

IN THE HIGH COURT OF SINDH KARACHI

Criminal Misc. Appln. No. 510 of 2025

Mst. Humaira. Applicant

Versus

Muhammad Abdul Ghaffar and others. Respondents.

Mr. Tajamul H. Lodhi, advocate for the applicant.

Mr. Fayyaz Ahmed, advocate for respondent No.1.

Mr. Zahoor Ahmed, Additional Prosecutor General, Sindh.

Date of hearing : 07.10.2025.

Date of order : 22.10.2025.

O R D E R.

MIRAN MUAHAMMAD SHAH, J.:- Through this Criminal Misc. Application, the applicant namely Mst. Humaira Qadeer widow of Late Abdul Qadeer has challenged the order dated 23.05.2024, passed by the learned VIIIth Additional Sessions Judge/Ex-Officio Justice of Peace, Karachi (East) in Criminal Misc. Application No.2313 of 2025, whereby the request of respondent No.1 for the lodgment of the FIR against the present applicant was allowed.

2. The learned counsel for the applicant submits that the learned ADJ VIII East without adopting the proper procedure under Section 176 Cr.P.C, passed the impugned order in violation of settled principle of law. Section 176 Cr.P.C. being in continuation of Section 174 Cr.P.C. empowered a Magistrate to exercise such power; that the learned trial court failed to consider that an inquiry would be futile, as the deceased died during hospitalization and no medical or lab report indicated any signs of toxicity; that the learned Trial Court failed to consider that Respondent No.1 remained silent for eight months after the death of his deceased brother; that he neither filed an application under Police Rules 1934, for exhumation of the body nor approached the concern SHO under section 174 or 176 Cr.P.C. Instead the applicant filed an complain against the criminal conduct of applicant directly and then approached the Distract & Session Judge for lodging of FIR and exhumation of deceased's body. That the impugned order passed was

without any legal basis, has led to further harassment of the applicant and her family by Respondent No. 01, in collusion with police official; that the learned trial court failed to consider that Respondent No.1 filed the Criminal Misc. Application without any witness or documentary evidence and had nothing to link the applicant to the alleged allegations; that a detail inquiry was conducted by the concerned Investigating Officer on the direction of the Court and the report, supported by documentary evidence established the mala fides of respondents No.1, which clearly showed that he failed to prove his version and attempted to misuse criminal proceedings against the applicant; that the impugned order was passed without substance and thereafter, respondent No.1 in collusion with police official, began harassing the applicant and her family members; that the learned Court fail to appreciate that respondent No.1 after an eight month delay following the death of the deceased, filed the criminal application solely to extort money from the applicant and her family; that no witness or any other documentary evidence was produced to connect the applicant to the alleged crime; that the learned Court also failed to appreciate that the allegation made by Respondent No. 01 during the police inquiry were unsupported by any evidence and his claim were based only on verbal statements, made to shield himself while demanding '*Bhata*' from the applicant and attempting to usurp her assets. Furthermore, he did not challenge the hospital's medical report dated 10.09.2024, nor did the Court consider his background, including the fact that he is facing trial for the murder of his own wife; that the learned Court also failed to consider that Respondent No.1 did not explain the delay in reporting the matter; that after the impugned order, police officials repeatedly harassed the applicant and her family without lawful cause; that the applicant is innocent and falsely implicated by Respondent No.1 solely to harass her, with no case established against her; that the Court further erred in treating technicalities as grounds to implicate an innocent person and hastily passed the impugned order without proper consideration; that the learned Court ordered an inquiry by the concerned officer, but no evidence was found on record connecting the applicant in any way and

Respondent No.1 is misusing the provisions of Section 22-A Cr.P.C; that the Hon'ble Supreme Court of Pakistan, in 2024 SCMR 985, emphasized that courts must prevent such misuse and not mechanically entertain applications for directing police to register FIRs, investigate, and prosecute without proper grounds; that it is a settled principle that every case must be decided on its own facts and there is no evidence connecting the applicant to the allegations, which are baseless and fabricated by Respondent No.1; that the police are attempting to extort money from her without any lawful justification and Respondent No.1 has no legal claim to any property, and the Criminal Misc. Application is a tool to pursue his nefarious goals; that the affidavits from other family members exposing his suspicious activities were ignored by the learned Court; that the impugned order is unsustainable in law and fact, being without jurisdiction, unjust, and an abuse of power and no offence has been attributed to the applicant, who has suffered due to this order passed by Respondent No.1; that the order results from a misreading of the prosecution material, ignoring the absence of any mention of the alleged crime or explanation for the delay in reporting; that the learned Court also disregarded the applicant's counsel's arguments and case law, passing the order hastily and the order is therefore arbitrary, capricious, and liable to be set aside; that this is a case with no evidence and the impugned order contains numerous legal defects and erroneous conclusions by Respondent No.5, causing harassment to the applicant. She was left with no option but to file an application under Section 561-A Cr.P.C. to seek redressal before this Court; that the learned Court failed to consider the true facts and passed the order without proper evaluation, as the Respondent's sole motive is to extort money and threaten the applicant and her family. Counsel lastly prays for allowing the instant Criminal Misc. Application.

