

47

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

**Criminal Misc. Application No.S-279 of 2019**

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

1. For orders on office objection "A".
2. For hearing of main case.

**06.02.2020**

Mr. Suhail Ahmed Veesar, Advocate for the Applicant.  
~~~~~

**ORDER**

**ZAFAR AHMED RAJPUT, J.-** This Criminal Miscellaneous Application is directed against the order dated 20.11.2019, passed by the learned Judicial Magistrate-II, Ratodero, whereby he declining the report furnished by the Investigating Officer under section 173 Cr.P.C. in Crime No.52 of 2019 registered at Police Station Ratodero under sections 337-A(i), F(i), 504, 427, 504, 34 P.P.C for taking cognizance against the nominated accused, disposed of the case under "C" class for insufficient evidence.

Learned counsel for the applicant states that in the F.I.R., initially section 506 (2) P.P.C was not inserted by the Investigating Officer, however same was mentioned in the final report on the basis of evidence collected by the I.O, but the learned Judicial Magistrate instead of taking cognizance against the proposed accused declined the final report and passed the impugned order.

It reflects from a perusal of the record that complainant, who is Hakeem by profession, lodged F.I.R. on 26.05.2019 by nominating one Sabir as accused for the incident allegedly taken place four months before, stating therein that due to dispute on landed property he issued threats to him for life by appearing in his Clinic/Dawakhana duly armed with deadly weapon and caused him injuries by inflicting lathi blows. It further appears that nominated accused was initially discharged under section 63 Cr.P.C. by the then Judicial Magistrate vide order dated 12.06.2019 on the basis of insufficient evidence against him by further observing that

49

section 506(2) P.P.C was inserted at the remand stage to make the case one of non-bailable. Besides he also observed that no medical letter for treatment was issued by the police nor even any medical report was available on record in order to ascertain the charge under section 427 Cr.P.C and no site inspection was made by the I.O. It further appears that no fresh material was brought on record by the I.O for taking cognizance upon his report filed under section 173 Cr.P.C and still the position is same; the F.I.R. has been lodged with delay of four months; no medical report is available to ascertain the fact that any injury was infact caused to the complainant; that the F.I.R. does not reflect if the accused was having in his possession any weapon, hence the subsequent addition of section 506(2) P.P.C. after lodgment of the F.I.R. is without any corroborating material and except few photographs, which have been brought by the applicant on record through instant Criminal Miscellaneous Application, there is nothing on record which reflect that infact any mischievous act was committed by the proposed accused to bring the case within ambit of section 427 P.P.C; the F.I.R. was initially recorded for the offences, which are non-cognizable/non-bailable and *prima facie* it leads to inference that subsequent addition of section 506(2) P.P.C. was with malafide in order to bring the matter within ambit of non-bailable offence.

Since the impugned order does not appear to suffer from any illegality or irregularity, requiring any interference of this Court, the instant Criminal Miscellaneous application is dismissed in limine.



JUDGE