

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Crl: Misc. Application No. S- 609 of 2012

**Before:- Mr.JusticeSalahuddinPanhwar, J.**

**Applicants:-** Manzoor, Qurban, Rehmatullah, Wali Muhammad, Ubedullah, Habibulah, Roshan, Amanullah, Rab Nawaz, Shah Nawaz, Shaman, Sanaullah, Khan Muhammad alias Kahnro, Ali Muhammad, Imdad and Ali Nawaz, through their counsel Mr.A.R.FaruqPirzada.

**Respondent** The State, through Mr.SyedSardar Ali Shah, A.P.G.

Mukhtiar Ahmed Mahessar, through  
Mr.Imdad Ali Malik. Advocate.

**Date of hearing** 08<sup>th</sup>. March, 2013.

**ORDER**

**SALAHUDDIN PANHWAR, J:-** The applicants have challenged the order dated 01.10.2012 passed by learned 1<sup>st</sup>. Civil Judge & Judicial Magistrate, PanoAkil, whereby the cognizance was taken on summary report Under section 173, Cr.P.C, under false “B” class in Crime No. 95 of 2012 of Police Station, PanoAkil Under sections 302, 324, 114, 337-H(ii), 148 & 149 P.P.C.

02. The facts as set-out in the F.I.R arethat on 06.5.2012 at 1030 hours, complainant Mukhtiar Ahmed Mahessar lodged report with Police Station, PanoAkil, complaining that about one year back his paternal grand father Ali Muhammad Mahessar murdered Mst.Gullan by leveling allegation of “Karap” with one WajidMahessar. Upon such matter Haq Nawaz and others were annoyed to Wali Muhammad and Roshan and used

to pronounce that they shall murder Haq Nawaz alias Dado. On 01.04.2012, he along with Haq Nawaz alias Dado, Mashooque and Munawar were grazing their respective cattle in the lands of Ali Hassan Mahessar when at about 10:00 A.M, accused Manzoor S/o Badal, armed with Kalashnikov, Qurban S/o Badal armed with Gun, Rehmatullah S/o Azizullah, armed with Kalashnikov, Wali Muhammad S/o Bahadur, armed with Gun, Ubedullah S/o Azizullah, armed with Kalashnikov, Habibullah S/o Chhatto, armed with Gun, Roshan S/o Sodho, armed with Kalashnikov, Amanullah S/o Azizullah armed with Gun, Rab Nawaz S/o KhawandBux, armed with Gun, Shah Nawaz S/o Bahadur, armed with Kalashnikov, Shaman S/o Kaman armed with Gun, Sanaullah S/o Chhatto, armed with Gun, Khan Muhammad alias Khanro S/o Azizullah, armed with Gun, Ali Muhammad S/o Bahadur, armed with Kalashnikov, Imdad S/o HadiBux, armed with Gun, Ali Nawaz S/o Wali Muhammad, armed with Kalashnikov, all by caste Mahessar, and three unknown persons whose faces were open came when accused Wali Muhammad and Roshan instigated accused Rehmatullah to kill him, upon which they all made direct fires upon HaqNaaza and as a result thereof he fallen down and died. Furthermore, the accused also made aerial firing to put pressure upon the complainant party and other persons went away. Thereafter the dead body was removed to Taluka Hospital, PanoAkil for autopsy by the complainant party with the help of police and subsequently got lodged the F.I.R upon the orders of Hon'bleVth.Additional Sessions Judge, Sukkur passed in Criminal Miscellaneous Application No. 315 of 2012.

03. After the instant F.I.R, investigation was carried out and investigation officer in the first report opined that instant case is false, therefore, Summary Report U/s 173, Cr.P.C under false class was submitted before the Magistrate. Learned Magistrate after hearing the parties by order dated 01.10.2012 took cognizance and forwarded the instant case U/s 193(3), Cr.P.C to Sessions Judge.

04. Learned counsel for the applicants/accused inter-alia contends that the impugned order is against the settled principles of law, same is not speaking as the applicants prior to F.I.R subject-matter of this case, lodged

F.I.R bearing Crime No. 74 of 2012 U/s 302, 364, 395, 324, 148, 149, 337-H(ii), 511, 114 P.P.C and in such F.I.R the complainant party alleged that on 02.4.2012 the complainant party of instant case armed with deadly weapons abducted Mukhtiar Ahmed and Nisar Ahmed, both sons of the complainant of Crime No.74 of 2012; committed dacoity, thereafter caused straight fires shots on both the abductees whereby they received injuries, complainant brought them to Hospital, where injured Mukhtiar Ahmed succumbed to the injuries. It was also contended that one accused Haq Nawaz alias Dado also was killed due to fires of his own companions and such case was also thoroughly investigated and case was sent-up for trial, the same is pending for adjudication, such aspect has not been considered or discussed by learned Magistrate. It is further contended that learned Magistrate in its impugned order has referred that investigation officer has relied upon the statements of independent persons, but it is strange that he has not discussed their statements, which were recorded during the investigation.

05. Conversely learned counsel for the complainant assistant by learned A.P.G argued that the impugned order is well speaking and according to law, infact the accused party had committed the murder of Haq Nawaz but police refused to lodge the F.I.R, therefore, the complainant approached the Ex-officio Justice of Peace, Sukkur and on his directions the instant F.I.R was lodged; investigation was not conducted properly; learned Magistrate was not bound to concur with the opinion of the investigation officer, therefore, he has taken cognizable according to law.

06. Since the F.I.R. Crime No.74 of 2012 and 95 of 2012 relates to the murder of two persons; in the first F.I.R it is alleged that complainant party of instant case has caused murder of Mukhtiar Ahmed and Haq Nawaz and caused injuries to Nisar Ahmed, it is described in the first F.I.R that deceased Haq Nawaz was dacoit and companions of complainant party killed by their companions due to indiscriminate firing. Whereas, in second F.I.R, it is surfaced that complainant has alleged that deceased Haq Nawaz was killed by applicant. It is also matter of record that investigation was carried out in F.I.R No.74/2012, case was sentup for trial and in the instant

F.I.R according to investigating agencies case was false, therefore, report under false “B” class U/s 173, Cr.P.C was submitted. I am conscious of the facts that the learned Magistrate while exercising the powers in administrative capacity can agree or disagree with the police report and there is no cavil that he is very competent to take cognizance, even on negative report submitted by police. But it is also settled proposition of law that while passing such order learned Magistrate has to pass a speaking order, especially if report is negative and case is triable by Sessions Court.

07. After careful examination of the impugned order, it reveals that learned Magistrate has not put both the versions in juxtaposition and has not justified the fate of first case same was forwarded by him to the Court of Sessions Judge for adjudication of trial, such aspect is clearly lacking in the impugned order. Moreover, learned Magistrate has not discussed the names and specific parts of the statements of five P.WS who are supposed to be independent witnesses. Thus, without hesitation it can be safely say that impugned order is not speaking and according to parameters laid down by the Hon’ble Superior courts. Consequently impugned order dated 01.10.2012 is set-aside.

08. Above are the reasons of my short order dated 08<sup>th</sup>. March, 2013, whereby, matter was remanded back to the learned Magistrate for passing a fresh speaking order.

JUDGE

A.R.BROHI