

IN HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Miscellaneous Application No.S-639 of 2024

[Niaz and others v. Mst. Sadori & Others]

Applicants: Niaz, Nisar and Nazeer Chandio
through Mr. Haider Ali Maheri,
Advocate.

Respondents: Mst. Sadori through Mr. Imtiaz Ali
Channa, Advocate.

ASI Ghulam Asghar Laghari and
The State through Mr. Irfan Ali
Talpur, Deputy Prosecutor
General, Sindh.

Date of Hearing : **14.04.2025**

Date of Decision : **05.05.2025**

O R D E R

RIAZAT ALI SAHAR J: -Through this Criminal Miscellaneous Application, the learned counsel for the applicants has impugned the order dated 16.09.2024, whereby the learned Civil Judge & Judicial Magistrate-II, Dadu took cognizance of the offence and on the application filed by respondent No.1/complainant under Section 190(1), Cr.P.C. inserted Section 354-A, PPC, in respect of FIR bearing Crime No. 59/2024, which was initially registered under Sections 506/2, 337-A(i), 337-F(i), 114, and 504, PPC, at Police Station Khudabad, Dadu.

2. The background of the case is that respondent No.1/complainant initially lodged FIR No. 59/2024 at Police Station Khudabad, Dadu, alleging that on 17.06.2024, she went to fetch water from a Water Supply Line near her residence but was restrained by accused Aslam. The next day, on 18.06.2024 at about 07.00 hours, she and her sister Mst. Rehmat again went to fetch water when, near the land of Bagan Bhand, they met the applicants and one Niaz, allegedly armed with dandas. It is claimed that

applicant Aslam misbehaved, abused, and assaulted her, causing multiple injuries. After raising cries, the accused fled, and she sought medical treatment after obtaining a letter from the police station. The FIR was registered on 09.07.2024.

3. Subsequently, respondent No.1 filed an application under Sections 22-A and 22-B, Cr.P.C. before the Ex-Officio Justice of Peace, alleging therein that the police had failed to record her statement accurately in the FIR. The learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Dadu, disposed of the application on 19.07.2024, declining to direct registration of a fresh FIR but directed the I.O. to record the further statement of the complainant and proceed in accordance with law.

4. Notice of the instant application was issued to the respondents as well as the learned Deputy Prosecutor General, Sindh.

5. Learned counsel for the applicants contended that the order dated 16.09.2024 passed by the learned Magistrate is illegal and without lawful justification. He argued that the FIR did not initially disclose any fact constituting an offence under Section 354-A, PPC and such a serious allegation was only introduced at a belated stage through an afterthought statement of the complainant. He further contended that the Investigating Officer, after conducting a thorough inquiry, had not found any material to substantiate such an offence and the final report under Section 173, Cr.P.C. was already submitted and accepted without the insertion of Section 354-A, PPC. Therefore, the learned Magistrate was not competent to take cognizance of a charge not found by the I.O., on the basis of filing application under section 190 Cr.P.C. by the Respondent No.1/complainant.

6. On the other hand, learned counsel for respondent No.1 supported the impugned order and argued that the complainant was aggrieved by the non-inclusion of the correct section in the FIR. He maintained that the subsequent insertion of Section 354-A, PPC, was

justified based on the further statement of the complainant which highlighted the true gravity of the offence, specifically the tearing of her clothes in public and, hence, it was within the domain of the Magistrate to take cognizance accordingly.

7. Learned Deputy Prosecutor General, Sindh appearing on behalf of the State submitted that the Investigating Officer submitted report under Section 173, Cr.P.C. (challan) before the learned Magistrate on 05.08.2024 wherein he did not insert the section 354-A, PPC on the ground that he reached at the conclusion after examining the independent witnesses and other tangible material, the section 354-A PPC was not attracted with the prosecution story. However, subsequently, the complainant filed application in terms of section 190 Cr.P.C. and that was entertained by the learned Magistrate, who passed the order on 16.09.2024, which is contrary to law.

8. I have heard the learned counsel for the applicants, learned counsel for respondent No.1 and the learned D.P.G. for the State and have carefully examined the material available on record.

9. From the perusal of the record, it appears that FIR No. 59/2024 was lodged with a delay of approximately 21 days after the alleged incident. Notably, the FIR contains no mention of any act constituting public humiliation or tearing of the complainant's clothes, which are essential ingredients to attract Section 354-A, PPC.

10. The subsequent statement of the complainant, alleging that her clothes were torn in public, appears to be an exaggerated improvement brought in at a belated stage. Such an enhancement of the prosecution case is not permissible under the law, especially when the Investigating Officer, in his final report, explicitly ruled out the occurrence of any such incident on the basis of statements under Section 161, Cr.P.C. of independent witnesses. The claim that the torn clothes were later produced also raises doubts about the authenticity of this assertion.

11. More significantly, there was no mention of the offence under section 354-A PPC in the FIR; and though further statement under Section 161, Cr.P.C of the complainant was recorded but in the final report submitted under Section 173, Cr.P.C. by the I.O. with opinion that the offence section 354-A Cr.P.C is not constituted, as such, the Magistrate's subsequent act of taking cognizance of an offence not supported by the police report and based solely on a belated statement, amounts to an error of law. If the complainant wishes to pursue inclusion of such charge, she is at liberty to move an appropriate application before the trial Court after evidence is led, in accordance with law.

12. In view of the above discussion, it is evident that the learned Magistrate committed a legal error in taking cognizance under Section 354-A, PPC in the absence of any tangible evidence justifying such inclusion. Therefore, the impugned order dated 16.09.2024 is set aside. However, the learned Magistrate is directed to pass order afresh in the light of discussion made hereinabove.

13. Consequently, the instant Criminal Miscellaneous Application stands **allowed**.

JUDGE