

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Criminal Miscellaneous Application No.S-203 of 2017

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For orders on M.A 5404/17
3. For hearing

11.05.2018.

Mr. Ghulam Shabbir Babar, advocate for applicant.
Shahzado Salim Nahyoon, D.P.G for the State.
Mr. Ali Abbas Kabooro, Advocate for respondents No.9 & 10.

SHAMSUDDIN ABBASI, J: Applicant Allah Rakhio is complainant in F.I.R. No.03 of 2017 u/s. 320, 337-G, 279 PPC registered at P.S Loni Kot, District Jamshoro. After usual investigation, Investigating Officer has submitted final report u/s. 173, Cr.P.C in "C" class, which was accepted by the learned III-Civil Judge & Judicial Magistrate, Sehwan @ Thana Bula Khan vide order dated 17.07.2017.

2. Being aggrieved and dissatisfied from the order dated 17.07.2017, applicant / complainant has challenged the same through instant Criminal Miscellaneous Application.

3. Brief facts of the incident are that on 05.06.2017 complainant hired a Taxi Car bearing No:BAT-093 on rent for going to Karachi from Dadu and also to return back to Dadu. There were his two sisters Mst. Janat (deceased) and Mst. Hameedan, his brother Maqbool Hussain, his father Shah Muhammad and accused/driver Sadaqat Ali in said Car. After getting treatment from Karachi his brother Maqbool Hussain stayed in Karachi, while others alongwith driver/accused were coming back to Dadu. Driver of Car accused Sadaqat Ali was using mobile phone continuously during driving and despite of forbidding by the father of complainant, accused kept on using mobile. Consequently, said Car became out of control of driver, accused jumped out from running Car, and such accident took place. Resultantly Mst. Janat sister

of complainant died while others passengers sustained injuries, one Mazda driver took deceased Mst. Janat and injured persons to LUMHS Hospital Jamshoro, so complainant got the F.I.R. registered that due to the negligence of Driver such incident took place.

4. Learned Counsel for the applicant submits that in this incident a lady Mst. Jannat Khatoon has lost her life and P.W Mst. Hameeda and Allah Rakhio have received injuries but police had refused to register the case. Thereafter, complainant approached the learned Sessions Judge, Jamshoro and filed an application u/s. 22-A & B, Cr.P.C for seeking direction for registration of the F.I.R. It is stated that on the directions of learned Sessions Judge F.I.R. of the incident was registered. He further contended that after registration of F.I.R. police had shown non-serious attitude in the case. He further contended that neither police had obtained postmortem report of deceased Mst. Janat Khatoon nor obtained medical certificates of injured and even I.O has not sent the vehicle for forensic test. He further contended that police has not recovered said car as case property and I.O has also not arrested the accused. He further contended that all these facts were brought on the notice of learned Magistrate but learned Magistrate did not take notice. Finding no other way, complainant approached to learned Sessions Judge for transfer of the case from the court of learned III-Civil Judge & Judicial Magistrate, Sehwan @ Thana Bula Khan but inspite of pending transfer application, learned Civil Judge & Judicial Magistrate, Sehwan @ Thana Bula Khan has passed impugned order and accepted the summary submitted by I.O of the case without applying the judicial mind. He further contended that it is a heinous offence and during investigation police has obtained certificate from Chief Patrol Officer, Beat 33, Jamshoro, which is not sufficient to discard the version of complainant party. He further contended that accused be directed to produce the car for forensic test and case may be remanded back for re-investigation.

5. Learned D.P.G has conceded to this fact and states that this is a heinous offence in which one lady has lost her life and two other persons have got serious injuries due to negligence of taxi driver namely Sadaqat Ali and learned Magistrate neither gave the due weight to the statements of P.Ws u/s 161, Cr.P.C nor vehicle was sent to forensic test in order to ascertain any mechanical fault and certificate collected by I.O from Chief Patrol Officer is not sufficient to discard the evidence of complainant party.

6. Learned Counsel for respondents No.9 & 10 has shown his consent if the case is remanded back for re-investigation with direction to I.O to furnish fresh report in view of forensic test of the vehicle.

7. Heard learned Counsel for the applicant, learned Counsel for respondent No.9 and 10 as well as learned D.P.G for the State.

