

ORDER SHEET**HIGH COURT OF SINDH, KARACHI**

Crl. Misc. Appl. No. 24 of 2016

Date	Order with signature of the Judge
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APPLICANT : Saifullah Khan through Haji Zafar-ul- Haq, Advocate

RESPONDENTS : The State through Mr. Abdullah Rajput DPG

Date of hearing : 29-07-2016

Date of Judgment : 04-08-2016

JUDGMENT

Muhammad Humayon Khan, J: -This is a Criminal Misc. Application under Section 561-A read with Section 439 Cr.P.C. against the Order dated 08-02-2016 passed by the learned VIIth Additional District Judge, Karachi-East, in Criminal Revision No.61 of 2015, whereby Order dated 27.10.2015 of the learned XIV Civil Judge and Judicial Magistrate, Karachi-East, was upheld.

2. I am sorry to say that neither the facts in detail have been pleaded in the main petition nor required necessary documents have been filed. However, the relevant facts of the case as pleaded in the main petition and appeared from the case file are that a written application from SHO office vide No. 340/LC, dated 10.06.2011 was received at PS New Town, Karach, wherein, fraud, forgery and

preparation of forged documents were alleged and consequently FIR No. 232/2011 under Sections 420/468/471/34 PPC of PS New Town, Karachi was lodged and finally Criminal Case No. 3068 of 2011 was registered before the learned XIV Civil Judge and Judicial, Magistrate, Karachi-East. It appears from the Order dated 27.10.2015 of the learned Judicial Magistrate that the criminal case is old one pertains to the year 2011 and now fixed for final arguments since 01.09.2015. However, the applicant filed a statement for stay of the proceedings on the ground that civil litigation is pending, which was rejected with the directions to proceed with the matter without any further delay by Order dated 27.10.2015, against which, the applicant filed Criminal Revision No. 61 of 2015, which was dismissed by the learned VIIth Additional District Judge, Karachi- East, by Order dated 08.02.2016.

3. I have heard the learned Counsel for the Applicant as well as learned DPG and perused material available on the record.

4. Haji Zafar-ul-Haq, the learned counsel for the applicant argued that since the civil litigation is pending between the parties, the criminal case should be stayed. Simultaneously, the learned counsel has filed the following documents with statement:

- 1) Order dated 30.05.2016 passed by My lord The Chief Justice in Cr. Tr. Appli. No. 54 of 2015.
- 2) Report of Official Assignee dated 16.06.2016 in Suit No. 92 of 2010.
- 3) Judgement dated 03.05.2016 of the Hon'ble Division Bench in HCA Nos. 254 and 258 of 2014.

In support of his contention, the learned counsel for the applicant relied upon the case of Muhamamd Kashif and others Vs. Maj. (Rtd.) Atta Ullah Butt and others reported in 2003 MLD (Lahore) 1017.

5. On the other hand, Mr. Abdullah Rajput, the learned DPG has contended that the criminal case is pending since the year 2011 and presently it is at the final stage of arguments and the applicant has applied for stay of criminal proceedings at a very belated stage after four years in the year 2015. He further contended that there is concurrent findings of both the Courts below against the applicant whereby stay of criminal proceedings was refused.

6. I have gone through the Order dated 30.05.2016 of the Hon'ble Chief Justice passed in Criminal Transfer Application No. 54 of 2015 and surprised that the learned counsel for the applicant Haji Zafar-ul-Haq stated that since civil proceedings are pending, he has moved an application for stay of the proceedings till the civil suit is decided. In the circumstances, the following directions were given by the Hon'ble Chief Justice:-

“The Judicial Magistrate-XVI, Karachi-East, would decide the application for stay of the proceedings on account of pendency of civil litigation within 30 days and if the application is rejected then the main case would be decided as earlier directed.”

Whereas, the facts pleaded in this petition are totally different.

7. I have gone through the case of Muhamamd Kashif and others Vs. Maj. (Rtd.) Atta Ullah Butt and others reported in 2003 MLD (Lahore) 1017, relied upon by the learned counsel for the applicant,

which is distinguishable on facts and hence not applicable to the facts of this case for the reason that in the reported Judgment, the petition was filed at an early stage when the challan was submitted and the proceedings were not yet commenced, whereas, the case in hand is at the stage of final arguments.

8. However, I myself found that the legal position is that civil suit and the criminal case both have to be decided on their individual merits and the evidence recorded in one of them cannot be used in the other nor the Judgment in the civil suit would be binding in the criminal case. The two proceedings are to be governed by different laws. The Court dealing with civil suit is barred from staying the proceedings in any criminal matter in view of the embargo put by Section 56 (e) of Specific Relief Act. Apart from this, there is no provision of law whereby criminal proceedings require to be stayed till the decision of civil suit. My view is supported by the following case law:-

- (i) Malik Khuda Bakhsh Vs. The State reported in 1995 SCMR 1621;
- (ii) Rafique Bibi Vs. Muhammad Sharif and others reported in 2006 SCMR 512;
- (iii) Seema Fareed and others Vs. The State and another reported in 2008 SCMR 839.

9. I have gone carefully through Order dated 27.10.2016 of the learned Judicial Magistrate as well as Order dated 08.02.2016 of the learned Additional District Judge and found that both the orders have

been passed in accordance with law and do not require any interference by this Court.

10. In view of the above discussion, this Criminal Misc. Application is dismissed being devoid of force. The learned Judicial Magistrate is directed to proceed with the matter day to day and decide the same within a month and he should send compliance report to this Court through MIT-II. The learned District & Sessions Judge, Karachi-East, is hereby directed to assign this matter to any other Judicial Magistrate if the concerned Court is vacant.

JUDGE