

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
C.P.No.D-652 of 2009.

DATE **ORDER WITH SIGNATURE OF JUDGE**

1. For hearing of MA 2969/09.
2. For Katcha Peshi.
3. For orders on MA 3192/09.

Date of hearing: 13.4.2010.

Date of order: 4.2010.

Petitioner Sajid bin Wajid present in person.

Mr. Mukhtar Ahmed Khanzada, State Counsel.

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AQEEL AHMED ABBASI, J- Through instant petition, the petitioners have sought quashment of F.I.R. in Crime No.303/2009 registered at Police Station Qasimabad under Section 324/114/524 P.P.C. against the petitioners. Petitioner No.1 being advocate by profession appeared in person and stated that the petitioners having been falsely implicated in the instant F.I.R. at the instance of private respondents with whom a matrimonial dispute of petitioner No.2 is pending before the Civil Court. Petitioners submitted that petitioner No.2 son of Petitioner No.1 has contracted love marriage with Mst. Bilqees out of which wedlock a child was born. It is further stated that family members of Mst. Bilqees never accepted such marriage and were not happy with the same and always created problems for the couple. So much so that in the year 2007 they took Mst. Bilqees to their house and detained her without her wishes for which the petitioner No.1 filed suit for restitution of conjugal rights in the competent Court of law. The said suit was decreed and Mst. Bilqees started living with the petitioner No.2. As per petitioners, this further antagonized the family members of Mst. Bilqees, who have managed to involve the petitioner in the instant false F.I.R. The petitioner also agitated that the official respondents are in hand and gloves with the complainant and are harassing the petitioners and pressurizing them to withdraw the Guardian and Ward suit filed by the petitioner No.2 pending in the competent Court of law. The petitioners also complained about the highhandedness of the police officials who demanded illegal gratification and on refusal by the petitioner, have challaned the petitioners No.1 and 2 in the instant crime, whereas the petitioner No.3 is shown in column No.2.

Notices were directed to be issued to the respondents as well as AAG. On 24.11.2009 the learned AAG has filed a statement alongwith comments on behalf of respondents No.2 to 4 i.e. police officials who denied the allegations of any harassment or abuse of the process of law. During pendency of instant petition on 10.04.2010 petitioner No.1 has submitted a statement alongwith the order and pointed out that only after filing of the instant petition the police officials have submitted Challan before the competent Court wherein they have kept petitioner No.3 in column No.2, which was duly accepted by the learned Additional and Sessions Judge, Hyderabad. It was further stated that petitioner No.1 has duly been acquitted under section 265-K Cr.P.C. on 18.01.2010 by the learned Vth Additional Sessions Judge, whereas application under section 265-K Cr.P.C. of the petitioner No.2 is pending before the learned IInd Additional Sessions Judge, Hyderabad, where the matter was transferred.

The petitioner present in Court today has submitted that though substantial relief to petitioner No.1 and 3 has been granted whereas remedy by way of filing application under section 265-K Cr.P.C. has already been sought before competent forum, however, the fact remains that the police officials in collusion with the private respondent and after having become vindictive against the petitioners have abused the process of law whereby in addition to ask for illegal gratification did not submit any report under section 169 Cr.P.C. or 173 Cr.P.C. even after lapse of about 45 days of lodging of the F.I.R. without any cause or explanation. He further submitted that though in substance of the instant the petition has served out its purpose but the highhandedness and misuse of authority by the police officials is required to be taken cognizance by this Court.

On the other hand, the learned AAG states that the instant petition has served out its purpose and the police officials are not harassing the petitioners, hence no further orders are required.

We have heard the contentions of the parties and perused the record. It appears that through instant petition the petitioners have sought quashment of the F.I.R. No.303 of 2009 registered at P.S. Qasimabad, on the ground that the same has been registered on account of enmity between the parties emanating from family dispute including the Guardian and Wards proceedings filed by petitioner No.2 against Mst Bilqees. During pendency of the instant petition it appears that certain relief has been granted to the petitioners No.1 and 3, whereas the remedy seeking quashment/release of petition No.2 in terms of section 265-K

Cr.P.C. has also been availed by the petitioner No.2 which as per statement of petitioner is pending before the competent Court of law.

Under the circumstances, we see no reason to keep instant petition pending which is accordingly disposed of for having served out its purpose. However, before parting with the judgment we cannot remain oblivious of serious allegations against the police officials who appear to have not acted in a prudent manner as expected from the public functionary while discharging their public functions. There is no cavil to the proposition that as soon as the complainant lodges his complaint before the police functionaries, it is their duty to entertain the same strictly in accordance with law. However, it is also the duty of police officials to examine the preliminary facts and the material available on record in order to satisfy themselves as to whether any cognizable offence has been made out by the complainant.

We are fortified in our mind by the judgment of Division Bench of this Court in the case of Mazharuddin Vs. The State (1998 P.Cr.L.J 1035) wherein the Division Bench of this Court while exercising constitutional jurisdiction has held that a police officer under Section 54 Cr.P.C is competent to arrest a person in respect of whom there is some reasonable basis to suspect his involvement in a cognizable offence. Such power, however, can be exercised only in those cases where a Police Officer is possessed of some evidence indicating the involvement of a person under the situations mentioned in Section 55(1) Cr.P.C. It has been further held that in order to act under this section there must be a reasonable suspicion of the person to be arrested having been concerned in a cognizable offence. Any arrest of the citizen in reckless disregard of the conditions imposed in this section would make the arrest and detention of the subject illegal and the Police Officer arresting or detaining the subject, would be exposed to prosecution under the Pakistan Penal Code and also for departmental action under the relevant rules.

We are of the view that a police official in the absence of any reasonable basis to suspect involvement in a cognizable offence, on any set of allegations leveled by the complainant without any material, cannot be permitted to act in mechanical manner by converting civil dispute between the parties into criminal offences to the disadvantage of any innocent party. It is further expected from the police functionaries that they should never become party to set of allegation of either party and shall always act prudently and shall conduct an impartial enquiry into the matter.

Since the petitioner through instant petition has sought quashment of the F.I.R./proceedings and have not specifically made allegation on Oath against the official respondents, we do not deem it fit to accept the contention of the petitioner whereby legal action against the official respondent is sought. However, we would like to put to caution the police officials/respondents in the instant petition to always act strictly in accordance with law and observe all the legal and procedural requirements and shall not abuse the process of law by encouraging false and frivolous litigation.

The instant petition is disposed of accordingly.

JUDGE.

JUDGE