3. On the other hand, the learned counsel for respondent No.1 opposes the instant Criminal Misc. Application on the ground that the deceased Abdul Qadeer was elder brother of the respondent No.1, who was serving as Civil Engineer in Government Department, and deceased Abdul Qadeer had solemnized second marriage with

applicant namely Mst. Humaira at about 15/16 years ago, out of the said wedlock, two issues were born and lived at Bungalow No.F-2/133, Gulshan-e-Iqbal, Block No.7. Karachi-East and alleged that Abdul Qadeer was murdered by his wife in a calculated manner to usurp his moveable and immoveable properties; that on 10-09-2024, at about 10.42 AM, applicant called respondent No.1, informing him that his brother was critically ill and admitted at Liaquat National Hospital. Upon arrival, respondent No.1 found Abdul Qadeer unconscious and on a ventilator in critical condition and admitted he had been hospitalized for four days; that the ICU staff disclosed that a blood sample had been taken and handed over to the applicant for testing at a government lab, but she failed to submit the report, thereby destroying crucial evidence. Later that day, Abdul Qadeer passed away. When questioned again applicant threatened respondent No.1 to remain silent or risk not recovering his invested funds; that respondent No.1 claims he had invested Rs.5.4 crore in various business ventures with the deceased, from which he received regular profits. Four days before the incident, Abdul Qadeer had agreed in the presence of the applicant to settle accounts and divide profits. It has come to respondent No.1 knowledge that applicant has since transferred all assets to her name and taken unlawful possession of all properties of the deceased, including ancestral lands of Khairpur Mir's; that respondent No.1 strongly suspects that the applicant murdered Abdul Qadeer to illegally claim his assets, given that applicant is now the legal beneficiary.

4. Conversely, the learned Additional Prosecutor General, Sindh strongly opposed the grant of the instant Criminal Misc. Application and adopted the arguments advanced by the learned counsel for respondent No.1 and prays for dismissal of the same.

5. I have heard the learned counsel for the parties at length and have perused the material available on record. It seems that the present case has arisen out of a family dispute wherein the sister-in-law (widow of the deceased brother) is the applicant whereas respondent No.1 is the elder brother of the deceased. It has been alleged that there were some business dealings between the two brothers and they were

doing different businesses which were allegedly profitable in nature and it was alleged once the businesses were transferred to the applicant, she had allegedly become greedy and killed her husband. Whereas the record brought before this court states contrary to the allegations leveled against the present applicant. The deceased person Abdul Qadir was infact suffering from a deadly disease AIDs and had gone into renal failure before passing away. Hence question of unnatural death can easily be ruled out. There is an inordinate delay of 09 months in lodgment of an application for exhumation of the body of the deceased and lodgment of FIR. It seems it was a much thought after proceedings and done so after much consultation and deliberations. It can categorically be concluded that the application was filed to frame the widow of the deceased, who has submitted in the grounds in the present application that she suffered a great deal financially during the last days of her deceased husband due to his expensive treatment. Even after his death, no one was available to support her family. In such circumstances it cannot be held that due to her husband's death she became strong financially as that was being alleged by the respondent No.1 while implicating the present applicant in his application for exhumation of body. The inordinate delay of 09 months in filing the application of exhumation of body has gone unexplained during the proceedings. Even the learned trial court despite mentioning the delay has not dilated much upon this lacuna.

6. Even on the legal aspect reliance is placed on the dicta laid down by the Hon'ble Supreme Court in 2013 SCMR 338, wherein it was held that:-

“It is a settled law that any forum or court, which if lacks jurisdiction adjudication and decides a matter, such decision etc. shall be void and of no legal effect.”

So also reliance is also placed on an unreported judgment of this Court in Criminal Revision Application No.S-38 of 2020, wherein it has been held in paragraph No.12 as under:-

“It is observed that when the law required that a particular procedure must be followed, its non-compliance would create

numerous complications. Any action performed, however, honestly, but in violation of statutory provisions, would damage the end result. It is further observed that the things required to be done in a particular manner should be done in that manner and if anything was done contrary to that then same should be deemed to have not been done at all."

7. In view of the above, the trial Court's order dated 23.05.2025 is patently illegal and without jurisdiction, hence, it is set aside and the present Criminal Misc. Application No.510 of 2025 is hereby allowed.

Manthar Brohi.

JUDGE