8. From the perusal of record it appears that the allegation against respondent No.9 (Sadaqat Ali, Taxi Driver) was that he was using mobile phone while driving the car and despite forbidding by the father of complainant, not to use mobile phone, but he ignored the warning and was continuously using the same and consequently said car became out of control of driver and due to negligence and rash driving of the driver, this incident has taken place where one lady has lost her life and two persons have got serious injuries. I cannot discard the evidence of victim of the incident simply for the reason that Investigating Officer has produced certificate issued by Chief Patrol Officer, Beat-33 Jamshoro. For the sake of convenience, the said certificate is reproduced as under:-

“ CERTIFICATE

It is certified that the on 06.06.2017 a Car No.BAT-093 driven by Sadaqat Ali S/O Haji Khan R/O District Dadu, he was proceeding from Karachi to Dadu when he reached at location NB-120 at about 1235 hours, suddenly turn turtle. Resultantly, Car was completely damaged.

Sd/
CHIEF PATROL OFFICER,
Beat-33 Jamshoro”

This certificate clearly reveals that Car turned turtle. Resultantly, car was completely damaged. But, the learned Magistrate has mentioned in his order that the report of Chief Patrol Officer declares that such incident has taken place due to tyre burst of said vehicle and vehicle turned in verge. The certificate is completely silent that this incident has taken place due to tyre burst of said vehicle. The Chief Patrolling Officer did not mention that why the car suddenly turned turtle whether it happened due to any mechanical reason or due to negligence of the driver.

9. In the present case it appears that from the day one I.O has shown non-serious attitude and complainant has shown mala fide on the part of I.O. The Honourable Supreme Court has observed on the point of malafide investigation in a case of GHULAM SARWAR ZARDAI vs. PIYAR ALI alias PIYARO and another reported in 2010 SCMR 624, as under:-

“11. Thus, the consensus of this Court from the year, 1971 and onward is that the High Court has jurisdiction under Article 199 of the Constitution and competent to correct such proceedings and pass necessary orders to ensure justice and fairplay. The investigating authorities do not have the entire and total authority of running investigation according to their whims, therefore, if the investigation is launched mala fide or beyond the jurisdiction of investigating agency, then the same can be corrected and appropriate orders can be passed.

In the above referred case it has also been observed as under:-

“13. It is clear from the above definition that if the investigation is launched in bad faith out of personal motives either to hurt the accused or to benefit oneself or in colourable exercise of powers not authorized by the law under which the action is taken or action taken in fraud of the law then it comes within the scope of mala fide. The fraud of the law or colourable exercise of powers amounts to abuse of the process of law.

14. In view of the above position, the investigation can be corrected and necessary orders can be passed if the aggrieved party alleges and proves one or other of the following conditions:---

- (1) investigation initiated beyond the jurisdiction of Investigating Agencies;*
- (2) investigation initiated with mala fide intention;*
 - (i) in bad faith out of personal motives either to hurt the person against whom the action is taken or to benefit oneself.*
 - (ii) in colourable exercise of powers;*

- (iii) *not authorized by the law under which the action is taken;*
- (iv) *action taken in fraud of the law; and*
- (v) *abuse of the process of law.”*

10. It has also come on the record that during investigation Investigating Officer has not produced the Car for proper verification from the concerned department in order to verify that cause of accident was on technical / mechanical basis or due to negligence of driver. Therefore, in my view, the order dated 17.07.2017, passed by the learned III-Civil Judge & Judicial Magistrate, Sehwan @ Thana Bula Khan in F.I.R. No.03/2017 of P.S Loni Kot, District Jamshoro, is not justified and is not sustainable in law, as such, the same is hereby set-aside. The F.I.R. / case is remanded back to the Senior Superintendent of Police, Jamshoro for re-investigation with direction to handover the investigation of the case to a police officer not below the rank of Inspector and to produce the vehicle for forensic test in order to ascertain that this incident has taken place due to any technical / mechanical fault or due to negligence of the driver. Investigating Officer of the case is directed to complete the whole process of investigation within stipulated time and submit his report before the learned Sessions Judge, Jamshoro who shall assign this case to any other Magistrate for passing appropriate orders after receiving fresh report u/s. 173, Cr.P.C.

Criminal Miscellaneous Application stands disposed of in the above terms along with listed application in the above terms.

JUDGE