

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Misc. Appln. No. S-494 of 2021.

| Date | Order with signature of Hon'ble Judge |
|------|---|
| 1. | For orders on office objection as flag A. |
| 2. | <u>For hearing of main case.</u> |

20-06-2022.


Mr. Wakeel Ali Shaikh, advocate alongwith applicant.

Mr. Aitbar Ali Bullo D.P.G a/w I.O SIP Asadullah Tunio.

Mr. Ghulam Hussain N. Surahio, advocate for the respondent No.3.

O R D E R.


MEHMOOD A. KHAN-J.:-This application under Section 561-A Cr.P.C has been filed in respect of proceedings arisen from Crime No.18 of 2021 P.S Hamal District Kamber Shahdadt registered for an offence under Sections 382, 148, 149 PPC wherein learned concerned Magistrate was pleased to accept the report of the I.O by order dated 19.12.2021 and was pleased to further order for cognizance to be taken under Section 406 PPC.

2. According to the allegations in the matter as alleged by the complainant Muhammad Ali in his FIR that he has agricultural land in Deh Bisharat Kaashri in which he had cultivated crop of wheat, mustered and sorghum grain (Juwaar). On 09.5.2021 after threshing their crops they were sitting on their produce when at about 9.00 a.m they saw 17 accused named in the FIR duly armed with lathies alongwith two unknown duly armed with pistols came there in two tractor trollies and on pointation of their weapons, forcibly taken their produce viz. 400 monds of wheat, 50 monds of mustered and 20 monds of sorghum grain into their tractor trollies and left the scene. The complainant alongwith his witnesses being empty handed did not chase them due to fear of weapons. Later on complainant lodged the FIR to the above effect. 

3. On lodging FIR the investigation carried out by the I.O wherein the report was submitted requiring the cognizance to be taken under Section 406 PPC. According to the Investigating Officer the matter was a dispute arisen from relationship of Makata i.e. the tenancy on agreement.

4. Learned counsel for the applicant in the matter contends that the I.O has failed to record the statements of his witnesses and that the report submitted in the matter was not qualifying to pass the impugned order as the offence alleged in the matter was to be investigated in the first place, whereas the report was in respect to offence under Section 406 PPC.

5. Learned counsel for the respondent No.3, who is in attendance, states that the I.O has based its report upon the facts and that the dispute between the parties could at the best be termed for mis-appropriation for which section 406 PPC was applied and as no material in respect of the version of the complainant was available, the report was submitted and approval rightly thereof and challenging the impugned order as such is not available.

6. Learned D.P.G however states that according to the police papers available to him I.O preferred to submit report without proper approval of DPP and as such the very basic element has not been considered that either the version of the complainant was incorrect or no criminal case could have been made out. The version of the I.O does not finds place in the criminal law as neither the complainant's witnesses had been examined nor it has been applied to the mind that the dispute between the parties is only cognizable before criminal forum requiring specific Section of an act as provided under Pakistan Penal Code. On being confronted with this element neither learned counsel for the respondent No.3 nor I.O present could show this Court that the impugned order in the matter is not liable to be disturbed. 

7. I have heard learned counsel and perused the record. The allegations of the complainant in the matter prima facie were not properly examined nor it has been considered that the Investigating Officer was required to collect the material, check its veracity and then submit his report also normally call challan that is whether the FIR should not be entertained or cognizance is to be taken respectively. In case cognizance to be taken, sections applicable from the material obtained during investigation are freed up. In the present case no proper investigation in the right direction or with the application of mind has been found present which were conveniently accepted by way of impugned order without an apparent application of judicial mind.

8. In the circumstances, the impugned order being untenable is set aside. The SSP concerned is directed to appoint some other investigating officer in the matter to collect the required material and to submit report. However, it is upto the investigating officer to determine whether cognizance is to be taken or otherwise.

With the above observation and discussion matter stands disposed of.


JUDGE