cognizable offence and S.H.O. concerned is duty bound under section 154 Cr. P. C. to register F. I. R.

3. Mr. Aijaz Mustafa Samtio, learned DDPP for the State has opposed the grant of application on the ground that the same is misconceived and not maintainable. He argued that Applicant has alternate remedy available under the law i.e. Private Complaint before competent court of law.

4. I have heard learned counsel for the Applicant, learned DDPP for the State and perused the material available on record.

5. Perusal of record reflects that Applicant moved an Application under section 22-A & B Cr. P. C. before learned Justice of Peace who dismissed the same vide impugned Order dated 02.06.2017 on the ground that firstly, Applicant failed to mention the names of Prosecution Witnesses in the memo of application and secondly, on the ground that there was a dispute between the Applicant and proposed accused on certain business deal.

6. It is well settled principle of law that while praying for relief under section 561-A Cr.P.C the Applicant has to show prima facie case to attract the extraordinary jurisdiction of this Court. Admittedly, there is money dispute

between the Applicant and the proposed accused on visa issue. Therefore, extraordinary jurisdiction of this court under section 561-A, Cr.P.C cannot be invoked.

7. Reverting to question of snatching documents and certain cash from the Applicant he has remedy to file a Private Complaint as provided under the law.

6. I am of the view that learned Ex-Officio Justice of Peace before exercising jurisdiction under section 22-A(6)(i)(iii) Cr. P. C. has to be satisfied with information provided by the Applicant to assume jurisdiction. The record shows that Applicant has failed to place on record convincing material to substantiate his claim for issuance of direction for registration of F.I.R. The above proposition is supported by the decision of five member bench of Honorable Supreme Court rendered in the case of *YOUNAS ABASS and others v. ADDITIONAL SESSIONS JUDGE, CHAKWAL and others (PLD 2016 SC 581)*.

6. In view of the above discussion, I am of the opinion that Applicant has failed to make out a case for indulgence of this Court. Therefore, the instant application is dismissed. However, Applicant may, if he wishes, avail the remedy of filing a private complaint against the proposed accused. The above observations are tentative in nature which shall not prejudice the case of either party at any stage.


JUDGE