

ORDER SHEET**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.**

Cr. Misc. Application No. S- 394 of 2024

DATE OF HEARING

ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For orders on office objection as flag A.
2. For hearing of main case.
3. For hearing of M.A No. 6428 /2024.

14.3.2025.

Mr. Abdul Rehman Bhutto, advocate for the
applicants/accused.

Mr. Mumtaz Ali Brohi, advocate for the complainant.

Mr. Nazeer Ahmed Bhangwar, D.P.G for the State.

ORDER

KHALID HUSSAIN SHAHANI J.- The applicants/accused have filed the instant Criminal Miscellaneous Application challenging the order dated 30.10.2024, passed by the Learned Justice of Peace in Cr. Misc. Appln. No.1752/2024. The impugned order directs the registration of an FIR against the applicants if the complainant's statement discloses a cognizable offense.

2. The complainant, Mst. Zarina, asserts that on 09.11.2023, she received information that her daughter, Mst. Zainab Khatoon, was being maltreated by her husband and in-laws, and they intended to commit her murder. Acting on this information, the complainant, accompanied by witnesses, reached her daughter's residence, where she allegedly witnessed the applicants administering poison to her daughter with the intent to kill her. Despite her efforts, she was unable to intervene due to threats of serious consequences. The victim was subsequently taken to CMCH Larkana, where she passed away on 10.11.2023 at 12:55 p.m. The complainant claims that her repeated attempts to register an FIR with the relevant SHO were unsuccessful, leading her to seek relief before the

Justice of Peace, who issued the directive for recording of the statement in pursuance of Section 154 Cr.P.C.

3. Conversely, learned counsel for the applicants contends that the deceased, Mst. Zainab Khatoon, succumbed to Cardio Pulmonary Failure at NICVD Larkana on 10.11.2023, a fact supported by the death certificate issued by the medical authorities. It is further argued that the complainant had previously filed an application seeking the same relief, which was dismissed as withdrawn. The current application, filed after an unexplained delay of seven months, exhibits inconsistencies in dates, timelines, and the names of the accused, raising concerns about its credibility. Moreover, the dispute primarily revolves around the custody of the deceased's minor daughter, for which a Guardian and Wards Application is/was pending adjudication. The applicants argue that the complainant's application is motivated by mala fide intent to exert undue pressure rather than to seek justice. Accordingly, they pray for the setting aside of the impugned order.

4. On the other hand, learned counsel for the complainant, duly assisted by Mr. Nazir Ahmed Bangwar, D.P.G., supports the impugned order, contending that the allegations against the applicants are of a serious nature, involving the intentional murder of an innocent woman through poisoning. He further submits that the complainant's claims are corroborated by eyewitness testimony and that an investigation following the registration of an FIR is essential to ascertain the veracity of the prosecution's case.

5. It is a firmly established principle of law that the jurisdiction vested under Section 22-A Cr.P.C. is designed to safeguard the rights of aggrieved individuals by ensuring access to legal recourse when law enforcement authorities fail to register a cognizable offense. However, such jurisdiction must be exercised with judicial prudence and due diligence, particularly in instances where allegations appear speculative,

lack substantial evidentiary support, or are seemingly driven by ulterior motives.

6. Upon a meticulous analysis of the arguments advanced by the learned counsel for both parties, it is an admitted fact that Mst. Zainab Khatoon was admitted to the hospital. The complainant, Mst. Zareena, claims that her daughter died due to poisoning. However, documentary evidence, including the medical report and death certificate issued by NICVD Larkana, unequivocally confirms that the deceased succumbed to natural causes, i.e Cardio Pulmonary Failure, contradicting the poisoning allegation. Furthermore, no post-mortem examination was conducted to substantiate the complainant's claim. The complainant has approached this court after an undue and unexplained delay of seven months following the alleged incident. Moreover, an earlier application filed by the complainant seeking similar relief was dismissed as withdrawn, and the details within the applications exhibit inconsistencies in dates, timelines, and the identities of the accused. Additionally, the learned counsel for the applicants has highlighted multiple discrepancies in the complainant's versions, including variations between the application filed before the learned Justice of Peace and the application submitted to the SSP Larkana. It is pertinent to note that, subsequent to the filing of a Guardianship application under the Guardian and Wards Act regarding the custody of baby Umme Zehra, the daughter of the deceased, the instant application has been instituted, raising reasonable suspicion of mala fide intent and necessitating cautious judicial scrutiny. The report submitted by the police authorities also indicates that the complainant never approached law enforcement for the registration of the FIR, and the inquiry conducted by the DSP further negates the complainant's assertions, thereby casting doubt on her credibility. While it is well established that under Sections 22-A and 22-B Cr.P.C., the courts may direct the registration of an FIR if a cognizable offense is prima facie disclosed, such direction cannot be issued in a mechanical manner. The judiciary must ensure that applications under these provisions are

scrutinized to determine whether the applicant has approached the court with bona fide intent or is acting with malice. Reliance is placed on the case of *Imtiaz Ahmed Cheema v. SHO P.S Dharki, Ghotki* (2010 YLR 189), wherein it was observed:

The provisions of Section 22-A & B Cr.P.C. have been misused in numerous cases. The intent of the legislature was not to allow individuals to harass the accused under the guise of these provisions. Courts must exercise discretion while entertaining such applications and ascertain whether the applicant has approached the court with clean hands or with mala fide intent. Unless this practice is curtailed, it will have far-reaching implications on law enforcement officials who take actions in the course of their duties.

7. Similarly, in the case of *Younas Abbas and others v. Additional Sessions Judge, Chakwal and others* (PLD 2016 SC 581), the Hon'ble Supreme Court held:

The functions performed by the Ex-Officio Justice of Peace are not executive, administrative, or ministerial in nature, as they do not involve merely carrying out, managing, or executing tasks mechanically. Rather, his role is quasi-judicial, requiring the application of legal reasoning, examination of records, hearing of parties, and issuance of directives with due application of mind. Each case brought before him demands the exercise of discretion and judicial judgment.

8. Upon a careful and detailed examination of the facts and circumstances presented by the applicants, it is evident that no cognizable offense has been made out. Consequently, courts are not bound to direct the police to register an FIR where allegations are tainted with mala fide intent or lack substantive legal grounds. Judicial prudence dictates that before issuing such directives, the court must exercise caution to prevent the misuse of the legal process, thereby safeguarding the fundamental rights of individuals against whom such orders are sought. The impugned order, therefore, warrants interference and is accordingly set aside. Consequently, the Criminal Miscellaneous Application is allowed.

JUDGE

Shabir/P.S