

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

CrI. Misc. Appln. No.S-141 of 2023.

CrI. Nusc. Appln. No.S-142 of 2023.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of bail application.

28.06.2024.

Mr. Ali Azhar Tunio, advocate for the applicants in both the matters.

M/s Ahsan Ahmed Qureshi, Sher Ali Jatoi and Muhammad Ibrahim Lashari, advocate for the private respondent and proposed accused in both the matters.

Mr. Aitbar Ali Bullo, D. P.G.

The background of the matters being in Cr. Misc. Appln. No.S-141 of 2023 arises from the proceedings of CrI. Misc. Appln. No.1112/2022 filed on part of private respondent wherein the learned Sessions Judge/Ex-Officio Justice of Peace Jacobabad, was pleased to order for recording of statement and in case cognizable offence is made out FIR be lodged. Whereas, in CrI. Misc. Appln. No.S-142/2023 arises from the proceedings of Cr. Misc. Appln. No.179/2023, wherein the present applicant who was the petitioner therein required an FIR to be lodged; however, the same was declined. Both the parties have referred to alleged incidents of similar date which cases to be their own version as they have considered in the matters. The report was called from the concerned officials provided that an overt incident has taken place; however, it was also stated therein that the dispute primarily being of inheritance and possession thereof arising there from.

Learned counsel for the applicant in both the cases contends that by way of the impugned order the case of the other party has been entertained and as FIR has not been allowed to be lodged

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favouring his party as such he is liable to suffer as his version is not liable to come up and he is also entitled to lodge the FIR as incident stated by him carries more weight, whereas, the other side not in position could not even claim the same. Learned counsel for private respondents in the matter, however, contend that they have no objection to the recording of the statement on the part of the applicants as the final conclusion is liable to come after investigation. Learned D.P.G present also requires similar treatment to the matters.

I have heard learned counsels and have gone through the record. It bears there from that an overt act was present. The parties may have their own version to the same, however, as the incident is present, I do not find requirement to disturb the impugned order and it is found proper to only very the same to the extent that that the applicants in both these cases shall record their version with the I.O, in case said I.O comes to the conclusion that a cognizable offence has taken place so that the version of both the parties may come up for proper investigation and as such determination arises there from be put up before the Court of law, if so found present. In this regard however, as it seems that the applicants may have reservations in respect to the possession as is said to be available which is not liable to be disturbed by way of these proceedings. The element of possession as such liable to be considered and decided under the different provisions of law somewhat limited in the criminal jurisdiction wherein substantially to be concluded by the Civil Court, the same however is not opened to disturbance by way of the version as brought forward in the matter and in these proceedings. As such it is also ordered that the possession is not to be disturbed under the cover of the impugned orders. In order to ensure that exercise of the powers are not made in deviation of required law or to the unavailable prejudice to any party. It is further ordered

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that no arrest in the matters shall take place without the Investigation Officer having collect tangible and substantial material in this regard.

With the above alteration and variation to the impugned orders, both these matters stand disposed of accordingly.


Judge

Application on D/o Maltis

- ① - For orders in MA No. 4091/24 (4/A)
- ② - For orders in MA No. 4082/24 (E/A)
- ③ - For orders in MA No. 4084/24 (Contempt Application)