

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Misc: Application No.204 of 2018

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

Fresh Case

1. For orders on M.A No.6141/2018
2. For orders on office objection a/w reply as at "A"
3. For orders on M.A No.6142/2018
4. For hearing of main case.
5. For orders on M.A No.6143/2018

Imdad Ali S/o Bashiruddin vs. The State & others

19.07.2018

Mr. Zakir Hussain Khaskheli, advocate for the applicant.

NAZAR AKBAR, J. Through this Crl. Misc: Application the applicant has sought straight away quashment of the proceedings in Crime No.248/2018 under Section 465, **302** and 34 PPC registered at P.S Preedy, Saddar, Karachi. The prosecution after investigation has submitted challan in the Court of District and Sessions Judge, South, Karachi through the XV- Magistrate, South, Karachi by order dated **7.7.2018**.

2. Learned counsel for the applicant has vehemently claimed that the proceedings have to be quashed since the applicant is innocent person and he has been falsely implicated alongwith his two legal advisors. However, this Crl. Misc: Application is filed by only one person Imdad Ali son of Bashiruddin resident of Sukkur and his legal advisors are not before the Court. The other grounds taken by the learned counsel are all based on various documents to support that the case is liable to be quashed against the applicant.

3. I am surprised that how this criminal quashment proceedings under Section 56-A Cr.P.C has been filed directly before the Court

without first approaching the learned District and Sessions Judge, South under Section 265-K Cr.P.C. I have examined the record. The record shows that challan has been submitted only 10 days ago when it was forwarded to the learned District Judge by impugned order dated **7.7.2018**. The accused persons have never appeared before the District and Sessions Judge to make their submissions that they have such a good case. The applicant himself has filed more than 14 different documents of prosecution to press that the case against him is false and fabricated. If I exercise power under Section 561-A Cr.P.C at this stage it would amount to usurp the powers of District and Sessions Judge and stifling the fair trial. It goes without saying that whatever grounds have been taken by the learned counsel in this CrI. Misc: Application can be raised by him in an application under Section 265-K Cr.P.C before the District and Sessions Court. The applicant without first approaching the trial Court cannot claim that there was any “abuse of the process of Court” and, invoke extraordinary jurisdiction of this Court under Section 561-A Cr.P.C. Merely filing of challan by itself is not abuse of the process of the Court. The challan has been submitted before the District and Sessions Court and the learned District and Sessions Judge is fully empowered to quash the proceedings against the applicant in exercise of the powers under Section 265-K Cr.P.C after thoroughly examining each and every document relied upon by the applicant and that can be done at any stage.

4. It is settled principle of law that all criminal and civil proceedings have to be initiated from the lowest grade of the Courts and, therefore, efforts to dispose of criminal/civil proceedings, too, should be initiated from the Court of lowest grade. In fact, by approaching the High Court without first approaching the District Court for the remedy available, the applicant has attempted to “abuse

of the process of High Court”. Section 561-K Cr.P.C is not meant to circumvent and defeat the procedure laid down by the law nor it can be used by the High Court to usurp the power of District and Sessions Court to provide/extend remedy to the aggrieved person which can be obtained by the aggrieved person by approaching the District Court. It may further be pointed out that use of phrase “*at any stage*” in Section 265-K Cr.P.C ensures that remedy of seeking quashment of proceeding is available to the applicant even today when he has chosen to file this application in this Court which is also appellate Court. In my humble view even the advice to approach the High Court and give up the remedy under Section 265-K Cr.P.C was against the interest of the applicant himself. In doing so, he loses a chance of getting the relief in the first stance and gives up chances of getting the said relief in appeal/revision from the High Court in case of dismissal of his request for quashment by District Judge. I do not think it is wise to opt for only one chance instead of two chances for getting the same relief. It has been repeatedly held by the superior Courts that before exercising extra ordinary jurisdiction of inherent power of High Court, the High Court must be satisfied that there is no other remedy provided by law. As state the provision of Section 265-K Cr.P.C is definitely a remedy available with the applicant. If any case law is needed on this point one may refer to the cases reported as Muhammad Khalid Mukhtar vs. The State (**PLD 1997 S.C 275**), The State through Deputy Prosecutor-General, NAB vs. Tariq Mohsin and others (**2004 SCMR 1892**) and Dr. Sher Afgan Khan Niazi vs. Ali S. Habib and others (**2011 SCMR 1813**).

5. In view of the above, this Crl. Misc: Application is dismissed in limine alongwith pending applications.

JUDGE