

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr.Misc.Appl.No.S- 171 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.
3. For hearing of MA 4702/2017.
4. For hearing of MA 5955/2019.

10.02.2020.

Mr. Hameedullah Dahri, Advocate for applicant.
Ms. Rameshan Oad, A.P.G. for the State.
Complainant / respondent No.2 Muhammad Nadeem present in person.

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ABDUL MAALIK GADDI, J: Through this criminal miscellaneous application, the main grievance of the applicant is that after registration of the FIR being Crime No.17/2017 u/s 452, 147, 148, 149, 337-A(i), 337-F(i) PPC of P.S B-Section, Tando Allahyar, the I.O of the case conducted investigation and after due investigation, he submitted report u/s 173 Cr.P.C. and the name of applicant / accused was placed in column No.2 of the challan. The report has been perused by learned Judicial Magistrate who vide his order dated 18.05.2017 took the cognizance of case against the applicant / accused in the said crime.

2. It is argued by learned counsel for applicant / accused that the case against applicant / accused is false and has been registered with malafide intention by the complainant and ingredients of offence as mentioned in the FIR are also not made out. He further submits that after due investigation, the I.O. of the case submitted report u/s 173 Cr.P.C and placed the name of applicant / accused in column No.2 of the challan but the learned Magistrate wrongly took the cognizance, therefore, impugned order may be set aside.

3. On the other hand, learned A.P.G. appearing for the State has supported the impugned order passed by the learned trial court.

4. I have heard learned counsel for the parties and perused the material available on record with their able assistance.

5. It appears from the record that an F.I.R. No.17 of 2017 was registered at Police Station B-Section, Tando Allahyar on 15.04.2017 in respect of offences under section 452, 147, 148, 149, 337-A(i), 337-F(i) PPC wherein seven (07) accused persons including the present applicant / accused were nominated by complainant Muhammad Nadeem / respondent No.2 herein. It further appears that the said FIR was lodged on the basis of an application u/s 22-A & B Cr.P.C. filed by the complainant as the concerned SHO had refused to register his FIR. From perusal of impugned order, it reveals that I.O. after due investigation recommended the case of applicant and co-accused ASI Ehsan-ul-Haq Gujjar for disposal by placing their names in column No.2 of the challan but the learned Magistrate did not agree with the report of I.O. and issued NBWs against present applicant and co-accused by taking cognizance of the case in hand and the instant criminal miscellaneous application has been filed for setting aside the said order of learned Magistrate.

6. Admittedly, challan in the case had already been submitted before the learned trial court and the learned Trial court had already taken cognizance of the case. The law is quite settled by now that after taking cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and has been falsely implicated and he wishes to avoid the rigorous of a trial then the law has provided him a remedy under section 249-A/265-K Cr.P.C. to seek his / their premature acquittal if the charge is groundless or there is no probability of his / their conviction.

7. In view of the above facts and circumstances of the case, I am of the view that impugned order has rightly been passed by the learned Magistrate by taking cognizance of the case and finding of the police / I.O is not binding upon the court. Accordingly, instant criminal miscellaneous application is hereby dismissed alongwith listed applications.

JUDGE

Tufail