

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD  
Cr. Misc. application No.D- 13 of 2017

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
-------------	--------------------------------------

1. For order on MA No 503/2017
2. For orders on office objections
3. For katcha Peshi
4. For hearing of MA No 8998/2015

26.02.2018.

Mr. Mazhar Hussain Kalwar Advocate for applicants  
alongwith applicant No.1  
Mr. Sanauallah Khoso Advocate for respondent No.1  
a/w respondent No.1 Dodo  
Syed Meeral Shah Bukhari A.P.G  
--==--

Through this Criminal Misc. application, the applicants have called in question the order dated 20.11.2015 passed by learned Judicial Magistrate-II Nawabshah, whereby the learned Judicial Magistrate did not agree with the recommendation of the Investigating Officer for disposal of the case under “B” class and the Investigating Officer was directed to submit final report under section 173 Cr.P.C against all the accused persons nominated in FIR No. 184/2015 U/S 395 PPC of police station B-Section Nawabshah.

2- It is contended by learned counsel for the applicants that there are multiple litigation pending between the parties and the applicants have been falsely involved in the present case. He next contended that the impugned order is illegal. In support of his contention, learned counsel has relied on a case of Nazeer and others Vs. Khuda Bukhsh & Others reported in 2011 SCMR-1430, wherein it has been held that “order of High court to the extent of setting aside the order of Magistrate passed on the summary submitted by the police, appear to be correct, but further directions to the police for submission of challan was unwarranted and not sustainable in law”.

3- It is stated by the learned counsel for the respondents that parties have compromised the matter outside the court and there are number of civil and criminal cases pending in different courts against each other, now parties are withdrawing their cases against each other, therefore, they have agreed that impugned order may be set aside.

4- Learned APG has contended that the offence allegedly committed by the accused persons are not compoundable but he was of the view that since parties have amicably resolved their differences outside of the court, they are withdrawing their cases against each other, therefore, according to him, impugned order by consent may be set aside as the FIR is delayed by 15-days and nothing was recovered from accused persons.

5- We have given our anxious thoughts to the contentions raised at the bar and have gone through the material so made available before us.

6- It appears from the record that incident was took place on 15.09.2015 at 1700 hours whereas complainant registered the FIR on 01.10.2015 at 1900 hours U/s 395 PPC at police station B-Section Shaheed Benazirabad after delay of 15-days for which no satisfactory explanation has been furnished, therefore, under the circumstances false implication of the applicants in this case with due deliberation and consultation could not be ruled out. We have gone through the summary report submitted by the Investigating Officer alongwith other material and come to the conclusion that summary has been presented before the Learned Magistrate by the Investigating Officer of the case on the basis of the statement of independent witnesses, recorded by him, stating therein that in fact incident has not taken place in a fashion as alleged by the complainant in his FIR. It also appears from the record that parties are admittedly in litigation with each other in different cases and the applicants still have not been arrested and nothing has been recovered from them. Therefore, in our view, the impugned order passed by the learned Magistrate is not sustainable in the eyes of law on the ground that learned Magistrate while passing the impugned order did not consider at all submission of the Investigating Officer alongwith statements of independent witnesses as such same is liable to be set aside. Learned APG in view of above submissions did not support the impugned order passed by the learned Magistrate and he was of the view that learned Magistrate has wrongly declined the summary in "B" class and ordered to submit the challan.

7- In view of above this criminal Misc. application is allowed, resultantly the impugned order dated 20.11.2015 is set aside.

JUDGE

JUDGE