

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Misc. Application No. S- 356 of 2019

Deedar Hussain Abro.Applicant

Versus.

The State and others..... Respondents

Priority Case.

1.For hearing of main case.

2.For hearing of MA 2640/2019

Mr. Ali Gul Abbasi Advocate for the applicant.

Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of hearing: 27-05-2019

Date of decision: 27-05-2019

ORDER

ZAFAR AHMED RAJPUT J., Mr. Illahi Bux Jamali Advocate files power on behalf of alleged detenuess, namely, Abdul Ghafoor, Bilal, Irshad, Imran and respondent No.3 Mst. Hakima, which is taken on record.

2. Through instant Crl. Misc. Application, applicant Deedar Hussain son of Ghulam Mustafa Khan Abro, SIP/the then SHO, P.S, Dubar, Taluka Rohri, district Sukkur has impugned the order dated 09.05.2019, whereby learned Sessions Judge, Sukkur while setting at liberty the alleged detenuess, namely, Imran and Irshad passed order to lodge FIR against responsible police officials for making them in wrongful confinement and missing of Abdul Sami.

3. Learned counsel for the applicant contends that the impugned order suffers from material irregularities and illegality as the same has been passed by the learned Sessions Judge without considering the

further statement of the complainant of FIR being Crime No. 28/2019 registered at P.S, Dubar-Sukkur under Sections 504, 427, 435, 147, 148 & 506/2 PPC, wherein complainant categorically implicated both alleged detenues, namely, Imran and Irshad. He further contends that Abdul Sami was not available at P.S at the time of raid conducted by the Judicial Magistrate Rohri on 08.05.2019 at 02.45 p.m and perhaps due to misunderstanding, he has mentioned in his report dated 09.05.2019 the name of Abdul Sami as confined in the lockup of P.S, hence impugned order is liable to be set-aside.

3. On the other hand, learned counsel for the alleged detenues, respondent No.3 and learned DPG have opposed this application on the ground that further statement of complainant appears to be managed one after a successful raid of the Judicial Magistrate, wherein both the alleged detenues, namely, Imran and Irshad were found in wrongful confinement. They further submit that learned Judicial Magistrate in his report has clearly mentioned that Abdul Sami was present in the police lockup at the time of arrest along with arrested co-accused Abdul Ghafoor. They have also maintained that even after lodging of FIR in compliance of impugned order, the investigation would be conducted and in case applicant is found innocent, he would be let off in investigation.

4. Heard learned counsel for the parties and perused the material available on record. It appears that on 08.05.2019 Mst. Hakima w/o Abdul Ghafoor filed Crl. Misc. Applciatoin No. 810 of 2019 before

learned Sessions Judge, Sukkur under Section 491 Cr.P.C alleging therein that on 07.05.2019 at about 11-30 a.m, SHO, P.S, Dubar along with his subordinate staff and five unknown private persons raided her house and forcibly took away Abdul Ghafoor (husband), Abdul Sami (son), Bilal (relative), Irshad (relative) and Imran (relative) and demanded Rs. 50,000/- for their release. On the said application of Mst. Hakima, learned Sessions Judge deputed Judicial Magistrate, Rohri who conducted raid at P.S, and submitted his compliance report dated 09.05.2019, stating that he conducted raid on 08.05.2019 at 02-45 p.m and found Abdul Ghafoor, Abdul Sami, Irshad, Bilal and Imran confined in lockup of P.S, Dubar while SHO and duty officer were not present, however, as per record produced by WHC Zameer Qazi, it was reflected that an FIR bearing Crime No.28/2019 was registered at P.S, wherein Abdul Ghafoor, Abdul Sami and Bilal were nominated, whereas, Irshad and Imran both sons of Jamsher were not nominated in the FIR hence they were released from police custody after recording their statements with directions to WHC to produce the nominated accused along with relevant record before Sessions Court on 09.05.2019 at 08-00 a.m. It further appears that on the very next date, nominated accused as well as alleged detenues were produced before learned Sessions Judge, Sukkur, where present applicant submitted his report disclosing that on the basis of further statement of the complainant recorded on 07.05.2019, both Irshad and Imran were arrested and as per statements of I.O and said SHO, the further statement was recorded at 1230 hours, however, learned Sessions

Judge found that no such time was mentioned over said statement and that the FIR was registered on 07.05.2019 at 1530 hours, while further statement of complainant was recorded on the same date i.e. 07.05.2019 allegedly at 1230 hours (about two hours before registration of FIR). Learned Sessions Judge further observed that there was an overwriting on the FIR. The date of incident was mentioned initially as 07.05.2019, which was corrected by overwriting as 06.05.2019 and the date of registration of FIR was mentioned initially as 08.05.2019 then overwriting was made as 07.05.2019.

5. Apparently, alleged detenues, namely, Irshad and Imran were found under unlawful detention while Abdul Sami who was seen by the Judicial Magistrate in the lockup was found missing as the SHO in his report had alleged that he was not arrested by the police. The impugned order, therefore, appears to have been passed by learned Sessions Judge in the light of material available before him, hence same does not suffer from any irregularity or illegality requiring any interference of this Court. Accordingly, this Crl. Misc. Application stands dismissed.

JUDGE